THE BOARD OF

RAILWAY COMMISSIONERS FOR CANADA

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OF

JUDGMENTS, ORDERS, REGULATIONS AND RULINGS OF THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI | Ottawa, April 1, 1926 | No. 1

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Application of the Department of Northern Development, Province of Ontario, for an Order directing the Algoma Eastern Railway Company to provide and construct a suitable highway crossing, at its own expense, at a point where the company's railway intersects the highway on Lot 6, Concession 4, Township of Merritt, District of Manitoulin, Ontario;

(File No. 10844.38)

and

Application of the Department of Northern Development, Province of Ontario, for an Order directing the Algoma Eastern Railway Company to provide and construct a suitable highway crossing, at its own expense, at a point where the company's railway intersects the highway on Lot 7, Concession 5, Township of Merritt, District of Manitoulin, Ontario;

(File No. 10844.39)

and

Application of the Department of Northern Development, Province of Ontario, under Section 256, for an Order directing the Algoma Eastern Railway Company to provide and construct a suitable highway crossing, at its own expense, where the company's railway intersects the highway on Lot 2, Concession 1, Township of Merritt, in the District of Manitoulin, Ontario.

(File No. 34185)

JUDGMENT

CHIEF COMMISSIONER MCKEOWN:

These applications were heard at a sitting of the Board held in Toronto on January 14, 1926.

Three applications are made by the Department of Northern Development of the Province of Ontario, through the deputy minister, for orders of the Board under section 256 of the Railway Act, directing the Algoma Eastern Railway Company to provide and construct suitable highway crossings, at its own expense, at points indicated in the applications.

No question is raised as to the necessity or advisability of the crossings, but only as to the incidence of the expense involved.

The property of the railway company in the right of way at the locations set out in the applications is derived from a grant under the great seal of the

Province of Ontario bearing date November 1, 1901, and in which the Crown reserved—

> "five per cent of the acreage hereby granted for roads and the right to lay out the same where the Crown or its officers may deem necessary, etc."

The contention of the Department of Northern Development of the Province of Ontario is that the province is senior to the railway, because in the grant by the province to the Manitoulin and North Shore Railway Company, the predecessor in title of the Algoma Eastern Railway Company, a reservation for roads and the right to lay out the same, as above quoted, was made, and being senior, it has the right to lay out the crossings at the expense of the railway company whose property or right of way is crossed.

On the other hand, the contention of the railway company is that it is actually senior to the highways, in the sense that the line of railway was constructed and in operation before these highway crossings were contemplated and, therefore, it should not be called upon to bear any expense in connection with the construction of the crossings.

The Board is not without precedent in this matter. In an application by the municipality of the township of Caldwell, for a highway crossing over the line of the Canadian Pacific Railway Company, on the town line between two townships, where no allowances had been reserved in the original survey, but where a reservation of five per cent for the purpose of building roads was contained in the patents, with the right to the Crown to lay out same where necessary or expedient, the Board held that, in view of such reservation by the Crown, the railway company should be required to bear the expense of opening such highway across its right of way.

Township of Caldwell vs. Canadian Pacific Railway Company—9 C.R.C. 497.

Following the authority in this case, the Board made Order No. 34842, dated March 17, 1924, in connection with a like application by the Department of Lands and Forests for the Province of Ontario, for authority to construct a highway over the Canadian Pacific Railway, District of Sudbury, and therein directed that the cost of construction and maintenance thereof be borne and paid by the railway company, for the same reason.

The above instances indicate the practice of the Board in applications like the present, and orders in the three cases named will be made to the like effect.

The applications directing the Algoma Eastern Railway Company to provide the three crossings at the points above named will be allowed.

Ottawa, March 1, 1926.

Commissioner Lawrence concurred.

ORDER No. 37392

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Maximum Sleeping and Parlour Car Tolls, C.R.C. No. S-13, on file with the Board under file No. 9451.17.

THURSDAY, the 10th day of March, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Maximum Sleeping and Parlour Car Tolls, C.R.C. No. S-13, on file with the Board under file No. 9451.17, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37393

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-9, on file with the Board under file No. 9451.21.

MONDAY, the 15th day of March, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-9, on file with the Board under file No. 9451.21, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37398

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-13, on file with the Board under file No. 9451.19.

MONDAY, the 15th day of March, A.D. 1926.

H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-13, on file with the Board under file No. 9451.19, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 429

In the matter of the General Order of the Board No. 427, dated January 28, 1926, directing railway companies subject to the jurisdiction of the Board who publish tariffs naming rates on pulpwood, in carloads, in which the following provision is contained, namely: "Cars will not be considered fully loaded unless containing 90 per cent of their cubical capacity, subject to destination measurement," to amend the said tariff provision to read, "Cars will not be considered fully loaded unless containing 87 per cent of their cubical capacity, subject to destination measurements"; the said amendments to take effect not later than March 15, 1926.

File No. 19475.79.3

Monday, the 15th day of March, A.D. 1926.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*

Upon reading what is filed on behalf of the Canadian Freight Association,—

The Board orders: That the said General Order No. 427, dated January 28, 1926, be amended to provide that amendments to the said tariffs applying to United States destinations become effective April 22, 1926.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37396

In the matter of the application of the Gordon Crushed Stone Company, Limited, for an Order suspending the provision of Note "B", page 2, of Supplement No. 22 to the Canadian National Railways Tariff C.R.C. No. E-838, effective March 22, 1926, which provides that the rates on crushed stone from Hagersville will be exclusive of switching at the said point.

File No. 463.4

Saturday, the 20th day of March, A.D. 1926.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

Upon reading the application and what is alleged in support thereof and on behalf of the railway company; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the provision of Note "B", page 2, of Supplement No. 22 to the Canadian National Railways Tariff C.R.C. No. E-838, effective March 22, 1926, providing that the rates on crushed stone from Hagersville will be exclusive of switching at the said point, be, and it is hereby, suspended pending a hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

March 10, 1926.

CIRCULAR No. 209

Pilots on Locomotives

File No. 21351.1

Referring to the application of the Railway Association for an extension of time for the completion of work required by General Order No. 379, please submit for the information of the Board the total number of road locomotives on your line, number at present equipped with the standard pilot required by General Order No. 379, and number yet to be equipped.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI Ottawa, April 15, 1926 No. 2

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In the matter of the applciation of Ellen Boland for an Order setting aside the approval of the plan by the Board's Chief Engineer; for an Order setting aside the Order of the Board No. 36272, dated April 9, 1925; or, in the alternative, for an Order declaring that the Board of Railway Commissioners did not authorize or make any Order authorizing the expropriation of any portion of the Plaintiff's land.

File No. 32453.2

JUDGMENT

Hon. H. A. McKeown, K.C., *Chief Commissioner:*

This application was heard in Ottawa on February 9, 1926.

By Order of the Board No. 36272, dated the 9th day of April, 1925, an application made on behalf of the complainant in this case at a sitting of the Board held in Toronto on the 19th day of March, 1925, was dismissed. The motion then made was to invalidate the approval of plan No. C-829 for a proposed north-west retaining wall for subway on Bloor street. The approval then sought to be revoked is endorsed on the said plan, and reads as follows:—

"The Board of Railway Commissioners for Canada.

"Approved as provided in Order 35153, dated June 5, 1924.

T. L. Simmons,
"*Board of Railway Commissioners.*

"Ottawa, February 5, 1925."

In order that there may be no misapprehension as to the present motion, the following is taken from the record, p. 1107:—

"The Chief Commissioner: I would like to know just what this application is, not that I want to cut you short in your statement. What is this for?

"Mr. Boland: This is an application for a rehearing of the application which was made on the 19th of March, 1925, to set aside the approval by the Chief Engineer, or for an order restoring me to a position in which I can appeal, if the Board is of opinion that that order is right, or for a declaratory order that the Board did not authorize the taking of any of the land of Ellen Boland for the building of a subway, or the approval of the plan to which the Chief Engineer has affixed his signature."

The special reason which brings the applicant again before the Board is because it is contended on her behalf that all the proceedings taken by the Canadian National Railways in expropriation of her land have been misconceived, and there is no legal justification for the action which the railway company is taking in that respect.

The claim of applicant is, that a part of her land is sought to be taken for the purpose of minimizing damages which the action of the company in carrying out the Board's order has caused to adjoining proprietors, namely, to The Loblaw Grocerterias Company, Limited, and the Canadian Fairbanks-Morse Company, because their common access to Bloor street has been destroyed; and to remedy this, applicant's property is sought to be taken by the railway company in order that substituted access may be furnished them. Applicant says that while the railway company is entitled to take land for its own use, it cannot deprive plaintiff of her land in order to ease off or minimize the damages payable to a neighbour by reason of an expropriation of the latter's land.

This is a proposition with which the Board, in my opinion, is not called upon to deal. By order of the Board, the railway company was directed to construct a subway. Approval of the plans of such subway by the Board's Engineer was directed by the order. The Board has nothing to say as to the procedure properly to be adopted by the railway company in order to carry out the undertaking so ordered, and if in any way the company has misconceived its legal rights, or has taken steps which it was not authorized to take, the remedy is not by application to this Board, but must be sought in the courts having jurisdiction in that regard. But applicant says she already has had recourse to the courts, and that she is there confronted by plan C-829 approved by the Chief Engineer of the Board, and that the approval of such plan is a bar to her recovery. Plan C-829 is a detail plan dated January 30, 1925, showing proposed entrance to Loblaw's warehouse and property of Canadian Fairbanks-Morse Company. The provisions of the Board's Order No. 35153 made it necessary that the plan of the railway company's works be approved by the Board's Engineer, and having once given such approval, I do not think it should be revoked. Although requested to do so, the applicant pointed out no section of the Railway Act under which this procedure could be followed or justified. If, as seemed to be the conclusion drawn by the applicant, the approval of the plan was necessary for the legal carrying on of the work by the railway company, and in good faith the plan was approved for that purpose, in order that the work might proceed, it seems to me the withdrawal of such approval would leave the railway company in a position in which it would be most unfair to place it.

The substance of this motion has already been dealt with by the Order first above named, and I think the reasons which then induced the Board to refuse that application should still prevail.

But the applicant goes on to say that if the Board is of opinion that the order complained of is right, then a declaratory order is asked, that the Board did not authorize the taking of any land of the applicant for the building of the subway, nor authorize the approval of the plan to which the Chief Engineer has affixed his signature.

With reference to the approval of plans under which works of this nature are constructed, the Board is guided by the advice of its Chief Engineer in these technical matters, and if it is here suggested that in some way, unknown to the Board, the plan in question was approved by the Chief Engineer, I am willing to say that before expressing the approval by his signature, the Chief Engineer brought the plan in question to me; we went over it together, he gave me all the explanation required, and obtained whatever authority I could give

him, for the approval of this plan. The Board itself does not approve these detail plans, apart from the approval indicated by its Chief Engineer.

As to the motion for a declartory order, it seems to me that the order in question speaks for itself, and that upon a matter concerning which the Board has spoken unambiguously, it is unnecessary and undesirable that further order should be made. The difficulty under which the applicant represents herself as labouring, is, that other courts have misconceived the Board's order. I do not think it is open to us to comment upon, or criticize the view taken as to the scope and meaning of this order by courts in which it has been cited or called in question. And unless there is some ambiguity in the order, or some palpable omission, or defect, which should be supplied or remedied, what is there to declare? No such conditions prevail here. The burden of applicant's complaint is that the order has been misconstrued in other courts, and that it has therein been taken for granted that the order in some way ties up the procedure of the railway company to the Railway Act, 1919. The order reads thus:—

> "That the Canadian Pacific and the Canadian National Railway Companies be, and they are hereby, directed to construct, jointly, two subways, one under the double tracks of the Galt Subdivision and the Toronto, Grey and Bruce Subdivision of the Canadian Pacific Railway Company and the Brampton Subdivision of the Canadian National Railway Company on Bloor street, and one under the said tracks on Royce avenue, in the city of Toronto, province of Ontario.
>
> "2. That the Canadian National Railway Company be, and it is hereby, directed to construct a subway under the tracks of its Newmarket Subdivision on Bloor street, in the said city of Toronto.
>
> "3. That plans showing the two subways on Bloor street be filed by the railway companies, for the approval of the Chief Engineer of the Board, within thirty days from the date of this order; and that plans showing the Royce Avenue Subway be filed, for the approval of the Chief Engineer of the Board, not later than January 1, 1925; detail plans of the said work also to be filed for the approval of the Chief Engineer of the Board.
>
> "4. That the work on the two subways on Bloor street be commenced not later than August 1, 1924, and completed not later than July 1, 1925.
>
> "5. That the work on the subway at Royce avenue be commenced as early in the spring of 1925 as convenient, and completed not later than January 1, 1926.
>
> "6. That all questions of distribution of costs, interest, or other matter involved in the construction of the said work, be reserved for further order of the Board."

It is very clear that the above order contains no directions whatever as to the procedure which the railway company should adopt. It is left perfectly free to take any course legally open to it to fulfil the order of the Board. Whether it has taken the proper course is for other courts to determine, and I am reluctant to express any opinion which would seem to indicate that any other court has misdirected itself as to the scope or intention of the order.

Comment upon a construction put upon the above order by another court involves questioning the correctness of such interpretation, which I do not think this Board should assume to do.

I would refuse this motion.

Ottawa, March 1, 1926.

Assistant Chief Commissioner McLean concurred.

Heard at Toronto, Ontario, March 19, 1925.
Heard at Ottawa, Ontario, February 9, 1926.

COMMISSIONER BOYCE:

The application, as set forth in the Notice of Motion of February 2, and in the petition of the applicant, dated November 12, 1925, asks, *inter alia,* "for an order declaring that the Board of Railway Commissioners for Canada did not authorize or make any order authorizing the expropriation of any portion of the land of Ellen Boland, and in particular the land in question in this action, etc., etc." The petition referred to sets out in detail the various steps in litigation and the complications that have arisen which this application, so far as this Board is concerned, aims to remedy.

Under the provisions of an order of this Board, No. 35153, dated June 5, 1924, the Canadian National Railway Company, upon the application of the Corporation of the City of Toronto, was directed to construct a subway under the tracks of its Newmarket Subdivision, on Bloor street, Toronto. That plans showing that subway were to be filed with this Board, for the approval of its Chief Engineer, within thirty days from the date of order; detail plans "of the said work" were also to be filed for the approval of the Chief Engineer of the Board. This order was made, as it states, under the powers conferred upon the Board under sections 257 and 259 of the Railway Act.

The railway company filed a plan, No. C-555, dated June 28, 1924, which was approved by its Chief Engineer on July 10, 1924. This plan showed the location and width of the street and railway lines, with the sidewalks and curves on the street and the boundaries of the parcels of land adjoining.

Under date October 15, 1924, the railway company submitted for the approval of the Chief Engineer of the Board, under the order, plans of a subway as follows: C-724, profile through subway; C-706, showing details of main abutments; C-775, showing southeast retaining wall. These plans were approved by the Chief Engineer on October 17, 1924, and on that date counsel for the railway company was advised that these plans had been so approved. These plans, so approved, constitute the working plans of the subway in accordance with the order of the Board. Except as to the plans of detail, which might subsequently be filed, and which could only work out the details of the general scheme of the subway, as shown on the plans so approved on October 17, 1924, these plans constituted the general outline of the work proposed by the railway company and authorized by the Board's order.

In the view that I take, and except as to the working out, in detail, plans of the subway scheme, as shown on the general plans above mentioned, the Board had exhausted its jurisdiction under the order. The acquirement of any land, or easement, found to be necessary to the construction of the work was no part of the original order, nor could it be dealt with under section 257, but would be the subject of an entirely independent application under different sections of the Railway Act, as I shall presently show.

The plans C-724, C-775, C-706 were submitted by the railway company to the Board, October 15, 1924. On October 16, 1924, the railway company proceeded under their expropriation powers, under the Special Act and (or) the Expropriation Act, and entirely outside of the Railway Act, to expropriate two parcels of land of Ellen Boland, the applicant and petitioner, by filing in the Registry office of the city of Toronto, on that date, a plan and description of the lands proposed to be taken. As a result of this proceeding, much litigation ensued in the civil courts regarding the regularity of those proceedings and the powers of the railway company, under the Expropriation Act, or their Special Act, to take the complainant's land as part of the subway scheme. These proceedings are set forth in the petition of this Board upon which the Notice of Motion now before us is based. No proceedings had been taken at

that time, or have been taken since, under the provisions of the Railway Act, by the railway company to expropriate, take or use any of the complainant's land as part of this subway scheme.

The complainant took action in the Supreme Court of Ontario against such expropriation proceedings, asking that they be set aside as illegal and unauthorized, and that case was heard in Toronto before Mr. Justice Orde, January 26, 1925, and judgment was reserved, and was subsequently delivered on March 12, 1925. While that action was pending for judgment, and under date January 27, 1925, solicitor for the complainant wrote to the Chief Engineer of the Board, pointing out the difficulties with which his client was confronted in the civil proceedings by the proposals of the railway company to take part of her lands as part of the railway scheme, and, apparently, to attempt to justify such taking in whole or in part under the Railway Act. There was no such application before this Board, but as an expropriation plan, under the Expropriation Act, had been filed in the registry office and was offered in evidence in the civil action, the solicitor asked that before any such plan was approved by the Chief Engineer of this Board the complainant should have an opportunity of stating her case before the Board. On the same date the solicitor for the complainant wrote a letter to the Chief Commissioner of this Board, enclosing copy of the letter to the Chief Engineer, just referred to, and asked for an opportunity of presenting his client's case as and when any such plan should be submitted to the Chief Engineer of the Board for approval. Under date, January 29, 1925, the Chief Commissioner wrote to the complainant's solicitor, in reply to the last mentioned letter and stated that such a plan had not yet been submitted for the approval of the Chief Engineer, but that when this was done, and before it was approved, the solicitor would be given an opportunity of presenting his client's case as requested.

On January 30, 1925, counsel for the Canadian National Railways submitted to the Board plan No. C-829, which was the plan used in the civil proceedings, and which had not until then been submitted to the Board. This plan was filed under the title of a detailed plan of "the proposed southwest retaining wall for subway "Bloor street". In the letter submitting this plan, counsel for the railway company stated that "as provided for in the order of the Board, No. 35153, dated June 5, 1924 (the original subway order), I am enclosing for the approval of the Chief Engineer of the Board, three blueprint copies of plan of proposed southwest retaining wall for the subway at Bloor street, under the Newmarket Subdivision. Will you please note that this plan shews a highway 42 feet in width to give access to the Loblaw warehouse and the property of the Canadian Fairbanks-Morse Company, each of whose access to Bloor street is being destroyed by the retaining wall."

This plan was not assented to by the city of Toronto, nor did the city assent to or create the highway referred to, and, at the time that it was submitted (January 30, 1925) judgment in the proceedings before Mr. Justice Orde had been reserved.

The Chief Engineer of the Board visited Toronto and looked over the situation on January 31 (the day after the plan was filed) after giving notice on January 30 to the complainant's solicitor and the Commissioner of Works of the city of Toronto, and, although dated February 5, 1925, on the copy of the plan filed with the Board, the Chief Engineer of the Board wrote his approval of the plan C-829, January 31, 1925, and the copy filed in the case then pending before Mr. Justice Orde bore that date, January 31, as the date of certificate of approval of the Chief Engineer.

Under date February 2, 1925, and after the plan just above mentioned had been approved by the Chief Engineer of this Board, the Commissioner of Works of the city of Toronto wrote to the Chief Engineer of this Board as follows:—

"DEAR SIR,—I acknowledge receipt of your telegram of the 30th ultimo which reads as follows:—

'Expect to be in Toronto Saturday afternoon *re* approval of plans shewing street at Bloor Street Subway, Newmarket Subdivision, on Boland's property. Understand you have consented to approval of plan. If you desire to have someone accompany me, have him call me up at King Edward Hotel between eight and nine Saturday morning, thirty-first instant.'

"As my deputy, Mr. G. G. Powell, advised you at the site on Saturday, January 31, the city did not consent to nor has it approved the plan of proposed entrance to the Loblaw warehouse and the property of the Canadian Fairbanks-Morse Company. The city takes the position that the entrance as proposed for these properties will prove dangerous to the public, in as much as the traffic from such will come out on to Bloor street on the approach of the subway and in a cut. Bloor street is a through street and forms part of a provincial highway. The traffic for many years has been very heavy and will markedly increase. We think, therefore, that wherever such an approach to Bloor street can be avoided by other means, such provision should be made. The railway company's profile was adopted to the benefit of the railways and even if additional cost be involved by providing property entrances on the level or to some other street, it is reasonable and in the best interests of the public.

"The city is a contributor to the cost of the improvement as well as the railways, and we think that expense should not be the sole consideration where the safety and convenience of street traffic is so vitally concerned.

"We feel that the Loblaw entrance should be so arranged as either to meet Bloor street on the level or to find outlet to some other street."

Under date February 4, two days after the city's letter was written, the Chief Engineer of the Board wrote to Mr. Harris, the Commissioner of Works of Toronto, in reply to his letter, and over-riding the city's contention as to the dangerous nature of what was proposed in the shape of a cross street entering the subway, stated that he had approved the plan. (He had approved it on January 31 previous.) This procedure was objected to by the solicitor for the complainant, in a letter dated February 2, 1925, to the Chief Commissioner, and he asked for a hearing. I extract the following from this letter:—

"I would ask that the Board of Railway Commissioners permit a hearing so as to enable us to give the necessary evidence so as to show the facts. I am surprised at the haste on the part of Mr. Simmons because he was aware of the fact that I intended communicating with the Board in reference to the objections legal and otherwise and the facts which should be placed before the Board of Railway Commissioners. Will you please consider this as an application on behalf of Ellen Boland to disallow the approval or for a reconsideration of what Mr. Simmons apparently has tried to do pursuant to the belated approval which he has now attached to the plan.

"It seems to me that this was and is indecent haste having regard to the fact that Mr. Simmons gave us a very few minutes of his time on Saturday morning on the ground and when I explained to him that there were legal objections and questions of fact which we wanted to raise he said *he had nothing to do with it*, but it does strike me that proper consideration would have caused him to defer action until the matter could be properly placed before the Board of Railway Commissioners."

The provisions of section 19, subsection 2, providing that any complaint made to the Board "*shall,*" on the application of any party to the complaint be heard "and determined in open court," as was requested by the solicitor's letter, seem to have been overlooked. It appears, however, to be a mandatory provision and to confer a right to a hearing in open court before the Board, to which any approval by an officer of the Board was subject.

The Chief Commissioner replied to this request, under date February 4, 1925, in part as follows:—

> "I gather from your late favours that in the suit now under consideration by Mr. Justice Orde, the point is raised that as no part of the subway in question is built on Mrs. Boland's property there is no power in the railway company to expropriate her land, it not being needed for the work but being taken in order to minimize damages to neighbouring property caused by the railway company's expropriation. *If that contention is well founded, there would seem to be no justification for the railway company taking possession of this piece of land and the approval of the plan could not validate it.*"
>
> . . . . . .
>
> "The way the matter presents itself to me is that, if under the circumstances it is within the power of the railway company to take Mrs. Boland's land, the law will have to prevail, *providing the procedure has been regularly taken.* I gather that this point is now under consideration by the Court, as well as the larger question, whether it is competent that the railway company take the land of an adjoining proprietor to minimize damages to property as in the present instance.
>
> "If you have it in mind to make any application to the Board, I need hardly say that it will always be ready to hear you."

After the approval of the plan (January 31, 1925), and following a strong telegraphic protest from Ward 6 Ratepayers' Association of the city of Toronto, as to the dangerous condition that would be created by such an entrance to the subway, the Board consented to a hearing, ex *post facto,* of the protests of the complainant and other interested parties against the approval thereof. No suspension of the operation of the plan so approved was directed pending such hearing by this Board.

The plan, as approved by the Chief Engineer, was then used by the railway company in evidence in the civil action then standing for judgment in the Supreme Court of Ontario, and was relied upon there by the railway company as a defence, and was admitted as exhibit No. 24 in that case. Judgment was delivered by Mr. Justice Orde, March 12, 1925, in the course of which His Lordship stated as follows:—

> "Counsel for the company did not attempt to rely upon any express provision in the Railway Act, 1919 (9-10 Geo. V, Cap. 68 Dom.), and so far as I am aware an ordinary private railway company incorporated by the Parliament of Canada would probably not have the power to do what the defendant company is doing here."

The judgment deals with the proposals of the railway company, as contained in its plan C-829.

In dealing with Parcel "B"—the small wedged-shaped piece running parallel to Bloor street—the learned judge says:—

> "I fail utterly to understand how the defendants justify the taking and removal of part of the complainant's soil and the building upon her land of a retaining wall, or a slope, upon any theory that the interest in the land so taken or interfered with is an easement."

He further says:—

> "Here it is proposed, I understand, to leave a slope and build some sort of retaining wall on the parcel in question. The complainant will be left with the title in fee in the parcel itself, but without any power to use it or build upon it by reason of the so-called 'Easement' of the defendant company to maintain the strip as a slope. This, in my judgment, the defendants cannot do under any guise."

And, the learned judge concluded that,—

> "Upon that branch of the case the plaintiff, the present complainant, was entitled to a declaration that the defendant company was not entitled to enter upon Parcel 'B,' or to erect any structure thereon."

Now, this retaining wall, or slope, which is shown as part of the southwest retaining wall, constitutes an important part of plan C-829, submitted to the Board by the railway company in the manner I have mentioned. It was a plan submitted by the railway company as a detail of the subway, but it is judicially declared in the civil court that such a retaining wall, or slope, cannot be built, or made, on the complainant's land as indicated, and it does seem to me, therefore, that the proposal outlined by the plan C-829, though approved by this Board's Engineer, has been, by judgment in civil proceedings, judicially declared to be improper, and not permissible by law as regards that part of it, shown on the plan in brown, which purports to effect the land of Ellen Boland. I cannot see, therefore, that the plan C-829 which shows such retaining wall, or slope, could continue as a valid plan, and if only on that reason ought to have been disapproved before this. It is erroneous.

A hearing was allowed before the Board on March 19, 1925, and judgment delivered April 7, 1925, dismissing the application upon the grounds set forth in the judgment of the Chief Commissioner of that date. Reference to this judgment will show that the learned Chief Commissioner, referring to the expropriation proceedings commenced by the company, says:—

> "In this (the expropriation proceedings of October, 1924) the railway company acted, *not* by order of this Board, *nor under the provisions of the Railway Act,* but by authority of the Act incorporating the Canadian National Railway Company and the Expropriation Act."

He further says:—

> "The expropriation proceedings were admittedly taken before the plan (C-829) was approved, and if such approval be a condition precedent to the commencement of such proceedings, then, undoubtedly, all that the railway company has done in the way of taking the land in question is without legal foundation and the defence thereon must fall to the ground and no action of the Board invalidating the plan is required in order to entitle her to succeed."

The Board never has had any application before it, under the Railway Act, which would give it any power or jurisdiction whatever to encroach upon or authorize the encroachment upon the taking or interfering with any private or proprietary rights in abutting lands.

But, it is alleged, that the approval of the plan C-829, constituted an assertion by the Board of such a jurisdiction, and this is what has never been cleared up by this Board.

What powers of expropriation of adjoining lands there are in the Railway Act applicable to the circumstances were never invoked by the railway company, and have not yet been invoked. Those powers are contained in totally different clauses of the Act and the procedure to be followed in invoking them is specific and mandatory.

It is one thing under that Act to get power to build a subway to carry a street under a railway, under section 257, but quite another to authorize the railway company in connection with that work, to enter upon, take, use, or interfere with the rights of ownership of land, however necessary it may be.

The original order of this Board only authorized the carrying of Bloor street under the railway tracks, under section 257, and the doing of such work as was necessary for that purpose, and the filing of such plans as would show that the work was to be properly done under the Board's order. If, in the carrying out such work, the right of eminent domain is to be exercised, the Railway Act, under wholly distinct procedure, specifies how that is to be done. There is no such power under section 257 under which the original subway order was made.

Section 200 of the Railway Act specifies this procedure in the following language:—

> "(1) Should the company require, at any point on the railway, more ample space than it possesses or may take under the preceding section for . . . . the diversion of a highway, or the substitution of one highway for another, *or for the construction or taking of any works or measures ordered by the Board under any of the provisions* of this Act or the Special Act, etc., it may . . . . *apply to the Board for authority to take the same for such purposes, without the consent of the owner.*"
>
> "(2) The company shall give ten days' notice of such application to the owner or possessor of such lands and shall, upon such application, furnish to the Board copies of such notices with affidavits of the service thereof."
>
> "(3) (*a*) and (*b*) specifies the procedure which '*shall*' be taken in the application before it is before the Board, and
>
> "(4) Sets forth that 'After the time stated in such notices, *and the hearing of such parties interested as may appear*, the Board *may in its discretion*, etc., etc., authorize *in writing* the taking, for the said purposes of the whole or any portion of the lands applied for."
>
> "(5) and (6) provide for filing of authority with the Board, with plan, profile, book or reference and notices with the Board, and delivery thereof to the company—and (6) registration of such duplicate authority, plan, profile, book of reference, and application, or copies thereof certified by the Board with the Registrar of Deeds of the county in which such lands are situated."

Under subsection (7) all the provisions of the Railway Act applicable to the taking of lands without the consent of the owner shall apply to the lands "*authorized under this section to be taken, etc.*"

This section (200) of the Railway Act (1919), was section 178 in the previous Act R.S.C., Cap. 37. From the plain wording of the section itself, it is clear that the provisions of the section, now 200, must be strictly complied with, as indeed is obvious where rights of private ownership are to be over-ridden in the public interest and for the public benefit.

C.P.R. v. Coquitlam Landowners, 13 C.R.C., p. 25.
The Burnt District Case, Toronto, 4 C.R.C. 290.
Vancouver V. & E. Ry. Co., v. Municipality of Delta, 8 C.R.C. 354.
Municipality of Delta v. Vancouver V. & E. Ry., etc., Co., 8 C.R.C., p. 362.

No application, whatever, has been made by the railway company to this Board under this section, or under any other section of the Railway Act, to expropriate, in whole or in part, or otherwise to in any way prejudicially affect the lands of the complainant. This is a fact, the determination of which rests

solely with this Board, and in the determination of which "the Board shall not be concluded by the finding or judgment of any other court in any suit, prosecution or proceeding involving the determination of such fact," etc., etc.

Section 44 of the Railway Act, 1919.

When application was heard by this Board, March 19, 1925, to invalidate the approval by the Chief Engineer of the Board, given under the circumstances I have set forth, of plan C-829, attention was drawn by applicant to the judgment of Mr. Justice Orde in the civil action, delivered March 12, 1925, which, while holding that the defendant railway company was justified under the Expropriation Act in proceeding to expropriate the complainant's lands yet referred to, plan C-829 which was admitted in evidence of the contention of the company in that action that this Board, as part of the subway scheme, under its Order No. 35153 of June 5, 1924, had, by its Chief Engineer, approved a plan that purported to condemn, by this Board, for such purposes, the portions of land shewn thereon in colours. This Board had not, and, as I have pointed out, could not, do any such thing. Moreover, by the judgment in the civil court, then before this Board, it was shewn that the part of the retaining wall, or slope, at southwest corner, on plan C-829 (referred to in the judgment as "B") was held not to be the subject of any expropriation under the Expropriation Act, and, therefore, it was before the Board on that application, that the plan, quoad that portion of the retaining wall, was incorrect.

Having these facts before it at that time, it seems to me that it would have been well within the Board's powers, and most desirable in removing any doubts in the matter, and the complications that did follow through omitting to do so, that the judgment and order of this Board should, in disposing of that application, have plainly stated that no expropriation proceedings whatever had been commenced before this Board under the Railway Act, and pointing out the reasons therefor. So far from making such a situation plain the judgment on that application (*a*) specifically approves the entrance to the subway which involves an expropriation, although there was no application before the Board with reference to it, and, therefore, the Board was without jurisdiction to approve it, and (*b*) declined to interfere with the approval of plan C-829 by its Chief Engineer, shewing the southwest retaining wall, when it had before it the judgment of the learned judge in the civil action granting the contentions of the complainant that, as to at least part of that plan, the rights of the complainant could not be interfered with, and the proposals of the railway, as shewn by the plan could not at law, be proceeded with, and therefore the plan was incorrect in an important particular and should be disapproved.

It would, in my opinion, have considerably clarified the situation had such a declaration been made.

The Board is now asked, in this application, to rectify a condition of things which has grown up by reason of its approval of plan C-829 in the manner I have referred to, and of its subsequent reaffirmation of the approval of that plan in the face of judicial opinion that part, at least, of it was improper and should not therefore stand as a detail plan which it purported to be. The position heretofore taken by the Board in so doing has led to dicta in other judicial courts entirely at variance with the facts as the Board determines them.

It is not my intention to discuss at length the various steps taken in the intricate proceedings in the civil courts, all centering around and in a large measure caused by the approval of this plan. Those facts are set forth in full in the petition and Notice of Motion, which is part of the record, but I would shortly refer to some outstanding features made apparent to the Board by judgments of judicial courts, the result of which, if nothing be done on this application, is to place the complainant in a very embarrassing position.

For example, the judgment of Mr. Justice Orde was appealed to the Second Divisional Court of Ontario, and judgment was delivered determining the appeal. The judgment being written by Mr. Justice Middleton, from whose judgment the following paragraphs may be quoted:—

> "The case is, I think, within the provisions of section 257 of the Railway Act and the order of the Board made under the authority of that section is sufficient to justify all that has been done by the defendants."
>
> "What is to be done and how it is to be done is by the statute a matter to be determined solely by the Railway Board and this court has no jurisdiction to go behind the order of the Board in any respects."

The above is in direct conflict with the facts before this Board. I think those facts should now be made plain, in order that the complainant may not be further prejudiced in carrying her appeal to the Privy Council and that this Board may make plain that it has made no such Order and could not have made it upon what was before it.

If, what the railway company has done is, as affirmed by the Divisional Court, in the language above stated, justified under section 257 of the Railway Act, and is authority for the expropriation proceedings which this Board has asserted are taken outside of the Board and outside of the Railway Act, and if, as set forth in the second paragraph above quoted from the Divisional Court judgment, relief is denied the complainant in the civil courts, because, in the opinion of the civil court, it has no jurisdiction to go behind an order of this Board, which is so interpreted, then I think it is the duty of this Board to make plain, through the complications that beset it, that it did not and could not, on what was before it, assert any jurisdiction which would be a bar to the complainant in getting the relief sought for in the civil court.

The Supreme Court of Canada in delivering judgment remitting the expropriation proceedings to the Exchequer Court commented upon the judgment of the Appellate tribunal of Ontario, in the following language:—

> "For the reasons stated by Mr. Justice Middleton in delivering the judgment of the Appellate Division of the Supreme Court of Ontario, affirming the judgment of Orde J., (56 Ont. L.R. 653) in Boland v. C.N.R. (29 Ont. W.N. 41), we agree with the conclusion of that court that the impugned expropriation falls within the provisions of the Railway Act, 1919, and that the order of the Board of Railway Commissioners of Canada was sufficient to justify all that has been done by the railway company."

When the complainant desired to appeal to the Judicial Committee of the Privy Council from the judgment of the Second Divisional Court, cited before, her application was dismissed with costs, the learned judge who delivered the judgment of the court, used the following language:—

> "In this matter the *sole matter* in controversy is the right of the Railway Board to make an Order authorizing the expropriation of a portion of the complainant's land."

This Board made no such order, and except for what is contained in the approval of the plan, C-829, and in its affirmation, nothing in the shape of expropriation proceedings was before this Board, and, as I have pointed out, the plan C-829 purporting to shew the southwest retaining wall on the complainant's land is rendered ineffective as a detail plan by the judgment of Mr. Justice Orde.

Upon the hearing of this application, and in connection with the above, I put this question to Mr. Fraser, K.C., counsel for the railway company. See Volume 451, page 1128:—

> "COMMISSIONER BOYCE: Is this right, Mr. Fraser? In this case the sole matter in controversy is the right of the Railway Board to make an order authorizing the expropriation of a portion of the complainant's land?
>
> "Mr. FRASER: No; it is not."

Now the complainant sets forth in her petition that she was not aware that she was prejudiced by reason of the judgment of the Board, written by the Chief Commissioner, and concurred in by the Assistant Chief Commissioner, which refused to set aside the approval of plan C-829, until on the argument of the appeal on which the judgment of the Second Divisional Court was delivered shewed that the railway company was relying and had argued that the *Order of the Railway Board and the approval of the plan, by the Board, was justification for all that it had done.*

I think that it is the manifest duty of this Board, in view of the complications which have arisen, as a result of the approval of plan C-829, and of the affirmation of such approval, to make clear the facts which rest with the Board alone to determine. The allowance of the plan, in the view that is pressed upon us, supported by the judgment in the civil courts, is taken as justification for interference with property and civil rights in the province of Ontario, and with the control of the said Corporation of Toronto of its streets.

The Board, as is very clear, had no such intention, and I may add that, in the circumstances it had no such jurisdiction, and I think there is a question of fact to be determined in view of the controversy and complications which have arisen, and which facts should be determined and expressed under section 44 of the Railway Act, free from anything that has been expressed in the finding, or judgment, of any other court, and that is that in approving the plan, C-829, by the Chief Engineer of this Board, this Board did not assume, nor did it intend to assume any jurisdiction which would, in any way, authorize the railway company to enter upon, take, or use, any of the lands of the complainant, or of any other person abutting on the area to which by the limits of Bloor street the subway work was confined.

I think that it is not a sufficient answer to this application to say that the order made by the Board speaks for itself. The conclusion, which is irresistible in the circumstances, especially in view of the comments of Mr. Justice Orde, as to the proposal to erect the retaining wall on the complainant's land, as shewn in plan C-829, is that that plan should not have been approved, is judicially condemned, at least in part, and is not now a feature of the subway, and that in approving of it the Board did not, and upon what was, or is, before it, had no power to authorize any expropriation of land of Ellen Boland, or any other person, or to exercise any jurisdiction outside the limits of Bloor street, and that by no action, or order of this Board has the complainant's proprietary rights in her property been encroached upon; and the plan having become defective and inaccurate as a detail plan, by reason of the judgment of Mr. Justice Orde, relating to plot "B", slope or retaining wall, I would now, in order to remove doubts and to make the situation plain, disapprove of the plan and cancel the approval thereof by the Chief Engineer, under date January 31 (or February 5, 1925), and would make order that the railway company submit for the approval of the Board another detail plan of the southwest retaining wall, prepared in conformity with the original order, and limited to what that order authorizes, and no more.

To leave this matter in its present position and to make no other order upon this application than to dismiss it would, I think, leave this Board in the position of having approved, as part of a work authorized by it, the doing of something (the construction of part of the slope of southwest retaining wall, on the complainant's lands, and beyond the confines of Bloor street, as plan C-829 shews), that a provincial court has declared must not be done, and of having, subsequent to the judgment of the provincial court, and with the judgment of that court before it, affirmed the approval of such plan in express terms, and, by dismissing the application to cancel its approval. This would place this Board in a position which it has ruled it has no jurisdiction to do, namely, to supplant (not overlap) the jurisdiction of a provincial court.

See Judgment of Chief Commissioner Killam in Duthie v Grand Trunk Ry. Co., 4 C.R.C. 304 at p. 315.

The complainant desires to prosecute her appeal from the provincial courts to the Judicial Committee of the Privy Council, but has been denied leave to appeal in the language of Mr. Justice Middleton, quoted above. I feel it to be the duty of the Board to correct the error of fact which obstructs the complainant in her efforts to assert her proprietary rights to the fullest extent, in the judicial proceedings, and I would do so in the manner suggested.

I am, therefore, of opinion that a declaratory order should issue to the effect that this Board never authorized the taking of any of the land of Ellen Boland in connection with the construction of this subway, and the approval of the plan by the Chief Engineer, in the opinion of this Board, cannot be construed as giving such authority.

Ottawa, March 11, 1926.

Deputy Chief Commissioner Vien, and Commissioners Lawrence and Oliver concurred.

Heard at Toronto, Ontario, March 19, 1925.
Heard at Ottawa, Ontario, February 9, 1926.

Commissioner Oliver:

Mrs. Ellen Boland is the owner of property which fronts on Bloor street, in the city of Toronto, near the point at which that street is crossed by the Newmarket branch of the Canadian National Railway system.

On June 5, 1924, the Board ordered and thereby empowered the railway company to construct a subway on Bloor street where it is crossed by the Canadian National Newmarket Branch. Part of the cost was to be borne by the city of Toronto. The order required the railway company to file a plan of the proposed subway within thirty days. The plan was accordingly filed and duly approved. This plan involved the lowering of the street level for some distance on each side of the railway track. It thereby interfered with access from the street level thus lowered to the buildings occupying the surface level on each side. The order and plan did not, and was not intended by the Board, to apply to any property outside the street line. It was fully understood in and through the order of the Board that whatever damage was suffered by these properties must be paid for jointly by the Canadian National Railways and the city.

The Loblaw Groceries occupied land fronting on the subway and adjoining the Boland property. The amount of damage suffered by properties fronting on the subway depended on the depth of the street depression and on the measure and kind of use being made of the properties affected. As the Loblaw building occupied all but twelve feet of the frontage of the property occupied; as a large and increasing business was being done in and from it; and as the

level of the subway at that point was considerably below the ordinary street level, the Loblaw interests were entitled to very substantial damages. The Boland property was not used for business purposes, and the frontage was not fully occupied by buildings.

In arranging damage adjustments regarding the properties fronting on the subway, the railway reached the conclusion that instead of settling with the Loblaw interests for the full amount of damage suffered because of the construction of the subway, it would be advantageous to lessen the damages by giving the Loblaw interests access over an adjoining strip of the Boland property, then unoccupied. Apparently a satisfactory adjustment between the railway company and Loblaws was arrived at on that basis. But it was found impossible to come to terms with the owner of the Boland property.

Section 200 of the Railway Act—the Act which defines the powers of the Board of Railway Commissioners—makes provision for dealing with cases in which a railway company requires land outside its right of way. This section governs all railways in Canada except the Canadian National, which by reason of its being Government owned, claims to be entitled to take proceedings for acquiring land outside its right of way, under the Expropriation Act, a measure that makes provision by which the Crown may take possession of land for Crown purposes. Proceedings for the taking of private property under the Railway Act are slow and cumbersome. Under the Expropriation Act they are summary. In the Boland case they consisted in filing plans of the land to be expropriated, in the Registry Office of the city of Toronto on October 16, 1924. This was the formal assertion of possession, leaving the amount to be paid to be settled later.

Mrs. Boland entered action in the Supreme Court of Ontario to have the expropriation by the railway company annulled. Mr. Justice Orde heard the case in January, 1925. The city of Toronto, which was paying part of the cost of the subway, disapproved of the expropriation plan filed by the railway company because of the dangers which it created. After the evidence had been heard by Mr. Justice Orde, but before a decision had been rendered, the expropriation plan was submitted to the Chief Engineer of the Board of Railway Commissioners. After an examination of the ground this plan was approved by him, as not creating a danger to the subway traffic, as the city had held. The approved plan was accepted as an exhibit by the court.

In March, 1925, Mr. Justice Orde gave his decision that the railway company had the special right of expropriation claimed and that, therefore, the plan should stand. He pointed out that the extraordinary procedure outside of the terms of the Railway Act, and outside that of the authority of the Board of Railway Commissioners, could not have been taken by an ordinary railway company—could, in fact, only have been taken by the Canadian National Railways, as acting in the right of the Crown.

A certificate that the subway had been completed in accordance with the original plan was issued by the Board on August 21, 1925. No work had been done at that time, and none has yet been done, on the Boland property taken under the Expropriation Act.

Mrs. Boland appealed from the decision of Mr. Justice Orde to the Second Divisional Court of Ontario. The judgment in that case was delivered by Mr. Justice Middleton, who said in part:—

> "The case is I think within the provisions of section 257 of the Railway Act, and the order of the Board, made under the authority of that section, is sufficient to justify all that has been done by the defendants."
>
> "What is to be done and how it is to be done is by the statute a matter to be determined solely by the Railway Board and this court has no jurisdiction to go behind the order of the Board in any respect."

Mrs. Boland then applied for leave to appeal to the Judicial Committee of the Privy Council. This was refused; the reasons for the refusal were stated by Mr. Justice Middleton. They contained the following paragraph:—

> "In this case the sole matter in controversy is the right of the Railway Board to make an order authorizing the expropriation of a portion of the plaintiff's land."

There is an obvious contradiction between the views of Mr. Justice Orde and Mr. Justice Middleton, with his colleagues, in regard to the application of the Railway Act and therefore of authority of the Board to the expropriation proceedings taken by the railway company against the Boland property. Because of this difference in understanding in regard to a question of fact concerning the action of this Board, between the trial court and the Court of Appeal, Mrs. Boland is debarred from the right of appeal to the court of last resort for the protection of her property rights. If the view of Mr. Justice Orde is correct, Mrs. Boland might be given the right of appeal. If Mr. Justice Middleton is correct in his view, there is no provision for such an appeal.

Mrs. Boland asks the Board, as the authority whose action is in question, for a declaration of fact as to whether the expropriation proceedings taken against her property were or were not by the order of the Board. To be the more easily understood, it seems to me that this question might fairly be divided into two parts:—

(1) Did the Board's order for the construction of the subway authorize the expropriation of Mrs. Boland's property?

(2) Has any action since been taken by the Board that would constitute such authorization?

An order of the Board having been made, and the interpretation of that order by the courts having shown a difference of opinion on the facts as to the Board's action, with the result that the right of appeal to the court of last resort is denied, the applicant desires a declaration by the Board which will remove the disability imposed upon her by the interpretation placed upon the order and action of the Board by the Appeal Court of Ontario.

This is an extraordinary application; but the circumstances of the case are extraordinary. As I understand it, the prime purpose of the existence of this Board is to decide on questions of fact rather than on those of law, and to deal with situations, ordinary or extraordinary, as they arise. That is one of the outstanding differences between this and other Courts of Record.

I am of opinion that the facts call for an official declaration by this Board:—

(1) That the expropriation of Mrs. Boland's property by the Canadian National Railways was not included in or contemplated by the original order for the construction of the subway; and

(2) That the Board has not taken any subsequent action that brings it under the expropriation proceedings taken by the railway company.

Ottawa, March 15, 1926.

ORDER No. 37446

In the matter of the application of Ellen Boland, of the City of Toronto, in the Province of Ontario, hereinafter called the "Applicant", for an Order setting aside the approval of the plan by the Chief Engineer of the Board and the Order of the Board No. 36272, dated 9th April, 1925; or, in the alternative, for an Order declaring that the Board did not authorize or make an Order authorizing the expropriation of any portion of the Applicant's land.

File No. 32453.2

THURSDAY, the 1st day of April, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 9, 1926, and March 19, 1925, in the presence of counsel for the applicant and the Canadian National Railways, and what was alleged,—

The Board declares: That, in issuing its Order No. 35153, of the 5th of June, 1924, it did not authorize the taking of any of the land of the applicant in connection with the construction of the Bloor Street subway; and the approval of plan No. C-829 by the Chief Engineer of the Board is not to be construed as giving such authority.

THOMAS VIEN,
Deputy Chief Commissioner.

Application of the Red Deer Valley Coal Company, Limited, for an Order, under Section 35, interpreting and giving effect to certain agreements between the Canadian Pacific Railway Company and the North American Collieries, Limited, and the Red Deer Valley Coal Company, Limited, in connection with the installation, maintenance, and operation of a spur line serving the applicant.

File No. 27400.7

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The applicant sets out that an agreement was entered into between the Canadian Pacific Railway Company, of the first part, and the North American Collieries, Limited, and the Red Deer Valley Coal Company, Limited, of the second part, the said agreement being dated July 24, 1922. It is set out that under the said agreement the Canadian Pacific Railway Company undertook and agreed to rebuild a mine spur belonging to the applicant, and thereafter to maintain and operate it in accordance with the terms of the said agreement.

It is further recited that by a subsequent agreement between the Red Deer Valley Coal Company and the Canadian Pacific Railway Company, dated the 13th day of August, 1923, "all the terms of the original agreement, save and except as to the rock conveyor, were made applicable only to the applicant and the Canadian Pacific Railway Company, the North American Collieries, Limited, having lost all interest in the property by reason of the termination of a lease under which they had operated up to January 20, 1923."

The matter concerned, and in connection with which an interpretation and order based thereon is asked for, is set out in the application as follows:—

"By order of the Board No. 32119, dated the 9th of February, 1922, authority was granted to the Canadian Pacific Railway Company to construct, maintain, and operate a branch line of railway parallel to and fourteen feet north of the spur of the applicant, and to connect with the Canadian National Railways in section 9, township 29, range 20, west of the 4th meridian.

"After a hearing at Calgary, in the year 1922, a judgment was rendered by the Board, and Order No. 33001, dated the 20th day of October, 1922, was issued approving of a plan showing a proposed connection between the Canadian National and the Canadian Pacific Railways at Drumheller, 'in lieu of the plan approved under Order No. 32119'.

"A reference to the judgment shows that it was the intention of the Board to grant certain rights to the Canadian Pacific Railway, subject to the preservation of the prior rights of the Canadian National. The language used by the Chief Commissioner will be found on page 2 of the judgment. He says:—

> 'Mr. Walker, for the Canadian Pacific Railway, pointed out that by a new agreement with the North American Collieries, they had provided for the reconstruction of this spur, which was in a very dilapidated condition, and had maintained all rights which the Canadian National Railway possessed therein, stating positively that the Canadian National had prior rights of user of the same whenever necessary to their purposes.'

"It was the intention of the applicant and the Canadian Pacific Railway Company that when reconstructed, and so long as properly maintained, the applicant's spur should be used by the Canadian Pacific Railway Company in accordance with the above recited agreements, in lieu of the trackage which the Canadian Pacific proposed, as shown on the plan approved by Order No. 32119; but Order No. 33001 merely approved of the connection with the Canadian National Railway and made no provision for the operation of the applicant's spur.

"There was a plan attached to the agreement of the 24th of July, 1922, which showed the existing trackage of the applicant, and it was the intent and purpose of the parties that all the trackage shown on the said plan should be reconstructed and thereafter maintained by the Canadian Pacific Railway Company.

"Notwithstanding repeated requests from the applicant, the Canadian Pacific Railway Company declines to admit its duty to maintain the whole of the said trackage."

The application then continues by stating that the fact that the Board's orders are not specific in fixing the terms governing the operation of the spur may cause considerable embarrassment and danger to the applicant and to the public, and it is essential that a proper order be issued by the Board defining in definite terms what the situation is under the agreement and how the spur should be operated by both railway companies. In sum, what is requested by the applicant is as follows:—

"That the Board examine the said agreements and the plan attached thereto, and issue an order that the Canadian Pacific Railway Company rebuild and thereafter maintain and operate the whole of the trackage of the applicant shown on the said plan, in accordance with the terms of the said agreements.

"That provision be made by order of the Board for the operation of the said spur by the Canadian Pacific Railway Company and the Canadian National Railway Company, maintaining to the latter company its

prior rights as guaranted by the Calgary sittings and as set forth in the Board's judgment of October 20, 1922.

"That the said operation by the railway companies shall include the use of the spur for the movement of all classes of freight traffic.

"That the Canadian Pacific Railway Company will be responsible for the installation, maintenance, and operation of any necessary protection or protective appliances, if and when ordered by the Board.

"That the Canadian Pacific Railway Company assume all liability for damage arising out of or in connection with the operation and maintenance of the spur. In this connection it will be noted that the Canadian Pacific Railway Company's main line runs through sections 7 and 8, in which the applicant's mine is located, and use part of the original mine spur for such main line."

In its reply the Canadian Pacific Railway Company recites the various steps in connection with the negotiations between the North American Collieries and the railway company on the one hand, and the Red Deer Valley Coal Company and the railway company on the other. The railway company says: "The Red Deer Valley Coal Company now contend that the Canadian Pacific should reconstruct and maintain certain trackage on which the railway company enjoys no rights under the agreements, and which it was never contemplated the railway company should maintain."

The railway company contends it has carried out all the terms of the two agreements, and there is no necessity of an order being made by the Board.

As presented, it appears that, under the agreement, and in lieu of trackage which the Canadian Pacific was authorized by Order No. 32119 to build, an agreement was entered into whereunder rights were obtained in respect of the use of trackage through the property of the applicant.

Section 35 of the Railway Act, under which the applicant moves, is one which has been recognized as conferring an extraordinary jurisdiction, trenching to a certain extent upon the jurisdiction of the courts, and the Board has recognized that, that being so, it must be strictly construed.

Prior to the amending legislation of 1908, contained in section 8, chapter 61, 7-8 Edward VII, the Board had no jurisdiction in regard to the enforcement of an agreement. The legislation aforesaid was repealed and replaced by section 1, chapter 32, 8-9 Edward VII.

In dealing with the jurisdiction of the Board as it existed prior to the enactment of the legislation in question, a decision rendered in 1905 by the late Chief Commissioner Killam is very pertinent. See Duthie v. Grand Trunk Ry. Co., 4 Can. Ry. Cas. 304. At p. 311 it is stated:—

> "The Board is purely a creature of statute. The general principle applicable to such a body is that its jurisdiction is only such as the statute gives by its express terms, or by necessary implication therefrom."

Again, at p. 315, it is set out:—

> "It (the Board) was not created to supplant or even to supplement the provincial courts in the exercise of their ordinary jurisdiction, but to exercise an entirely different jurisdiction, though perhaps occasionally overlapping that of the provincial courts."

The position so laid down sets out the broad general principle to be followed. Any departure therefrom, under section 35, must be confined to what is therein set out; and this, it would appear, should interfere with the jurisdiction of the provincial courts only in so far as is strictly necessary. If adequate remedy exists within the jurisdiction of the provincial courts, action under section 35 is precluded.

Aside from the provisions of the section, the Board has recognized, in matters arising under other sections of the Act, that a public interest is necessary to justify its intervention. In City Transfer Co. v. Canadian Northern

Railway Company, 19 Can. Ry. Cas. 427, complaint was made by the transfer company against the railway company for breaches of a contract to which the complainant and the railway company were parties. At p. 429 it is stated: "There is, however, no public interest involved which would justify the Board interfering one way or another on the mere question of contractual rights, involving as they do no public interest;" and the matter was therefore considered as one not within the Board's jurisdiction, but falling within the jurisdiction of the regular courts.

The judgment does not refer to section 35.

In dealing with the subject-matter of section 35, and its predecessor, already referred to, the Board has emphasized that the jurisdiction as to agreements is purely statutory. It has said:—

> "It will be noted that agreements, although made by railway companies, are not placed generally under the Board's jurisdiction, but only agreements relating to the company's obligations having regard to its railways and its operation and use, etc. The ordinary contractual obligations of railways are left with the appropriate courts."

City of Victoria and Attorney General for British Columbia v. Esquimalt and Nanaimo Railway Co., 24 Can. Ry. Cas. 84, at pp. 90 and 91.

In Montreal v. Grand Trunk Co., 25 Can. Ry. Cas. 448, at p. 454, it was pointed out that the functions of the Board were confined within the limits of the Railway Act and for the administration thereof in adjusting and settling rights and liabilities as between the railways under its jurisdiction and the public, for the more effective carrying out of the transportation system of Canada, and, therefore, its powers and its jurisdiction with regard to the enforcement of agreements are distinctly limited by statute.

The same principle was followed in Town of Leamington v. Windsor, Essex and Lake Shore Rapid Ry. Co., 28 Can. Ry. Cas. 346.

What is asked for is specific performance. The decisions in the *Montreal* case and in the *Leamington* case point out that section 35 does not bind the Board to such action, but instead emphasizes its function to "make such order as to the Board may seem reasonable and expedient."

While a breach is complained of, it is not clear from the submissions made that there is a specific breach existing. As presented it is at most an inferential breach. The Board's jurisdiction under the section cannot be successfully invoked where the breach alleged falls only inferentially within the scope of the agreement. The breach must be of something specifically set out in the agreement. City of Hamilton v. Grand Trunk Ry. Co., 21 Can. Ry. Cas. 211.

To have carried on the work under Order No. 32119, the railway company would have had to acquire right of way. In this connection disputes might have arisen as to cost; there might have been disputes as to other incidents of acquisition; there might have been questions as to the area involved. Into the matters so arising, whether out of compulsory taking or out of contract, and the determination of the questions arising therefrom, the Board would not have been empowered to enter; and the remedies afforded by the courts would have been unimpaired.

Where for the landowner who would have been affected under the order there is substituted the applicant company, is the situation varied? This substitution, instead of dealing with the matter under the provisions of the Railway Act in regard to compulsory taking, deals with the matter under contract. As the matter presents itself to me, what is involved is a question of construction of a contract. Having in mind the wording of the section and the decisions thereunder, it appears to me that the applicant should be left to its remedy, if any, in the courts.

March 5, 1926.

Commissioner Boyce concurred.

Heard at Calgary, Alta., November 20, 1925.

COMMISSIONER OLIVER:

The applicant coal company complains that it is obliged to pay the Canadian National Railways certain charges for rental and upkeep of certain railway sidings and spur tracks used in the operation of its coal mine, which the objecting railway company had agreed, but now refuses, to pay. The coal company asks,—

> "That the Board issue an order that the Canadian Pacific Railway Company rebuild and thereafter maintain and operate the whole of the trackage of the applicants shown on the said plan, in accordance with the terms of the said agreement."

The application of the coal company is made under section 35 of the Railway Act, which provides as follows:—

> "Where it is complained by or on behalf of the Crown or any municipal or other corporation or any other person aggrieved, that the company has violated or committed a breach of an agreement between the complainant and the company—or by the company that any such corporation or person has violated or committed a breach of an agreement between the company and such corporation or person—for the provision, construction, reconstruction, alteration, installation, operation, use or maintenance by the company, or by such corporation or person, of the railway or of any line of railway intended to be operated in connection with or as part of the railway, or of any structure, appliance, equipment, works, renewals or repairs upon or in connection with the railway, the Board shall hear all matters relating to such alleged violation or breach, and shall make such order as to the Board may seem reasonable and expedient, and in such order may, in its discretion, direct the company or such corporation or person, to do such things as are necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as constitute a violation or breach thereof."

The mine of the Red Deer Valley Coal Company is situated in the valley and south of the Red Deer river, somewhat less than two miles west of the bridge by which the Calgary-Saskatoon line of the Canadian National Railways crosses the river above Drumheller.

On the Board's file is copy of an agreement dated July 22, 1919, for an industrial siding connecting the mine in question with the then Canadian Northern line just south of the Canadian National Railway bridge above mentioned. The agreement of the Canadian Northern Railway is with the North American Collieries, Limited, which was then operating the mine of the Red Deer Valley Company under lease.

On July 24, 1922, the Canadian Pacific Railway Company and the North American Collieries signed a ten-year agreement which set out the following, as a part of its purpose:—

> "And whereas the parties have agreed that the railway company shall during the term of this agreement have the right to reconstruct, maintain and operate the mine spur of the coal companies upon the terms and conditions hereinafter mentioned";

In its second and tenth sections the agreement provides as follows:—

> (2) "The railway company covenants and agrees to rebuild the said mine spur so as to bring the same into conformity with the standard of construction of its line of railway connected therewith, and to maintain the said mine spur according to the said standard during the term of this agreement.

(10) "The covenants on the part of the railway company herein contained and accepted by the coal companies, are in lieu of any compensation to which they might otherwise be entitled under the provisions of the Railway Act."

The circumstances under which the Canadian Pacific Railway Company became the lessees of a spur track belonging to the Canadian National Railways are as follows:—

The Canadian Pacific Railway desired to share in the coal business which had been developed in the Red Deer river valley, both east and west of Drumheller. In order to reach the mining area a railway line beginning at Langdon on the Canadian Pacific main line, 16 miles east of Calgary, had been constructed by way of Acme from the plateau level down the valley of Knee Hill creek to the flats along the Red Deer river on its south side. Thence it was intended to follow along the flats easterly to a connection with the Canadian National line at its crossing of the Red Deer river.

In reaching the Canadian National line at the Red Deer river bridge, the Canadian Pacific had to pass the mine then being operated by the North American Collieries and parallel throughout its whole length the spur which was being operated under the agreement with the Canadian Northern, already mentioned, in connection with that mine, to its junction with the Canadian National, formerly the Canadian Northern, at the Red Deer river bridge.

Instead of building their line to parallel the spur the Canadian Pacific Railway came to an arrangement with the North American collieries, by which they were to use the spur instead of building another line parallel to it. The agreement in pursuance of that arrangement, dated July 24, 1922, contains the paragraph of the preamble, and sections two and ten of the original agreement which have been already quoted.

It is signed for the railway company by E. W. Beatty, President, and H. C. Oswald, Secretary, and for the coal company by H. A. Lovett, President, and D. MacNeill, Secretary.

This agreement recognized the priority of right of the Canadian National Railways and of the coal company over the Canadian Pacific Railway in the use of the piece of track that was to replace the then existing spur.

The position would appear to be that the Canadian National Railways was the owner of the spur, the coal company the lessee and the Canadian Pacific Railway a sub-lessee from the coal company. The Canadian National looked to the coal company for rental and upkeep and the coal company, under the agreement of July 24, 1922, looked to the Canadian Pacific Railway for rental and upkeep.

The lease of the mine was given up by the North American Collieries within a year after the agreement of July 24, 1922, and the Red Deer Valley Coal Company resumed possession and operation. This company had not signed the agreement of July 24, 1922, but on August 13, 1923, the Red Deer Valley Coal Company signed an agreement amending and confirming as so amended, the agreement of July 24, 1922, between the North American Collieries, Limited, and the Canadian Pacific Railway. The signors for the respective companies were: for the Red Deer Valley Coal Company, Edith Howland, President, and Violet B. Christie, Secretary; for the Canadian Pacific Railway Company, D. C. Coleman, Vice-President, H. C. Oswald, Assistant Secretary. The amendments to the original agreement were only such as were necessary to make it applicable to the Red Deer Valley Coal Company instead of to the North American Collieries, Limited.

The total length of the spur which was the subject of the agreement was about 10,300 feet or slightly under two miles.

When the Canadian Pacific Railway Company, in pursuance of the agreement of 1922, as amended in 1923, actually made their Langdon-Drumheller con-

nection, they did not enter upon the coal mine spur at its extreme westerly end. They paralleled the westerly 1,600 feet of the spur, passing between the spur and the river and entered upon the coal mine spur a short distance east of the mine, some 8,700 feet from its junction with the Canadian National Railways near Drumheller.

This easterly portion of the spur has been reconditioned as agreed and is being operated also in accordance with the agreement. Both railways serve the mine, but the greater part of the output is handled by the Canadian Pacific Railway.

The dispute between the Red Deer Valley Coal Company and the Canadian Pacific Railway is that the railway refuses to recondition the 1,600 feet of the spur west of the point at which the Canadian Pacific Railway line from Acme joins it. As lessee of the whole spur the coal company must pay the Canadian National Railways the cost of upkeep, as well as rental for the whole spur. When the Canadian Pacific Railway refuses to provide for the proper maintenance of the westerly 1,600 feet of the spur, the Canadian National Railways look to their tenants, the coal company, to do so. The coal company, resting on the terms of their agreement with the Canadian Pacific Railway, appeal to the Board, under section 35 of the Railway Act as above quoted, for the enforcement of the agreement according to its terms, as the Board shall understand them.

The railway company through its solicitor at Calgary, contended that the agreement was only intended to apply to that part of the spur that they required to use in their through business between Drumheller and Acme, that is the mile and a half east of the junction point, and, as they did not need the part of the spur west of the junction point, they could not properly be required to pay for it.

I have been unable to find support for this contention of the railway, either in the evidence given at the hearing, or in the documents on file. On the contrary, it appears to me that if the intention of the agreement was as now contended by the railway company, it would have been so expressed, if not in the original agreement made with the North American Collieries in 1922, then in the amending and confirming agreement with the Red Deer Valley Coal Company, made in 1923. I have been unable to find any reference or indication that the agreement applied to anything less than the whole of the spur.

If the Red Deer Valley Coal Compay had had notice in 1923 of the present contention of the railway, they would have been in a position to protect themselves in the supplementary and confirming agreement which they then signed. They had not been parties to and had not signed the agreement of 1922 made between the railway company and the North American Collieries, although the name of the coal company appears on the title, as one of the parties concerned, they being the owners of the mine.

The solicitor for the Canadian Pacific Railway Company further argued that as they did not use the westerly end of the spur track in their through traffic, it was not to be inferred that they had any obligations regarding it. But on being pressed, he admitted that the railway company did, and indeed must, use it in handling their coal business from the mine, the coal company having no locomotive to handle the mine output.

On the foregoing review of the facts, as I understand them, I am compelled to find that the complaint of the applicants is well founded and that they are entitled to an order of the Board, under the terms of section 35 of the Railway Act, requiring the Canadian Pacific Railway Company to fulfil the terms of the agreement of July 24, 1922, as amended and confirmed by the agreement of August 13, 1923.

Ottawa, March 21, 1926.

Application of Retail Merchants' Association of Canada, Vancouver, B.C., for a ruling of the Board as to the correct rate applicable on a shipment of Cotton Waists, Overalls, and Cotton Pants, shipped on April 10, 1924, from Hull, Que., to New Westminster, B.C.

File 34431

REPORT OF CHIEF TRAFFIC OFFICER

This Report is issuing as the

RULING

of the Board in this matter.

On April 10, 1924, Sparks-Harrison, Limited, Hull, Que., shipped to M. J. Phillips, New Westminster, B.C., a consignment described as "one case clothing," weight 310 pounds, which was assessed rate of $5.32 per 100 pounds, in accordance with item 200, page 75, of Canadian Freight Association's Tariff 1-C, C.R.C. No. 96, which was then in effect.

Claim was made upon the delivering carrier, the Great Northern Railway Company, supported by certified copy of invoice showing that the shipment consisted of cotton waists, overalls, and cotton pants; and claimant requested that charges be reduced to $3.90½ per 100 pounds, in accordance with item 205 of tariff already mentioned.

Claim was declined by the Great Northern Railway and the Board is asked by the Retail Merchants' Association for a ruling as to the rate properly applicable on this shipment.

In connection with this tariff, in item 200 provision is made for a rate of $5.32 per 100 pounds on "Clothing, N.O.S."; in item 205 rate of $3.90½ per 100 pounds is provided for cotton waists; in item 215 a rate of $3.54½ is published on overalls, and pants (cotton, denim, duck or jean).

The written submissions of the Great Northern Railway are on file, in which they state:—

> "We refused to entertain the claim because our understanding is that the original rate as assessed, $5.32, is correct, as the item consisted of clothing N.O.S., and it is our further understanding that you cannot mix articles as shown in item 215, which takes a rate of $3.54½ per cwt., with those that are shown in item 205, which is a higher rated article. Our contention for this is based upon rules and regulations found on page 63 of tariff, rule 10, as published.
>
> "'Rates on commodities specified on pages 69 to 137 inclusive, are specific and must not be applied on analogous articles. Articles for which commodity rates are not specifically provided for herein will be subject to class rates governed by current Canadian Freight Classification.'"

The tariff in question is governed (except as specified) by Canadian Freight Classification 16 and applicant refers to rule 15 of Classification which stipulates that any package containing articles of more than one class will be charged at the rate for the highest classed article contained therein.

The fact that the shipment was described as "clothing" does not in itself justify the railway company in charging the rate provided for clothing, N.O.S., and debar applicant from being entitled to a lower rate established on items of clothing specifically described and where the shipment actually consists of such specifically described articles provided with a lower rate. Under the provisions of the bill of lading (section 8) and of the Classification (rule 16) all shipments are subject to inspection or examination as to correct description,

the freight charges to be paid upon the goods actually shipped. The term "Clothing, N.O.S." shown in item 200 means clothing not otherwise specified in the tariff, and the type of clothing contained in this shipment was otherwise specified in the tariff in items 205 and 215. As expressed in their letter, the contention of the Great Northern Railway is based wholly upon the provisions of rule 10 on page 63 of the tariff, which is above quoted. This particular rule has no application to the shipment here in question, because the articles comprised therein *are specifically* provided for, and there is not being dealt with here the question of rates on articles *not specifically* provided for.

It will be noted that by rule 5, page 63, of Tariff 1-C a rule was inserted making an exception from rule 2 of the Classification in connection with commodities which may be shipped in mixed carloads, and said rule 5 specifically stipulates that "the only commodities which can be shipped in mixed carloads (unless otherwise specifically provided herein) are those included in each separately numbered item". No similar rule is in the tariff providing that with respect to L.C.L. shipments commodities included in separately numbered items cannot be mixed in one case and charged at the highest rating provided in the tariff for any of the articles in the case; the tariff contains no rule covering an exception from the principle of section (*a*) of rule 15 of the Classification. In the absence of a rule in the tariff to the contrary, I consider that with respect to L.C.L. shipments all articles name in the tariff could be mixed in one case and charged at the highest rate provided in the tariff for any of the articles in the case.

Aside from there being no rule in the tariff as above mentioned, the rule of equity and reason would also suggest that if a case of waists can be shipped at rate of $3.90½ and a case of overalls at $3.54½, a case containing waists and overalls could not with propriety and equity be charged in excess of $3.90½.

In my opinion, rate of $3.90½ per 100 pounds was properly applicable at the time this shipment moved, and between the points in question, on a case containing cotton waists, overalls, and cotton pants.

W. E. CAMPBELL,
Chief Traffic Officer.

Ottawa, March 11, 1926.

Petition of the Honourable the Minister of Railways and Canals for Canada, for an Order directing the Hereford Railway Company to safely and efficiently operate its railway, and specifically to put up the necessary equipment and locomotives, and to run regular trains on its line, in order to give an efficient and continuous service of trains for both passenger and freight traffic.

File No. 33693

JUDGMENT

Thomas Vien, K.C., *Deputy Chief Commissioner:*

This is a petition on behalf of the Honourable the Minister of Railways and Canals of Canada for an order directing the Hereford Railway Company to safely and efficiently operate its railway, and to put up the necessary equipment and to run regular trains.

This matter came up before the Board at a hearing held at Ottawa on the 31st of March, 1926, before the Chief Commissioner, Mr. Commissioner Oliver and myself. There appeared before us, on behalf of the petitioner, Mr. Wilfrid Lazure, and on behalf of the respondent and of the trustees for the bondholders of the Hereford Railway Company, Mr. Frederick S. Rugg, K.C.

By 50-51 Victoria (1887), chapter 93, a railway was incorporated under the name of the Hereford Branch Railway Company, and was authorized to construct a double or single line of railway from a point of connection with the Atlantic and Northwest Railway within the limits of the township of Eaton to the international boundary line in the township of Hereford, or any point within five miles of Hall's Stream.

By 51 Victoria (1888), chapter 51, the name was changed to the Hereford Railway Company, and by section 5 of the said Act, the company was authorized to extend its line from the Atlantic and Northwest Railway to a point of connection with the Quebec Central Railway, either in the township of Westbury, county of Compton, or in the township of Dudswell, County of Wolfe.

Under section 9 of the said Act, the company was authorized to acquire certain other railways, including the Quebec Central Railway and the railway of the Dominion Lime Company.

By a deed of sale entered into on the 9th of November, 1889, which was duly ratified by Order in Council P.C. 482, on the 12th of June, 1890, the Hereford Railway Company purchased from the Dominion Lime Company their line extending from Dudswell Junction to Limeridge.

The following subsidies were authorized by Act of Parliament to be paid for the construction of these railways:—

1. Under the authority of 49 Victoria, chapter 10.....	$108,800
2. Under 50-51 Victoria, chapter 24 (to the Dominion Lime Co.)..	22,400
3. Under 52 Victoria, chapter 3	48,000
	$179,200

Subsidy agreements were entered into between Her Majesty in respect of the Dominion of Canada, and the respondent, for a total sum of $170,560, paid up by the Dominion Government to the respondent as admitted by them in their exhibits No. 5-6 filed in this case.

The said subsidy agreements, among other things, provided:—

> "Sec. 6: that the company would . . . truly and faithfully keep the same and the rolling stock required therefor in good sufficient working and running order, and should continuously and faithfully operate the same."

Under the authority of 53 Victoria (1890), chapter 73, when the line was built, it was leased to the Maine Central Railroad, and such lease was ratified by Order in Council P.C. 2190, of the 23rd of September, 1890.

The railway was then operated by the Maine Central Railroad Company, who supplied the rolling stock and all the necessary equipment, and maintained the road in working order.

As appears by exhibit No. 4, the operation was not profitable, and resulted in net losses amounting up to the 31st of December, 1923, to $1,639,359.63.

By an agreement entered into between the Hereford Railway Company and the Maine Central in September, 1925, a copy of which is filed as exhibit No. 2, the lease between these two companies for the operation was cancelled to take effect on the 1st of November, 1925.

On the 1st of November, 1925, the Maine Central Railroad took away all their rolling stock and other equipment, and ceased to operate the Hereford Railway, which has been inoperated ever since.

It is of evidence that several industries are established along the line of the respondent company, and they suffer heavy damages from the fact that the railway is not being operated. It also appears by the subsidy agreements that one of the conditions of the payment of the subsidies was the undertaking by the respondent company to continuously and faithfully operate the said railway, and to keep it fully equipped and in good sufficient working and running order.

It is also of evidence that the roadbed is unsafe, and in a bad state of repair.

The petitioner, the Honourable the Minister of Railways and Canals of Canada, now appears before this Board and requests that, under section 160 (p. 1) of the Railway Act, an order should issue directing that the repairs and improvements should be made to the said railway, and that sufficient equipment be put on the railway, and that the railway be operated continuously and faithfully, and that the time limit within which this order should be complied with should be as short as possible, on account of the large interests that are injuriously affected through the absence of railway connections.

It was further represented at the hearing that very serious damages will be inflicted to the roadbed by the spring floods, unless the drainage of the road is taken care of in due time.

The respondent company and the representatives of the trustees stated that the time limit was immaterial to them, because they would be unable to comply with the order on account of their financial situation.

The petitioner also urged that they should be put in the position to take advantage of the provisions of section 160 (p. 2) of the Railway Act, by which, on failure of the company to comply with the order of the Board, His Excellency the Governor in Council may take the necessary steps to create a lien against the railway, and to enforce it.

There is no serious legal difficulty concerning the application, and no opposition is offered on its merits. The only reservation made by the trustees for the bondholders and the respondent company is as regards the priority of the lien over the mortgage securing the bondholders. The Board is not called upon to deal with this aspect of the question. It will be a matter for the courts to decide the question of priority as between the petitioner, the respondent and the trustees for the bondholders.

I am therefore of opinion that the application should be granted, and that an order should issue directing the respondent company, within eight days from this date, to put back the said railway in good sufficient working and running order, to re-equip it with the necessary rolling stock, and to continuously and faithfully operate it.

Ottawa, March 31, 1926.

Chief Commissioner McKeown and Commissioner Oliver concurred.

GENERAL ORDER No. 430

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, 1919, for approval of Supplement No. 1 to the Canadian Freight Classification No. 17, as submitted to the Board under date of December 11, 1925.

File No. 33365.60

Tuesday, the 23rd day of March, A.D. 1926.

S. J. McLean, *Assistant Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*
C. Lawrence, *Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Whereas notice has been given by the Canadian Freight Association in the *Canada Gazette*, as required by section 322 of the Railway Act, 1919, and copies of the said supplement were furnished to the mercantile organizations enumerated in the General Orders of the Board Nos. 271, 348, and 353, with request that their objections, if any, be filed with the Board within thirty days;

Upon consideration of the said objections; and upon the hearing of the application at the sittings of the Board held in Ottawa, February 16, 1926, in the presence of representatives of the Canadian Freight Association, the Canadian Manufacturers' Association, the Retail Merchants' Association, and the Northern Electric Company, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Supplement No. 1 to the Canadian Freight Classification No. 17, on file with the Board under file No. 33365.60, be, and it is hereby, approved, subject to the following changes and additions, namely:—

Item	Page		L.C.L.	C.L.
22–23	3	Change to read:		
		Bowling Alley Outfits:		
		Floors or Tracks, plain or with box end and sides, Back Stops, Divisions, Kickbacks, Pin Setter Attachments, Pin Spotters, Posts and Returnway Racks, K.D.:		
		In boxes, bundles or crates..	2	..
		In packages named, straight or mixed C.L., or in mixed C.L. with Bowling Balls, Bowling Pins, Score Boards, wooden, or Score Tablets, paper, in boxes or crates, min. wt. 24,000 lbs., subject to Rule 7..	..	5
Add	4	Change Item 12, page 61 of Classification to read:		
		Brick:		
		Enamelled or Glazed:		
		In barrels, boxes or crates..	3	..
		Loose or in packages, C.L., min. wt. 30,000 lbs...	..	5
10	5	Change to read:		
		Chimney Flues or Chimney Pipe, clay:		
		Loose—		
		Weighing each less than 15 lbs..	3	..
		Weighing each 15 lbs. or over..	4	..
		In barrels, boxes or crates..	4	..
		Loose or in packages, C.L., min. wt. 30,000 lbs..	..	10
12	5	Change to read:		
		Chimney or Flue Linings, clay:		
		Loose—		
		Weighing each less than 15 lbs..	3	..
		Weighing each 15 lbs. or over..	4	..
		In barrels, boxes or crates..	4	..
		Loose or in packages, C.L., min. wt. 30,000 lbs..	..	10
Add	7	Add the following item:		
		Electrical Appliances and Supplies:		
		Wire Strand, iron and steel:		
		In barrels, boxes or coils, or on reels..	3	..
		In packages named, C.L., min. wt. 36,000 lbs..	..	5
6	10	Change to read:		
		Door Hangers, Door Hanger Stays or Stay Rollers, Rail Brackets or Holders, iron or steel, plain, japanned, or brass, bronze or copper coated:		
		In barrels or boxes..	3	..
		In barrels, boxes or bundles, C.L., min. wt. 30,000 lbs..	..	5
Add	10	Change Item 24, page 150 of the Classification, to read:		
		Hardware:		
		Wire Fencing, with Steel Posts and Tubular Railing (see Note):		
		In bundles or rolls..	3	..
		Loose or in packages, C.L., min. wt. 24,000 lbs., subject to Rule 7..	..	5
		NOTE.—With shipments of Wire Fencing there may be accepted at the rates and C.L. min. wt. applicable on the Wire Fencing, barbed wire, coiled spring wire, staples, stretchers and brace wire, the combined weight not to exceed 20 per cent of the weight of the Wire Fencing.		
Add	10	Change Item 52, page 154 of the Classification, to read:		
		Hardware:		
		Pipe, Lead:		
		In wrapped coils..	3	..
		On slatted reels..	3	..
		In barrels, boxes or crates..	3	..
		In packages named, C.L., min. wt. 36,000 lbs.....	..	5

Item	Page		L.C.L.	C.L.
2	11	Change to read:		
		Solder, N.O.I.B.N.:		
		In bags..	3	..
		In barrels or boxes..	3	..
		In packages named, C.L., min. wt. 36,000 lbs..	..	5
Add	14	Change Item 28, page 190 of the Classification, to read:		
		Steam or Oil Separators, N.O.I.B.N.:		
		Loose or on skids..	2	..
		In barrels, boxes or crates..	2	..
		In packages, loose or on skids, C.L., min. wt. 24,000 lbs., subject to Rule 7..	..	5
4	15	Change to read:		
		Plates, Piano, iron or steel, O.R.B.:		
		Loose..	2	..
		In boxes or crates..	3	..
		Loose or in packages, C.L., min. wt. 30,000 lbs..	..	5
30	15	Change to read:		
		Guns, Machine (see Note 1):		
		In boxes..	1	..
		In boxes, C.L., min. wt. 30,000 lbs..	..	3
..	17	Change to read:		
10	..	*Radio Receiving Sets and Radio Parts:*		
12	..	Radio Receiving Sets (see Note):		
		In boxes..	1½	..
		In boxes, C.L., min. wt. 16,000 lbs., subject to Rule 7..	..	2
13	..	Radio Receiving Sets and Desks or Tables combined (see Note):		
		In boxes or crates.. .. .. D-1		..
		In boxes or crates, C.L., min. wt. 16,000 lbs., subject to Rule 7..	..	2
14	..	Radio Bulbs or Tubes:		
		Packed in boxes..	2½	..
		Packed in boxes, C.L., min. wt. 14,000 lbs., subject to Rule 7..	..	1
16	17	Radio Amplifying Horns, without bases:		
		In boxes..	1½	..
		In boxes, C.L., min. wt. 12,000 lbs, subject to Rule 7..	..	1
18	..	Radio Loop Aerials, in boxes..	1½	..
20	..	Radio or telephone loud speakers or talkers, with or without bases (see Note):		
		In boxes..	1½	..
		In boxes, C.L., min. wt. 16,000 lbs., subject to Rule 7..	..	2
22	..	Radio Sets and Talking Machines combined:		
		In boxes..	1½	..
		In boxes, C.L., min. wt. 16,000 lbs., subject to Rule 7..	..	2
		NOTE.—A sufficient number of radio bulbs or tubes to initially equip the article may be included at same ratings (whether packed with the article or separately).		
S-14	18	Change to read:		
		Silk, Artificial or Natural, when value is declared in writing by the shipper in accordance with the following:		
		Artificial Silk Filaments, spun or thrown, including Yarn or Warp, subject to Rule 29:		
		When declared value does not exceed $1 per lb..	1	..
		When declared value exceeds $1 per lb..	1½	..
		Natural:		
		Raw, subject to Rule 29:		
		When declared value does not exceed $1 per lb.. ..	1	..
		When declared value exceeds $1 per pound..	1½	..
		Spun, Schappe, or Thrown, including Organzine, Singles, Train, Warp or Yarns, subject to Rule 29:		
		When declared value does not exceed $1 per lb.	1	..
		When declared value exceeds $1 per lb..	1½	..
Rule 3	1	Rule 3 to be amended by the addition of Section No. 6, reading as follows:		
		Section 6. The progression above first-class is 1¼, 1½, D1, 2½tl, 3tl, 3½tl, 4tl, 4½tl, 5tl, 5½tl.		

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 37410

In the matter of the application of the Michigan Central Railroad Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-11, on file with the Board under file No. 9451.20.

TUESDAY, the 23rd day of March, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-11, on file with the Board under file No. 9451.20, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37416

In the matter of the application of the Boston and Maine Railroad Company, hereinafter called the "Applicant Company", for approval of its Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-8, on file with the Board under file No. 9451.22.

THURSDAY, the 25th day of March, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—
The Board orders: That the applicant company's said Standard Tariff of Sleeping and Parlour Car Tolls, C.R.C. No. S-8, on file with the Board under file No. 9451.22, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37440

In the matter of the application of the Century Coal Company, Limited, for an Order suspending the Canadian National Railways Tariff, C.R.C. No. E-1029, which increases the freight rate on coal from Huntingdon, Quebec, to Isle Maligne, Quebec.

File No. 27425.103

WEDNESDAY, the 31st day of March, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is alleged in support of the application,—
The Board orders: That the said Tariff C.R.C. No. E-1029 of the Canadian National Railways, increasing the freight rate on coal from Huntingdon, Quebec, to Isle Maligne, Quebec, be, and it is hereby, suspended pending a hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI Ottawa, May 1, 1926 No. 3

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Application of the Corporaion of Point Grey, B.C., and residents of that portion of the said Municipality lying within the boundaries of the new exchange of the British Columbia Telephone Company, known as the "Point Grey Exchange."

—AND—

In the matter of Order No. 35623, dated October 1, 1924, suspending the British Columbia Telephone Company's Tariff C.R.C. No. 7, in so far as the same provides for a change in the tolls of the Company's new exchange, known as the "Point Grey Exchange."

File 32560.2

Heard at Vancouver, B.C., 16th and 17th November, 1925.

JUDGMENT

COMMISSIONER BOYCE:

The complaint of the Municipal Corporation of Point Grey, B.C., is directed against the tolls proposed in British Columbia Telephone Company's Supplement No. 1 to C.R.C. No. 7, dated January 15, 1924, filed with the Board January 28, 1924, and proposed to be effective February 26, 1924.

The important features of the tariff involved are as follows:—

GREATER VANCOUVER INTER-EXCHANGE SERVICE

Between:	
Collingwood, Fraser, Glenburn, Kerrisdale, Marpole, North Vancouver, Point Grey, Vancouver, West Vancouver	Per call—4 cents each 5 minutes.

GLENBURN, POINT GREY

Unlimited Exchange Service	Rate per Month Business	Residence
Individual line within 1 mile radius of Central office	$4.00	$2.00
Two-party line within 1 mile radius of Central office	....	1.50
Party line beyond 1 mile and within 3 mile radius of Central office	2.50	1.50

The rates proposed in the tariff attacked, and which, while effective as to Glenburn area (in the absence of complaint), would apply also to the proposed new telephone exchange area of Point Grey, are the same as those already in force in the exchange areas of (*a*) Collingwood, (*b*) Fraser, (*c*) Kerrisdale, (*d*) Marpole, (*e*) West Vancouver, and (*f*) North Vancouver. The interchange toll rate of 4 cents, however, is a reduction of one cent per call between all the exchanges in the large telephone area of the company known as Greater Vancouver, with the exception of the exchanges of North Vancouver and West Vancouver, where, on account of the cost of cable connection, the interchange rate was formerly 10 cents per call, and now being reduced to 4 cents per call, effects a reduction in those two exchange areas of 6 cents per call.

The creation of the new telephone exchange areas of Point Grey and Glenburn made by the telephone company as a part of its internal arrangements became necessary by the growth of the company's business in all the exchange areas making up the territory of "Greater Vancouver." For the same reasons the other six exchange areas before mentioned were created.

In the year 1906, it is shown, there was only one telephone exchange for the city of Vancouver. All indications pointed to a great development and large influx of population there, and, foreseeing the necessity for liberal provision to meet the telephone requirements of that rapidly developing community, now known as "Greater Vancouver," the telephone company formulated its plans to provide for the very large demands for telephone service which, year by year, might be expected to result from that development. The company took expert advice. The potential growth of the then Vancouver area, as well as the outside, and now suburban areas, was carefully studied, and, following the expert advice, a policy was then inaugurated which was put into effect. As necessity arose by the realization of the telephone company's estimates as to growth of population and consequent telephone development, outside exchange areas were established —and again as development required, those areas were subdivided. All the suburban Vancouver exchange areas were thus created. For example, the Eburne exchange area, one of the first outside exchanges, was subdivided into the Kerrisdale and Marpole exchanges, and again, the Glenburn and Point Grey areas were separated and created into separate exchange areas—in all cases the tariff of tolls being submitted to the Board under the Act. All these divisions of areas were, it appears, made in pursuance of the policy referred to and which was decided upon in 1908, as a general policy to meet the growing requirements of a rapidly growing area. This Board has no power under the Railway Act to review or interfere with the discretion of a telephone company under its jurisdiction as regards establishment, redivision or readjustment of exchange areas. It is a matter of internal management of the company's business which is not subject to this Board's supervision. The jurisdiction of the Board is confined to tariffs, and tolls and rates thereunder. Therefore, with the policy decided upon by the company in 1908, and with all that the company has done, or is doing, or may do, in furtherance thereof, or of any other such policy, this Board is not concerned. Its jurisdiction is confined to determining the reasonableness of the tolls and rates for the service and to any question of unjust discrimination involved.

This principle as to jurisdiction has been long settled by the Board's judgments; see,—

Tinkess v. Bell Telephone Co., 20 C.R.C. 249;

Town of Dundas v. Bell Telephone Co., Vol. XI, Board's Judgments, p. 83;

B.C. Municipalities' complaint *re* Kerrisdale Exchange, B.C. Telephone Co., Board's Judgments, Vol. XI., p. 325 (Dec. 1, 1921);

Corporation of Saanich v. B.C. Telephone Co., Board's Judgments, Vol. XV. p. 63;

Towns of Riverside, Tecumseh, *et al*, v. Bell Telephone Co. (1st Sept., '25), Board's Judgments, Vol. XV, p. 263

and cases there referred to.

Particular reference may be made to the Kerrisdale case cited above, because the conditions and circumstances therein bear strong resemblance to those in this case, and its neighbouring exchange in the Greater Vancouver exchange area; and the tariffs are the same in each case. The same inter-exchange toll, then 5 cents, now 4 cents, was involved.

The following statement filed will show, approximately, the number of subscribers in the respective exchanges in Greater Vancouver (Ex. 2) as of October 31, 1925:—

1. Vancouver city	45,555	subscribers
2. North Vancouver	2,227	"
3. West Vancouver	502	"
4. University	2	"
5. Point Grey	807	"
6. Kerrisdale	2,158	"
7. Marpole	872	"
8. Fraser	2,072	"
9. Collingwood	1,920	"
10. Glenburn	401	"

The University exchange was provided for during the time that the Point Grey rates were under dispute and after the suspension, pending hearing, by Order No. 35623, dated October 1, 1924, of the tariff now complained of (in so far as it related to Point Grey exchange), Supplement No. 8 to C.R.C. No. 7, dated June 18, 1925, effective August 1, 1925, provided for the University exchange the same rates and tolls as those now in dispute, proposed for this and Glenburn exchanges, and which while suspended as to Point Grey, became and are effective in Glenburn exchange. Mr. R. L. Reid, K.C., appeared at the hearing at Vancouver as counsel for the University of British Columbia and, up to a certain point, joined with the corporation of Point Grey in opposing the tariff. After a statement by counsel for the telephone company that the university, while on the Vancouver rate, was paying $281.15 per month for thirty-five telephones, the traffic over which was almost entirely with Vancouver city, while for the same traffic, under its present arrangement of tolls, the university was paying $218 per month, or a saving to the institution of $62.29 per month, and after Mr. Reid had checked this with accounts, he withdrew his opposition stating his clients, the university, were quite satisfied.

Prior to the establishment of the Point Grey exchange the subscribers there resident were attached to the Bayview exchange of Vancouver. Before the change went into effect the telephone company addressed a letter to its Point Grey subscribers in terms following (see p. 9, Ex. 18):—

" British Columbia Telephone Company,

" General Commercial Superintendent's Office,

" E. F. Helliwell

" Vancouver, B.C., September 17, 1924.

" Howard C. Green, Esq., 2775 Courtney St., City.

" Dear Sir,—Owing to the continued growth of that portion of Point Grey west of Wallace street, we have been finding it increasingly difficult to supply the residents of that district with telephone service, even at Bayview rates plus mileage, as the distance from the Bayview exchange is so great.

" In order to relieve the situation, therefore, we have built and intend cutting over on or about October 1, our new Point Grey exchange, which

will take care of all present and future subscribers in the West Point Grey district. Your service will, therefore, be changed from Bayview to Point Grey at the time of the cutover, your new number which will be shown in the October issue of the Directory, being Point Grey 199-L, and your rate only $1.50 net per month instead of $2.70 net per month as at present.

"Furthermore, while as above noted, it is growing practically impossible for us to supply even two-party service in West Point Grey at the present time, we will with the opening of the Point Grey exchange, be in a position to give you individual service should you desire it, the rate for which is $2 net per month. Should you prefer this class of service, we will appreciate your so advising us at your early convenience.

"Yours truly,

"E. F. Helliwell,
"*General Commercial Superintendent.*"

The complaint of the municipality of Point Grey, representing the subscribers, is largely directed to showing that this separation from Bayview exchange imposed upon the subscribers the 4 cents toll per call involved in calling the Bayview exchange, and that as the subscribers at Point Grey were largely persons whose business was at Vancouver, having frequent occasion to call Vancouver, the toll of 4 cents for the Vancouver calls substantially, as they alleged, increased the telephone rates and tolls to the subscribers.

It is to be observed that this contention is precisely the same as that dealt with by the Board in the Riverside and Tecumseh case, cited above, where the same conditions substantially were created by creating the Tecumseh exchange—attaching the subscribers formerly on the Windsor exchange to that new exchange and with the usual toll rate.

In a different and modified way—but involving the same principles, the subscribers, formerly attached to Eburne exchange—who were, by change in boundaries and establishment of the Kerrisdale exchange area, attached to that new area, and separated from Eburne exchange, complained that a 5 cents toll was imposed upon them for calls to the Eburne area to which formerly they had calling access without a toll call. The 5 cents toll has since been reduced to 4 cents for all inter-exchange calls within the Greater Vancouver exchange area. That toll has been found by this Board to be not unreasonable. In deciding the complaint in the Kerrisdale case, the Assistant Chief Commissioner, who presided at the hearing, and delivered the judgment of the Board, said, p. 329:—

> "The charge of 5 cents (now 4 cents) between Kerrisdale and Eburne for a two-number call is in general accordance with the charge from one exchange to another, no other exchange intervening, applying within the territory in question."

It appears to me that it is only in the volume of the Vancouver calls in the Point Grey case, and of the Eburne calls in the Kerrisdale case that the application of the same principle to the whole of the outside exchanges in Greater Vancouver telephone area seems to be complained of. A subscriber needing to call the Eburne exchange, and having to pay an inter-exchange toll to do so, had just as much a grievance, per subscriber, as will the Point Grey subscriber, per subscriber, have in calling Vancouver, if this tariff, now suspended pending hearing of this complaint, is allowed to be effective. The burden upon the necessity of the call to Vancouver, or the call to what was then the Eburne exchange, from Point Grey and Kerrisdale respectively, is precisely the same, as it is the same in the case of all the other exchanges—similarly situated which I have enumerated. The difference in this complaint from that in the Kerrisdale case seems to lie in the fact that in this case, the separation having taken place from

a Vancouver exchange, the number of subscribers paying the inter-exchange toll will be greater than in the case of Kerrisdale subscribers separated from the then Eburne exchange. This contention, if it were to prevail as an objection to the tariff, would involve some nice computations. What percentage of subscribers in one exchange called upon to pay the toll, in excess of those subscribers in another exchange area paying the same toll, would constitute the toll, *per se*, an unreasonable toll? In separating or subdividing exchange areas, and creating new exchange areas, as a telephone company has a right to do in the conduct of its business, and in consequence imposing an inter-exchange toll, such as is common to all such conditions, is the telephone company required to first make a careful calculation as to the number of subscribers in the new area whose business is such as to require more inter-exchange calls than others, and, by such computation, arrive at a conclusion as to the applicability of such a toll to that area? And is it required to keep peg counts and readjust its tolls, or perchance, change or readjust its boundaries from time to time, to conform to the result? If, as I have pointed out, the company has, as an incident to the conduct of its internal business, the right to create new exchanges, or readjust the boundaries of old ones, and the rates generally approved in similar cases, are open to attack on the grounds herein pressed upon us, such a duty would be cast upon the company, which would create an anomalous condition in view of the decisions of the Board I have referred to.

As I have pointed out, the situation as to Greater Vancouver is the result of a well-considered policy settled long ago by the company, upon expert advice, to deal with a potential development which subsequently eventuated, and is still progressing, to an extent as great, if not much greater than was estimated when, in 1908, the policy was adopted. Even though this Board has no supervisory powers over such a policy it certainly does not appear from anything submitted at the hearing, or in argument, that its wisdom and soundness is open to criticism. The tolls and rates applicable to other subdivisions of telephone areas in Greater Vancouver have been filed with this Board, from time to time, and the tariff now attacked is the same as that in force, with the sanction of the Board, in the other exchange areas. As the Board is precluded from considering the revision of the company's judgment in the establishment of the new areas of Glenburn and Point Grey, there must be found evidence of unreasonableness or unjust discrimination in the tolls and rates themselves as proposed to be applied to the Point Grey area, and which is effective as to Glenburn, as well as in the other exchange areas I have mentioned and the necessity for the separation of which from the areas to which the telephone territory in question was formerly a part arose, as a result of telephone development and growth, consequent upon the extension of Greater Vancouver as to settlement and activity, in the same way as all the other separate areas have been created, and therefore common to all.

I cannot find any evidence or argument to support the suggestion of unjust discrimination. I feel that none of the instances relied on to support that suggestion come within the meaning of the term "unjust discrimination" as contained in the Railway Act, and interpreted by the Board and judicial decisions on appeal therefrom. The mere fact that any subscriber of the former area is included within, and another is left out of the new area, by the establishment of new exchange area, manifestly cannot, *per se*, support such a suggestion. If it were so, no new boundaries could be established by the company without giving occasion for such a charge. In the Tecumseh case (Board's Judgments, etc., Vol. XV, at p. 266) this situation was accentuated as regards the Town of Riverside, one of the complainants. There Riverside complained that the new arrangement cut the town into two areas with a toll charge between the westerly side of the Lauzon road and the new telephone area established to the east of it,

involving a toll charge between one side of the town street to the other. As was said of that situation, in that case, is I think applicable here, viz:—

> "But, as has been pointed out, the Board's powers are limited as regards telephone companies, to tolls, and no order it could make within its jurisdiction could remedy this arrangement, and I am unable to find that it can have any effect upon the reasonableness of the rates which was the issue before us."

In every new telephone exchange area established there must inevitably be similar situations. Some subscribers must suffer inconvenience, and some according to the nature of their private business or social requirements, as distinguished from those of others, may be subjected to extra expense for inter-exchange calls, but that inevitable situation, common to every change in boundaries such as this, and without which no such division of areas could be made, does not support the suggestion that there is unjust discrimination thereby created.

Reference was made to the situation of the Jericho Club, which by a "jog" or irregularity in the boundary line was left in the Bayview exchange. The Board cannot revise the boundaries, and the rates and tolls are applicable to the boundaries as established, providing the Board is satisfied that such rates are not unreasonable nor unjustly discriminatory. Discrimination there must be by the drawing of the boundary line, but there is no "unjust discrimination" because, no matter though the line of demarcation may be irregular one subscriber is on one side under the old rate, and another on the other side on the same rate though with different result as to extra exchange calls because of his business or social telephone exigencies.

The Jericho Club is subject to the same tariff of tolls as any other subscriber in the telephone exchange area in which it is now located, and no case of unjust discrimination is supported by the boundary alignment of the new Point Grey area which this Board has no power to change, readjust or interfere with.

The telephone company, as in the Tecumseh and Riverside cases (*supra*), assumed the onus of showing, that the proposed rates and tolls were reasonable. It showed that the Bayview exchange was rapidly filling up, and that another exchange was necessary. This was not open to contradiction because it was not relevant to the issue. It was, however, the subject of much evidence by the applicants, whose expert witness, Mr. J. G. Wray, of Chicago, an expert telephone engineer, while critical of the necessity at this time of a division of the Bayview exchange, says (p. 2774) that he considers that what the company did "may have been advisable, though not necessary". Mr. Wray's exhibit (15) was referred to as showing that Bayview Central office capacity was sufficient in equipment to carry the Point Grey area. The exhibit shows that, as of June 15, 1925, the Bayview exchange had floor space for A and B positions with present capacity for 10,400 lines; that 6,760 subscribers' lines were equipped (a difference of 35 per cent with which Mr. Wray does not quarrel) and that 5,223 were in use: thus leaving a margin of lines equipped over lines in use of 23 per cent, which the witness admitted was good practice, or "all right". Mr. Wray said (p. 2779) that he approved of the company looking ahead. "That would be good economic planning", and that the best he would say was that he would not like to challenge the policy of separation from Bayview, but that the business might have been better taken care of in the Bayview office until the new area was developed.

In his evidence, upon cross-examination by counsel for the company, Mr. Wray admitted that the proposed tariff charge of $1.50 per month for two-party line was not unreasonable, and the inter-exchange calling rate of 4 cents was not

unfair. By statement, exhibit 13, prepared by Mr. Wray, it is worked out that the present rates would average per station, $2.36, while the rates now proposed, and in abeyance, would average $1.61, on basis of stations in service June 1, 1925, Point Grey exchange. This, outside of inter-exchange calls, effects a saving to the subscriber on the exchange rates now in force and those proposed, and now in dispute, of 75 cents per station per month, or $9 per station per annum. On the business shown for month of December, 1924, by the same exhibit, the present rates (taken as including mileage) would average $3.02 per station, while the proposed rates would average $1.52 per station, a difference on the basis of the exhibit of $1.50 per station per month in favour of the present rates, or $18 per station per annum. But, by exhibit 14, also prepared by Mr. Wray, who as an expert witness displayed every desire to assist the Board in a fair, impartial and efficient manner in dealing with the facts, he estimates, upon the basis of 732 stations in Point Grey, as of June 1, 1925 (there are now 838 or more), that the inter-exchange calling rate of 4 cents would, in the conditions shown, result in an average increase to the Point Grey subscriber of 93 cents per station per month, or $11.16 per station per annum. This result is more or less conjectural, and Mr. Wray very frankly stated, in submitting the exhibit (p. 2772), that as to the estimate of calls between large central points (Vancouver) and sub-areas, which was the crux of the computation, that it was his best judgment, based upon general experience, and added, in reply to a question from a member of the Board, "It is my best guess." As this exhibit contains at least the substance of the complaint against the proposed rate schedule, I will quote it, before further commenting from the evidence upon its reliability as a basis for the complaint as to rate increase, in so far as that is a factor in this case which the Board should deal with.

Mr. Wray's figures, then, are as follows:—

Estimated Increase in Service Charges Resulting from Proposed Rate Schedule, Point Grey Exchange

(*a*)	Average calls to Vancouver per day (June 2 and 5, 1925)	2,135
(*b*)	Number of stations	732
(*c*)	Average Vancouver calls per station per day	2.92
(*d*)	Average Vancouver messages per station per day at 75 per cent	2.19
(*e*)	Average Vancouver messages per station per month	60.66
(*f*)	Vancouver toll charges per station per month—$0.04	$ 2 43
(*g*)	Total rental December, 1924, at present rates	$2,152 50
(*h*)	Total rental December, 1924, at proposed rates	$1,086 00
(*i*)	Average number of stations	713
(*j*)	Rental per station at present rates (including mileage)	$ 3 02
(*k*)	Rental per station at proposed rates	$ 1 52
(*l*)	Reduction in rental per station under proposed rates	$ 1 50
(*m*)	Net increase in charges per station per month	$ 0 93
(*n*)	Total increase in charges per month on basis of June, 1925, stations	$ 680 76

The item (*a*) is based upon a special peg count taken June 2 and 5, 1925. The item (*d*) is computed upon an assumption that 75 per cent of originating calls are completed. The item (*e*) is computed upon the assumption that the total (average) month equals 27.7 times peg count day. The item (*m*) of 93 cents is arrived at by deducting the net reduction ($1.50) estimated will be effected by the new tariff, as confined to calls within the new exchange area, as above referred to, from $2.43 the Vancouver toll charges of 4 cents per station per month on the estimated number of Vancouver calls. Based upon this computation Mr. Wray estimates that the increase per month on the basis of June, 1925 stations (732) will be $680.76. The essential features of this computation are the ones which Mr. Wray admits are based upon conjecture, namely (*a*) the correctnes of the peg counts of 2nd and 5th June (and the proportion, estimated at 75 per cent of completed calls) upon which the computation is based, as representing the average, in fact, of the Vancouver calls, and (*b*) the maintenance of

the ratio of Vancouver calls, to local calls within the exchange, shown by Ex. 11 as follows:—

	Amount.	Per cent of total
Local calls per day (including information and long distance).. ..	1,463	39.6
Vancouver calls per day..	2,135	57.7
Interchange calls per day (other)..	99	2.7
Total originating calls per day..	3,697	100.0

As to the first feature, the reliability of a two days' peg count, as the basis of a monthly average, year by year, I think is, at any rate, too vague and indefinite a factor upon which to base a positive conclusion. As Mr. Wray frankly said it was "his best guess", doubtless the only method, and, therefore, the best available for such a computation.

By the second feature, viz., that presented by the figures in exhibit 11, quoted above, it is at least manifest that as the exchange stations increase in number, local interest increases, and the ratio of local to outside calls must change. Mr. Wray affirms this and says that the ratio of inside to outside calls depends on how the suburbs grow, and that he cannot form any opinion as to Point Grey's future. He, however, files a statement, obtained from the company (exhibit 8), showing estimated increases in population in Greater Vancouver areas, which estimates the increase in population of all the exchanges in Greater Vancouver, as of January 30, 1930. This statement shows that of all these areas Kerrisdale, with 81 per cent increase, and Point Grey, with 70 per cent increase, have the highest expectations, four years hence, as to proportionate increase estimated. Glenburn comes next with 37 per cent; West Vancouver, 33 per cent; Marpole, 24 per cent; North Vancouver, 21 per cent; Vancouver, Fraser, and Collingwood, 17 per cent each. By exhibit 10 filed by Mr. Wray, the Point Grey area is shown as the second highest in telephone development of the whole of the exchanges in Greater Vancouver, as to residence main stations per 100 population, Kerrisdale being the highest. The company's estimates as to the future growth of this area, adopted by the applicants' engineer expert, leave little room for doubt as to the correct foresight of the company in establishing the exchange. By exhibit 10, the total stations per 100 population in Point Grey was 23·4 as of January 1, 1925.

On cross-examination by counsel for the company upon exhibit 11 (distribution of originating calls at the Point Grey exchange), and Mr. Wray's computations in exhibit 14 (copied herein), Mr. Wray admitted that if the tariffs objected to were put in force there would be considerable reduction in the outgoing calls to Vancouver, and that such reduction might be as high as 50 per cent. He further admitted that the result would be to change the percentage of the local calls from 39·6 per cent to 68 per cent or 69 per cent of the whole, which would closely approximate the ratio in the Kerrisdale exchange, where (exhibit 12) the ratio is 66 per cent local, Vancouver 25 per cent, and other office 7 per cent, and when this estimated reduction of outside (Vancouver) calls, with the consequent increase of local calls, was applied to Mr. Wray's estimate in exhibit 14, he admitted that if the calling rate were reduced one-half, the item of increase of 93 cents shown in exhibit 14 would be more than wiped out.

It is, I think, clear that as a factor in deciding whether the rates are unreasonable this computation, made by Mr. Wray in the utmost good faith, but as an estimate only, cannot be definitely adopted as a basis, and no other evidence to that end was submitted.

To those subscribers in the Point Grey area, whose calls to Vancouver exchanges are so frequent as to greatly increase their rates, the measured exchange service, applicable to this and seven other exchanges, covered by supplement No. 6, to C.R.C. No. 7, of the telephone company, effective April 15, 1925, is available. This provides a rate of $4.40 per month (with 100 free out-

going calls, all calls in excess of the first 100, 3 cents each), plus mileage from nearest Vancouver city exchange to central office in area where service is desired at rate of 75 cents per quarter mile air line or fraction thereof. This might be suitable to meet the individual complaints of Dr. Harwood and others, who possibly were not aware that such an arrangement was open to them.

To provide for the expansion of such an extensive and ever growing and changing telephone area as Greater Vancouver, embracing, as it does, a territory of 180 square miles, requires considerable foresight and judgment. The plans of the company prepared in 1908, upon expert advice, and now being followed, are not now quarrelled with by the expert witness called by the applicants who attack the rates in Point Grey area. In any event such plan and consequent development is not open to question here. Stage by stage, in pursuance of that carefully planned development policy, new exchange areas have been created, and again those have been extended, realigned or subdivided, and a scale of rates has been applied to all, which I think is reasonable, of basic equality, and which, so far as appears, is not open to attack on the ground of unjust discrimination. To disturb that basis, common to all exchange areas outside of Vancouver city exchanges, if such were found necessary, would necessitate readjustments elsewhere, and in this case I must conclude, upon the evidence, that there is no justification for such a change.

The complaint will be dismissed and the suspension order discharged.
February 10, 1926.

Assistant Chief Commissioner McLean concurred.

Commissioner Oliver:

The application of the Corporation of Point Grey, British Columbia, and of certain citizens of the municipality of that name resident within the proposed boundaries of the Point Grey local exchange of the British Columbia Telephone Company, for the disallowance of the telephone company's tariff, which had been filed with the Board on January 28, 1924, was heard at Vancouver on November 16 and 17, 1925.

The tariff had not gone into effect at the date of the hearing, it having been held in suspense by order of the Board of date October 1, 1924.

The applicants complained that the tariff as filed decreased the value and increased the cost to them of their telephone service, without justifiable cause.

The company asserted,—

(1st) That the proposed tariff did not in fact increase the average cost of telephone service to the complainants;

(2nd) That it was rendered necessary in the proper adjustment of the company's operating conditions, because of present and prospective increase of telephone business in and adjacent to the locality particularly affected.

The applicants contended that by the tariff filed January 28, 1924, the telephone subscribers in the westerly section of the region served by the Bayview station of the Vancouver city exchange area were excluded from the direct communication with the city of Vancouver which they had formerly enjoyed at a flat monthly rate, and instead were being charged a toll rate of four cents for each city call, or for each period of five minutes occupied by a single call.

Single line house telephones within the Point Grey exchange area, when connected with the Bayview station of the city exchange area, paid rates from $2.95 to $3.80 per month, according to their distance from the Bayview station. Beyond a mile and a half from the station the rate was increased 25 cents for each quarter mile. This rate gave communication with subscribers throughout

the locality proposed to be set apart as the Point Grey local exchange, as well as with the four exchanges within the city telephone exchange area, which covered a considerably greater area than the city itself.

The company proposed to give a local rate within the proposed new exchange of $2 per single phone, plus the extra mileage charge of 25 cents for each quarter mile beyond a mile from the local exchange.

The applicants contended that the lowered exchange rate was of little practical value to them, because,—

(1st) The presently occupied area within the proposed new exchange was too small and too irregularly shaped to admit of community interest being established, that would give value to a purely local telephone service;

(2nd) That the boundaries of occupation within the proposed district were restricted by the existence of the Provincial Government reserve in which the university is situated, and that there was no present prospect of the reserve being opened for residental occupation.

(3rd) That the subscribers within the area proposed to be cut off the Bayview exchange of the city telephone exchange area were, in large majority, persons whose business and social relationships were centred primarily in Vancouver city and in the various suburban areas surrounding it, rather than in the section of Point Grey municipality in which they resided;

(4th) That there was no present prospect of existing conditions changing materially within any definite period; and that,

Therefore, the tariff complained of was merely an attempt by the British Columbia Telephone Company to increase their revenue from that particular section of Vancouver's suburban area, without due warrant.

The contention of the telephone company was that the new tariff did not mean an average increase in the cost of service to telephone users within the area proposed to be set apart from the present Bayview city exchange and make an outside local exchange, would seem to me to have been met very effectually by the representations made at the hearing. There is no question that all the witnesses fully believed that they would suffer both in lessened value of service and in greater cost. As they are the persons, besides the company, who would be chiefly affected by a variation in the charges, it becomes a matter of opinion as between the two. It appears to me that the contentions of those who would have to pay might fairly be given precedence over the contentions of those who would get the money. On the question of average cost, as the municipality, representing the average subscriber, took the same view as to comparative cost as the subscribers who appeared on their own behalf, I am compelled to conclude that the average subscriber was on the same side of the question as the subscribers who appeared as complainants in the case. An expert witness for the complainants estimated that on the number of calls of last year the increased cost to Point Grey exchange subscribers at the new rates would be $30,000. He further assumed that because of the higher cost per call the number of calls would decrease. Estimating that the number of calls decreased one-half, the extra cost to subscribers would be about $8,000. That is, the subscribers would pay $8,000 more than at present for half the service they had hitherto received.

The contention of the company that the readjustment of the tariff, as affecting the complainants, was necessary in the proper development of the service, was very fully considered during the hearing. It was suggested by the company that the westward growth of the city towards Point Grey, at the extreme western end of the peninsula, was overloading the Bayview exchange of the city area; and that having due regard to the further development of the peninsula of Point Grey, as a residential area, westward from the limits of Point Grey municipality,

it became necessary to establish a new exchange westward of that of Bayview to take care of conditions which if not then pressing were at least in early prospect.

It does not appear to me that the suggestion of the company was sufficiently supported by the weight of evidence submitted. An expert witness for the applicants gave evidence, which was not challenged, that the Bayview office had 5,223 subscribers' lines in use, while they had room for 10,400 lines; and that increased accommodation up to present requirements, including that of Point Grey exchange, could have been provided at less cost by increase of equipment at Bayview than by establishing a new exchange. In reply to a question, the expert witness said:—

> "Well, in this particular instance, because of the fact that it is a restricted area, and because of the fact that the interest of the subscribers is so markedly with Vancouver, my feeling is that the company may have been a little premature in establishing this office (Point Grey exchange). The mere establishing of an office however, need not involve rates at all".

The further argument was made for the company that the new Point Grey exchange was necessary as a provident measure in preparation for future expansion. It would appear to me that an examination of the conditions is very far from supporting this view. The western part of the Point Grey peninsula is covered by a Provincial Government reserve, within which reserve the Provincial University is situated. This reserve forms the westerly boundary of Point Grey municipality, and is entirely unoccupied except for the university. No evidence was offered as to the probability, either early or remote, of this reserve being made available for residential occupation.

That being the case, the need of preparation for future expansion is confined to the part of the Point Grey exchange which is within Point Grey municipality. The actual service of the proposed Point Grey exchange is restricted to this small and irregularly shaped area, lying between Wallace street (which is the western boundary of the Bayview exchange) and the eastern boundary of the Government, or university, reserve. In its central and widest part, this occupied area is eight city blocks from east to west. This width extends nine blocks from north to south. South of this area and between Wallace street, the west line of the Bayview exchange area, and the Government reserve, is a strip two blocks wide from east to west and fourteen from north to south. North of the western part of the central section first mentioned, and fronting on English bay, the occupied area is four blocks from east to west and nine blocks from north to south, or a total of 136 city blocks in all. This area already has something over 800 telephones. While residential occupation is increasing within that area, its total extent being limited as it is, there is no visible prospect of any such large or rapid increase of telephones within its boundaries as would require the company to install a new exchange, and much less to warrant their placing an additional charge of $30,000 a year on present subscribers within that area. It is to be kept in mind that the Bayview exchange was only occupied to little more than half its capacity, while taking care of all the present business of the Point Grey exchange.

Besides, the irregular shape of the proposed exchange area tends to prevent the establishment of local community interest that would naturally increase the number of telephones.

In opposing the contention of the company that the new exchange was being set up only in conformity with sound business principles and forehanded telephone administration, the complainants instanced the fact that by an arbitrary adjustment of boundary, the Jericho Golf and Country Club was retained within the Vancouver city exchange area, while several city blocks in residential occupation situated considerably nearer the Bayview exchange, were excluded

from the city exchange area. The grounds of the Jericho Golf and Country Club front on English bay. The golf links are immediately behind the club house grounds. The club house, with grounds is west of Wallace street, which further south is the west boundary of the Vancouver city exchange area; but at the south-east corner of the club grounds the boundary is jogged three blocks west, so as to place the club house and grounds in the city exchange area, while the golf links are in the Point Grey exchange. If circumstances and conditions as to distance and other matters did not call for the exclusion of the Jericho Golf and Country Club from the city exchange area, there cannot be any good reason for the exclusion of the row of city blocks lying west of Wallace street, which for a considerable distance are nearer to the Bayview exchange than is the Jericho Club.

In my opinion it was conclusively established by the evidence at the hearing that the tariff filed in January, 1924, provided for a substantial increase in the cost of their telephone service to the subscribers in the new Point Grey exchange area, and at the same time decreased the value of the facilities proposed to be given.

It was specifically stated at the hearing by the expert witness for the complainants, J. G. Wray, that,—

> "The mere establishing of an office (exchange), however, need not involve rates at all."

This statement stands without contradiction or qualification on the part of the telephone company.

I have been unable to find in the record of the evidence submitted or on the files of the Board, an indication of any change of conditions that would warrant the imposition of the increased tolls provided for by the tariff as filed in January, 1924.

No evidence was offered in support of the presumed assumption that the Provincial Government reserve lying immediately west of Point Grey municipality and of the occupied portion of the Point Grey telephone exchange area, at present occupied only by the university, would at any time be made available for residential occupation. In my opinion unless such occupation were in reasonably assured early prospect, there was no possible justification from an administrative point of view, why the limited and irregularly shaped occupied area of the Point Grey exchange should have been cut off from the Bayview exchange of the city telephone area.

Under these circumstances, if for any reason that might have seemed good to them, the company saw fit to establish the Point Grey exchange, in my opinion their doing so does not carry with it the right to increase the cost of service upon their subscribers within that area, particularly in view of the statement by the expert Wray that the establishment of the new exchange does not necessarily involve the question of rates.

For these reasons I am unable to agree that the tariff of the British Columbia Telephone Company, filed with the Board on January 28, 1924, should be approved.

Ottawa, March 17, 1926.

ORDER NO. 37490

In the matter of the application of the Corporation of Point Grey, in the province of British Columbia, and residents of that portion of the said Municipality lying within the boundaries of the new exchange of the British Columbia Telephone Company, known as the "Point Grey Exchange," hereinafter called the "Applicants," for an Order cancelling and rescinding, or delaying the coming into effect of, the tariff of the British Columbia Telephone Company establishing a toll of four cents per call between telephones on the Point Grey Exchange and the telephones connected with the exchanges of the Telephone Company at Vancouver; and the Order of the Board No. 35623, dated October 1, 1924, suspending the British Columbia Telephone Company's tariff C.R.C. No. 7 in so far as it provides for a change in the tolls in the Company's said Point Grey Exchange.

File No. 32560.2.

WEDNESDAY, the 14th day of April, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Vancouver, November 16, 1925, in the presence of counsel for and representatives of the applicants, the University of British Columbia, the British Columbia Telephone Company, and the city of Vancouver, the evidence offered, and what was alleged; and upon reading the further written submissions filed,—

The Board Orders: That the complaint against the tolls proposed in the British Columbia Telephone Company's Supplement No. 1 to Tariff C.R.C. No. 7, be, and it is hereby, dismissed; and that the said Order No. 35623, dated October 1, 1924, suspending such tariff be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

In the matter of Train Service on the line of the Canadian National Railways between Bridgetown and Port Wade, N.S.

File No. 27563.26.

JUDGMENT

Hon. H. A. MCKEOWN, K.C., *Chief Commissioner:*

The Canadian National Railways, operating the Halifax and South Western Railway, gave notice to the Board on the 14th day of June, 1924, of their intention to abandon the operation of that portion of the Halifax and South Western Railway between Bridgetown and Port Wade, in the county of Annapolis, province of Nova Scotia; and the Council of the Municipality of Annapolis County has applied to the Board for an order directing the restoration of a train service over the said portion of railway.

The application was very strongly supported by Dr. Lovett, former federal member for Digby-Annapolis, by correspondence, personal interviews, and at the public hearing held in Ottawa, March 17, 1925. It was pointed out by him, and impressed upon the Board, that to secure this service and to ensure its continuation the ratepayers of the county of Annapolis incurred and assumed large

financial obligations, which are still outstanding and have to be met. It was urged that, under an agreement between the Halifax and South Western Railway Company and the Provincial Government, the company undertook to furnish good and sufficient accommodation for any traffic offering and such train service as may be agreed upon between the parties to the agreement; that a term of the transfer of the undertaking, franchise, and property of the Middleton and Victoria Beach Railway Company to the Halifax and South Western Railway Company was that the obligation to afford suitable facilities and train service applying to the Halifax and South Western Railway Company should extend to and apply to the Middleton and Victoria Beach Railway Company; that industries established at large expense along the line of railway, and because of the existence of the railway, would be seriously crippled, if not actually destroyed, and that great inconvenience, loss and hardship to the residents of the districts through which the railway passed would result from the abandonment of the line.

That the abandonment of the railway would cause inconvenience to the residents of the county, who have for years enjoyed railway accommodation and service, there can be no doubt, and if the matter could be considered only from the standpoint of the applicants, the Board's course would be made easy had it the power to act.

The Board's jurisdiction to make the order applied for is not clear. In the case of the Rossland Board of Trade v. Great Northern Railway Company, 28 C.R.C. 24, it was held that unless the Special Act of incorporation provides that a railway should be continuously operated, the Board has no jurisdiction to compel a railway company which has discontinued the operation of its railway owing to a deficit, to resume such operation, even though the public interest is seriously affected by reason of the discontinuance.

It may be that the circumstances here are distinguishable from that case. By chapter 1 of the Statutes of the Province of Nova Scotia, 1905, being "An Act Relating to the Halifax and South Western Railway Company, and the Halifax and Yarmouth Railway Company, Limited, and the Middleton and Victoria Beach Railway Company, Limited," the Halifax and Yarmouth Railway Company is authorized to sell and transfer to the Halifax and South Western Railway Company, and the Halifax and South Western Railway Company is authorized to purchase and acquire all the undertaking, franchises, and real and personal property of whatsoever kind or description, and wheresoever situate, of the said Halifax and Yarmouth Railway Company (sec. 1.) and the Middleton and Victoria Beach Railway Company, Limited, is authorized to sell and transfer to the Halifax and South Western Railway Company, and the said Halifax and South Western Railway Company is authorized to purchase and acquire all the undertaking, franchises, and real and personal property of whatsoever kind or description, and wheresoever situate, of the said Middleton and Victoria Beach Railway Company, Limited (sec. 4).

Section 8 of this Act provides as follows:—

> "The said undertaking, franchises and real and personal property of the Halifax and Yarmouth Railway Company, Limited, and of the Middleton and Victoria Beach Railway Company, Limited, shall, upon the completion of the respective sales and transfers thereof to the Halifax and South Western Railway Company as hereinbefore provided for respectively, be and become a part of the railway system of the Halifax and South Western Railway Company, *and shall be subject to all enactments and regulations applicable to the Halifax and South Western Railway.*"

The Halifax and South Western Railway Company entered into an agreement with the Government of the province of Nova Scotia, dated August 20, 1901, which was ratified and confirmed by Act of the provincial legislature, chap-

ter 1 of the Statutes of 1902, by which the Company covenanted and agreed to and with the Government, *inter alia,* as follows:—

> "(6) That the company will upon and after the completion and equipment of the said lines of railway and works appertaining thereto, maintain, and keep the same and the equipment required therefor in good and sufficient repair and in working and running order, and will continuously well and faithfully work, maintain, and operate the said lines of railway in such manner as to afford good and sufficient accommodation for the traffic thereof, and will run at least one passenger train daily each way (Sunday excepted) at a moderate rate of speed, and such other train service as may be agreed upon between the parties hereto."

The Halifax and South Western Railway Company was acquired by the Canadian Northern in 1914, and became part of that company's system through ownership of its entire capital stock.

Counsel for the railway company argued that the company's undertaking under the agreement was limited to the main line of the Halifax and South Western Railway Company, and did not extend and apply to any and all branches of that railway, that it would be a long stretch to say that because the company bought a branch line and added to it new conditions, "that the enactments and regulations applying to the main line should apply to the branch lines, and that we would be called upon to run a train each way per day." He contended, further, that even if bound by that agreement, the moment the company decided to abandon the line and go out of business, whatever remedy there might be under that contract could not be made applicable here, and that the Board was divested of all jurisdiction over a railway when operation of that line was abandoned.

I am not prepared to decide that this is the effect of the provisions referred to, and that the service the Halifax and South Western Railway Company obligated itself to furnish may not be extended to include and apply to any lines of railway it later acquired and which became part of its system. In the conclusion I have come to, however, as to the disposition to be made of this case, having regard to existing circumstances and conditions, it is not necessary to decide the point.

The portion of the line affected extends from Middleton to Port Wade, a distance of 39.2 miles.

Bridgetown is a station on the branch, 13.8 miles from Middleton, and beyond that point the traffic for years has been very light.

In a letter to the Board under date of 14th June, 1924, the Canadian National Railways indicated their intention to abandon the service between Bridgetown and Port Wade, having pointed out that for the 25.4 miles involved, the earnings per mile were approximately as follows:—

1920	$ 233
1921	374
1922	279

and it was also shown that a number of bridges and other structures would require rebuilding immediately, if the operation of the road were to be continued further than Bridgetown, and that the amount of money necessary for such betterment required on that section alone, was estimated at $74,950 chargeable to capital, and $28,200 to maintenance.

When the matter was heard before the Board in March, 1925, it was shown that a modification of the intention indicated by the letter of the previous year had been made, and that the proposed abandonment was confined to that portion of the line running from Granville Centre to its terminus at Port Wade, a distance of some 17 miles.

Continuing their traffic figures, it was shown that between Granville Centre and Port Wade, which is the abandoned portion of the line, there was in the year 1923 a movement of 100 cars of gravel or ore which had been lying in pockets at Port Wade and had been disposed of for roadmaking purposes, and this was practically all the traffic which originated west of Granville Centre, with the possible exception of two or three cars of apples from points close at hand, and that in the year 1924, a total of 58 cars of pulpwood comprised the total traffic on that section of the line.

From Middleton to Granville Centre the operation of the road has been as follows:—

From Middleton to Bridgetown, one train per week; and from Bridgetown to Granville Centre, as occasion demands;

In the time when apples are moving, weekly trips are run when required, and other freight taken care of.

In the year 1924, the total freight traffic from Middleton to Granville Centre amounted to approximately 420 cars, of which 90 per cent were apples from warehouses located at intermediate points between Middleton and Bridgetown.

The passenger traffic is represented as almost nil and without much chance of improvement, because the people are said to be wealthy and use their automobiles in travel.

It was further pointed out that in order to put the line in shape for operation between Granville Centre and Port Wade, which is the part abandoned, would cost $136,650 and entail an annual maintenance cost of $28,200.

In these circumstances, I do not feel that the Board would be justified in directing the restoration of this service, even assuming it has the power to do so.

It was further urged that, under the Special Act, chapter 13 of the Statutes of 1919, section 19, the company could not abandon the operation of any lines, or parts of lines, of railway without the approval of the Governor in Council, upon the recommendation of the Board. This would be true if the Special Act applied to the Halifax and South Western Railway Company.

Section 11 of the Special Act provides that the Governor in Council may from time to time, by Order in Council, entrust to the company, that is, the Canadian National Railway Company, the management and operation of any lines of railway, or parts thereof, which may be from time to time vested in or owned, controlled, or occupied by His Majesty. The Governor in Council has not yet, by Order in Council, entrusted the management and operation of the Halifax and South Western Railway Company to the Canadian National Railway Company, and until that is done, my view is that the Canadian National Railways' Act, to which reference has been made, does not apply to it.

The only railways brought within the purview of that Act to date by the necessary Order in Council are the Grand Trunk Railway Company and the Government Railways, for example, the Intercolonial, Grand Trunk Pacific, and Transcontinental, the latter in respect of the operation of a railway (as distinguished from the construction or maintenance of a railway).

Consequently, in my view, section 19 of the Special Act does not apply in this case, and the consent of the Governor in Council, upon the recommendation of the Board, before the abandonment of the line, was not necessary. For the reasons stated, the application is refused.

Ottawa, April 1, 1926.

Assistant Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioners Boyce and Oliver concurred.

ORDER NO. 37464

In the matter of the application of the Central Vermont Railway Company, hereinafter called the "Applicant Company," for approval of its Standard Tariff of Sleeping and Parlor Car Tolls, C.R.C. No. S-8, on file with the Board under file No. 9451.29.

TUESDAY, the 6th day of April, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the applicant company's said Standard Tariff of Sleeping and Parlor Car Tolls, C.R.C. No. S-8, on file with the Board under file No. 9451.29, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER NO. 37467

In the matter of the applications of Fitzsimmons Fruit Company, Limited, of Port Arthur, Ontario, and Peters Duncan, Limited, of Toronto, Ontario, for an Order suspending Item 380-A of Supplement No. 45 to Agent Ransom's Tariff C.R.C., No. 110, effective March 27, 1926.

File No. 26848.24

SATURDAY, the 10th day of April, A.D. 1926.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the applications,—

The Board Orders: That, as from March 27, 1926, the said item 380-A in Supplement No. 45 to the Canadian Freight Association Tariff, C.R.C. No. 110, issued by Agent G. C. Ransom, be, and it is hereby, suspended pending a hearing by the Board.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER NO. 37487

In the matter of the application of The Express Traffic Association of Canada, for approval of Supplement No. 5 to C. N. Ham's Tariff, C.R.C. No. ET-694, covering Regulations for the Transportation by Express of acids, inflammables, oxidizing substances, samples of explosives, on file with the Board under file No. 1717.12.

WEDNESDAY, the 14th day of April, A.D. 1926.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the said Supplement No. 5 to C. N. Ham's Tariff, C.R.C. No. ET-694, providing regulations governing the transportation of fireworks on file with the Board under file No. 1717.12, be, and it is hereby, approved.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 37494

In the matter of the application of the Hull Electric Company, hereinafter called the "Applicant Company", under Section 334 of the Railway Act, 1919, for approval of its Supplement No. 1 to Standard Passenger Tariff C.R.C. No. P-16, on file with the Board under file No. 21781.2.

THURSDAY, the 15th day of April, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—*The Board orders:* That the said Supplement No. 1 to the applicant company's Standard Passenger Tariff C.R.C. No. P-16, on file with the Board under file No. 21781.2, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the City of Montreal, under Section 257 of the Railway Act, for the installation, operation and maintenance of gates at the highway crossing of Gouin Boulevard, over the right of way of the C.P.R. Co., by and at the expense of the said railway company.

File 27156.3

Heard at Montreal, P.Q., January 7, 1926

JUDGMENT

THOMAS VIEN, K.C., *Deputy Chief Commissioner:*

This is an application of the city of Montreal, under section 257 of the Railway Act, for the installation, operation and maintenance of gates at the highway crossing of Gouin Boulevard, within the limits of the city, over the right of way of the Canadian Pacific Railway, at the expense of the railway, after the usual contribution from the Grade Crossing Fund.

This matter originated with a letter from Inspector Lafontaine dated October 27, 1924, in which he stated that, in his opinion, the crossing was dangerous and should be inspected and reported on. Instructions were issued, and in compliance therewith on January 10, 1925, Lafontaine made an inspection and report. On March 20, the Chief Operating Officer submitted the report with his comments, recommending that warning signs should be placed on the highway, 300 feet on each side of the crossing.

On March 31, 1925, the Secretary of the Board wrote to the city drawing attention to that dangerous crossing, and to the inadequacy of the protective devices ordered by the Board's Order No. 25486, and stating the recommendations of the Chief Operating Officer.

The city replied by an application dated May 27, 1925, requesting the Board to direct the Canadian Pacific Railway to install, maintain and operate gates, at its own expense.

The railway answered, on June 22, 1925, recognizing the necessity for some additional protection, and submitting that a modern bell and wigwag would meet all requirements.

It also added that, notwithstanding the seniority of the highway over the railway, the additional protection being rendered necessary by the increased automobile and other traffic on the highway, the cost should be borne by the city at least to the extent of 50 per cent, after deducting the contribution from the Grade Crossing Fund.

To this, the city replied on October 27, stating that bell and wigwags would not offer efficient protection, and reiterating that the whole cost should be borne by the railway.

The case was then set down for hearing, and was heard at Montreal, on January 7, 1926, before the Chief Commissioner, Mr. Commissioner Boyce and myself.

The record of the proceedings is to be found in volume 449, at pages 138 and following.

There appeared on behalf of the city of Montreal, W. H. Butler, Esq., K.C., and Alderman Alfred Legault, and on behalf of the Canadian Pacific Railway, E. P. Flintoft, Esq.

Mr. Butler said the following (Record, page 138):—

> "This is an application for gates at the Boulevard Gouin crossing of the Canadian Pacific Railway, in Bordeaux ward of the city of Montreal. We ask that the entire cost of the protection whether installation, operation or maintenance, be paid by the company. The company in their reply have admitted that additional protection is necessary. At present there is a bell.
>
> "We do not agree as to the protection or as to the cost of protection. The company submit that wigwag signals with the bell are sufficient. We say, they are not, and that gates are necessary. They say also that a contribution should be made from the Railway Grade Crossing Fund for the installation of whatever protection is ordered there, 25 per cent. Of course, we agree with them on that. But they say we should pay fifty per cent of the balance of the cost of installation and they pay fifty; and each 50 per cent of the cost of maintenance and operation.
>
> "Commissioner Boyce: I suppose this is a very heavily travelled road?
>
> "Mr. Butler: Yes sir.. . . We filed with our application a large plan and we have also filed a count of the traffic. . . The count is made from seven in the morning of each day, and on April 17, for instance, there were 951 vehicles went over. And in the 12 hours there were 29 trains, 951 vehicles and 1,129 pedestrians. On the following day there were 1,081 vehicles and 1,420 pedestrians and 29 trains. The following day was a Sunday. Of course you will notice the vehicular traffic increased to 1,274, and the pedestrian traffic also slightly increased. There were less trains: fourteen. We have no count of the traffic in the summer months but I would respectfully submit that the traffic must be much heavier in the summer months because as the Board knows, the suburban train service or the train service to summer resorts in the mountains on the Ste. Agathe line, the north shore line of the Canadian Pacific Railway, and also the trains to Quebec, and in that direction—for instance in the summer months the Canadian Pacific Railway have their Empress trains to meet their boats at Quebec, which are very fast trains, and also other trains, so I respectfully submit that the traffic would be considerably greater in the summer months at this crossing both on the highway and on the railway. . . ."

At page 141, Mr. Butler, after stating why wigwags and bells offered inadequate protection, added:—

> "In addition you have the noise of the bell ringing which is not a thing I think that should be adopted in a city, where there are a lot of people residing close to the crossing; they are continually disturbed by the ringing of this bell and also the whistling of the engines. . . The practice is, as I understand, to whistle as they approach a crossing like

that. That is also an inconvenience, and to be avoided, if possible, in the city where the area is built up."

And Alderman Alfred Legault being heard (Record, p. 150), concurred in that statement, and added:—

> "The Gouin Boulevard has a tremendous traffic. . . It is the national highway between Montreal and Ottawa, and between Montreal and Toronto, and on a Sunday there passes there between 7,000 and 8,000 machines, and on a Saturday between 5,000 and 6,000. I, myself, have counted on a Sunday 200 cars in twenty minutes. I was tired enough after counting them that I stopped at the end of twenty minutes. . . . I speak of automobiles; they are almost all closed cars which pass by there, and for persons in a closed car, that bell which is there is not much protection.
>
> "Now, there are two curves, one curve on each side of the railway. On the one side, at 700 feet, and on the other side at 500 feet, and on account of those curves, you cannot see the railroad at all. Even, if you placed a wigwag, in the summer time with the trees, and the Gouin Boulevard has trees from one end to the other, and the branches reaching to the middle of the street, it would not be possible for the driver of an automobile to see this railroad for a greater distance than 500 feet.
>
> "And besides all that, there is our climate which is a cause of danger. The day before yesterday, I was returning home at one o'clock in the morning. It was raining. I ought to tell you that I am well acquainted with that locality as I pass there four times a day. However, it was raining. I saw nothing and heard nothing, when all at once I perceived that there was a train approaching. Fortunately, I am accustomed, I thought about it in time, and I put on my brakes in time, but for some one who was not familiar, it might have been otherwise."

That evidence is not contradicted.

A dangerous situation is revealed by a report of our inspector, concurred in by the Chief Operating Officer, and is admitted by the city and the railway.

I am satisfied that in view of the number of closed cars that pass at that crossing, and our frequent unfavourable climatic conditions, bells and wigwags would hardly be adequate to protect the public.

Although there is a duty cast upon every user of the highway to take ordinary precautions, to use auditory and visionary senses, and observe signals and warnings, people travelling on a highway in a city must also, in my opinion, be protected against their own negligence.

When gates come down, they have to stop, and the accident is avoided. With bells and wigwags, with windows closed, when it is raining or cold, the driver does not hear the bell, does not see the signal, and the accident occurs.

The Railway Act imposes upon the Board the duty of making orders for the protection, safety and convenience of the public. (Railway Act, section 257 (1).)

In this case, the inadequacy of the existing protective appliances is apparent and admitted. The only effective change would be the installation of gates.

I am therefore of the opinion that an order should issue ordering the railway company to install gates to be operated day and night from the 1st of June to the 1st of November, and from 6 o'clock a.m. to 10 o'clock p.m. from the 1st of November to the 1st of June, each year.

In this case, the seniority of the highway over the railway is admitted, but the additional protection is rendered necessary by the very much increased traffic over the highway. It would, in my opinion, be unfair to impose upon the railway the whole burden of protecting the vehicular traffic.

The Board should give a contribution out of the Railway Grade Crossing Fund of 25 per cent of the cost of the construction and installation of the gates, and the remainder of the said cost should be borne equally by the railway company and by the city of Montreal.

The cost of maintenance, including the wages of the gatemen, and all other expenses should also be borne equally by the city and the railway company. The gates should be erected and in operation by June 1 next.

OTTAWA, March 16, 1926.

Chief Commissioner McKeown concurred.

COMMISSIONER BOYCE:

I was not impressed by the evidence at the hearing, nor by what is on file before the Board, with the necessity for the installation of gates at this crossing, as suitable protection.

The complaint did not originate from the municipality, but through an Inspector of the Board who was authorized, upon his own suggestion, to make an examination of the crossing, which he suggested was congested, and which report is now on file, dated January 10, 1925. The Inspector's conclusions, concurred in by the Chief Operating Officer of this Board, were that the present protection by bell, with the restricted speed of the trains, gave fairly good protection and only three recommendations were made, viz: (*a*) advance warning signs on the highway; (*b*) a slow order against westbound traffic of 10 miles per hour; and (*c*) the addition of a wigwag to the present bell.

The evidence showed that the eastbound traffic is controlled by full stop at signal No. 99, situated about 100 feet east of the station and only a few feet from the crossing. It is also apparent that trains coming in the oposite direction make a similar stop across the bridge; then, as they come over this crossing, their speed even though the trains do not stop at Bordeaux cannot easily exceed 20 to 25 miles per hour, and it is recommended as part of the protection suggested and endorsed by the Chief Operating Officer of the Board, that this speed be reduced to 10 miles per hour.

No accident is reported at this crossing since July 29, 1918, when an auto truck returning from Cartierville, in charge of one Ernest Rowe, was struck by a train. After examination, the Inspector's report of that accident, dated September 11, 1918, shows that the cause of the accident was the carelessness of the driver of the motor truck.

The present protection by bell was installed upon the application of the railway company, dated August 7, 1916, upon which, after inspection and report, Order No. 25486, dated October 2, 1916, was made for the installation of a bell.

At the time that the above order was made, the returns of highway and train traffic show that the train traffic was heavier on an average at that time than it is now for the period shown. In 1916 the train movements over this crossing amounted to 83, while the average train traffic for the 48 hours—6 a.m. June 8 to 6 a.m. June 10, 1925—is reduced to 69·5. The pedestrian traffic in 1916 would be less than it now is, and by reason of the creation of the road into a provincial highway and the advent of the motor car, the vehicular traffic has very considerably increased.

The installation of crossing gates costs, roughly, $4,000, and for maintenance $4,000 per annum, which is a serious expenditure when capitalized. The policy and judgments of this Board for many years has been to order gates as a form of protection at highway grade crossings, primarily, at very congested street crossings in crowded cities. The suggested order for installation of gates at this crossing cannot but break down the many precedents established over a number of years by this Board in this respect, and to virtually

over-ride judgments and decisions of the Board in other cases where, with train traffic much heavier than in the present case, the Board has, for the reasons set forth in its judgments from time to time, regarded gate protection as unsuitable in the various instances in which it was applied. I am not in favour of breaking down such precedents and over-riding such decisions of this Board upon questions of principle, without exceptional circumstances being apparent, and, after careful and anxious examination I am unable to find that such exceptional circumstances exist in this case.

It is true that the return of highway and train traffic show a congested crossing, and doubtless a necessity for further protection, to the cost of installation and maintenance of which the city must be called upon to contribute. I do not think that under the conditions presented in the evidence, gate protection is the most suitable for the conditions involved.

With the train traffic much reduced from that in 1916 the responsibility for congestion of the highway traffic must rest upon the municipality—the applicant—and as regards the congestion of traffic at this point and the alleged inadequacy of protection by bell and wigwag as a protective device recommended by the expert operating officials of the Board, I would point out that there are many crossings protected by bell and wigwag signals with highway warning signs 300 feet on each side of the crossing which are in use to-day, and which afford ample protection against highway traffic where such highway traffic is twice as heavy as the traffic at this crossing. My view is, in accordance with the recommendations of the expert operating officials of the Board, and having regard to the policy of the Board as indicated, and to the desirability of not creating a precedent, which might be found subsequently to be unjustified, that installation of bell and wigwag signals at this crossing bonded 2,000 feet in each direction, the erection of highway warning signs by the municipality, on each side of the crossing and 300 feet therefrom, and the restriction of the speed of westbound train traffic to 10 miles per hour at this crossing, would be adequate protection for the present and all that the Board would be justified in imposing upon the railway company and the municipality, as to cost of installation and maintenance.

The following cases may be referred to, the first one of which is a case where an order for gates was rescinded in favour of the more suitable form of protection at that point, of bell and wigwag signal:—

C.N.R. vs. City of Belleville—27 C.R.C. 372;

C.P.R. et al vs. Ontario Department of Highways—28 C.R.C., p. 10, and cases there referred to.

Although the highway traffic is heavy, for which the municipality must take its adequate share of responsibility, there is a duty cast upon every user of the highway, as has been pointed out in many of the decisions of the Board to take ordinary precautions to use auditory and visionary signs and observe signals and warnings.

The only accident that is reported at this crossing has been caused, as the Board's officers report, by non-observance of that duty.

I would make an order for the establishment of bell and wigwag signals. The limitation to 10 miles per hour of speed against westbound trains at the crossing and the placing of the highway warning boards, as above mentioned, to be erected by the railway company and in use by the first day of July next. The cost of installation to be borne—25 per cent out of the Railway Grade Crossing Fund, and the balance of the cost of construction to be divided equally between the railway company and the city applicant, and maintenance to be borne equally by the railway company and the applicant.

Ottawa, April 27, 1926.

ORDER No. 37532

In the matter of Order of the Board No. 37467, dated April 10, 1926, suspending Item 380-A of Supplement No. 45 to Agent Ransom's all-rail tariff C.R.C. No. 110.

File No. 26848.24

TUESDAY, the 20th day of April, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that a similar item has been published by Agent Ransom in Supplement No. 17 to rail and water tariff C.R.C. No. 111,—

The Board orders: That item No. 270-A in Supplement No. 17 to the Canadian Freight Association Tariff, C.R.C. No. 111, issued by Agent G. C. Ransom, effective May 10, 1926, be, and it is hereby, suspended pending a hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37540

In the matter of the complaint of Woodward's Limited and the Retail Merchants' Association of Canada against the proposed advance in the rate on perfumes, as covered by Item No. 300-A of Supplement 3 to the Canadian Freight Association Tariff C.R.C. No. 256, effective May 1, 1926.

File No. 34439

FRIDAY, the 20th day of April, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is alleged in support of the complaints,—

The Board orders: That the said Item No. 300-A of Supplement 3 to Canadian Freight Association Tariff C.R.C. No. 256, in so far as the same advances the rate on perfumes, be, and it is hereby, suspended, pending a hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37572

In the matter of the complaints of the Boards of Trade of Moose Jaw, Brandon, Winnipeg, Vancouver, Saskatoon, Prince Albert, Battleford, and North Battleford, the Medicine Hat Chamber of Commerce, Western Grocers Limited, the Department of Railways and Telephones of Alberta, the Government of the Province of Saskatchewan, Kelly, Douglas & Company, Limited, J. L. Trumbull, J. D. D. Broom, and Braid, Tuck & Company against Item 250-A in Supplement No. 21 to Agent Thompson's Tariff C.R.C. No. 47, which eliminates special commodity import rate on tea from Vancouver to points in Western Canada.

File No. 34552

MONDAY, the 10th day of May, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

C. LAWRENCE, *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the complaints and on behalf of the Canadian Freight Association; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said item 250-A in Supplement No. 21 to Canadian Freight Association Tariff C.R.C. No. 47, issued by Agent F. W. Thompson, be, and it is hereby, suspended pending hearing by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

April 26, 1926.

CIRCULAR No. 210

Re *form of consent given by Municipalities, or other corporate bodies, upon application to the Board*

File No. 429.6

I am directed to point out that the attention of the Board has been drawn to a certain laxity that has crept into the form of consent given by municipalities or other corporate bodies upon applications to this Board. That such consent is often given only in writing upon a plan on which is the signature of the mayor, the secretary-treasurer, or the municipal engineer, whereas a body politic cannot give its consent otherwise than by a resolution or a by-law.

I am, therefore, directed by the Board to call the railway companies' attention to this matter and to request that they show cause why an order of the Board should not issue to the effect that in future when the consent of such municipalities or bodies corporate is necessary it should be furnished to the Board in the form of a resolution or a by-law.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI | Ottawa, June 1, 1926 | No. 5

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ORDER No. 37601

In the matter of the application of the Canadian Freight Association, on behalf of the railway companies subject to the jurisdiction of the Board, for approval of proposed Supplement No. 2 to Canadian Freight Classification No. 17. File No. 33365.60

MONDAY, the 10th day of May, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the said supplement has been issued to provide for a reduction from second to third class in the less than carload rating on lard compounds or substitutes, N.O.I.B.N., other than dry, in metal cans in barrels, boxes or crates, said rating of second class having been published in error in Supplement No. 1 to Canadian Freight Classification No. 17,—

The Board orders: That the said Supplement No. 2 to Canadian Freight Classification No. 17 be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37650

In the matter of the Order of the Board No. 37195, dated December 31, 1925, suspending, pending a hearing by the Board, certain supplements to tariffs of the Canadian National, Canadian Pacific, Quebec Central Railway Companies, affecting change in the rates on newsprint paper, in carloads, from various shipping points to Clarksville, Knoxville, Memphis, and Nashville, Tennessee. File No. 24602.11

FRIDAY, the 21st day of May, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, February 2, 1926, in the presence of counsel for and representatives of the Canadian National, Canadian Pacific, and Quebec Central Railway companies; the

Canada Paper Company, Limited; Canadian Export Paper Company, Limited; Brompton Pulp and Paper Company, Limited; Laurentide Company, Limited; Price Bros. & Company, Limited; Donnacona Paper Company, Limited; Howard Smith Paper Mills, Limited; Port Alfred Pulp and Paper Corporation; St. Maurice Valley Corporation (Belgo Division); Traffic Bureau of Nashville, Tennessee; Canadian International Paper Company, E. B. Eddy Company, J. R. Booth Company, Limited, and the Canadian Freight Association, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That Supplement No. 2 to Canadian National Railways Tariff C.R.C. No. E-976; Supplement No. 2 to Canadian Pacific Tariff C.R.C. No. E-4196; Supplement No. 2 to Quebec Central Railway Tariff C.R.C. No. 922; and Supplement No. 2 to Quebec Central Railway Tariff C.R.C. No. 921, in so far as they proposed to change the rates on newsprint paper, in carloads, from various shipping points to Clarksville, Knoxville, Memphis, and Nashville, Tennessee, be, and they are hereby, disallowed.

H. A. McKEOWN,
Chief Commissioner.

Re *Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders Nos. 201 and 349*

File No. 1700

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1925.

(NOTE.—First two days over free time, $1 per day; three days or more, $5 per day.)

EASTERN CANADA

Month, 1925	Total cars handled	Number released within free time	%	Number held over free time	%	Number held under 3 days over free time	%	Number held 3 days or more over free time	%
January	168,410	158,356	94·03	10,054	5·97	8,123	4·82	1,931	1·15
February	168,426	157,377	93·44	11,049	6·56	8,561	5·08	2,488	1·48
March	182,280	170,596	93·59	11,684	6·41	8,978	4·93	2,706	1·48
April	171,857	161,717	94·1	10,140	5·9	8,176	4·75	1,964	1·15
May	185,442	175,020	94·38	10,422	5·62	8,589	4·63	1,833	0·99
June	196,530	184,876	94·07	11,654	5·93	9,274	4·72	2,380	1·21
July	202,676	190,090	93·79	12,586	6·21	9,880	4·88	2,706	1·33
August	195,013	182,006	93·33	13,007	6·67	10,121	5·19	2,886	1·48
September	200,058	186,834	93·39	13,224	6·61	10,390	5·19	2,834	1·42
October	225,023	210,622	93·6	14,401	6·4	11,332	5·04	3,069	1·36
November	210,479	196,651	93·43	13,828	6·57	10,619	5·04	3,209	1·53
December	187,832	172,862	92·03	14,970	7·97	11,642	6·19	3,328	1·78
Monthly average	191,169	178,918	93·59	12,252	6·41	9,640	5·04	2,611	1·37

WESTERN CANADA

Month, 1925	Total cars handled	Number released within free time	%	Number held over free time	%	Number held under 3 days over free time	%	Number held 3 days or more over free time	%
January	92,115	86,524	93·93	5,591	6·07	4,739	5·14	852	0·93
February	78,437	73,582	93·81	4,855	6·19	4,116	5·25	739	0·94
March	80,684	76,190	94·43	4,494	5·57	3,821	4·73	673	0·84
April	69,508	66,456	95·61	3,052	4·39	2,545	3·66	507	0·73
May	62,007	59,366	95·74	2,641	4·26	2,194	3·54	447	0·72
June	63,895	60,937	95·37	2,958	4·63	2,368	3·7	590	0·93
July	73,665	70,217	95·32	3,448	4·68	2,857	3·88	591	0·80
August	67,394	64,179	95·23	3,215	4·77	2,658	4·00	557	0·77
September	151,885	146,660	96·56	5,225	3·44	4,276	2·81	949	0·63
October	159,920	153,203	95·80	6,717	4·20	5,737	3·59	980	0·61
November	180,325	171,705	95·22	8,620	4·78	7,287	4·02	1,333	0·76
December	151,520	145,232	95·85	6,288	4·15	5,343	3·53	945	0·62
Monthly average	102,613	97,854	95·36	4,759	4·63	3,995	3·88	764	0·75

R. RICHARDSON,
Assistant Secretary and Registrar,
B.R.C.

OTTAWA, May 19, 1926.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI **Ottawa, June 8, 1926** **No. 6**

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Dangerous Practices of Motorists, Drivers of Other Vehicles, and of Pedestrians, at Railway Crossings

Files Nos. 45.8.1, 45.8.2 and 45.8.3.

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines, from May 25, 1925, to May 12, 1926, show 124 cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Toronto, Hamilton and Buffalo lines, from July 16, 1925, to October 25, 1925, show 5 cases.

The Canadian Pacific Railway lines, from February 1, 1925, to January 31, 1926, show 239 cases of danger practices by automobile drivers; 496,026 cases of pedestrians, and 38,850 cases of bicycles, passing under lowered gates.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this. If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
May 25.....	4.27 p.m...	Dufferin St., Trenton.	233-045.....	Fast driving and passing 2 vehicles at excessive speed.
" 28.....	1.15 p.m...	Leclair St., Maisonneuve.	.....	Left truck standing too close to Station platform.
" 30.....	3.15 a.m...	Stobie Rd. Crossing, Sudbury.	270165.....	Drove into side of train.
June 4.....	8.30 a.m...	Orleans St., Montreal.	27304.....	Ran into side of engine.
" 13.....	6.20 p.m...	Forrest St., Parry Sound.	252-393.....	Car ran into van steps.
" 14.....	1.30 p.m...	Laframboise St., St. Hyacinthe.	20883.....	Crossing in front of coming engine despite signal to stop.
" 19.....	5.30 p.m...	East Main St., Welland.	136536.....	Ran into gates.
" 20.....	4.30 p.m...	John St., Aylmer, Ont.	.....	"

CANADIAN NATIONAL RAILWAY LINES—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
July 1.....	9.30 p.m...	Pinnacle St., Belleville.	827.....	Ran into gates.
" 3.....	10.10 p.m...	Jones Ave., Toronto...	49095.....	Reckless driving, disregarded signal.
" 3.....	7.10 p.m...	Laurier Ave., Levis...	85763.....	Ran into gates.
" 6.....	12.05 a.m...	Dundas St., Tansley, Ont.	82–289.....	Attempted crossing ahead of train.
" 4.....	10.30 p.m...	Desery St., Montreal	14330.....	Ran over track into outer gate.
" 10.....	1.50 p.m...	Walker Rd., Walkerville.	24–329.....	Drove under gates while being lowered.
" 14.....	10.25 a.m...	First crossing North of King Station, Ont.	C 30930.....	Fouled track ahead of train.
" 21.....	1.30 p.m...	Lansing Crossing, M. 12·8, Bala Subdivision.	59–887.....	Attempted crossing ahead of train.
" 23.....	3.30 p.m...	Queen St., Ottawa....	113–613.....	Ran into gates.
" 29.....	9.00 a.m...	Ontario St., Cobourg..	286886.....	Deliberately passing signalling flagman.
Aug. 8.....	9.35 a.m...	Dundas St., Trenton..	229643.....	Crossing despite stop signal.
" 10.....	10.35 a.m...	Martins Siding, Ont...	C.29–445.....	Did not notice train coming.
" 11.....	3.50 p.m...	First Crossing West of L'Orignal Station. Ont.	115845.....	Drove into side of train.
" 15.....	8.30 p.m...	Prefontaine St., Montreal.	Taxi No. 83.....	Ran through half open gate into outer closed gate.
" 17.....	4.47 p.m...	First Crossing West of Joliette, Que.	.....	Drove team in front of passing train.
" 17.....	10.30 a.m...	William St., Chatham.	179–342.....	Ran through gates.
" 17.....	.....	Essa St., Allandale....	62–606.....	Skidded into gates.
" 17.....	3.50 p.m...	Huron St., Newmarket.	.....	Drove horse through crossing despite signalman's effort to stop him.
" 18.....	3.30 p.m...	Crossing 2¼ miles W. of Wendover.	.....	Truck driven in front of train.
Sept. 1.....	1.10 p.m...	Hastings, Ont.....	.....	Failed to observe signals.
" 4.....	11.55 a.m...	King St., Cobourg....	50–601.....	Ran past signal when train was close to crossing.
" 10.....	12.30 p.m...	Notre Dame St., Victoriaville.	72400.....	Ran into North gate when down.
" 12.....	11.50 a.m...	George St., Brantford	145761.....	" "
" 12.....	5.40 a.m...	King St. North, Weston.	6–08–11.....	Excessive speed approaching gates.
" 13.....	1.10 p.m...	Hastings, Ont.....	3.233.....	Drove by stop signal.
" 13.....	10.15 p.m...	Walker Rd., Walkerville.	102–800.....	Driving by stop signal.
" 15.....	1.50 p.m...	Hastings, Ont.....	231–988.....	Driving by stop signal.
" 16.....	8.45 a.m...	Dundas St., Trenton..	231–835.....	Driving at high speed disregarded stop signal.
" 16.....	12.03 p.m...	West St., Brantford...	146–999.....	Ran into gates when down.
" 19.....	2.15 a.m...	Queen St., Riverdale.	56894.....	Reckless driving through both gates.
" 21.....	8.15 p.m...	St. Clair Ave., Brampton Subd.	69–474.....	Reckless driving while *under influence of liquor.*
" 21.....	9.10 a.m...	Selby Rd., Napanee..	237–447.....	Disregarded stop signal.
" 24.....	2.10 p.m...	Main St., Hamilton...	.....	" "
" 25.....	6.19 p.m...	King St., Sherbrooke.	F 3622.....	Broke through gates while down.
" 25.....	9.20 a.m...	Walton St., Port Hope.	219–826.....	Disregarded stop signal.
" 26.....	8.35 p.m...	Pie IX Blvd., Maisonneuve.	73636 & 62894...	Car towing another, driven over crossing ahead of train.
" 30.....	5.30 p.m...	Brant St., Burlington.	84–703.....	Approaching gate at high speed, unable to stop in time.
Oct. 4.....	10.40 p.m...	Queen St., Chatham..	.....	Broke through north gate.
" 4.....	7.40 p.m...	Kingston Road, Cobourg.	280561.....	Ran into closed gate.
" 5.....	7.30 a.m...	Walton St., Port Hope	91–353.....	Disregarded stop signal.
" 6.....	2.45 p.m...	Laframboise St., St. Hyacinthe.	69218.....	" "
" 10.....	4.30 p.m...	Dundas St., Trenton..	202–414.....	Defective brakes preventing stop at signal.
" 11.....	3.14 a.m...	First Public Crossing East of Port Credit.	126521.....	Failed to heed signal to stop.
" 12.....	10.07 a.m...	Detour crossing West of Merriton Yard	132–457.....	Refused to stop at signal.
" 13.....	7.50 a.m...	Detour crossing West of Merriton Yard.	129–829.....	" " "

CANADIAN NATIONAL RAILWAY LINES—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
Oct. 16.....	8.30 a.m...	First Crossing South of Tottenham.	.....	Drove horse across track despite warning.
" 17.....	6.38 a.m....	Eastern Ave., Toronto	C. 7-830.....	Did not notice lowering of gates.
" 18.....	1.00 a.m...	Orillia Road, Washago	C-31-820.....	Ran over track and struck side of train.
" 19.....	11.30 a.m..	Dundas Street, Trenton.	229-643.....	Crossing against board when train was backing up.
" 22.....	5.35 p.m...	Pie IX Avenue, Maisonneuve.	.....	Drove truck ahead of approaching train
" 22.....	12.10 p.m...	Devonshire Road, Walkerville.	104-695.....	Drove under gates while being lowered.
" 31.....	4.50 p.m...	Desery St., Montreal.	H. 3470.....	Broke through gates.
Nov. 6.....	2.20 p.m...	Cannon St., Hamilton.	78-146.....	Passed both flagmen who were on crossing.
" 7.....	2.20 p.m...	West St., Brantford...	143-298.....	Ran into gates when going down.
" 8.....	5.10 a.m...	Queen St., Riverdale.	9880.....	Ran through S.W. Gates 2 minutes after closing.
" 13.....	4.50 a.m...	Bathurst St., Riverdale.	1-008.....	Reckless driving.
" 13.....	6.38 p.m...	Laframboise St., St. Hyacinthe.	69218.....	Disregarding Stop Signal.
" 14.....	9.50 a.m...	Queen St., Ottawa....	294-959.....	Ran through East gate.
" 14.....	10.30 a.m...	Desery St., Montreal.	27255.....	Did not notice lowered gate and backed through same.
" 17.....	11.43 a.m...	Public Crossing, Mile 39.1 Westport Subd.	245874.....	Fast driving in front of passing train.
" 18.....	12.13 p.m...	College St., Lennoxville.	.....	Lifting gate to pass under.
" 25.....	9.15 a.m...	George St., Brantford.	C-204-63.....	Ran through gates when down.
" 25.....	3.00 p.m...	Adelaide St., London.	C-6-968.....	Ran into S.E. gates when down.
Dec. 3.....	4.50 p.m...	Strachan Ave., Toronto.	26-035.....	Reckless driving.
" 7.....	2.25 p.m...	George St., Brantford.	.....	Slippery pavement unable to stop.
" 8.....	7.00 p.m...	Devonshire Road, Walkerville.	186105.....	Drove through both gates.
" 8.....	9.05 p.m...	Prefontaine Street, Montreal.	Fire truck No. 13.	Came over crossing before South gates were lowered and broke through North gate.
" 8.....	4.33 p.m...	Ontario Street, Montreal,	.....	Bank truck drove over crossing at high speed and broke gate.
" 9.....	6.45 p.m...	Moreau St., Montreal.	23097.....	Approaching at high speed could not stop and skidded.
" 12.....	12.50 p.m...	King St., Waterloo...	157394.....	Car ran into gate while being lowered.
" 13.....	8.50 p.m...	Moreau St., Montreal.	60517.....	Skidded when brake applied while approaching at crossing.
" 14.....	1.57 p.m...	Maitland St., London, Ont.	89-420.....	Failed to heed warning to stop.
" 14.....	6.30 p.m...	Main St., Hamilton...	75-558.....	Disregarding signal to stop.
" 17.....	8.01 a.m...	King St., Weston.....	119-115.....	Ran through gate while being lowered.
" 21.....	8.14 p.m...	Huron-Ontario St., Port Credit.	12-471.....	Ignoring watchman's signal.
" 25.....	2.10 a.m...	Queen St., Chatham..	176-641.....	Ran through North gate when down.
" 29.....	12.45 p.m...	King St., Waterloo...	158-261.....	Ran through South gate at great speed.
" 30.....	6.15 p.m...	Clarence St., London East.	137-271.....	Driving through gates when down.
1926				
Jan. 3.....	12 noon.....	Main St., Glenco.....	280981.....	Car skidded into gate.
" 6.....	4.50 p.m...	Rectory St., London East.	88-545.....	Driving through gates after same had been lowered.
" 8.....	7.00 p.m...	Queen St., Chatham.	577.....	Running through North gates.
" 13.....	8.40 a.m...	Chambly St., Montreal.	24928.....	Drove through lowered gates.
" 13.....	4.05 p.m...	West St., Brantford...	65-791.....	Driver stepping on gas instead of brake, running through gates.
" 23.....	9.15 p.m...	Queen St., Chatham..	202-723.....	Failed to notice gate down.
" 25.....	1.15 p.m...	Centre Road, Port Credit.	C-7-673.....	Disregarding watchman's signal.
" 25.....	10.30 a.m...	Waterloo St., London.	88-919.....	Driving under gates as they were being lowered.
" 26.....	6.10 p.m...	Richmond St., London East.	97-137.....	Driving onto crossing when one set of gates were down and the other being lowered.
" 26.....	7.25 p.m...	Richmond St., London East.	283-996.....	Turning around on tracks.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926				
Feb. 2	8.15 p.m.	Adelaide St., London East.	300–098	Driving into gates after being lowered.
" 3	8.00 a.m.	Wellington St., Hamilton.	C9–295	Drove along track 100 feet and turned over tracks in front of train.
" 6	7.05 p.m.	Talbot St., London	98–773	Ran through lowered gates.
" 8	9.47 a.m.	Centre Road, Port Credit.	7–060	Crossing in front of freight train disregarding signal.
" 11	7.50 p.m.	Devonshire Road, Walkerville,	117–551	Drove through gates while being lowered.
" 16	4.25 p.m.	King St., Weston	324–65	Drove through gates while being lowered.
" 16	10.05 p.m.	Walker Road, Walkerville.	M–924	Ran into closed gates.
" 16	8.20 a.m.	Devonshire Road, Walkerville.	C–30–387	Running into gate after it was lowered.
" 17	6.50 p.m.	Devonshire Road, Walkerville.	112–962	Running into gate after it was lowered.
" 19	4.15 p.m.	Centre, Road, Port Credit.	53–587	Ignored stop signals.
Mar. 5	2.00 p.m.	King St., Cobourg	C–8–683	Disregarding stop signals.
" 15	2.20 p.m.	King St., Sherbrooke.	31418	Ran into North gate before it had time to be lifted.
" 16	9.35 p.m.	Devonshire Road, Walkerville.	214–669	Unable to stop in time account slippery pavement.
" 31	3.40 p.m.	Front St., Orillia		Horses became excited ran through gates.
April 1	6.55 p.m.	King St., Sherbrooke.	835F	Ran through gates while same were down.
" 13	3.58 p.m.	Walton St., Port Hope	284301	Disregarded stop signal.
" 19	9.05 a.m.	Queen St., Chatham.	209–244	Driving under gates when down.
" 20	8.15 a.m.	John St., Weston		Ran into closed gates.
" 21	7.30 p.m.	Devonshire Road, Walkerville.	280027	Ran into gates.
" 24	12.40 a.m.	West St., Brantford	169–217	Auto came downhill and struck gate.
" 29	4.28 p.m.	Pie IX Bldv. Montreal.	H–59748	Attempted to drive ahead of train.
" 30	12.55 p.m.	Devonshire Road, Walkerville.	C–30–419	Driving through gate after it was lowered.
May 1	2.30 p.m.	Adelaide St., London.	104–835	Ignored warning of signalman and was in front of engine.
" 1	1.45 p.m.	Adelaide St., London.	C–17–125	Did not heed warning and crossed in front of passenger train.
" 3		Marysville, Ont	280–916	Drove on to track from the south and stalled.
" 8	11.00 a.m.	Queen St., Chatham	203–816	Car skidded 26 feet and crashed through gate when it was down.
" 11	8.00 a.m.	Eastern Ave., Toronto.	65–536	Reckless driving.
" 12	5.10 p.m.	West Street, Brantford.	166–520	Rushed into gates as same were being lifted.

Total, 124

TORONTO, HAMILTON AND BUFFALO RAILWAY

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
July 16	1.30 p.m.	Main St. East, Hamilton.	112–253	Persisted in crossing in front of freight train despite stop signals.
Sept. 14	9.15 a.m.	Main St. East, Hamilton.	83–059	Auto unable to stop account poor brake service.
" 17	2.20 p.m.	Ferguson Ave., Hamilton.	C 10–246	Driver disregarded stop signal.
Oct. 24	9.15 p.m.	James Street, Hamilton.	53–436	Broke through S. E. gate account poor eye sight.
" 25	6.45 p.m.	James Street, Hamilton.	28–519	Raining, could not see gates, broke through same.

CANADIAN PACIFIC RAILWAY

EASTERN LINES

NEW BRUNSWICK DISTRICT

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925 Mar. 4...	5.30 p.m...	Jackman Station, Maine.	Snowmobile, cannot say license No. Owned and operated by A. Tewkesbury, Supt. Denniston Power Co., Jackman, Me.	Ran snowmobile up main line about ¼ mile and then took road for return trip. Man advised that this practice must be discontinued.

QUEBEC DISTRICT

Feb. 17...	10.35 p.m...	Chelsea Rd. Crossing Hull West.	Ont. 205–267....	Ran through crossing gates when down.
Mar. 20...	6.45 p.m...	" "	Quebec. No. unknown.	" " "
Feb.-Mar.-Apr.	.....	Busy crossings on Que. District.	.....	Pedestrians passing under gates, which is apparently an almost universal practice and occurs daily.

ONTARIO DISTRICT

Feb. 4...	1.45 p.m...	George St., Peterboro	C. 21035.....	Driver failed stop for north gate which was down; ran into and damaged gate.
April 6...	12.00 a.m...	" "	Gerald Conroy, owner.	Dashed through both gates which were down for No. 24 and after that train had started to move out. Broke both gates.
Feb. 4...	8.30 p.m...	Queen St., Chatham..	146–725.....	While gates were down for westbound freight train auto approached crossing but failed to stop breaking through gate, stopping on rails.
Mar. 18...	7.35 a.m...	Hurontario St. Galt SD.	111–79.....	Crossing protected by bell but not withstanding warnings from locomotive Ford coupe driven by Mr. E. Kemp, failed to observe train until 60 yards from crossing and then speeded up to get over rails ahead of train, rear of auto being struck by engine, slightly injuring passenger.
Feb. 2...	5.35 p.m...	Allans Bridge Crossing, Guelph.	.....	Crossing protected by bell and notwithstanding whistle signals from engine of train taxi attempted to cross over ahead of train resulting in being struck and injuring driver Bert Shier and passenger J. Kennedy.
Mar. 27...	1.10 p.m...	Waterloo St., London.	.....	Gates were let down to let light engine over crossing, boys on wheels rode under north gate, also broke top of gate off.
Mar. 11...	7.05 p.m...	Adelaide St., London.	87–068.....	Crossing watchman signalled with red lamp to stop, but auto failed to observe signal and crossed over ahead of approaching passenger train.
April 3...	5.30 p.m...	Waterloo St., London.	.....	While lowering gate for yard engine to cross a man on bicycle attempted to cross under gate, using his hand to spread gate apart breaking tip off gate.
April 8...	8.50 a.m...	Waterloo St., London.	.....	While gates were down for yard engine to cross a Mr. McMahon on a bicycle attempted to go under gate breaking end off it.
April 20...	2.00 p.m...	Centre St., Chatham.	174–016.....	While gateman was lowering crossing gate auto unable to stop struck gate breaking it off.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Concluded*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
Feb. 6..	4.33 p.m..	St. Clair Ave., Toronto.	C-5-138 (1924)..	Ran under gates while being lowered.
Feb. 9...	11.18 p.m...	" "	C-8-316 (1924)..	East gates had been lowered and west gate being lowered when auto truck ran under lowering gate and across four C.N.R. tracks and stopped just before reaching C.P.R. tracks. C.P.R. and C.N.R. passenger trains approaching at time.
Feb. 11...	9.15 a.m...	" "	C-7-899 (1924)..	Ran under gates while being lowered.
Feb. 16...	9.50 a.m...	" "	43-136 (1924)....	" " "
Feb. 18...	7.55 a.m...	" "	32-888 (1924)....	" " "
Feb. 18...	10.40 a.m...	" "	1-335 (1924).....	" " "
Feb. 28...	11.00 p.m...	" "	24-444 (1924)....	Ran through gate which had been lowered, damaging it.
Mar. 7...	12.35 p.m...	" "	11-669.....	East gate had been lowered and while the west gate was being let down, east bound auto ran under unlowered gate and did not stop until near the inside of East gate and had to back up to permit a freight train to pass.
April 2...	1.35 p.m...	" "	13-267.....	Ran under open gate and lowered gate had to be raised in order to prevent gate being run through.
April 22...	5.20 p.m...	" "	C-7-561.....	Towerman had lowered east gate and while lowering west one, an auto truck ran up and stopped directly under the gate so that signalman was unable to lower it while an engine passed over the crossing.

During February, March and April pedestrians and bicycles passed over following crossings while gates were down:—

Crossing	Pedestrians	Bicycles
Bartlett Avenue—		
February	857	393
March	1,324	648
April	801	302
	2,982	1,343
Dufferin Street—		
February	1,075	253
March	1,317	402
April	1,341	499
	3,733	1,154
Cherry Street—		
February	80	2
March	45	–
April	106	–
	231	2
Peter Street—		
February	26	2
March	48	–
April	94	–
	168	2
Eastern Avenue—		
February	504	–
March	757	81
April	635	146
	1,896	227
Front Street—		
February	1,778	7
March	1,859	52
April	2,061	100
	5,698	159
John Street—		
February	4,580	92
March	4,882	85
April	4,285	117
	13,747	294

Crossing	Pedestrians	Bicycles
Lansdowne Avenue—		
February	11,593	208
March	13,547	400
April	17,534	710
	42,674	1,318
McLennan Avenue—		
February	240	–
March	214	37
April	611	134
	1,065	171
Osler Avenue—		
February	5,169	135
March	6,107	245
April	4,852	327
	16,128	707
Royce Avenue—		
February	10,471	304
March	9,651	279
April	10,966	276
	31,088	859
Symington Avenue—		
February	4,284	283
March	5,436	640
April	5,195	968
	14,915	1,891
Trinity Street—		
February	11	–
March	9	–
April	7	–
	27	–

CANADIAN PACIFIC RAILWAY—*Continued*

NEW BRUNSWICK DISTRICT

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
May 25...	8.40 p.m...	Douglas Ave., St. John	X 1137.....	Ran down to gates and was stopped by shouting and waving of red flag.
June 20...	9.20 p.m...	" "	Foreign car 81510	Struck gates and put out light but did not do any damage.
" 20...	2.25 p.m...	Main Street, Fairville.	.....	Person by the name of Earle raised gates.
" 25...	.....	" "	NB 3091.....	L. A. Sherwood running across the crossing.
July 5...	12.30 p.m...	" "	81658.....	J. S. Cookson of Calais, Me., ran into East gate and broke off point.

QUEBEC DISTRICT

May 18...	1.40 p.m...	Chelsea Road, Hull West.	F-4016.....	Motor truck tavelling west ran through north-east gate breaking gate and casting. Driver A. Hamon claimed brakes would not work.
June 18...	11.35 a.m...	" "	F-4035.....	Ran under crossing gates when down and occupants used their hands to push them up.
" 18...	6.48 p.m...	" "	Ont. 114605.....	Auto travelling west ran through north-east gate when gates were down, breaking it off near casting.
July 11...	10.10 p.m...	" "	Que. 34548.....	Auto owner and witness claimed west gates were dropped in front of his car and when he had passed east gates all were up. Signalman was disciplined but owner was also to some degree at fault.
May-June-July.	.....	.....	.....	Usual number of pedestrians passing under gates or going around the ends of gates when they were lowered.

ONTARIO DISTRICT

May 1...	9.40 p.m...	Richmond St., London.	198978.....	While gates were down auto driven by Mr. Cross was unable to stop until it struck gate, breaking it and also scraped side of car and fenders.
" 2...	8.00 p.m...	Adelaide St., London.	93450.....	Driver refused to stop when signalled with red lamp and crossed tracks in front of yard engine almost striking crossing watchman.
" 2...	9.35 p.m...	" " ..	133683 Mich.....	Driver in spite of warning signals with red lamp crossed over tracks in front of No. 19.
" 30...	10.22 p.m...	Dundas St., Cooksville.	11-136.....	After westbound train had passed, auto started to pass over tracks in face of eastbound train, auto being struck and driver, L. Lapine, injured.
June 26...	.....	Anne St., London.....	.....	Auto driven by Mrs. R. H. Cunningham drove under gate while being lowered although warning bell was ringing.
July 3...	4.10 p.m...	Richmond St., London.	87639.....	While gates were down for approaching train auto ran into gate breaking it off and had just time to back out or a train would have struck it.
" 3...	2.10 p.m...	" "	87655.....	Warning bell was ringing and two gates lowered for approaching train when auto drove under gate about to be lowered and crossed tracks compelling gateman to raise opposite gate to let him out.
June 30...	.....	Vanstittart St., Woodstock.	149393.....	Auto driven by Mrs. J. F. McDonald struck side of engine No. 633. Electric crossing bell was ringing. Brakes on auto failed to hold.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
July 21...	.....	Richmond St., London.	88087.....	Closed auto drove under gate as it was being lowered. Driver claimed did not hear gong ringing or see other gate was already down.
May 2...	4.10 p.m...	St. Clair St., Toronto.	509 motor cycle.	Lifted and ran under both gates.
" 19...	8.00 a.m...	" "	8-156.....	Ran around team standing at gate and broke 12 feet off gate.
June 22...	11.55 a.m...	" "	14-989.....	Auto slewed around on wet road and struck north-east gate with rear end of car.
" 22...	7.43 a.m...	" "	C-583.....	Broke south-west gate.
" 30...	5.45 p.m...	" "	48-878.....	Ran into gate, no damage to same.
" 11...	2.45 p.m...	Kingston Road, Belleville S.D.	60719.....	Drove on crossing just ahead of No. 19, auto stalled on track, was struck and badly damaged, occupants had barely time to get clear.
" 30...	5.20 p.m...	Mileage 13¼ Highway crossing, Port McNicoll S.D.	218624.....	Got excited and forgot emergency brake, then turned auto into ditch to avoid running into train No. 605. Auto capsized, no one hurt.
July 9...	1.35 p.m...	Highway crossing near Whitby Station.	165111.....	Apparently stopped or nearly stopped auto clear of track then lurched forward and stopped square on track.
" 18...	.....	Kingston Road, Belleville S.D.	Not secured. Butcher's delivery auto, Verona.	Beat train over the crossing, had narrow escape.
" 21...	.....	Ontario St., Kingston.	238310.....	Drove across track too close to moving cars. No damage done but escape was very narrow.
May 12...	10.20 a.m...	Cherry Street, Toronto.	45-706.....	Automobile drove over crossing, disregarding stop signal displayed by watchman.
" 19...	7.29 a.m...	" "	Waggon.....	Disregarded warning displayed by watchman.
" 4...	1.50 p.m...	Front Street, Toronto.	13-847.....	Automobile ran in on crossing after gates on opposite side of crossing were lowered.
" 14...	2.00 p.m...	" "	C1-643.....	Dom. Express Co's. truck ran onto crossing after gates on opposite side were lowered.
" 21...	5.35 p.m...	" "	50-988.....	Automobile ran onto crossing after gates on opposite side were lowered.
June 3...	11.05 p.m...	" "	29-006.....	Automobile drove onto crossing after gates were lowered on opposite side.
" 23...	4.20 p.m...	" "	9714.....	Ran onto crossing after incoming gate had been lowered.
July 11...	2.00 p.m...	" "	23-636.....	Ran on to crossing after gates on opposite side had been lowered.
" 12...	2.15 p.m...	" "	30-325.....	" " "
" 14...	5.25 p.m...	" "	8321.....	" " "
" 18...	2.00 p.m...	" "	66-417.....	" " "
" 28...	.....	" "	1504.....	" " "
June 29...	5.30 p.m...	John Street, Toronto..	8-984.....	Ran on to crossing after incoming gates had been lowered.
May 2...	6.50 p.m...	McLenan Ave., Toronto.	5-422.....	Automobile ran into and damaged crossing gates after they had been lowered.
" 14...	5.50 p.m...	" "	38-953.....	Automobile ran against gates after they were lowered—no damage.
" 1...	8.20 a.m...	Peter Street, Toronto.	31-371.....	Automobile drove over crossing, disregarding stop signal displayed by watchman.
" 1...	12.10 p.m...	" "	14-018.....	" " "
" 2...	9.13 a.m...	" "	124-596.....	" " "
" 2...	12.58 p.m...	" "	51-170.....	" " "
" 8...	5.15 p.m...	" "	53-332.....	" " "
May 9...	8.00 p.m...	Peter Street, Toronto.	5-001.....	Automobile drove over crossing, disregarding stop signal displayed by watchman.
" 11...	6.00 p.m...	" "	9-554.....	" " "
" 14...	1.20 p.m...	" "	C5-742.....	" " "

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
May 15...	1.45 p.m...	Peter Street, Toronto	C8-747.....	Automobile drove over crossing, disregarding stop signal displayed by watchman, narrowly missing the watchman.
" 16...	9.03 a.m...	" "	9-465.....	Automobiles drove over crossing, disregarding stop signal displayed by watchman, narrowly missing the watchman.
" 16...	1.15 p.m...	" "	22-077.....	
" 18...	2.20 p.m...	" "	C7-824	Automobiles drove over crossing, disregarding stop signal displayed by watchman.
" 18...	5.30 p.m...	" "	4-155.....	
" 19...	1.20 p.m...	" "	45-480.....	" " "
" 20...	2.22 p.m...	" "	1-460.....	" " "
" 20...	7.35 p.m...	" "	7-318.....	
" 21...	12.05 p.m...	" "	9-178.....	Disregarded warning displayed by watchman.
" 22...	1.21 p.m...	" "	C9-862.....	" " "
" 22...	5.25 p.m...	" "	58-732.....	
" 23...	11.36 p.m...	" "	59-000.....	" " "
" 26...	3.05 p.m...	" "	1-617	" " "
" 30...	12.20 p.m...	" "	63-532.....	Drove over crossing, disregarding stop signal displayed by watchman.
" 30...	12.05 p.m...	" "	66-195.....	
" 30...	3.12 p.m...	" "	63-016.....	
June 2...	8.24 a.m...	" "	16-622.....	Drove over crossing by increasing speed, disregarding stop signal displayed by watchman, narrowly missing being struck by engine.
" 5...	4.20 p.m...	" "	C2-887.....	Drove over crossing, disregarding stop signal displayed by watchman.
" 6...	8.30 a.m...	" "	18-216.....	Automobile drove over crossing, disregarding stop signal displayed by watchman.
" 8. .	2.00 p.m...	" "	C5-599.....	" " "
" 9...	9.00 a.m...	" "	33-476	Automobiles drove over crossing, disregarding stop signal displayed by watchman.
" 9. .	1.50 p.m. .	" "	28-960	
" 10. .	1.25 p.m. .	" "	C4-357..... ..	Drove over crossing, disregarding stop signal displayed by watchman.
" 10...	4.10 p.m...	" "	10-041.....	
" 11...	9.25 a.m...	" "	68-218.....	" " "
" 11...	6.30 p.m...	" "	7-788.....	
" 12...	4.30 p.m...	" "	C6-760.....	" " "
" 19...	1.35 p.m...	" "	C70-021.....	Automobile drove over crossing, disregarding stop signal displayed by watchman.
" 24...	10.45 a.m...	" "	6-049.....	" " "
" 25...	9.04 a.m...	" "	59-741.....	" " "
" 25...	1.56 p.m...	" "	68-686.....	
" 26...	4.15 p.m...	" "	C7-000	" " "
" 27...	1.09 p.m...	" "	34-678.....	" " "
July 3...	1.30 p.m...	" "	50-913.....	" " "
July 7...	4.10 p.m...	Peter Street, Toronto	5-311.....	Automobile drove over crossing, disregarding stop signal displayed by watchman.
July 8...	1.00 p.m...	" "	C1-459.....	" " "
July 9...	2.22 p.m...	" "	64-276.....	" " "
" 11...	1.10 p.m...	" "	44-599.....	" " "
" 14...	1.21 p.m...	" "	C6-775.....	" " "
" 15...	1.14 p.m...	" "	53-730.....	" " "
" 25...	.....	" "	25-441.....	" " "
" 30...	.....	" "	11-820.....	" " "
" 30...	.....	" "	22-144	" " "
May 3...	1.05 p.m...	Royce Avenue, Toronto.	68-651.....	Automobile drove on to crossing after incoming gates had been lowered.
" 15...	2.55 p.m...	" "	3-035.....	" " "

CANADIAN PACIFIC RAILWAY—*Continued*

Ontario District—*Continued*

During May, June and July, pedestrians and bicycles passed over the following crossings while gates were down:—

Crossing	Pedestrians	Bicycles
Bartlett Avenue, Toronto—		
May	769	297
June	801	339
July	736	324
	2,306	960
Cherry Street, Toronto—		
May	525	18
June	566	16
July	743	18
	1,832	52
Dufferin Street, Toronto—		
May	1,913	634
June	2,232	722
July	2,170	640
	6,315	1,996
Eastern Avenue, Toronto—		
May	660	209
June	519	164
July	574	187
	1,753	560
Front Street, Toronto—		
May	1,618	60
June	2,019	108
July	1,164	84
	4,801	252
John Street, Toronto—		
May	6,697	162
June	4,488	49
July	3,834	25
	15,019	236

Crossing	Pedestrians	Bicycles
Lansdowne Avenue, Toronto—		
May	22,623	947
June	22,072	832
July	21,213	834
	65,908	2,613
McLennan Avenue, Toronto—		
May	452	179
June	403	151
July	289	91
	1,144	421
Osler Avenue, Toronto—		
May	4,679	426
June	4,824	425
July	4,310	391
	13,813	1,242
Peter Street, Toronto—		
May	311	6
June	456	18
July	408	5
	1,175	29
Royce Avenue, Toronto—		
May	6,021	172
May 20th—Crossing closed.		
Symington Avenue, Toronto—		
May	5,685	990
June	5,412	1,073
July	5,406	1,197
	16,503	3,260
Trinity Street, Toronto—		
May	19	3
June	50	2
July	42	6
	111	11

New Brunswick District

Date	Time	Place	License No. of Auto	Dangerous Practice
1925				
Oct. 9...	8.20 p.m...	(Main Street) Fairville Crossing.	NB 3506 F. A. McDonald	Broke through north gate on east side of track.
" 13...	9.55 p.m...	Douglas Ave., St. John	NB 7373.....	Broke through west gate.
" 26...	3.20 p.m...	(Main St.) Fairville Crossing.	Monohan Bus Co.	Broke through south gate.

Quebec District

Sept. 21...	6.00 p.m...	Dorval, Cote de Liesse.	(Unknown).....	Ran into gates while being lowered.
" 22...	.....	Vaudreuil Lakeshore Rd.	"	" " "
" 23...	.....	St. Valier Street, Quebec.	H-467.....	Ran under crossing gate.
Oct. 11...	.....	Chelsea Road, Hull...	(Unknown).....	Ran through crossing gates while gates were down.
" 29...	.....	" " ..	No. 34804.....	" " "
" 27...	.....	Cote des Neiges, Montreal.	Truck F-1382...	Struck by Ex. 857 while attempting to pass ahead of train although proper warning signals had been given by Enginere and crossing bell was ringing.
" 28...	.....	Beaubien St., Montreal.	Truck F-2440....	Struck Transfer 3471 when driver attempted to pass over ahead of train.

August, September and October.—There are hundreds of cases where pedestrians insisted upon passing over crossings although gates were lowered and we have not achieved any success in breaking up the practice.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
Sept. 21...	8.15 p.m...	St. Clair, Toronto.....	69474.....	After gong was sounded for gates to be lowered and one gate lowered, truck came along at an excessive rate of speed and passed crossing where gate was being lowered. Drawbar of yard engine just touched the door of auto.
" 28...	4.00 p.m...	" " ..	C-3-599.....	Gate was lowered for C.N.R. yard engine, truck came along and before being able to stop broke one of the gates.
Oct. 21...	5.52 p.m...	Church St., Weston, Ont.	Pedestrian.....	After gates had been lowered for passenger train pedestrian attempted to cross track in front of engine, resulting in being knocked down and having his collar bone broken.
Aug. 27...	6.00 p.m...	Kingston Rd., Belleville, Ont.	236069.....	Made as if to dash across ahead of Train 903 but had to pull up and stopped within foot of locomotive. Driver was lady. Wig wag was working, engine bell ringing and whistle kept sounding.
" 31...	3.00 p.m...	Just west of Myrtle Station.	2783.....	Approached crossing at high speed and barely escaped being struck by cars which were being moved to couple up. Had to swing into ditch to avoid collision. Trainman was flagging.
Sept. 26...	12.12 p.m...	Rama Rd. H/way crossing, Pt. McNicoll SD.	.....	Drove Ford touring car right up to crossing without looking out for train. Collided with baggage car Train 605, auto damaged. No one badly hurt. Owner and driver L. Dolan, R.R. No. 2, Atherley, Ont.
Oct. 15...	2.55 p.m...	Kingston Rd., Belleville.	232070.....	Drove past wig wag signal in operation and barely escaped being struck by No. 37.
" 17...	3.30 a.m...	George St., Peterboro	Unknown.....	While gates were down Sedan ran through both gates at high speed. Apparently made no effort to stop. Weather, rainy.
" 28...	11.10 a.m...	Scugog St., Bowmanville.	34427.....	Owned and driven by Mr. R. Rahan of Burketon, drove into north gate and broke it while down. Said snow storm interfered with view, but should have used extra precaution.
" 31...	2.30 p.m...	Kingston Rd., Belleville.	280253.....	Crossed track in front of fast through freight train while crossing signal was working and engine bell working.
Aug. 25...	.....	Eramosa Rd., Guelph	Unknown.....	While gates being lowered for train auto truck was unable to stop before breaking gate.
" 28...	.....	Allen's Rd., Guelph...	165-337.....	Notwithstanding engine whistled for crossing, electric crossing bell ringing, also engine bell ringing, driver so engrossed in another car approaching from opposite direction ran into side of engine 3903.
" 31...	.....	Pall Mall St., London	Unknown.....	Ford roadster drove under gate breaking it. Drove off before gateman could secure license number.
Sept. 18...	.....	" "	.....	Man on bicycle failed to notice gate being lowered and ran into it breaking it off.
" 16...	.....	York Rd., Guelph....	165-770.....	While yard engine was approaching crossing and notwithstanding stop signals from flagman on crossing, man driving auto was so busy watching tire also failed to hear engine whistle and engine bell; and drove into crossing in front of engine. Footboard of engine struck rear wheel. Fortunately engineer acted promptly and there was no damage.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
Sept. 24...	.....	Mile 94·3 H. & G. Subdivn.	Buggy.....	No. 637 struck buggy on crossing injuring Nes. Nicholson, L. Nicholson, Gab. Lauzon. Engine whistled for crossing, engine bell was ringing also electric crossing bell. Man in auto standing at crossing called out a warning. Driver of buggy thought train was coming from another direction.
" 25...	.....	Waterloo Street, London.	Bicycle.....	At 1 p.m. as north gates were being lowered, bicycle approached very fast and unable to stop. Man struck gate and was thrown to ground.
" 30...	11.15 a.m...	Queen St., Guelph....	168–223.....	At 11.15 a.m. taxi driven by Thos. Lynch struck by No. 645 backing up. Engine whistle sounded for crossing. Engine bell ringing, also crossing bell, back up whistle sounded. Driver slightly injured and Mrs. Cadesky cut and bruised.
Oct. 6...	.....	Brock Road, Puslinch, Ont.	C–92.....	Auto truck belonging to Dept. Public Highways ran into side of engine Train 21 resulting in death of C. R. Fallis and Wm. Stewart. Engine whistle sounded for crossing, also engine bell ringing. Crossing bell was ringing and wig-wag signal working.
" 6...	11.05 p.m...	Adelaide Street, London.	96–231.....	Crossing watchman was signalling approach of yard engine with his red lantern. Auto disregarded it and passed over tracks as yard engine was backing down on to crossing.
" 19...	10.25 a.m...	Richmond Street, London.	281–173.....	Ford sedan approached from north, driver slowed up but gust of wind blew car into crossing gate, breaking end of gate off.
" 16...	9.00 p.m...	William Street, London.	Unknown.....	While yard engine pushing string of cars east Ford car ran into side of leading car. There was man with light on this car. Engine whistle had been sounded. Engine bell was ringing also electric crossing bell and red light showing. Driver said rain on windshield obscured his vision.
" 22...	.....	Richmond Street, London.	88–396.....	Sedan approached crossing as south gate being raised. Driver did not notice it going up and drove over crossing into north gate before gateman could raise it.
" 23...	.....	Waterloo Street, London.	300–293.....	Sedan driven by 16 year old boy (licensed driver) drove up to gate. Claims foot slipped off brake pedal auto striking gate and breaking off point. Drove by other autos ahead of him to get close up to gate.
" 29...	9.30 a.m...	" "	Unknown.....	While gates were down and yard engine backing out of siding over crossing, auto ran into gate breaking it. License number covered with mud.
Sept. 15...	3.40 p.m...	McLennan Avenue, Toronto.	69–023.....	Automobile drove onto crossing after incoming gates had been lowered and had to back up to clear the rails and avoid being hit by train.
Aug. 13...	1.00 p.m...	Cherry Street, Toronto	32–911.....	Disregarded stop signal displayed by watchman.
Sept. 15...	4.12 p.m...	" "	38–929.....	Auto drove over crossing, disregarding stop signal of crossing watchman.
Oct. 21...	.....	" "	33–113.....	" " "
Aug. 19...	8.00 p.m...	Front Street, Toronto.	34699.....	Ran onto crossing after gates on opposite side were lowered.
" 21...	.....	" "	Penn. 7–196....	" " "
Oct. 9...	5.31 p.m...	" "	67–179.....	2 automobiles drove onto crossing after incoming gates had been lowered.
" 9...	10.52 p.m...	" "	107–004.....	
" 22...	5.30 p.m...	" "	C9–189.....	" " "

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Concluded*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1925				
Oct. 24...	1.50 a.m...	Front Street, Toronto.	3–191.....	Automobile ran into and damaged crossing gate.
Aug. 26...	6.00 p.m...	John Street, Toronto..	61–990.....	Ran on to crossing after gate on opposite side had been lowered.
Sept. 12...	7.30 a.m...	" "	33.66.....	" " "
" 16...	4.00 p.m...	" "	51–834.....	" " "
Aug. 5...	8.40 a.m...	Peter Street, Toronto.	57–196.....	Drove over crossing, disregarding stop signal of crossing watchman.
" 7...	9.30 a.m...	" "	57–489.....	" " "
" 26...	1.25 p.m...	" "	44–445.....	Automobile drove over crossing, disregarding stop signal by watchman.
Sept. 2...	4.07 p.m...	" "	4–112.....	" " "
" 11...	5.50 p.m...	" "	97–295.....	" " "
" 12...	8.30 p.m...	" "	42–796.....	" " "
" 14...	11.30 a.m...	" "	C9–369.....	" " "
" 14...	12.35 p.m...	" "	62–198.....	" " "
" 16...	12.00 p.m...	" "	7308.....	" " "
" 18...	5.25 p.m...	" "	50–246.....	" " "
" 18...	5.25 p.m...	" "	C1–170.....	" " "
" 22...	4.20 p.m...	" "	C3–757.....	" " "
" 23...	9.45 a.m...	" "	51–245.....	" " "
" 24...	9.30 a.m...	" "	57–718.....	" " "
" 28...	8.45 p.m...	" "	34–551.....	" " "
" 29...	11.08 a.m...	" "	27–589.....	" " "
" 29...	4.00 p.m...	" "	C33–510.....	" " "
" 29...	5.30 p.m...	" "	62–359.....	" " "
Oct. 7...	6.35 p.m...	" "	306–562.....	" " "
" 14...	5.27 p.m...	" "	22–190.....	" " "
" 26...	12.10 p.m...	" "	40–705.....	" " "
" 30...	1.04 p.m...	" "	50–913.....	2 vehicles drove over crossing disregarding stop signal displayed by watchman.
" 30...	1.18 p.m...	" "	Weston's Biscuit wagon.	

During the three months pedestrians and bicycles passed over the following crossings while gates were down:—

Crossing	Pedestrians	Bicycles
Bartlett Avenue, Toronto—		
August	699	309
September	662	274
October	656	262
	2,017	845
Cherry Street, Toronto—		
August	630	31
September	521	19
October	482	21
	1,633	71
Dufferin Street, Toronto—		
August	2,460	737
September	2,303	703
October	2,472	719
	7,235	2,159
Eastern Avenue, Toronto—		
August	527	151
September	613	177
October	665	177
	1,805	505
Front Street, Toronto—		
August	588	66
September	469	71
October	461	67
	1,518	204
John Street, Toronto—		
August	3,822	65
September	4,033	58
October	5,357	42
	13,212	165

Crossing	Pedestrians	Bicycles
Lansdowne Avenue, Toronto—		
August	20,441	754
September	18,030	660
October	18,664	593
	57,135	2,007
McLennan Avenue, Toronto—		
August	683	134
September	637	172
October	791	187
	2,111	493
Osler Avenue, Toronto—		
August	3,820	363
September	3,562	375
October	4,062	477
	11,444	1,215
Trinity Street, Toronto—		
August	131	19
September	51	–
October	59	–
	241	19
Peter Street, Toronto—		
August	366	2
September	390	–
October	387	6
	1,143	8
Symington Avenue, Toronto—		
August	5,451	1,264
September	4,828	1,024
October	5,026	1,159
	15,305	3,474

CANADIAN PACIFIC RAILWAY—*Continued*

NOVEMBER AND DECEMBER, 1925, AND JANUARY, 1926

NEW BRUNSWICK DISTRICT

Date	Time	Crossing	License No. of Auto	Dangerous Practice
Jan. 2...	10.40 p.m...	Douglas Avenue, St. John.	1169.....	Crossed track about forty miles per hour, just cleared carrying away gates.
" 17...	10.10 p.m...	" "	121.....	Crossed track about forty-five miles per hour.

QUEBEC DISTRICT

Nov. 19...	.....	Papineau Avenue, Montreal.	20819.....	Ran through both gates, damaging same.
Dec. 4...	5.00 p.m...	Beaubien St., Montreal.	Unknown.....	Ran through and damaged gates.
" 4...	5.20 p.m...	" "	"	" "
" 18...	6.30 p.m...	Papineau Avenue, Montreal.	62276.....	Ran through and damaged north gate.
" 18...	9.45 p.m...	" "	35147.....	" " "
Nov. 28...	10.30 p.m...	Chelsea Rd., Hull West.	4.....	Ran through gates causing damage of $18.07.
Dec. 27...	12.25 a. m...	" "	(Auto owned by John Felosa).	Ran through gates causing damage of $6.05.
Jan. 25...	6.40 p.m...	" "	14.....	Ran through gates causing damage of $14.66.
Nov. 22...	.....	Lake Shore Rd., Vaudreuil.	60218.....	Ran into gate breaking gate arm and axle.

November, December and January.—Numerous cases where pedestrians pass under crossing gates or lift up the gates in order to go over the crossing at the time when gates are lowered. This is a common practice at many points where traffic is heavy and we have not been able to break it up.

ONTARIO DISTRICT

Nov. 2...	10.00 p.m...	Adelaide St., London.	99–454.....	Auto failed to observe stop signal with red lamp from crossing watchman and passed over crossing in front of passenger engine backing over crossing.
" 8...	6.50 p.m...	" " ..	92.760.....	Auto failed to observe stop signal given by crossing watchman with red lamp and passed over rails 30 feet ahead of a light engine backing down to depot.
" 19...	12.30 a.m...	Waterloo St., London.	.....	Auto travelling south at an excessive speed crashed through both north and south gates just in front of train 902. Car did not slacken speed. Gate arms were broken.
" 20...	9.30 p.m...	William St., Chatham	.....	While No. 902 was approaching auto ran through north gate on William St. breaking gate. Gateman could not secure license number.
Dec. 1...	.....	Richmond St., London	.....	While freight train approaching crossing, gates were down, crossing bell ringing, boy on bicycle rode around end of gate arm and over tracks ahead of train.
" 2...	.....	Queen St., Chatham..	179–953.....	Crossing bell was ringing for freight train going west. As gateman was about to lower gate auto started across tracks. Gateman held gate to let him clear but car stalled on tracks and was struck by train.
Nov. 9...	.....	Adelaide St., London.	.....	While yard engine was approaching crossing two autos approached crossing from the south and one stopped on getting stop signal but the other auto driven by Mr. W. Sandford, 613 Oxford Street turned over to west side of road and when he got near the rails, seeing he could not get over, crashed into fence. Claimed he did not see signal from watchman in time to stop.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
Dec. 4...	7.40 p.m...	Adelaide St., London.	90–791.....	A Ford auto refused to observe stop signal and crossed over in front of light engine 2205.
" 7....	12.15 p.m...	Queen St., Chatham..	179.827.....	While gates were down for yard engine to pass over crossing car crashed into gate breaking it. Claims brake caused car to slew on icy pavement.
" 7...	10.53 a.m...	Adelaide St., London.	93–548.....	Closed auto ran into side of locomotive No. 629. Driver claims did not see crossing watchman standing in middle of road with stop sign in time to stop and car skidded on icy pavement.
" 7....	3.30 p.m...	" " ..	87–172.....	While yard engine was backing over crossing, auto drove around end of engine on to sidewalk at the west side disregarding stop signal from crossing watchman.
" 16...	.....	" " ..	184–239.....	As yard engine was approaching crossing, auto disregarded stop signals from crossing watchman and crossed tracks in front of engine.
" 16...	.....	" " ..	.....	Man driving team of horses had his back facing in direction team was going. Crossing watchman stopped team and told driver he should be on look out going over railway crossing. Driver was very abusive to watchman.
" 17...	5.50 p.m...	" " ..	300–417.....	While switch engine was passing over crossing, crossing watchman gave auto stop signal but driver crossed tracks disregarding it.
" 20...	2.45 p.m...	" " ..	87–594.....	While yard engine was switching, crossing watchman gave stop signal but auto passed over rails disregarding signal.
" 21...	6.25 p.m...	Queen St., Chatham..	174–882.....	Crossing bell was ringing and north gate just about down when Ford coupe travelling at a rapid rate of speed crashed into gate, breaking it.
" 22...	1.35 a.m...	" " ..	108–254.....	Auto going north ran through south gate breaking it and stopped on track, being hit by engine of No. 636.
" 25...	11.30 p.m...	Richmond St.,London	90–134.....	Auto going south turned out into centre of road passing standing cars and while gates down approached barrier and skidding on snowy pavement broke gate and got on to tracks in front of moving engine.
" 26...	3.45 a.m...	" " ..	.....	Auto ran through gates breaking south gate. Car running at speed of 35 miles an hour. Gateman unable to secure license number.
Jan. 6...	11.15 a.m...	Adelaide St., London.	C14–073.....	Watchman stopped truck and notwithstanding warning that express train 21 due, driver deliberately crossed over rails just ahead of train.
" 15...	9.15 p.m...	Centre St., Chatham.	.....	Crossing bell was ringing, south gate lowered for No. 633 and north gate was being lowered when auto drove under north gate and into south gate breaking it.
" 19...	.....	Richmond St., London.	.....	North crossing gate was down for approach of 2/20. A closed auto travelling very fast unable to stop on slippery pavement skidded and rear of car ran into gate and when it drove off gate arm went through side window and out of back of car. Driver drove off before his number could be secured.
" 18...	.....	Adelaide St., London.	90–901.....	Auto disregarded stop signal from crossing watchman and drove over ahead of switch engine.
" 17...	.....	" "	91–079.....	" " "

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Place	License No. of Auto	Dangerous Practice
Jan. 19...	1.00 a.m...	Queen St., Chatham..	.....	When lowering gate for No. 636, North gate was down, South gate partly down when auto ran under South gate and stalled on track in front of train. Gateman raised North gate and man drove off but could not secure license number.
" 25...	12.10 p.m...	Adelaide St., Chatham.	.....	Driver of auto failed to observe gate being lowered until a few feet from it, truck skidded and ran into gate breaking it.
" 28...	.....	Speedvale Avenue, Guelph.	.....	Auto stalled in snowdrift and left standing too close to rails, front fender being struck by passenger train, crossing bell ringing as well as usual signal given by train.
" 29...	.....	Queen St., Chatham..	190–687.....	While train 641 was backing up empty Ford coupe ran into side of last coach, slightly injuring Mrs. McKeown. Engine whistle sounded, engine bell ringing, back up whistle sounded, crossing bell ringing. Driver claims he did not hear whistle or bell signals
Nov. 12...	8.30 p.m...	George St., Peterboro	278–574.....	Ran into South-east gate, breaking same. Raining.
" 15...	8.45 p.m...	" "	278–574.....	Ran into gates, breaking two.
" 21...	Evening....	" "	E. L. Ainslee, 17 George St.	Ran into South-east gate. Broke same.
Dec. 17...	8.01 a.m...	King St., Weston.....	.....	Way freight was going in on siding and the south gate was down. Gateman was in the act of letting north gate down when an automobile driven by F. Cobb, Weston, ran into same, damaging it also damaging automobile.
" 19...	6.30 p.m...	" " ..	.....	Gateman was in the act of lowering the north gate when a touring car ran into it and broke it. The car kept on going and gateman unable to get name of owner.
" 22...	2.00 p.m...	Weston Road, Toronto	.....	Runaway horse and wagon, without driver, ran into gate, damaging same.
" 27...	4.15 a.m...	" "	.....	Motor car travelling at excessive rate of speed ran through gate, and kept on going and gateman did not have a chance to get owner's name.
" 31...	6.55 p.m...	" "	.....	While gateman was lowering gates man was not able to stop car in time, resulting in the automobile skidding into gate breaking same.
Nov. 11...	9.52 a.m...	Cherry Street, Toronto.	6–642.....	Automobile drove over crossing, immediately in front of passenger train, disregarding stop signal displayed by watchman.
" 7...	6.10 p.m...	Dufferin Street, Toronto.	1239.....	Automobile skidded on wet pavement, striking and damaging centre of arm of one gate.
" 26...	6.00 p.m...	" "	4614.....	Automobile ran into and damaged gates.
Dec. 14...	6 50 p.m...	" "	19–188.....	Drove into side of gate breaking off point of one gate.
" 17...	5.40 p.m...	" "	305–519.....	Ran into side of gate, breaking two centre boards of same.
" 29...	7.50 a.m...	Eastern Avenue, Toronto.	65–570.....	Ran into and damaged point of barrier.
Nov. 18...	12.05 p.m...	Front Street, Toronto	29–930.....	Drove on to crossing after gate on opposite side had been lowered.
Dec. 1...	4 35 p.m...	" "	34–547.....	Ran into side of gate after it had been lowered, breaking arm of gate.
" 2...	3.58 p.m...	" "	34–469.....	Drove on to crossing after incoming gates were lowered, making it necessary for gates on opposite side of crossing to be raised so that motor could clear the crossing.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Continued*

Date	Time	Place	License No. of Auto	Dangerous Practice
Dec. 22...	7.45 a.m...	Front Street, Toronto.	2136.....	Started over crossing before gateman had time to properly raise the gates, resulting in car of gate being damaged.
Jan. 22...	12.00 a.m...	" "	18–570.....	Automobile drove through gate No. 6, breaking off point.
" 21...	10.20 a.m...	John Street, Toronto..	54–235.....	Automobile drove into crossing gates, damaging same
" 27...	3.00 p.m...	" "	.....	Team of horses started over crossing before gates were properly raised, causing point of gate to catch on to wagon, breaking same.
" 16...	.....	" "	307978.....	Ford sedan skidded into side of gate in a slanting manner, after gates were lowered, for yard engine, damaging same.
Nov. 5...	.....	Lansdowne Avenue, Toronto.	13–508.....	Automobile drove on to crossing after incoming gates had been lowered.
Dec. 11...	.....	" "	45–271.....	Drove on to crossing after incoming gate had been lowered.
Nov. 28...	3.45 p.m...	McLennan Avenue, Toronto.	N.Y.272,448....	Drove onto crossing after incoming gates were lowered.
Jan. 22...	5.30 p.m...	" "	.....	Automobile driven by Dr. Cody, skidded on wet pavement, ran into and damaged crossing barrier after it was lowered.
Nov. 2...	9.40 a.m...	Osler Street, Toronto.	48–294.....	Automobile failing to stop in time, struck and damaged one arm of gate.
" 21...	1.12 p.m...	Peter Street, Toronto.	304–559.....	Automobile drove over crossing, disregarding stop signal displayed by watchman.
" 27...	12.20 p.m...	" "	52–379.....	" " "
" 28...	12.22 p.m...	" "	2–958.....	" " "
Dec. 8...	1.51 p.m...	" "	56–443.....	" " "
" 9...	7.40 a.m...	" "	857.....	" " "
" 14...	12.20 p.m...	" "	13–767.....	" " "
" 18...	12.07 p.m...	" "	307–039.....	" " "
" 22...	10.30 a.m...	" "	C–36–285.....	" " "
Jan. 23...	11.15 a.m...	" "	60–818.....	Disregarding warning displayed by watchman.
" 5...	5.45 p.m...	Trinity Street, Toronto.	.....	Automobile drove through point of gate, seriously damaging same, and stalled on same. As train No. 19 was approaching crossing it was necessary for gateman to raise the gates on opposite side in order that automobile might be driven clear of main line.
Dec. 31...	9.55 a.m...	Wallace Avenue, Toronto.	C–2319.....	Automobile driven over crossing just as gates were being lowered caught incoming gate with back of car, resulting in the point of the gate being torn off.

During the three months pedestrians and bicycles passed over the following crossings while gates were down:—

Crossing	Pedestrians	Bicycles
Bartlett Avenue, Toronto—		
November.....	613	236
December.....	524	164
January.....	508	132
	1,645	532
Cherry Street, Toronto—		
November.....	560	27
December.....	549	6
January.....	484	6
	1,593	39

Crossing	Pedestrians	Bicycles
Dufferin Street, Toronto—		
November.....	2,232	710
December.....	2,413	605
January.....	1,510	554
	6,155	1,869
Eastern Avenue, Toronto—		
November.....	594	145
December.....	671	175
January.....	593	126
	1,858	446

CANADIAN PACIFIC RAILWAY—*Concluded*

ONTARIO DISTRICT—*Concluded*

Crossing	Pedestrians	Bicycles
Front Street, Toronto—		
November	334	36
December	415	22
January	391	7
	1,140	65
John Street, Toronto—		
November	5,324	13
December	5,961	–
January	5,441	–
	16,726	13
Lansdowne Ave., Toronto—		
November	17,469	586
December	17,581	498
January	17,253	389
	52,303	1,473
McLennan Ave., Toronto—		
November	527	97
December	516	135
January	481	72
	1,524	304
Osler Ave., Toronto—		
November	3,563	436
December	3,919	412
January	3,822	324
	11,304	1,172
Peter Street, Toronto—		
November	238	3
December	797	9
January	689	3
	1,724	15
Symington Ave., Toronto—		
November	4,652	906
December	4,963	679
January	4,490	467
	14,105	2,052
Trinity St., Toronto—		
November	33	–
December	22	–
January	47	1
	102	1

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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REPORT OF MR. W. E. CAMPBELL, CHIEF TRAFFIC OFFICER

Complaint of Dominion Millers' Association, Toronto, that the Canadian Pacific and Canadian National railways refuse to apply stop-off charge of 1 cent per 100 pounds on the bulk export grain rate from Fort William to the Atlantic seaboard, per General Orders Nos. 354 and 391;

and

Application of the Dominion Millers' Association, Toronto, for an order that, where two rates on bulk grain are in effect from the same shipping point to the same destination for export, the stop-off charge shall apply on the lowest rate.

File No. 8641.33.

(NOTE.—all rates quoted herein are in cents per one hundred pounds.)

This Report is issuing as the

JUDGMENT

of the Board in this matter.

The contention of the Dominion Millers' Association per its secretary, Mr. C. B. Watts, is that the intention of the Board's General Orders, No. 354 of January 4, 1922, and No. 391 of January 31, 1924, was to provide milling in transit privilege based on the export grain rate plus stop-off charge of 1 cent. The complaint is that the railway companies have not made provision accordingly in their tariffs, and refuse to do so.

While the complaint as launched in Mr. Watts' letter of January 10, 1925, was directed only to the rates from Fort William to the Atlantic seaboard, when the matter was heard by the Board at its sittings in Ottawa on April 21, Mr. Watts also made the same complaint with respect to the ex-lake rates from Canadian Bay ports to the Atlantic seaboard.

Mr. Watts referred to ex-lake export rate of 14·34 cents on wheat from Bay ports to Montreal, pointing out that adding 1 cent for stop-off would make a rate of 15·34 cents, whereas the rate published on ex-lake grain from Bay ports, milled in transit, and reshipped to Montreal for export is 17½ cents, including a stop-off charge of 1 cent. So far as relates to export rate from Fort William, milled in transit at Renfrew (which is on the direct line), the rate to Montreal is 37½ cents, including stop-off charge of 1 cent.

Contending, therefore, that the intention of the Board's General Orders Nos. 354 and 391 was to provide on this traffic, when milled in transit, the export grain rate plus stop-off charge of 1 cent, it is alleged that the tariffs of the railway companies are not in compliance with the General Orders in question.

General Order No. 354, dated January 4, 1922, reads:—

> "*The Board orders:* That all railway companies subject to the jurisdiction of the Board file tariffs, effective not later than the 1st day of February, 1922, showing a charge of one cent per 100 pounds for the stop-over privilege on all grain for storage, milling, malting, or other treatment; such privilege to be granted for all grain produced in Canada, subject to a reasonable charge for out of line hauls."

General Order No. 391, of January 31, 1924, provides:—

> "*The Board orders:* That the maximum stop-off charge for milling grain in transit at stations within Canada shall be 1 cent per 100 pounds, regardless of the final destination of such traffic."

In connection with this milling in transit traffic there may be some confusion if it is not kept clearly in mind that there are two distinct factors: (1) the rate itself, and (2) the charge for the stop-off privilege. A careful reading of the Board's General Orders Nos. 354 and 391 will show that they dealt only with the factor represented by the charge for the stop-over privilege; they directed no change in the basis of the rate itself. However, if there could be any doubt from the wording of these orders as to the intention, subsequent proceedings should most effectively make the situation clear. In the first place, shortly after the issuance by the railway companies of tariffs in compliance with General Order No. 354, the question of the rates provided therein for out of line haul was raised upon application of the Canadian National Millers' Association and the Dominion Millers' Association, and this was dealt with by the Board's General Order No. 357 of February 14, 1922. There was no contention then raised that General Order No. 354 had been violated, or not properly complied with, in that the rates published were not the export grain rates plus 1 cent stop-off. Subsequently, there was before the Board the application of the Dominion Millers' Association regarding the difference between the wheat and flour rates from the Bay ports to Atlantic ports for export. This application is covered by the Board's Order No. 32227, dated March 13, 1922, and judgment dated March 6, 1922, Vol. XII, Board's printed Judgments and Orders, p. 1. In this case, again, it was not contended by the Dominion Millers' Association, or any of the other parties to the application, that export grain rates, plus 1 cent stop-off, were properly applicable. What was asked was that the spread between the rates on wheat and flour should be narrowed. If, at the time these two cases were under consideration by the Board, there had been non-compliance with an order of the Board, it would have been taken cognizance of and such direction as necessary made.

Reference was made to this by Mr. Watts, who stated that when the latter case was before the Board he was not sure that General Order No. 354 directed the railways to establish the grain rates, plus stop-off charge, on this milled in transit traffic, but he contended that General Order No. 391, subsequently issued, read in conjunction with General Order No. 354, made it clear that the export grain rate, plus 1 cent stop-off, should apply. There is clearly a misunderstanding here. The issue that was before the Board was that General Order No. 354 had not been interpreted by the railway companies as applying on traffic exported via American ports, and General Order No. 391 provided that the stop-off charge should not exceed 1 cent "regardless of the final destination of such traffic." In other words, this was an extension of the application of General Order No. 354, and that is as far as the order went.

It may be further pointed out, however, that subsequent to all these proceedings, the Board issued its General Order No. 400 on May 14, 1924, in which it prescribed specifically the rates on this traffic from Bay ports, and which are the rates now published in the tariffs of the railway companies. These rates are not the export grain rates, plus 1 cent, but are higher, as they have been for a great many years. The situation is, therefore, that in 1922 the difference in these rates was specifically before the Board and held to be justified, and subsequently, in 1924, by General Order No. 400, the Board prescribed the rates that are at present in effect. Summarized, therefore, Order No. 32227 and General Order No. 400 dealt with factor (1), viz., the rate itself, while General Orders Nos. 354 and 391 dealt with factor (2), i.e., the charge for the stop-off privilege. Mr. Watts' contention, however, in effect is that General Orders Nos. 354 and 391, dealing with the stop-off charge only, should be construed not only as dealing with the rates rather than the stop-off charge but also as entirely reversing and changing the findings of the Board as covered by its Order No. 32227 and General Order No. 400, notwithstanding that the latter was issued subsequent to General Orders Nos. 354 and 391.

With regard to Fort William, for many years the rate on wheat, milled in transit, and the flour shipped to Montreal, Quebec, and Atlantic seaboard ports for export, has been the *flour* rate plus stop-off charge. The export rates from Fort William have been predicated upon the rates contemporaneously in effect from Duluth and St. Paul, and in both cases the rates applied on the milled in transit traffic have been the *product* rates plus the stop-off charge, rather than the grain rates.

Mr. Watts laid stress on what he described as two sets of grain rates from Fort William to Atlantic ports. At pp. 430 and 431 of the evidence it is stated:—

> "Mr. Watts: C.R.C. Tariff No. E-3918 did not contain two sets of grain rates until Supplement No. 21 was issued on the 15th of February, purporting to carry out Order No. 391. That is a very important point, gentlemen, that 'until the 15th of February'.
>
> "The Chief Commissioner: What year would that be, Mr. Watts?
>
> "Mr. Watts: That would be in the year 1924. That until the 15th day of February, when Supplement 21 was issued, and that was issued to carry out the order of the Board that the stop-over charge should only be one cent, that until that date there had not been as far as I have any knowledge, two sets of grain rates in the tariff from the same point of origin to the same destination, one higher than the other. Then, for the first time, two sets of wheat rates appeared in the portion of the tariff applying to Fort William, plainly showing an attempt to circumvent the order of the Board."

The situation is that as of the date mentioned by Mr. Watts, viz., February 15, 1924, the following rates were in effect from Fort William to Montreal (for direct shipment):—

	Cents
Wheat (in bulk)	34½
Wheat (in packages)	35½
Grain products	35½

Wheat ex Fort William in bulk, and bagged or cleaned in transit at a point on the direct line, reshipped thence to Montreal as wheat, was provided with a rate of 35½ cents, or 1 cent for stop-off charge. Wheat ex Fort William, milled in transit on direct line, and the flour exported via Montreal, was provided with the rate of 36½ cents, or a stop-off charge of 1 cent over the *flour* rate from Fort William. Under the terms of the Canadian Pacific Railway's Tariff C.R.C. No.

E-3918, previous to the issuance of Supplement No. 21, a shipment of wheat bagged or cleaned in transit without changing the form of the commodity, would have been charged the flour rate of 36½ cents, so that the change made on that date, as indicated by symbol in the tariff, provided for a reduction in the case of grain bagged in transit, and this is the only practical effect of any change made in the tariff at that time. Mr. Watts also referred to the tariff at this time making a distinction in the rate to Montreal as beween "wheat in packages" and "wheat in bulk", but this was not new, as these rates had already been previously published in Canadian Pacific Railway's Tariff C.R.C. No. E-4074.

As to Mr. Watt's submission that "where two rates on bulk grain are in effect from the same shipping point to the same destination for export the stop-off charge shall apply on the lowest rate", the fact that the bulk grain rate is not the basis for the rate on the milled in transit traffic really makes it unnecessary to deal with this, although it may be stated that examination of the tariffs does not show two rates published on bulk wheat for direct movement from Fort William to Montreal. The only rate for direct shipment is that of 34½ cents. The other rate, which it is assumed Mr. Watts has reference to, of 35½ cents, applies on a shipment that is stopped off in transit, and the difference is not one of rate, but the addition of 1 cent stop-off charge.

The railway companies, under the various decisions of the Board, are justified in their refusal to apply the stop-off charge to the export grain rates on this traffic, and their tariffs, as now in effect, are not in violation of the orders of the Board, and the difference in the rates is held to be justified.

Ottawa, December 24, 1925.

Commissioner Oliver:

By Orders of the Board Nos. 354 and 391, a stop-off charge for milling in transit of 1 cent per 100 pounds was established.

Wheat rate Midland-Montreal is 14.34 cents per 100 pounds. (C.N.R. Tariff E-979, September 8, 1925).

Wheat milled in transit is 17½ cents per 100 pounds. (Supplement No. 43 to C.N.R. Tariff E-447).

Wheat rate, Fort William-Montreal is 34½ cents per 100 pounds. (Supplement No. 13 to C.P.R. Tariff E-4119).

Flour rate, Fort William-Montreal is 35½ cents per 100 pounds. (Supplement No. 13 to C.P.R. Tariff E-4119).

Wheat rate, Fort William-New York, etc., is 35½ cents per 100 pounds. (C.P.R. Tariff E-4119).

Flour rate, Fort William-New York, etc., is 36½ cents per 100 pounds. (C.P.R. Tariff E-4119).

The Millers' Association contended that wheat milled in transit should carry the wheat rate through from point of shipment to point of destination, plus stop-off charge of 1 cent per 100 pounds. The railway companies contended that wheat milled in transit should carry the flour rate from point of shipment to destination.

West of Fort William grain and flour take the same rate per 100 pounds to Fort William. East of Fort William, as shown by the through tariffs quoted, flour takes a through rate one cent per 100 pounds higher than wheat to all destinations. Accepting for the time being this difference in rate between wheat and flour east of Fort William as a fixed fact, and giving due weight to Orders 354 and 391, fixing the stop-off charge at one cent per hundred pounds, the rate on wheat milled in transit at Ontario and Quebec points should be 2 cents per 100 pounds higher than the rate on wheat carried through as wheat from Fort William, or points east thereof to destination—one cent because of the difference in the through rate between flour and wheat and the other cent because of the stop-off charge.

But the wheat rate, Midland to Montreal, is 14.34 cents per 100 pounds, while the milled-in-transit rate on wheat between the same points is 17½ cents per 100 pounds, an excess of 1.16 cents over what would appear to me to be the proper "milled-in-transit rate" if the words are used as having their proper and generally accepted meaning.

It was argued by the railway companies that the rate of 17½ cents, as authorized by the Board's Order No. 400 of date May 14, 1924, was a separate and specific rate and that the rate of 14.34 cents had no relationship to it. No doubt it is within the power of the Board to establish one rate on wheat and another and higher rate on flour or other product of wheat milled in transit, but I am unable to reconcile the declared and evident purpose of Orders 354 and 391 with such exercise of authority. If a stop-over charge for wheat milled in transit is authorized by the Board it appears to me that that rate must be considered as effective as applied to wheat; and that it cannot be displaced by a separate and higher rate on grain milled in transit, without regard to the rate on wheat, until the stop-off charge for milling wheat in transit has been specifically repealed or amended by the Board.

So far as I can recall the evidence at the hearing, and so far as I can find by a search of the report of the evidence given, there has been no repeal or amendment of the Board's Orders 354 and 391, fixing the stop-off charge. Therefore I am compelled to hold that the complaint of the Dominion Millers' Association is well founded and that an Order of the Board should issue accordingly.

OTTAWA, April 3, 1926.

ORDER No. 37686

In the matter of the complaint of the Dominion Millers' Association, Toronto, that the Canadian Pacific and the Canadian National Railway Companies refuse to apply stop-off charge of one per cent per one hundred pounds on the bulk export grain trade from Fort William to the Atlantic seaboard, as provided in General Orders Nos. 354 and 391;

And in the matter of the application of the Dominion Millers' Association, Toronto, for an Order requiring that, where two rates on bulk grain are in effect from the same shipping point to the same destination for export, the stop-off charge apply on the lowest rate.

File No. 8641.33

SATURDAY, the 29th day of May, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon hearing the matters at the sittings of the Board held in Ottawa, April 21, 1925, in the presence of counsel for and representatives of the Dominion Millers' Association, the Maple Leaf Milling Company, and the Canadian Pacific and the Canadian National Railway Companies, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the complaint and application herein be, and they are hereby, dismissed and refused.

H. A. McKEOWN,
Chief Commissioner.

Application of John A. Kelly, St. John, N.B., for the establishment of a heater car service from St. John to Edmundston, N.B., every week regardless of the 15,000 pound minimum for the accommodation of fruit dealers in St. John.

File 18855.14.

JUDGMENT

McLean, Assistant Chief Commissioner:

Application is made to have the Canadian Pacific Railway take over the heater service involved. In essence, the application is that the Canadian Pacific Railway should take over the service and run the cars handling in less than carlot shipments without any limit as to the minimum weight.

The existing Canadian Pacific Railway tariff is Tariff C.R.C. No. E.4126, effective August 1, 1924. It was preceded by C.R.C. No. E-3839, effective March 18, 1921. The provisions in the two tariffs are the same, except that in the tariff effective March 18, 1921, No. 8 covered the roads which would not accept less than carload shipments requiring heated car service. In the tariff now effective the same exception is made in rule 7 (*b*); and rule 7 of the tariff of 1921 is now rule 6 of the existing tariff, while rule 6 of the tariff of 1921 is covered by 7 (*a*) of the existing tariff. The tariff provisions as they stand are that in the case of heated refrigerator cars, shipments in less than carloads, the conditions are as follows:—

1. A charge of ten per cent (10%) of the freight charges will be assessed in addition to the freight charges.
2. Actual weight will be charged for, subject to a minimum of 15,000 pounds per car. When shipments aggregating less than 15,000 pounds are offered, the shortage in weight will be distributed pro rata over the various shipments in the car.
3. Shipments must be carted and loaded in the car by the shipper in the order in which the shipments are to be unloaded at destination.
4. Cars will not be furnished for shipments requiring transhipment from the original car for destinations off the direct route of the car.
5. Cars will be furnished only for shipments destined to points on the same or two consecutive way-freight runs. Shippers can obtain information as to the territory covered by way-freight runs from agents.
6. Freight charges must in all cases be prepaid.

The question involved turns on the 15,000-pound minimum. There is no question raised as to the physical impossibility of loading 15,000 pounds into the car, as it will be indicated later that the average loading is much in excess of this. The car loading may be made up of fruit, vegetables and other commodities. The railway does not solicit freight to fill the car, the shippers are, in practice, required to take this up with the local agents and arrange matters between themselves. There is no limit on the number of openings of the car in transit. It is complained that there is difficulty in loading to the minimum. If the carload is below the minimum the difference is a penalty. It is admitted in evidence that during the past winter season there was no difficulty in loading to the minimum.

Returns were given by the Canadian Pacific covering movements from November 11 to March 16. In the period, November 11 to November 25, three cars moved; in December, between the 2nd and the 30th of the month, twelve cars moved; in January, between the 6th and the 26th of the month, eight cars moved; in February there were ten cars, while in March between the 2nd and the 16th of the month, there were ten cars. It is to be noted that the service is a fairly frequent one.

Of the cars so moved the average loading of fruit in pounds was 12,420, and of vegetables 2,334 pounds, giving a loading of fruit and vegetables amounting to 14,754 pounds. Other commodities loaded into the car amounted to 11,234 pounds, giving a grand total average loading of 25,988 pounds per car. The points served from St. John are quite numerous; for example, cars with destinations out from McAdam to Edmunston serve some sixteen points. Destinations Fredericton Jct., to Chipman, some eight points are shown as being served. Destination, Aroostook to Edmundston, eight points. Destinations, Hartland and Edmundston, fifteen points.

It will be noted that the total average loading of fruit and vegetables was within 246 pounds of the 15,000-pound minimum, and with the addition of other commodities, as set out, brings the grand total up to 25,370 pounds, which apparently removed the possibility of any penalty attaching to the minimum being effected.

In order that the figures may be more clearly understood a further analysis may be given. In the total cars carried in the period in question there were four whose total loading was below the minimum of 15,000 pounds.

(1) Car C.P. 284184, moving on November 17 from St. John to McAdam and Edmundston and intervening points, had a total loading of 13,250 pounds of which 9,990 pounds were fruit, 2,310 pounds vegetables, and 950 pounds other commodities. The total was thus 1,750 pounds below the minimum and there resulted a penalty charge of $17.11 distributed among the various shippers. The car in question shows shipments to sixteen points. The shipments of fruit averaging from 40 pounds to 2,140 pounds, the average shipment being 621 pounds.

(2) Car C.P. 286370, on November 25, moving from St. John to McAdam and St. Basil and intervening points, fourteen in all, had a total loading of 14,980 pounds, of which 12,870 pounds were fruit and 1,550 pounds vegetables. The total loading being so close to the minimum no penalty was attached.

(3) Car C.P. 286499, December 17, moving to McAdam and Edmundston and intervening points, eleven in all, had a total of 9,150 pounds, 7,990 pounds of this being fruit. This was treated as an overflow from car 284762 which moved on December 16 and had a total loading of 29,790 pounds, of which 21,770 pounds were fruit. On account of it being treated as an overflow no penalty attached to the car which was loaded to 9,150 pounds.

(4) Car 286364, moving on February 23, destination Aroostook to Edmundston, seven points in all, had a total loading of 14,940 pounds, of which 5,130 pounds were fruit. The total loading being so near the minimum no penalty was charged.

It will thus be noted that during the movement for the winter months concerned there was only one car on which penalty accrued.

Averages by months of the items of fruit and vegetables may be set out. It has already been noted that the total average is much in excess of the 15,000-pound minimum. The figures that follow relate to fruit and vegetables alone:—

For November the average loading of fruit was 11,770 pounds and for vegetables 2,543 pounds, a total of 14,313 pounds. For December the average loading of fruit was 15,095 pounds, and for vegetables, 1,010 pounds. A total of 16,105 pounds. In January, while it is pointed out that the total loading is much in excess of the 15,000-pound minimum, the average of fruit and vegetables fell. In the case of fruit there were 10,341 pounds, and vegetables, 2,621 pounds, or a total of 12,962 pounds. For February, fruit averaged 11,656 pounds, and vegetables 3,256 pounds or a total of 14,912 pounds. For March, the fruit averaged 10,180 pounds and the vegetables 2,528 pounds, or a total of 12,708 pounds.

While the loading during 1925, both as to averages and as to individual cases was, almost without exception, in excess of the minimum, and while the

exception arising entailed penalty only in one case, it was claimed that there were special seasonal difficulties in getting the loading. Mr. Willett, one of the witnesses, said that traffic was light during the holiday season from November. It was stated, in evidence, that from the 15th of December until January 30 it was impossible for all of the fruit dealers of St. John to load a car as far as Edmundston.

If the averages of all cars moving to all destinations between December 16 and January 30 are taken, the following averages are available:—

	Pounds
Fruit	13,270
Vegetables	546
Other commodities	8,933
Total	22,749

Special reference has been made to the cars moving to Edmundston and intervening destinations, and the difficulty of loading them during the period from December 16 to January 30. The following averages on cars to Edmundston and the period in question are available:—

	Pounds
Fruit	9,748
Vegetables	2,492
Other commodities	12,061
Total	24,301

Included in this average and thereby bringing down the general total is car 286499, moved on December 17, whose total contents were 9,150 pounds, the fruit factor representing 7,990 pounds. This is the car, however, which has already been referred to as having been given the advantage of an overflow rate without penalty.

The quantities of fruit and vegetables vary. In a car which moved on December 30 there were 3,310 pounds of fruit and 330 pounds of vegetables—3,640 pounds in all. In the month of January the figures show a sharp upward movement. January 13, one car had 9,720 pounds of fruit and 2,240 pounds of vegetables—11,960 pounds in all. One week later another car moved with 9,670 pounds of fruit and 3,630 pounds of vegetables, or 13,300 pounds in all, while on January 20 a car moved with 16,070 pounds of fruit and 4,430 pounds of vegetables.

That the cars can load much in excess of the 15,000 pounds minimum was admitted in evidence. The general averages in this regard, which are above set out, bear upon this matter. Attention may be drawn to car C.P. 287603 which moved December 16, with destinations Fredericton and Fredericton Jct., with a loading of 40,400 pounds. Of this, fruit represented 24,640 pounds, vegetables 210 pounds, and other commodities 15,550 pounds. There is no question then as to the physical ability of the car supplied to carry more than 15,000 pounds. What is raised is the question of the commercial minimum. Whatever weight should properly be given to the commercial minimum, it is to be noted that in the present case the loading of fruit and vegetables is relatively close to the 15,000-pound minimum, and that the total made up by the addition of other commodities to the fruit and vegetables is only in one case below the 15,000-pound minimum.

I am of the opinion that the existing arrangement is not unreasonable, and that the application has been unsuccessful.

Ottawa, May 25, 1926.

Chief Commissioner McKeown and Commissioner Oliver concurred.

ORDER No. 37681

In the matter of the application of the Canadian Lumbermen's Association for an Order suspending Canadian National Railway tariffs C.R.C. No. E-1068, C.R.C. No. E-1069, and Supplement 2 to C.R.C. No. E-697; and Canadian Pacific Railway's Corrections Nos. 148, 149, 152, and 153 to tariff C.R.C. No. E-4126,—governing stop off and reshipping arrangements on lumber, in carloads:

File No. 26615.84.

SATURDAY, the 29th day of May, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Canadian National Railway Tariffs C.R.C. No. E-1068, C.R.C. No. E-1069, and Supplement 2 to C.R.C. No. E-697; also Canadian Pacific Railway's Corrections Nos. 148, 149, 152, and 153 to Tariff C.R.C. No. E-4126—in so far as the said tariff schedules in any way affect rules, regulations, or charges dealing with out of line haul service, be, and they are hereby, suspended as of May 26, 1926, pending a hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37697

In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "E" to the Express Classification for Canada No. 6, on file with the Board under File No. 4397.81.

WEDNESDAY, the 2nd day of June, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Board of Trade of the city of Toronto, the Montreal Board of Trade, and the Canadian Manufacturers' Association; and upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Supplement "E" to the Express Classification for Canada No. 6 be, and it is hereby, approved, with the following addition to item 13, page 15, of the Classification, namely:—

> " Where there are two or more rail routes between point of origin and destination, the lowest standard passenger fare applicable via any one of such routes will apply over all of the routes."

The proposed supplement to be published as Supplement No. 7.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37703

In the matter of the application of the Atlantic, Quebec & Western Railway Company and the Quebec Oriental Railway Company, hereinafter called the "Applicant Companies," under section 334 of the Railway Act, 1919, for approval of Standard Parlour Car Tariff, A.Q. & W. C.R.C. No. 18, and Q.O. C.R.C. No. 14, on file with the Board under file No. 9451.30.

SATURDAY, the 5th day of June, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Parlour Car Tariff of the Applicant Companies, A.Q. & W.—C.R.C. No. 18 and Q.O.—C.R.C. No. 14, effective July 1, 1926, on file with the Board under file No. 9451.30, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. MCLEAN,
Assistant Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI Ottawa, July 1, 1926 No. 8

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Re *Cohen and Crawford Sidings, Kingston, Ont., Canadian Pacific and Canadian National Railways*

File No. 22450.7

JUDGMENT

COMMISSIONER OLIVER:

By order of the Board of date February 9, 1926, the Canadian Pacific Railway was given permission to use the Cohen and Crawford sidings which connect with the Kingston Branch of the Canadian National Railways, on terms to be arranged betweeen the railways concerned, or to be decided by the Board in case of their failure to agree.

From letters on the Board's files it appears that the Canadian National Railways ask from the Canadian Pacific $2 for each car placed on either of these sidings. This the Canadian Pacific definitely refuses to pay, but offers to pay half the actual expense to which the National Railways are put under the siding agreements. The solicitor of the Canadian National Railways asks for the decision of the Board.

Section 193 of the Railway Act clearly contemplates the use by one railway company of the tracks of another, subject to the approval of the Board. Therefore there can be no doubt that the Board can give the permission in regard to the Cohen and Crawford spur tracks which the Canadian Pacific Railway asks. No difficulties arise as to access by the Canadian Pacific Railway to these spurs because that company has the right of operation under lease over the National track with which the spurs are connected.

There can be no doubt that it is in the interest of the industries operating on the Cohen and Crawford sidings that these sidings should be used with the greatest reasonable measure of freedom by both railways.

While subsection (1) of section 193 of the Act comprehensively provides that one railway company may, subject to the approval of the Board, use another company's tracks, subsection (2) of the same section provides that,—

> " Such approval may be given upon application and notice, and, after hearing, the Board may make such Order, give such directions and impose such conditions and duties upon either party as to it may appear just or desirable, having due regard to the public and all proper interests ".

That is to say, the Board may authorize interference with the property rights of a railway company, but only so far as the public interest demands, and to the smallest possible degree, consistent with the public interest. The Board's duty is to guard the private interest affected, as well as to give the public interest necessary precedence over it.

Subsection (3) of section 193 of the Act says,—

> "If the parties fail to agree as to compensation, the Board may, by Order, fix the amount of compensation to be paid in respect of the powers and privileges so granted."

That is, the use which one railway is given of another railway's property must be paid for, and the Board is charged with final responsibility in fixing the amount.

The lease of running rights over the Kingston Branch of the Canadian National Railways, held by the Canadian Pacific Railway as successors of the Kingston and Pembroke Railway Company, is an acknowledgement that the rights of ownership of the line rests in the Canadian National. The two sidings under consideration were constructed by arrangement with the Canadian National. The terms under which the Canadian Pacific should be permitted to use the two spurs should, in my opinion, completely preserve the seniority of right properly belonging to the Canadian National Railways, both in direction and in cost of operation. That is to say, National car movements should have precedence and protection and other costs should be assessed by the Canadian National Railways, half to be paid by the Canadian Pacific Railway.

As the Cohen spur is owned absolutely by the industry which it serves, no question of capital cost arises in connection with it. But as the Canadian National is the owner of the Crawford spur under a standard siding agreement, the Canadian Pacific Railway should pay to the Canadian National one-half the cost.

Ottawa, June 10, 1926.

McLean, Assistant Chief Commissioner:

I agree in the general disposition recommended by Commissioner Oliver. In regard to the Cohen siding any expense which the Canadian National may be put to to maintain the switch or other parts of the connection and switch lamp, should be contributed to by the Canadian Pacific on the basis of even division between the Canadian Pacific Railway and the Canadian National, unless the companies agree to divide this expense on a wheelage basis. In the case of the Crawford spur, I am of the opinion that the Canadian Pacific Railway should reimburse the Canadian National for one-half the cost of the rails, fastenings and non-perishables, and also bear one-half of any other expense that the Canadian National Railways is put to, subject to the two companies agreeing, if they wish, to divide the cost on a wheelage basis.

Ottawa, June 11, 1926.

Commissioner Lawrence concurred.

ORDER No. 37744

In the matter of the Order of the Board No. 37320, dated February 9, 1926, authorizing the Canadian Pacific Railway Company to run and operate its trains over and upon the Cohen and Crawford sidings, in the City of Kingston, and Province of Ontario; the terms of compensation by the said company to the Canadian National Railways, if not agreed upon by the parties within one month from the date of this Order, to be brought before the Board, on the complaint of either party, for disposition by the Board.

File No. 22450.7

WEDNESDAY, the 16th day of June, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading what has been filed on behalf of the Canadian National and the Canadian Pacific Railway Companies,—

The Board orders: That, in regard to the said Cohen siding, any expense to which the Canadian National Railways may be put, to maintain the switch or other parts of the connection and switch lamp, be paid one-half by the Canadian Pacific Railway Company and one-half by the Canadian National Railways, unless the said companies agree to divide such expense on a wheelage basis; and that, in the case of the Crawford spur, the Canadian Pacific Railway Company reimburse the Canadian National Railways for one-half the cost of the rails, fastenings, and non-perishables, and also pay one-half of any other expense that the Canadian National Railways may be put to, subject, however, to the two companies agreeing to divide such cost on a wheelage basis.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37730

In the matter of the Order of the Board No. 37440, dated March 31, 1926, suspending Tariff C.R.C. No. E-1029 of the Canadian National Railways, increasing the freight rate on coal from Huntingdon, Quebec, to Isle Maligne, Quebec.

File No. 27425.103

FRIDAY, the 11th day of June, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Century Coal Company, Limited,—

The Board orders: That the said Order No. 37440, dated March 31, 1926, be, and it is hereby, rescinded; and that Tariff C.R.C. No. E-1029 of the Canadian National Railways be allowed.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Canadian Pacific Railway Company under Section 188 of the Railway Act for approval of proposed relocation of station at Grand Piles, P.Q., at mile 28·9 on the applicant company's Piles Subdivision.

File 34195

JUDGMENT

McLean, Assistant Chief Commissioner:

The Canadian Pacific Railway station at Grand Piles was destroyed by fire on August 24, 1925. The provision was made thereafter for temporary facilities. The station which was destroyed was a non-standard one and was built in 1904. The dimensions were 20 feet 8 inches wide by 30 feet 8 inches long, and 20 feet from floor to eaves. It was of wooden construction, with post foundations. It comprised one waiting room, an office and a small baggage room.

On March 1, 1926, the railway made application for approval of proposed relocation of station at Grand Piles, furnishing plans therewith showing the proposed relocation. They also filed plan showing detail of the station.

The proposed station is a building 48 feet 10 inches long by 18 feet wide. It contains a general waiting room 12 feet 2 inches by 18 feet, a ladies' waiting room 12 feet by 18 feet, with lavatory accommodation for each of these waiting rooms. There is a baggage and express room 12 feet by 18 feet; telegraph and ticket office 10 feet by 12 feet. There is an 8-foot platform at either end of the building and a platform 200 feet long at the front.

The facilities proposed are much better, more commodious and more modern than in the old building which was destroyed by fire.

The location plan was approved by the town of Grand Piles, which is also spoken of as the municipality of St.-Jacques-des-Piles. The municipality of St. Jean-des-Piles objected to the relocation, and asked for construction on the former site. It is set out that the municipality of St. Jean-des-Piles is situated on the opposite side of the St. Maurice river from St. Jacques-des-Piles, about 1,600 feet from the former station site which was destroyed by fire. It is claimed that the old station being situated close to the ferry saved expense of carting from the ferry to the railway station, and that if the railway company changes the site of the station, as proposed, it will impose additional cost of cartage from the ferry to the proposed station location on the farmers and others, from the municipality of St. Jean-des-Piles, using the station. The new station location, as checked by the Board's Engineering Department, is at a point 275 feet south of the old station.

The claims of the two municipalities as bearing upon the location of the new and improved station have been carefully considered. As pointed out, the new station gives much better facilities than the old station, and it is only some 275 feet away from the site of the old station. In dealing with the matter of approval of station locations, as in other matters, the Board is given no managing function over the railways subject to its jurisdiction. The railway exercises the intial discretion in the matter of filing plans, for example, as to station location. The Board's right to intervene arises when there has been a misuse of the railway's power, and a disregard in exercising its discretion of the public interests concerned. The initial discretion as to the location of stations should be that of the carrier and the Board is justified in intervening only when there has been unreasonable exercise of this discretion or when there are exception circumstances.—*Hartin et al vs. Canadian Northern Railway Co'y, 21 Can. Ry. Cases, 437.*

Where there are contending applications for the location of a station, the Board has held that it should only intervene in the case of unjust discrimination between the railway company and the landowners.—*Druid Landowners vs. Grand Trunk Pacific Company, 14 Can. Ry. Cases, 20.* Where there has been a case of a question of agreement or bad faith on the part of the railway, the Board has felt justified in intervening.—*Kelly vs. G.T.P. Ry. Co'y, 14 Can. Ry. Cases, 15.*

In the present instance, I do not consider that it has been established that the railway is making an unreasonable exercise of the discretion which it has under the Railway Act. It does not appear that there is any such discrimination against a landowner, or landowners, as would justify the Board interfering. Having in mind (1) the short distance from the old location to the new location; (2) the very much improved facilities afforded by the larger station on the new location; (3) the discretion in regard to management given the railway under the Railway Act; (4) the limitations imposed upon the Board in respect of interference with the managing functions of the railway (see considerations set out above), I am of the opinion that the railway's application should be granted.

Ottawa, June 30, 1926.

Commissioners Boyce and Lawrence concurred.

ORDER No. 37812

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 188 of the Railway Act, 1919, for approval of the proposed relocation of its station at Grand Piles, in the Province of Quebec, at mileage 26·9 of the Applicant Company's Piles Subdivision, as shown on Plan No. Q.L. 35C, dated December 18, 1925, on file with the Board; also detail plan No. 17236-4, on file with the Board under file No. 34195.

Friday, the 2nd day of July, A.D. 1926.

S. J. McLean, *Assistant Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*
C. Lawrence, *Commissioner.*

Upon reading what is filed in support of the application on behalf of the Municipality of St. Jacques-des-Piles and the Municipality of St. Jean-des-Piles,—

The Board orders: That the proposed relocation of the applicant company's station at Grand Piles, in the province of Quebec, at mileage 26·9 of the applicant company's Piles Subdivision, as shown on the said plans on file with the Board under file No. 34195, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37759

In the matter of the application of The Express Traffic Association of Canada for approval of Supplement "F" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.82.

SATURDAY, the 19th day of June, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Supplement "F" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.82, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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NOTE:—No Issue for August 1, 1926

ORDER No. 37839

In the matter of the application of the Great Northern Railway Company, hereinfter called the "Applicant Company", for approval of its Standard Tariff of Maximum Parlour Car Tolls, C.R.C. No. S-10, on file with the Board under file No. 9451.31.

SATURDAY, the 10th day of July, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said Standard Tariff of Maximum Parlour Car Tolls, C.R.C. No. S-10, on file with the Board under file No. 9451.31, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37901

In the matter of the Order of the Board No. 37396, dated March 20, 1926, suspending, pending a hearing by the Board the provision of Note "B," page 2, of Supplement No. 22 to the Canadian National Railways' tariff C.R.C. No. E-838, effective March 22, 1926, providing that the rates on crushed stone from Hagersville be exclusive of switching at the said point.

File No. 463.4.

SATURDAY, the 24th day of July, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer, and its appearing that the said company has arranged to eliminate such tariff provision,—

The Board Orders that the said Order No. 37396, dated March 20, 1926, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 431

In the matter of the General Order of the Board No. 379, dated April 4, 1923, amending the "Rules Relative to the Inspection of Locomotives and Tenders," prescribed by General Order No. 289, dated March 24, 1920, with regard to the equipping of locomotives with pilots:

File No. 21351.1

THURSDAY, the 29th day of July, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Railway Association of Canada and the Pere Marquette Railway Company; and upon the report and recommendation of its Chief Operating Officer,—

The Board Orders: That the time within which the Canadian National Railways, the Canadian Pacific Railway Company, the Michigan Central Railroad Company, and the Quebec Central Railway Company shall comply with the requirements of the said General Order No. 379, dated April 4, 1923, be, and it is hereby, extended until the 31st day of December, 1927.

2. That the time within which the Pere Marquette Railway Company shall comply with the requirements of the said General Order No. 379 be extended until the 31st day of December, 1926.

3. That all the said railway companies report quarterly to the Board how many engines have been equipped with pilots so as to comply with General Order No. 379.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37936

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "Applicant Company," for permission to make correction, on less than statutory notice, in the rate on building brick, in carloads, from Scotts Junction to Shawinigan Falls, Quebec:

File No. 3079.80

WEDNESDAY, the 4th day of August, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board—

It is ordered: That the applicant company be, and it is hereby granted leave to issue a supplement forthwith to its tariff C.R.C. No. 917, correcting error in the rate on building brick, in carloads, from Scotts Junction to Shawinigan Falls, Quebec, on one day's notice; the title page of the supplement to bear a note to the effect that it is issued under the authority of this order, to correct printer's error.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

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Application of the National Explosives, Limited, Ottawa, Ont., for an Order of the Board granting relief from freight lots of explosives east of Winnipeg, except on the line of the Ottawa and New York Railway.

File 1717.30

JUDGMENT

McLean, Assistant Chief Commissioner:

Under existing conditions, the Canadian National, the Canadian Pacific Railways, and certain other eastern Canadian carriers apply on high explosives, in less than carloads, a rate of double first class, with a minimum of 5,000 pounds, for a single shipment. For two shipments to the same destination, in the same car, the minimum requirements of each is 3,000 pounds. In the case of three or more shipments to the same destination the minimum is 2,500 pounds. The applicant is asking that the charge be three times first class, with no weight minimum.

In the application, the territory in which relief is asked for is set out as being "east of Winnipeg." As a matter of strict accuracy, the territory actually involved is east of Port Arthur, Ont., and the minimum charge attacked as being unreasonable is that applying therein. West of that point there is a much lower minimum. The Ottawa and New York Railway was excepted, as it publishes a very low minimum rate which is not complained of.

As was pointed out in the application of the *Canadian Explosives, Limited, Montreal, for a reduction in rates on High Explosives in Canada, Board's Judgments and Orders, Vol. 15, p. 307,* receipt for carriage of high explosives is, under the classification, at the option of the railway.

In addition to the minimum above referred to, the Canadian Pacific Railway has between Port Arthur, Ont., and Chapleau, Ont., a provision for minimum weight of 2,500 pounds. The Canadian National also allows exception in the case of less than carload shipments of high explosives for bona fide prospectors, providing that between stations Amos, Que., to Tashota, Ont., inclusive (not exceeding one standard case), these may be carried at double first class, actual weight, minimum charge for any one shipment, $6. Between Port Arthur, Ont., and Hearst, Ont., inclusive, there is a rate of double first class, actual weight; minimum 2,500 pounds.

There are in effect throughout Canada uniform regulations authorized by the Board governing the description, packing, marking, loading, staying and handling of explosives.

The minimum charge for high explosives has already been set out. In the case of powder, black, brown or smokeless, for blasting, cannon and small arms, the charge is double first class for the actual gross weight, with a minimum charge of 100 pounds at first class rate, but not less than 50 cents.

In the case of fulminates, detonators, blasting caps, percussion caps, detonating fuses (except safety fuses), and projectiles containing explosives, the charge is double first class for the actual gross weight, with a minimum charge of 100 pounds at double first class rate, but not less than 50 cents.

Dynamite, when shipped from specified stations under the name "stumping powder—high explosives," accompanied by certificates to the effect that it is to be used only for clearing stumps from farm land, is charged first class standard mileage rates, minimum charge 100 pounds, but not less than 50 cents.

In Western Canada the charge on high explosives contained in the class with which the present application is concerned is double first class at actual gross weight, with a minimum for single shipments of $6. This reduced minimum on high explosives has been in force in Western Canada since, so far as the records of the Board show, 1904, with the exception of from September 1 to September 26, 1907, when the minimum was advanced to that now current in Eastern Canada. On the latter date the minimum was again reduced to $5 in Western Canada; on September 13, 1920, it became $7; on January 1, 1921, $6.50; and on December 1, 1921, $6. This minimum has been applicable since that date.

There is also an exception in the West where the Canadian Pacific Railway has a special minimum charge applicable on high explosives shipped from Northfield, B.C., to certain British Columbia destinations on Vancouver island.

In Eastern Canada there are certain exceptions. The Michigan Central provides for dynamite, high explosives, in less than carloads, at double first class rate, minimum 100 pounds.

Algoma Central and Hudson Bay Railway Tariff C.R.C. No. 652 provides for high explosives in less than carload quantities at four times first class rate, with minimum charge of $5 for any shipment, with the exception of single shipments of 5,000 pounds or over, which will take double first class rate, and the charge for less than 5,000 pounds shall not exceed the charge for 5,000 pounds at double first class rate.

Algoma Eastern Railway Tariff C.R.C. No. 415 provides for high explosives in less than carload lots of 5,000 pounds or over at double first class rate; under 5,000 pounds, at four times first class rate, with minimum $5 for any one shipment; and that the charge for less than 5,000 pounds shall not exceed the charge for 5,000 pounds or over.

The Boston and Maine provides for high explosives in less than carload shipments at double first class rate, minimum charge $2 per shipment.

The New York Central, between stations on the Adirondack Division, has a minimum charge of $1 on less than carload shipments, actual weight governing. The New York Central tariff applicable on the Ottawa Division has already been referred to.

The Board's judgment in the *Canadian Explosives Case* above cited considered the carriage of dynamite as a commodity from the standpoint (1) of the application of the ordinary factors governing the classification of rates, which included a comparison with other articles more or less analogous; and (2) the matter of risk. What was said under these headings is applicable here. The matter of the minimum charge is the new factor.

Mr. Ransom, chairman of the Canadian Freight Association, alleged that there was greater risk involved in hauling through the East, as the movements were through more congested districts than those existing in the West, and that the East had a greater number of junction points. He also called attention to the various provisions of the regulations governing the handling of high explosives

to show the additional care and precautions required as compared with ordinary merchandise. Reference may be made in this connection to the fact that the same regulations are applicable to other explosives to which, however, a low minimum apply.

Reference was made to the carriage of dynamite as stumping powder. The applicant stated frankly that there was a very low rate on this, and that he was not contending that the rate arrangement made in regard to stumping powder should be the measure of what should apply to his products.

It does appear that there is a business demand for L.C.L. lots. At the same time, the minimum charge based on 5,000 pounds, as above set out, is admittedly intended to confine the movements to carload lots.

The matter of rates on high explosives in L.C.L. shipments and the minimum weights attaching thereto has been before the Board in informal correspondence in earlier years, but the correspondence was dropped. In the present case the minimum charge is, I consider, excessive; and I do not think it is justified from the standpoint of risk. It is not necessary to set out again what has already been dealt with by the Board as to the matter of risk in connection with the application of the *Canadian Explosives Company*, nor is there any satisfactory evidence before the Board showing that it has such an effect of risk in connection with the carriage of L.C.L. shipments that the minimum of 5,000 pounds is justifiable.

On consideration, I am of opinion that the same rate adjustment as applies west of Port Arthur should be made applicable east; that is to say, double first class, at actual gross weight, with a minimum for single shipment of $6. This is not to be taken as a sanction for increase of lower rate minima where such exist in Canada east of Port Arthur.

July 31, 1926.

Commissioners Boyce and Lawrence concurred.

GENERAL ORDER No. 432

In the matter of the application of the National Explosives, Limited, of Ottawa, Ontario, for an Order granting relief from the freight rate conditions governing the shipment of less than carload lots of explosives east of Winnipeg, except on the line of the Ottawa and New York Railway.

File No. 1717.30

FRIDAY, the 13th day of August, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, May 18, 1926, in the presence of representatives of the applicant company, the Canadian Freight Association, and the Canadian Pacific and Canadian National Railways, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the Canadian Pacific, Canadian National, Central Vermont, Dominion Atlantic, Montreal and Southern Counties, Napierville Junction, Nipissing Central, Quebec Central, Quebec, Montreal and Southern,

Quebec Railway, Light and Power, Temiscouta, Atlantic, Quebec and Western, and Quebec Oriental Railway Companies amend their tariffs applying on high explosives, effective not later than the 30th day of August, 1926, so that the rate published therein on high explosives, in less than carloads, shall not exceed double first class current tariff rates, with a minimum charge of six dollars ($6) for a single shipment. Tariff provisions now in effect by any of the railway companies subject to the jurisdiction of the Board, east of Port Arthur, Ontario, naming lower rate minima on high explosives than above specified, are not to be increased as a result of this order.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Township of Sandwich South against reduction of train service on the Windsor, Essex and Lake Shore Rapid Railway, as required by Clause 10 of the agreement, or franchise, dated May 26, 1906, between the Company and the Municipality of Sandwich South.

File No. 27563.13

JUDGMENT

McLean, Assistant Chief Commissioner:

Effective April 4, 1926, a new time-table became operative on the Windsor, Essex and Lake Shore Rapid Railway.

Complaints have been received against the withdrawal of train No. 1 leaving Kingsville at 6 a.m., arriving Windsor at 6.59 a.m., daily, except Sunday, making two regular stops, namely, Cottam and Essex Office, and, in addition, five flag stops.

The time-table change made the first local train, daily, leave Leamington at 7 a.m., Kingsville at 7.25 a.m., arriving at Windsor at 9.45 a.m. This train makes either the regular stops or flag stops at all points. In addition, there is a bus service leaving Kingsville at 5.50 a.m., arriving Windsor at 7 a.m. Complaint was made of the limited seating capacity of the busses.

The railway company urged in support of the change that the traffic had fallen off. The railway traverses a section in which, on account of the good roads in existence, the competition of motor vehicles, including busses, is very much felt.

In substituting a bus service for the regular six o'clock train, to which reference has been made, the railway company propose to run two busses and, if necessary, three or more.

Attached to the petition asking for a hearing was a copy of a by-law of May 26, 1906, granting certain rights and privileges to the Windsor, Essex and Lake Shore Rapid Railway Company. Reference was made to clause 10 of the by-law, which reads:—

> "The said railway shall operate and run cars both ways through the township daily, at least every two hours, between the hours of seven o'clock in the forenoon and six o'clock in the afternoon."

While the paragraph in question was referred to in the written submissions, there was very incidental reference to it in the hearing; and the discussion that took place was concerned with the existing service, it being contended that the railway service as limited was unsatisfactory, and the bus service was also unsatisfactory.

At the hearing, direction was given that the six o'clock train (No. 14) leaving Windsor daily, except Sunday, should have such additional stops added as were necessary in order to permit it to do all the local work between Windsor and Maidstone.

The condition of the railway company from an earning standpoint has been before the Board on another occasion; the evidence adduced shows that there is motor vehicle competition which has quite a serious effect. On consideration, it does not appear, on the present record, that anything more can be ordered than was directed at the hearing and which became effective on July 12 1926.

August 13, 1926.

Commissioner Lawrence concurred.

ORDER No. 37922

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic the China Clay Branch from mileage 9.0 to 11.33. File No. 19704.32

THURSDAY, the 29th day of July, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of the China Clay Branch from mileage 9.0 to 11.33, in the province of Quebec.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37923

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Amulet to Dunkirk Branch from Wallace, mileage 0, to Cardross, mileage 46.04. File No. 30351.8

THURSDAY, the 29th day of July, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Amulet to Dunkirk Branch from Wallace, mileage 0, to Cardross, mileage 46.04.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37982

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Cutknife-Whitford Lake Branch from Unwin, mileage 45.65, to Lloydminster, mileage 76.25.

File No. 10758.47

TUESDAY, the 10th day of August, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Cutknife-Whitford Lake Branch from Unwin, mileage 45.65, to Lloydminster, mileage 76.25.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 37984

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of the China Clay Branch from mileage 0.0 to 9.0.

File No. 19704.33

FRIDAY, the 13th day of August, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of the China Clay Branch from mileage 0.0 to 9.0.

S. J. McLEAN,
Assistant Chief Commissioner.

OTTAWA: Printed by F. A. ACLAND, Printer to the King's Most Excellent Majesty, 1926.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI Ottawa, September 15, 1926 No. 12

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ORDER No. 37991

In the matter of the application of the Canadian Northern Saskatchewan Railway Company for an Order extending the time within which it may carry traffic over that portion of its Turtleford Southeasterly Branch from mileage 0, at the junction with the Turtleford Subdivision of the Canadian National Railways at mileage 56.2, for a distance of 23 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile.

File No. 26653.10

MONDAY, the 16th day of August, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Assistant Chief Engineer,—

The Board orders: That the time within which the applicant company may carry traffic over the said portion of the Turtleford Southeasterly Branch be, and it is hereby, extended until the 1st day of November, 1926.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 37999

In the matter of the application of the Rural Municipality of Prince Albert, No. 461, in the Province of Saskatchewan, hereinafter called the "Applicant", for an Order permitting automobiles to cross over the river at Fenton, Saskatchewan, on the Canadian National Railways bridge, at certain times of the year when it is not possible to cross on the ferry or on the ice.

File No. 949

TUESDAY, the 17th day of August, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Prince Albert, June 18, 1926, the applicant and the railway company being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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NOTE.—No Issue for October 1, 1926

GENERAL ORDER No. 433

In the matter of the General Order of the Board No. 379, dated April 4, 1923, amending the Rules Relative to the Inspection of Locomotives and Tenders, prescribed by General Order No. 289, dated March 24, 1920, with respect to the equipment of locomotives in road service with pilots.

File No. 21351.1

FRIDAY, the 17th day of September, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed on behalf of the Northern Pacific Railway Company, and the report and recommendation of its Chief Operating Officer,—

The Board orders: That the said General Order No. 379, dated April 4, 1923, as amended by General Order No. 390, dated January 25, 1924, and General Order No. 396, dated March 10, 1924, be, and it is hereby, further amended by inserting the words "Northern Pacific" after the word "Rutland", in the last paragraph of the order.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38130

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to carry traffic over its Acadia Valley Branch from mileage 0, at junction with Mantario Subdivision at mileage 136.3 near Eyre, to Acadia Valley, a distance of 24.60 miles; also the west leg of the wye at the said junction, a distance of 0.23 of a mile.

File No. 29460.10

WEDNESDAY, the 15th day of September, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to carry traffic over that portion of its Acadia Valley Branch from mileage 0, at the junction with Mantario Subdivision at mileage 136.3, near Eyre, to Acadia Valley, a distance of 24.60 miles; also the west leg of the wye at the said junction, a distance of 0.23 of a mile: provided the speed of trains operated over the said line be limited to one mile in six minutes.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38137

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its Willowbunch Branch, being an extension of Bengough Subdivision of the Canadian Northern Railway, from mileage 43.22, at Bengough, to Willowbunch, at mileage 71.71, a distance of 28.49 miles.

File No. 10799.215

THURSDAY, the 16th day of September, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Engineer and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to carry traffic on its Willowbunch Branch, being an extension of the Bengough Subdivision of the Canadian Northern Railway, from mileage 43.22, at Bengough, to Willowbunch, at mileage 71.71, a distance of 28.49 miles: provided the speed of trains operated over the said line be limited to a rate of twenty-five miles an hour.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Board of Management of the Parish of Lancaster in the Municipality of the County of the City and County of St. John, re *free wagon delivery service into the Parish of Lancaster, Dominion Express and Canadian National Express Companies.*

File No. 4214.149

JUDGMENT

CHIEF COMMISSIONER MCKEOWN:

In January last, application was made on behalf of the Board of Management of the Parish of Lancaster in the Municipality of the city and county of St. John, for an order to compel the Dominion Express Company and the Canadian National Express Company to extend their free wagon delivery into the Parish of Lancaster. To this application duly served upon the express companies, answer was filed by the Chairman of the Express Traffic Association of Canada, as follows:—

> "This matter has received the careful attention of the express companies, but they are not in favour of establishing a cartage service in the Parish of Lancaster."

The city of St. John is divided by the river which bears that name. The part known as West St. John lies west of the river, and the Parish of Lancaster lies immediately outside of the limits of West St. John. As a matter of fact certain portions of this parish immediately contiguous to the city are as thickly populated as portions of the city itself. The general method of communication for express purposes between east and West St. John is by means of a ferry, for the use of which a charge is exacted, and while there is free delivery to the public on the part of the express companies within the limits of the city, both on the east and west sides, the west side delivery is burdened with a ferry toll which renders it more expensive to the companies.

From the year 1913 to 1919, extra tolls were charged by the express companies for delivery in West St. John, on the theory that such extra charge covered the charge for ferriage. This was provided for by the Board's Order No. 19086, dated April 17, 1913, which authorized an extra charge of ten cents for a shipment of 100 pounds or under, and fifteen cents for a shipment between 100 and 500 pounds in weight. In the year 1918, the express companies represented to the Board that the charge thus allowed was insufficient, and asked that an increase be permitted. A hearing on this application was held in the

city of St. John in July, 1918, and the matter was disposed of in the following December by a communication from the Board to the Secretary of the Express Traffic Association of Canada, which stated in part:—

> "As it is understood that the express companies contemplate a new cartage scheme of general application in connection with their present application for increased revenue, the Board is of opinion that the West St. John question may well wait."

After a thorough and complete investigation, a judgment of the Board was issued in 1919, reported in Vol. 9 of the Board's Judgments, Orders, Regulations and Rulings, by which judgment certain rules were laid down concerning free cartage within municipal limits, and in accordance with the rules enunciated in such judgment, the application of the express companies for increased rates in West St. John was not only refused, but the existing differential was abolished, and the advantage of free delivery to West St. John secured, although, admittedly, it is more expensive for the express companies to deliver in West St. John than in East St. John, for the reason above named.

By the judgment above referred to, free cartage is not required beyond corporate limits, and this application must be taken as a request to vary that principle which was adopted after exhaustive examination and inquiry.

There is no doubt as to the necessity of laying down a general rule in this matter. Having regard to the locality concerned in this application, it is clear that for all surface reasons its inhabitants are entitled to as much consideration as those of the immediate neighbourhood within the limits of the city. But it is also clear that the infringement of such rule would necessitate a revision of rates as regards many other areas adjacent to cities and towns, the number of which would be very large. While the burden of a thorough examination into all such claims would be great, it would be readily undertaken if there were any prospects at all that it would lead to the establishment of a rule more equitable or just than the one now in force.

As remarked by the Assistant Chief Commissioner at the hearing of this case last April:—

> "These regulations in the Express judgment were laid down after careful consideration, with the intention of having pretty general applicability. We have recognized that whenever an applicant came within these conditions, he got the extension alright. If he did not, we have held that he did not, get the extension."

Hon. Mr. Baxter, who appeared in support of the application, admitted that, if the matter were looked at from the standpoint of the city of St. John, to grant the request would involve a departure from the principles already laid down. He urged that it be treated from the standpoint of the parish of Lancaster. While the whole parish could not claim benefits desired, he argued that a focal point be established in Fairville, from which a density of population might give substance to the request before the Board. But this is altogether outside the rules which govern the Board in disposing of applications of this kind.

As above remarked, prior to the judgment of 1919, the residents of West St. John were required to pay an extra charge for delivery.

Because of the location of the city boundaries, when delivery is made in West St. John by way of the bridge over the river, instead of by the ferry, a portion of the parish of Lancaster has to be traversed by the express company in order to reach West St. John, and it therefore seems not unreasonable to those living within that district that free delivery should be made to them, considering that the express teams have to pass by or very close to their homes to reach West St. John, when that delivery route is chosen. But it is clear that only in

exceptional cases delivery via the bridge is effected. If it were the only way by which the residents of West St. John could be reached, a much stronger case for the applicant would have been established. The fact is, that only a small fraction of the deliveries are made by way of the bridge, and in places wherein the street is the boundary line, the drivers have been ordered to make delivery on both sides of the street.

For ten years or more prior to the judgment of the Board in 1919, the whole question of free cartage limits for express delivery was dealt with on local applications. As a result, many contradictions existed, and the judgment of 1919 was the outcome of a thorough examination into all conditions, with a view of laying down some general principles applicable throughout.

It may be that applications to further extend delivery upon payment of fees calculated to meet such expense, should be considered generally by the Board. In the present case, counsel for the applicant has expressed a willingness to pay an extra charge for the service. Such application would have to be general in nature, in order that complete consideration be given to the situation at large. In this application the Board is not in a position to treat the matter from that standpoint. The question is too large to be determined upon the application of an individual locality. Such treatment would immediately duplicate the anomalies and contradictions which existed within the city limits prior to the judgment of 1919, and this application must, therefore, be dismissed.

Ottawa, August 26, 1926.

Assistant Chief Commissioner McLean and Commissioner Oliver concurred.

Complaint of the Boards of Trade of Halifax, St. John and Sackville, N.B., Canadian Lumbermen's Association, et al, against proposal of the Canadian National Railways to eliminate alternative routing via St. John and Ste. Rosalie Junction on Westbound Traffic destined to stations on the Canadian Pacific Railway.

File No. 34285.

JUDGMENT

Chief Commissioner McKeown:—

This application was listed for hearing, and heard on the 8th day of January, 1926, in the presence of representatives of the Canadian Pacific Railway Company and the Canadian National Railways; the provinces of Nova Scotia, New Brunswick and Prince Edward Island being represented by Mr. F. C. Cornell, who also appeared for the Halifax Board of Trade, St. John Board of Trade and the Sackville Board of Trade. Mr. R. L. Sargent appeared for the Canadian Lumbermen's Association and Mr. G. P. Ruickbie for the Bathurst Company, Limited, of Bathurst, N.B.

The trouble arises from attempt on the part of the Canadian National Railways to eliminate alternative routings of freight from the Maritime Provinces to Central Canada via St. John and Ste. Rosalie Junction, and consequently has reference to freight originating on the line of the Canadian National Railways within the three eastern Maritime Provinces.

For many years the tariff of the Canadian Government Railways, C.R.C. No. 1352, provided for such alternative routing, but on the first day of October, 1925, the railway company issued supplement No. 38 to such tariff, naming class rates from stations in Quebec, New Brunswick and Nova Scotia to stations in Quebec and Ontario, which, effective on November 2, 1925, had the effect of

eliminating the alternative routings aforesaid via St. John and Ste. Rosalie Junction to destinations common to both the Canadian National and Canadian Pacific Railways.

Theretofore the following routings were available:—

(1) Canadian National Railways direct.
(2) Canadian National to St. John, thence Canadian Pacific Railway.
(3) Canadian National to Ste. Rosalie Junction, thence Canadian Pacific Railway.

The intended operation of the supplement was to cancel the two last named routings as far as concerns common destination points, but no change was proposed in connection with destinations not reached by both railways.

In consequence of complaints and submissions hereinafter particularly stated, strongly protesting against the move above outlined, the Board by its Order No. 37000, dated November 2, 1925, suspended Supplement No. 38 to Tariff, C.G.R., C.R.C. No. 1352, pending a hearing by the Board, whereby it was intended and directed that conditions as to routing traffic would remain unchanged until the Board's decision in the matter would be announced.

On November 16, 1925, the Canadian National Railways issued a further supplement No. 48, to C.G.R. Tariff C.R.C. No. 1364, applicable to lumber and other forest products, to and from the territory covered by class rate tariff C.R.C. No. 1352 above referred to, by which latter supplement, to take effect December 18, 1925, it was proposed to make a like change as regards the elimination of alternative routings via St. John and Ste. Rosalie Junction, and upon complaint of the parties in interest the Board by its Order No. 37109, dated December 2, 1925, suspended the operation of supplement No. 48 so far as it proposed to eliminate alternative routings via Ste. Rosalie Junction, until hearing by the Board.

The complaints as to both of the above named supplements are based upon identical grounds, which will be detailed later

Upon the application of the Canadian Lumbermen's Association and the Maritime Rights Transportation Committee, the Board amended its Order No. 37109, above referred to, by a subsequent Order No. 37164, dated December 17, 1925, such amendment being the insertion of the words, " and St. John", after the words, " Ste. Rosalie Junction", in the 4th line of the operative portion of said Order No. 37109, the effect of which was that, pending hearing by the Board, both supplements to the tariffs referred to, having in mind the proposed elimination of St. John and Ste. Rosalie Junction alternative routings, were suspended.

It seemed to the Board that the practice of routing freight from the eastern Maritime Provinces, as the same had been developed ever since the railways have been open for traffic, should not be thus summarily changed, at least until the parties mostly concerned had full opportunity of being heard.

Suspension of these supplements to tariffs was urged by complaints originating from the St. John Board of Trade, the Halifax Board of Trade, the Sackville Board of Trade, Charles Fawcett, Limited, Sackville, N.B.; the Enterprise Foundry Company, Limited, Sackville, N.B.; and the Amherst Foundry Company, Limited, Amherst, N.S., which complaints enumerated objections to the proposed tariff amendments as follows:—

1. That the elimination of the alternative routings via these gateways will seriously affect the west-bound traffic originating in the provinces of New Brunswick and Nova Scotia.

2. That the shippers located on the Canadian National lines in New Brunswick and Nova Scotia will be forced to pay, in addition to the rate, a switching charge of at least 10 cents per ton, or $3 per car, if they are delivering to a consignee located on the Canadian Pacific Railway lines or sidings.

3. That to insure the New Brunswick and Nova Scotia shipper having an alternative route in the event of traffic being congested, due to weather conditions, the St. John and Ste. Rosalie gateways should be left open.

4. That in the judgment of the Board of June 30, 1922 (files Nos. 30531, 30685, 30686, and 30686.2), the Board stated as follows:—

" the St. John gateway provides via the Canadian Pacific Railway a short mileage to Montreal; from Halifax and other points, this route and gateway should be maintained to shippers (with the option of Ste. Rosalie) so that the advantages of the short constructive mileage of the Canadian Pacific Railway will continue to function as a rate factor.

5. " That the elimination of the alternative routings via Ste. Rosalie and St. John gateways is not in accordance with the Board's judgment of June 30, 1922, and General Order No. 366 of the same date."

In its answer to such complaints filed with the Board and dated October 21, 1925, the Canadian National Railways submitted that:—

" Prior to the consolidation or co-operation of the various lines that now compose the Canadian National Railways, joint rates were in effect between points on the Intercolonial Railway and points in Ontario and Quebec, common to the Grand Trunk and Canadian National Railways, but also reached by the Canadian Pacific.

" After, however, the Canadian National Railways as a whole came into being it was naturally felt that traffic originating on the old Intercolonial Railway and destined to points on the constituent parts of the Canadian National Railways should belong to the latter; for example, traffic originating at Halifax formerly could be routed via either St. John or Ste. Rosalie Junction and Canadian Pacific Railway to Toronto, Hamilton, London, etc., the latter company being allowed a very material portion of the revenue. It is only reasonable and fair to the Canadian National Railways that where we continue to give good and efficient service we should enjoy 100 per cent of the haul and revenue."

In a later reply dated October 23, the railway company further said:—

" Yours of October 21, file 903-34, inclosing communication from Commissioner Sclanders to Secretary Cartwright, drawing attention to expression by the Board that the gateways vit St. John and Ste. Rosalie should be kept open.

" As a matter of fact, the expression referred to had no connection whatever with rates in territory east of Fort William, as at that time the discussion was confined to the proper basis to be established between the Maritime Provinces and territory west of Fort William, and Supplement 38 to C.R.C. No. 1352 complained of does not affect western rates at all. Aside from this, however, the reason given by the Board for maintaining the St. John gateway was that the short constructive mileage of the C.P.R., that is from St. John to Montreal, should continue to function as a rate factor.

" There is no intention to disturb the rate situation as a result of eliminating the St. John or Ste. Rosalie routes, and, as a matter of fact, the Canadian National Railway Company has been more liberal to the Maritime Provinces in the matter of rates between that section and Ontario than might have been expected under the judgment referred to by Mr. Sclanders. In dealing with the class rate structure in Eastern Canada, the following appears in the judgment referred to:

' As the class rate structure in Eastern Canada is not being disturbed at this time, no change should be made in these arbitraries,'

"in other words in the arbitraries in effect at that time which were based on 42½ cents per 100 pounds first-class over Montreal rates, to or from St. John, N.B.

"The Canadian National Railways in April, 1924, voluntarily modified this basis very materially, but our St. John friends apparently do not appreciate the interest of the Canadian National Railways have in the Maritime Provinces, as their action would indicate a desire on their part to hand over a very substantial revenue, which legitimately belongs to us, to our competitors."

And in a further communication to the Board under date of October 29, the railway company made further submission, as follows:—

"The application of the Halifax Board of Trade is similar to that made by Commissioner Sclanders of the St. John Board of Trade, which is dealt with in my memorandum to you of October 23. In the Halifax application there are two principal grounds for asking that action be taken by the Board, viz: that the shippers located on Canadian National lines in Nova Scotia may be forced to pay, in addition to the rate, a switching charge of one-half cent per 100 pounds, or $3 per car, if consignees require delivery on Canadian Pacific Railway tracks, and that the alternative route is necessary in the event of traffiic being congested."

"We cannot believe that the westbound traffic from the province of Nova Scotia will or can be seriously affected by our action and with the service we are at present giving and intend to give, we do not anticipate the congestion referred to is or will be a serious factor; if it is, the people in the Maritime Provinces can rest assured that the Canadian National Railways will take such action as will prevent any undue interruption to the traffic in which they are particularly interested.

"It may be that on a few isolated cars requiring Canadian Pacific Railway delivery the consignees will have to pay one-half cent per 100 pounds on traffic originating at local points in the east, but this condition is general throughout Canada, and is in accordance with general interswitching regulations and this extra charge is infinitesimal when placed against the loss to the Canadian National Railways, and we might say the people of the Maritime Provinces and of the Dominion at large, of revenue to which we are legitimately entitled, but which would be handed over to our competitors if the St. John or Ste. Rosalie gateways are kept open.

"On general rate making principles a higher rate should be charged for a joint C.N.-C.P. service than for a single line haul, but our rates from all local territory in the Maritimes to-day not only reflect the Canadian Pacific short mileage, St. John to Montreal, but are even much more liberal and it is certainly difficult to understand the attitude of our Halifax friends."

At the hearing before the Board the various contentions set out in the communications hereinbefore referred to were elaborated, both on the part of the applicants and on the part of the Canadian National Railways. The latter strongly urged that it should be allowed to control freight originating in its own district, and that injustice would be done by compelling it to hand over to another company at any point, freight which it could carry to the required destination. No question of difference of rates presents itself, for the lines being in competition the rates are the same, but in the case of traffic for delivery on sidings located on the Canadian Pacific Railway at destination, such traffic would be burdened at destination with a switching charge which would be

avoided if it were interchanged at Ste. Rosalie or St. John; such switching charge being, as stated by Mr. Cornell, anywhere from $3 to $6 per car.

The complainants do not rest their objection wholly upon this factor, for it is claimed that in addition to lengthier mileage over the Canadian National Railway, involving a longer time in transit, it occasionally happens that snow blockades occur on both lines during certain periods of the year, and traffic specifically routed via the line so blockaded is subject to delay, whereas if the alternative routing continues to prevail such detention is more easily avoidable.

Having regard to the disparity of mileage and to all the other factors entering into the problem, there is no doubt that alternative routing via St. John and Ste. Rosalie Junction operates to deprive the Canadian National Railways of a certain amount of its traffic or at least endangers the same. From that standpoint this application seems to associate itself with the general question of interchange of traffic over the two systems which, roughly speaking, may perhaps correct itself by dealing with the situation as a whole. But the most important question immediately before us here is, whether the Board shall continue to allow its Orders to be disregarded, for it is more than clear that notwithstanding the formal suspension of the supplements to tariffs eliminating such alternative routing, effective by specific Orders of the Board, the Canadian National Railway Company has closed the door to such alternative routing, and ignored the directions specified by the shippers, and refused to turn over at Ste. Rosalie Junction many cars plainly routed via Canadian Pacific Railway from the last-named point.

Immediately after the hearing before the Board last February, requests were received from the Montreal Board of Trade that judgment in this case be withheld until opportunity was afforded to the Montreal Board of Trade to further discuss the matter with the railways, and a like request for delay was also received from the Montreal Wholesale Lumber Dealers Association and from others, including the Canadian National Railways.

Inasmuch as the disability complained of was supposed to be removed by the suspension of the objectionable supplements, there seemed to be no substantial reason for refusing these requests, and judicial determination of this matter has been allowed to stand pending opportunity for the discussion asked for. But the attention of the Board has been lately directed to serious infractions of its suspension orders above set out by the Canadian National Railways, which infractions have been so frequent as to make it impossible to ascribe them to inadvertence or mistake.

In a memorandum re the transportation problems and freight structure of the province of Nova Scotia filed by Mr. Cornell and used before the Maritime Rights Committee, and subsequently filed with this Board re the General Freight Rate Inquiry, he alleged:—

> "Even though the Commission have indicated their opinion with regard to the elimination of these gateways, the Canadian National Railways have steadily continued to eliminate the routing on practically all products of the province of Nova Scotia. They have even gone so far as to instruct their agent at Ste. Rosalie to refuse to turn over traffic regardless of the suspension order of the Board on items numbers 11 and 12, or the shipping instructions of the shippers."

Upon such memorandum being filed with the Board, Mr. Cornell was asked for proof of such statement, and such request resulted in a communication addressed to the Board by him, under date of August 20, 1926, certain paragraphs of which read as follows:—

> "It has been brought to my attention that the Canadian National Railways are ignoring the suspension order of your Board with respect

to the elimination of the gateways of St. John and Ste. Rosalie Junctions. I would refer you to your Order No. 37000.

"As evidence of this, the following cars, shipped from points in the Maritime Provinces, were routed via Ste. Rosalie Junction and Canadian Pacific Railway to destinations:—

"Car C.N. 86452 shipped by Charles Fawcett Coy., Sackville, N.B., during June, 1926.

"A car shipped by A. & R. Loggie on May 19, 1926.

"Cars numbered C. N. 416626 and two others on the same date (June 4, 1926) shipped from the Acadia Sugar Refineries, Halifax, N.S.

" Car C.N. 192276 shipped July 29, 1926, from Acadia Sugar Refineries at Halifax.

"Car C.N. 313191 shipped July 26, 1926, from Acadia Sugar Refineries.

"Car C.G.R. 412938 shipped July 28, 1926, from the Acadia Sugar Refineries.

"In each and every case, the shipments quoted above were routed via Ste. Rosalie Junction but the routing instructions on the bills of lading were ignored and the Canadian National did not divert the traffic as instructed.

"As representing the provinces of Nova Scotia, New Brunswick and Prince Edward Island, I am instructed to protest most strongly against this ignoring of the orders of the Board and the routing instructions of the shippers.

"While the examples given above are concrete examples of where routing instructions have been ignored, I feel that after investigating the situation it is safe to make the statement that it is the accepted policy of the Canadian National to ignore your suspension order in every case."

And by further communication of September 16, 1926, addressed to the Secretary of the Board, Mr. Cornell again stated as follows:—

" I append hereunder a list of cars that were shipped from Maritime Province points during the month of August last and were not diverted to the Canadian Pacific Railway at Ste. Rosalie in direct disregard of the suspension order of the Board:—

Date.	Car Number.	Shipper.	Contents.	Destination.
7th	211188	Acadia	Sugar	Fort William.
9th	130236	Besco	Steel bars	Vancouver.
11th	308747	Acadia	Sugar	Fort William.
11th	416171	Enterprise	Stoves	Vancouver.
12th	113116	Fawcett	Stoves	Vancouver.
13th	102502	Fawcett	Stoves	Vancouver.
16th	305842	Fawcett	Stoves	Vancouver.
18th	652981	Besco	Steel bars	Vancouver.
18th	653705	Besco	Steel bars	Vancouver.
20th	206139	Moirs	Chocolates	Regina.
26th	211976	Acadia	Sugar	Fort William.
26th	203902	Acadia	Sugar	Fort William.
26th	205097	Leonard	Fish	Vancouver.
28th	204335	Mar Fish	Fish	Regina.
30th	321567	Acadia	Sugar	Fort William.
30th	332053	Acadia	Sugar	Fort William.

"There are possibly other cars that have been treated by the Canadian National in a similar manner.

"We sincerely trust that your Board will take prompt action to stop this practice."

As above remarked, the particularity of these infractions of the Board's orders are so complete that it is impossible to attribute them to any oversight. On directing the attention of the Canadian National Railways to these instances of disobedience to the Board's orders, as well as to Mr. Cornell's letters, reply was made by counsel for the Canadian National Railways by letter to the Board dated October 5, 1926, in which, *inter alia,* he said:—

"So far as the general question of routing traffic via St. John and Ste. Rosalie is concerned, this matter has been fully developed before the Board and I am anxiously awaiting a decision."

Also:—

"The Board will remember that the Canadian National filed tariffs eliminating the two gateways of Ste. Rosalie and St. John. These tariff provisions were suspended by the Board and published rates are therefore open via these points. We have carried out, therefore, the directions of the Board in their entirety and I am not aware of any allegation that can be successfully established against us in respect to this matter."

Notwithstanding the above denial contained in Mr. Fraser's letter, no other conclusion can be drawn, than that in the instances so completely detailed the Canadian National Railways have ignored the suspension orders of the Board by not delivering the cars above indicated to the Canadian Pacific Railway Company at the point of interchange directed by consignors. As might be expected, this procedure on the part of the Canadian National Railways has resulted in reprisals on the part of the Canadian Pacific Railway Company, which in a communication to the Board from its counsel, after Mr. Cornell's letters of August 20 and September 16 had been drawn to its attention, informed the Board under date of September 29, 1926, as follows:—

"I may say that in so far as this company is concerned any disregard of shipper's routing instructions during the past summer was due to the effort of this company to protect itself against the Canadian National, which has been diverting traffic from this company to a large extent for a long time past. Our officials notified the Canadian National in writing many times that unless they discontinued the practice this company would be obliged to take similar action in order to protect itself."

The correspondence in part above quoted, and the course of conduct indicated on the part of both railways, clearly show that specific orders of the Board have been and are now being ignored. It also demonstrates that the whole question of interchange and exchange of traffic must be upon a basis which admits of no ambiguous construction, and above all, it must be made clear that the Board will not permit violation of its orders.

As regards the particular question here at issue, I find myself in complete acquiescence with the Board's judgment of June 30, 1922, in the matter of freight tolls, reported in Vol. 12 of the Board's Judgments, Orders, etc., wherein it is stated at p. 70, as follows:—

"The St. John gateway provides via Canadian Pacific Railway the short mileage to Montreal; from Halifax and other points this route and gateway should be maintained to shippers (with the option of Ste. Rosalie) so that the advantage of the short constructive mileage of the Canadian Pacific Railway will continue to function as a rate factor."

The motion to remove the suspending orders above referred to is refused; and the provisions of Supplement No. 38 to C.G.R. Tariff C.R.C. No. 1352, and of Supplement No. 48 to C.G.R. Tariff C.R.C. No. 1364, so far as they propose

to eliminate routing via St. John and Ste. Rosalie Junction, are hereby disallowed; and the Canadian National Railways and the Canadian Pacific Railway Company are ordered to observe and perform the directions given on the bills of lading by shippers, as to the routing of traffic when such routing is open under the published rates of the tariffs in force.

OTTAWA, October 19, 1926.

Deputy Chief Commissioner Vien and Commissioner Boyce concurred.

ORDER NO. 38275

In the matter of the complaint of the Boards of Trade of Halifax, St. John, and Sackville, in the Province of New Brunswick, and the Canadian Lumbermen's Association, et al, against the proposal of the Canadian National Railways to eliminate alternative routing via St. John and Ste. Rosalie Junction, on westbound traffic destined to stations on the Canadian Pacific Railway.

File No. 34285.

TUESDAY, the 19th day of October, A.D., 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Montreal, January 8, 1926, the complainants, the Bathurst Company, Limited, the Canadian Lumbermen's Association, and the Canadian National Railways being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

The Board Orders: That the provisions of Supplement No. 38 to the Canadian National Railways' tariff C.G. Rys. C.R.C. No. 1352, and of Supplement No. 48 to the Canadian National Railways' tariff C.G. Rys. C.R.C. No. 1364, in so far as they propose to eliminate routings via St. John and Ste. Rosalie Junction, be, and they are hereby, disallowed; and the Canadian National Railways and the Canadian Pacific Railway Company are hereby directed to observe and perform the directions given on the bills of lading by shippers as to the routing of traffic, when such routing is open under the published rates of the tariffs in force.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 38264

In the matter of the complaint of the Wolverton Flour Mills Company, Limited, of St. Marys, in the Province of Ontario, against the provisions of Canadian National Railways tariff C.R.C. No. E-4233, governing grain, carloads, ex lake, for milling at New Hamburg, Ontario, and reshipment.

File No. 8641.46.

FRIDAY, the 15th day of October, A.D., 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon consideration of the submissions of the complainant and the railway company; and upon the report and recommendation of its Chief Traffic Officer.

The Board Orders: That, effective not later than November 15, 1926, tariffs of the Canadian Pacific and the Canadian National Railway Companies be amended establishing rates on wheat, oats, rye and barely, grain screenings, and grain refuse, also flaxseed, ex lake, for milling, malting, storage, or other treatment at interior milling points east of Port Arthur and re-shipment, on the following basis:—

A. To stop-off point at the current tariff rate, mileage or specific, as the case may be.

B. Re-shipment of the grain, grain screenings, grain refuse, or products thereof, to points in Canada east of Port Arthur, Ont., to be based on the remainder of the through mileage rates where same is applicable, computed on the actual through mileage (including out of direct line or back haul) point of origin to destination via the stop-off point, plus stop-off charge of one (1) cent per 100 pounds, except that the current rate to Montreal will be the maximum rate to Montreal and intermediate points plus current stop-off and charge for haul out of direct run; or where through commodity rates are in effect at the remainder of the through commodity rate plus current stop-off and charge for haul out of direct run. Existing difference over Montreal rate to points north, east, and south of Montreal to be maintained.

C. Re-shipment of the flaxseed products, namely, linseed meal, oil cake, and oil cake meal, to points in Canada east of Port Arthur, Ont., to be based on the remainder of the through mileage rate where same is applicable, computed on the actual through mileage (including out of direct line or back haul) point of origin to destination via stoff-off point, plus stop-off charge of one (1) cent per 100 pounds, except that the maximum rate to Montreal and intermediate points will be $3\frac{1}{2}$ cents per 100 pounds over the current rate on grain, etc., from point of origin to Montreal, plus current stop-off and charge for haul out of direct run; or where through specific commodity rates are in effect, at the remainder of the through commodity rate plus current stop-off and charge for haul out of direct run.

Existing difference over Montreal rate to points north, east, and south of Montreal to be maintained.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 38286

In the Matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Warden-Hanna Branch from the junction at Warden, mileage 56.59 Stettler Subdivision, to the junction with the Drumheller Subdivision at mileage 0.77 at Hanna, a distance of 62.18 miles; and the west leg of the Wye at the said junction at Hanna, a distance of 0.23 of a mile:

File No. 17169.12.

WEDNESDAY, the 20th day of October, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Warden-Hanna Branch from the junction at Warden, mileage 56.59 Stettler Subdivision, to the junction with the Drumheller Subdivision at mileage 0.77 at Hanna, a distance of 62.18 miles; and the west leg of the Wye at the said junction at Hanna, a distance of 0.23 of a mile.

H. A. McKEOWN,
Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of John Brownlee & Company, Galt, Ont., re refusal of the Canadian National Railways to refund $17 demurrage charges assessed at Kitchener on car 35218 containing coal.

File No. 1700.348.

REPORT OF MR. W. E. CAMPBELL, CHIEF TRAFFIC OFFICER OF THE BOARD, DATED JULY 15, 1926

Manager Collins, of the Canadian Car Demurrage Bureau of Montreal, has submitted his complete file of papers relating to this demurrage charge. The record of the car is as follows: It arrived at Kitchener on November 26, 1925, consigned to J. Brownlee & Co., who were notified November 27. On same date they ordered the car delivered to the Huether Brewery Company. Tender of the car was made to the Huether Brewery Company, but they were advised by the railway company that before the car would be placed for unloading the freight charges must be paid. Under the terms of the conditions of the bill of lading, the railway company is within its rights in refusing to deliver or relinquish possession at destination of the property covered by the bill of lading until all charges thereon have been paid. Although it appears that the Brewery Company advised the agent they would send over a cheque for the charges against this car, it did not arrive. Finally, on December 3, the Brewery Company refused the car. The railway agent states they had been twice called before that date concerning payment of charges and arranging to unload the car. On refusal of the car by the Brewery Company on December 3, it reverted to the possession of John Brownlee & Company, who, on December 4, reconsigned the car to the Interior Hardwood Company, the car being placed for the latter on December 5 and released by unloading December 8.

The Canadian Car Demurrage rules, as authorized by the Board, provide that " cars held for or by consignor or consignee for loading; unloading, forwarding directions, or for any other purposes " shall be subject to the demurrage rules. Demurrage rule 3 allows twenty-four hours free time allowance for reconsignment in same car; and forty-eight hours free time (exclusive of Sundays and legal holidays) is allowed for loading or unloading all commodities.

Rule 9 provides that after the expiration of the free time allowed the following charges shall be made for each day until the car is released:—

For the first day or fraction thereof of delay, $1;
For the second day or fraction thereof of delay, $1;
For the third and each succeeding day or fraction of a day, $5.

This car was held for the purpose of obtaining payment of the freight charges from the Brewery Company, to whom the car had been turned over by the original consignees, and no free time is allowed for payment of freight charges. Such a free time allowance was not provided for in the rules because it is really unnecessary as consignee can pay freight charges immediately upon being notified, which is usually before the car has been placed and before any question of demurrage is involved, or after placing and within the free unloading time. In this case, the car was reconsigned to the Brewery Company November 27 and demurrage accrued awaiting payment of freight charges. Demurrage was charged for November 28 and 30 (29th was Sunday) and December 1, 2 and 3, making two days at $1 each, and three days at $5 each, a total of $17, as assessed. When the car reverted to original consignee, J. Brownlee & Company, on December 3, it was reconsigned by them December 4 to the Interior Hardwood Company, and was unloaded within the free time after being placed, so that no further demurrage accrued against the car. Obviously, the free unloading time was not allowed while car was held awaiting payment of freight charges, as the unloading time allowance follows the car and is made when the car is finally placed for unloading.

Complainants allege that they are not responsible for the demurrage charges that accrued and that the railway company should consequently refund same. It would seem clear from the record that complainants were not responsible for the demurrage charges; the Brewery Company would seem solely responsible. However, when the Brewery Company refused to accept the car and its possession reverted to the complainants, then the demurrage charges followed the car, and, in my opinion, would clearly have to be assumed by complainants regardless of the question of their responsibility for same being incurred. Under the provisions of the car demurrage rules, the railway company is properly entitled to, and correctly assessed, the demurrage charges, and same are a lien against the shipment. I consider the demurrage charge has been properly assessed by the railway company, and is a matter for adjustment between the complainants and the Huether Brewery Company.

The Board concurred in the conclusions set forth in the report.

Ottawa, July 16, 1926.

Application of Dunlop Tire and Rubber Goods Company, Limited, Toronto, Ont., for a ruling of the Board as to the proper rating in Canadian Freight Classification No. 17 on what is described as a " vulcanizer or tire press."

File No. 33365.66

REPORT OF MR. W. E. CAMPBELL, CHIEF TRAFFIC OFFICER OF THE BOARD, DATED JULY 29, 1926

Applicant submitted a picture of an article which they describe as " a vulcanizer or tire press, or in other words, a mould in which tires are cured, and in the process of curing the design is moulded or pressed into the rubber." Applicant refers to three items in the classification, and asks for a ruling as to which of these items the article in question is properly ratable under. The items in question are:—

SUPPLEMENT No. 1 TO CLASSIFICATION No. 17, PAGE 16, ITEM 4

	L.C.L.	C.L.
Moulds:		
Rubber:		
Iron or steel:		
Loose or in bundles	2	..
In barrels, boxes or crates	3	..
Loose or in packages, C.L., min. wt. 30,000 lbs.	..	5

CLASSIFICATION No. 17, PAGE 189, ITEM 20

Machinery and Machines:	L.C.L.	C.L.
Presses:		
Presses, N.O.I.B.N.:		
S.U., loose or on skids	1	..
S.U., in boxes or crates	2	..
K.D., in boxes, bundles or crates	2	..
S.U. or K.D., in packages, loose or on skids, C.L., min. wt. 24,000 lbs., subject to Rule 7 and Note 3	..	5

CLASSIFICATION No. 17, PAGE 192, ITEM 6

Machinery and Machines:	L.C.L.	C.L.
Machinery and Machines, N.O.I.B.N.:		
S.U., loose or on skids	1½	..
S.U., in boxes or crates	1	..
K.D., in boxes, bundles or crates	2	..
S.U., or K.D., in packages, loose or on skids, C.L., min. wt. 24,000 lbs., subject to Rule 7	..	6

Vulcanizers are not specifically provided for in either the Canadian Freight Classification or the United States Consolidated Freight Classification. It may be inferred from the second paragraph of applicant's letter of June 22 that they consider these articles are covered in the Consolidated Freight Classification by the item "Rubber moulds, iron or steel," page 308, item 22. The Consolidated Classification contains provision of similar description for "Moulds" on page 308, item 22; "Presses, N.O.I.B.N.," on page 291, item 10; and for "Machinery and machines, N.O.I.B.N.," on page 298, item 3. There is not, however, uniformity in the ratings themselves as between the Canadian and Consolidated Classifications. Both the applicants and Chairman Ransom of the Canadian Freight Association refer to dictionary definitions. I have attached a memorandum covering dictionary definitions of the articles described as "machine," "mould," "press," and "vulcanizer."

With regard to the suggestion, or apparent impression of applicants that the item "Rubber moulds" in the United States Consolidated Freight Classification covers these articles, I beg to report that I sent the picture of the article to the Chairman of the Official Classification Committee with the description as furnished by applicant and quoted in the first paragraph of this report, and asked what item in the Consolidated Freight Classification is applied to the movement of these articles in Official Classification territory. The reply of the Official Classification Committee, under date of June 30, states:—

> "In answer to your file TD-14090, June 24, you are respectfully advised that shipments of so-called vulcanizers or tire presses, such as illustrated in the cut which you have submitted, are properly subject to the ratings established in the Official Classification on machinery and machines, N.O.I.B.N."

I addressed a similar inquiry to the Chairman of the Western Classification Committee to ascertain what item in the Consolidated Freight Classification is applied to the movement of these articles in Western Classification Territory, and have a reply dated July 24, reading:—

> "Replying to yours of July 12, file TD-14090, Rcd. 33365.66 and returning the cut as requested: There are various types of this machine and the committee has ruled that the proper rating applicable is that for machines, N.O.I.B.N., set up."

Applicant refers to the vulcanizer as being an article in which tires are cured, and in the process of curing the design is moulded or pressed into the rubber. This would suggest a process beyond that which would be obtained by

the use of merely a mould or press. In view of this, and the dictionary definitions of "vulcanizer," it is my opinion that an act or process that is distinct from pressing or moulding is performed by the vulcanizer, and that the article in question is properly subject to the rating applicable for machines, N.O.I.B.N., as per item 6, page 192, of Canadian Freight Classification No. 17.

This report issued as the ruling of the Board.

Ottawa, October 30, 1926.

MACHINE

Websters:

Any device consisting of two or more resistant, relatively constrained parts, which, by a certain predetermined intermotion, may serve to transmit and modify force and motion so as to produce some given effect or to do some desired kind of work.

A construction or contrivance of a mechanical sort. Popularly and in the wider mechanical sense, a machine is a more or less complex combination of mechanical parts, as levers, cog and sprocket wheels, pulleys, shafts, etc.

Standard 20th Century:

Any combination of inanimate mechanism for utilizing or applying power: specifically a construction for mechanical production or modification, generally complicated and involving more than one mechanical principle, as an arrangement of gears, cranks, connecting-rods, etc.

Murray's Oxford Dictionary:

An apparatus for applying mechanical power, consisting of a number of interrelated parts, each having a definite function.

An instrument employed to transmit force, or to modify its application.

MOULD

Websters:

The matrix, or cavity, in which anything is shaped, and from which it takes its form; also the body or mass containing the cavity.

That on which, or in accordance with which, anything is modeled or formed, anything which serves to regulate the size, form, etc.

Standard 20th Century:

A form or matrix for shaping anything in a fluid or plastic condition, especially when the shape is to be rendered permanent by cooling or hardening.

Murray's Oxford Dictionary:

A pattern by which something is shaped.

A pattern, commonly a thin plate of wood or metal, used by masons, bricklayers and plasterers, as a guide in shaping mouldings, etc.

A hollow form or matrix into which fluid or plastic material is cast or pressed and allowed to cool or harden so as to form an object of a particular shape or pattern.

PRESS

Websters:

An apparatus or machine by which any substance is pressed or stamped, or by which an impression of a body is taken.

Standard 20th Century:

To act upon by weight, bear down or lie upon.

To act upon as by lateral force or stress, push against, thrust or crowd; to crush or squeeze with or as with a press, jam, crush, compress.

Murray's Oxford Dictionary:

An instrument or machine by which pressure is communicated.

An instrument used to compress a substance into smaller compass, denser consistency, a flatter shape, or a required form.

VULCANIZER

Websters:

Vulcanization: Act or process of imparting to caoutchouc, gutta percha, or the like, greater elasticity, durability, or hardness by heating with sulphur, sulphides, or oxides, or by soaking the material in a solution of sulphur chloride.

Vulcanize: To subject to the process of vulcanization.

Standard 20th Century:

Vulcanization: The process of treating crude india-rubber with sulphur at a high temperature, thereby increasing its strength and elasticity.

Vulcanizer: An apparatus used in vulcanizing india-rubber.

Application of Neilson Magann Lumber Co., Ltd., Toronto, Ont., per Canadian Shippers' Traffic Bureau, for ruling of the Board as to the lawful charges covering switching movement in Toronto terminals of car C.N. 260772, containing lumber ex Eganville, from siding of Neilson Magann Lumber Co., Ltd., on C.P.R. to Moore Bros., Danforth (C.N. Railway).

File No. 6713.211

REPORT OF MR. W. E. CAMPBELL, CHIEF TRAFFIC OFFICER OF THE BOARD, DATED AUGUST 6, 1926

Applicants set out that in June, 1925, car C.P. 74324, containing lumber was shipped from Eganville, Ont., via Canadian Pacific Railway, consigned to the Neilson Magann Lumber Company, Limited, who have a private siding on Canadian Pacific tracks at Toronto at the foot of Bathurst street. Apparently, the bill of lading issued at Eganville indicated that the shipment was consigned to Toronto for dressing, kiln-drying, resawing or sorting. In October, 1925, car C.N. 260772 was loaded with lumber on Neilson Magann Lumber Company's siding on Canadian Pacific tracks in Toronto for movement to Moore Bros., Danforth, on Canadian National Railway's public delivery track at that point. Shippers indicated that the lumber in this car was that which had been shipped from Eganville for sorting or dressing, as already referred to. According to Canadian Pacific Railway Company's expense bill as submitted by applicants, there was assessed for the movement of this car within Toronto terminals

a stop-off charge of 1 cent per 100 pounds, minimum $5 per car, by the Canadian Pacific Railway for its movement from Neilson Magann Lumber Company's siding to interchange with Canadian National Railways at Cherry street, and a local switching charge of 4½ cents by the Canadian National Railways for movement from Cherry street interchange to public delivery track at Danforth.

The 4½-cent rate was based on minimum weight of 40,000 pounds, whereas applicants contend that if this local switching charge is properly applicable, it should be based on minimum weight of 30,000 pounds, and as the net weight of shipment was 32,840 pounds there was, in any event, an overcharge in weight. On behalf of the carriers, Chairman Ransom, of the Canadian Freight Association, admits that the local switching charge should have been based on actual weight of 32,840 pounds, instead of 40,000 pounds, and the carriers are prepared to adjust this overcharge based on the actual weight of the lumber.

Aside from the question of weight, with respect to which there is now agreement between the carriers and the applicants, the other matter in dispute is the 4½-cent rate charged by the Canadian National Railways for switching from Cherry street interchange to public delivery track at Danforth, and the refusal of the Canadian Pacific Railway to absorb this switching charge.

Applicants contend that the movement to Danforth was essentially an interswitching movement for the purpose of completing a road-haul delivery and, therefore, the rate provided in the tariff covering local switching was inapplicable; further, that in any event, as the traffic in question is competitive, the Canadian National's switching charges should be absorbed by the Canadian Pacific Railway under the absorption provisions of its tariff in which there is published the rates and rules of that company governing interswitching charges to and from connecting lines and the absorption of interswitching charges of connecting lines on carload traffic.

Some of the tariffs to which applicants made reference in support of their contentions were not in effect on the dates that are involved in this issue. For example, applicants referred to the provisions of Canadian Pacific Tariffs C.R.C. Nos. E-3839 and E-3669, and Grand Trunk Tariff C.R.C. No. E-4418, but these schedules were all cancelled prior to the movement of this shipment from Eganville to Toronto.

As I understand the position of applicants, they contend that if this shipment of lumber had originally moved over Canadian National Railways from Eganville to Toronto, there dressed or sorted at a private siding on Canadian National line within Toronto terminals, it would have been entitled to a transit handling and free movement subsequently to any Danforth delivery. Applicants' position on this point is set out in the following language in their letter of April 26, 1926:—

> "Any such shipments handled by the Canadian National Railways from Eganville would be similarly entitled to a transit handling within Toronto terminals at private sidings on its own line and free reconsignment to any Danforth delivery without question—either private siding delivery or public siding delivery."

Based, therefore, on the assumption above set out, and the contention that the traffic is competitive, applicants contend that under the provisions of Canadian Pacific Tariff C.R.C. No. E-3668 that company is obligated to absorb the switching charge of the Canadian National Railways from Cherry street interchange to Danforth in respect to the shipment here in question. It would seem that the first question to be determined is what the charge would be if this shipment moved via Canadian National Railways from Eganville to Toronto for dressing, and thereafter was reshipped to Danforth, because whether or not this is competitive traffic so far as the Canadian Pacific is concerned depends upon the determination of that question. Are applicants correct in the assumption

that the tariff of the Canadian National Railways covering stop-off and reshipping arrangements on lumber, carloads, would permit a shipment of lumber to be made from Eganville to Toronto for dressing and thereafter to be shipped to Danforth, and obtain the benefit of the stop-off and reshipping arrangement published in Canadian National Railways Tariff C.R.C. No. E-697? The tariff just referred to contains the rules governing the stop-off and reshipping arrangements on lumber, and seems to be very clear in connection with a movement such as has been described. The provisions of the tariff which are relevant to what is here in issue are quoted below:—

> "Shipments of rough lumber, carloads, for dressing, re-sawing, kiln-drying or sorting and reshipment, within six (6) months after arrival at stop-off point, may be given the benefit of through rate, from original shipping point to final destination, plus one (1) cent per 100 pounds, minimum $5 per car for stop-off (provided stop-off point is on the direct run, see Rule C) under the conditions shown herein."
>
> "A. On reshipment of lumber from stop-off point, through charges to final destination will be based on application of tariff rate in effect on date shipment was forwarded from original point of shipment. Should the cars shipped from stop-off point contain lumber from one or more inwards carloads, the highest *balance of rate from reshipping point to final destination will be applied on entire quantity reshipped.*"
>
> "C. If stop-off point is not on the direct run, a charge of 1 cent per ton per mile (minimum 20 miles) for haul out of direct run will be made in addition to stop-off charge, except that such charge will not be made between Sudbury Jct. and Sudbury, Ont., on lumber for dressing at Sudbury, Ont., and reshipment to points south of Sudbury Jct., Ont. Short line mileage to govern on competitive traffic."

I consider the proper interpretation of the above-quoted rules is to permit the lumber to be stopped-off and reshipped under the provisions of the tariff, provided the stop-off point is on the direct run between point of origin and destination or on a line diverging from direct line between point of origin and destination; otherwise, local rate to and from stop-off point is properly applicable. In other words, the tariff arrangement provides for a stop-off en route but not a back haul from the stop-off point. A shipment over Canadian National Railways from Eganville to Toronto passes through Danforth en route to Toronto, and consequently I do not consider this stop-off and reshipping arrangement on lumber under the provision of the tariff would apply when the reshipment from Toronto is a back haul to some intermediate point through which it passed originally en route to Toronto. This would not be a movement through a stop-off point on the direct run between point of origin and destination or on a line diverging from the direct line between point of origin and destination. If applicants' contention were sound, then, following it to its logical conclusion, a shipment of lumber could be made from Eganville to Toronto, there dressed, and be reshipped back to Eganville, because if, under the provisions of the tariff, a back haul as far as Danforth is permitted, then, of course, there is no limit to the distance of the back haul.

Under the terms of the tariff of the Canadian National Railways, therefore, when the consignee at Toronto, with respect to a shipment of lumber from Eganville for resorting, gave directions to reship the lumber back to Danforth, the provisions of Tariff C.R.C. No. E-697 were not applicable, and the shipment from Toronto to Danforth was therefore nothing more or less than a local switching movement. In other words, the lumber dressing-in-transit tariff was inapplicable, and the proper, legal charge was the lumber rate from Eganville to Toronto, plus the local rate from Toronto to Danforth, which is the published local switching charge of the Canadian National Railways, as contained in their Tariff C.R.C. No. E-875.

Similarly, if the shipment had moved from Eganville to Toronto via Canadian National Railways consigned to Neilson Magann Lumber Company on Canadian Pacific tracks, the rate from Eganville to Toronto would be 19½ cents, and the Canadian National Railways would absorb the Canadian Pacific Railway interswitching charge from interchange point to consignees' siding. On reshipment from said siding on Canadian Pacific Railway to Danforth, the lumber transit arrangement would be inapplicable, and the shipment would properly be subject to the Canadian Pacific Railway local switching charge of 4½ cents from mill on Canadian Pacific tracks to Canadian National interchange, plus 4½ cents Canadian National local switching charge from Canadian Pacific interchange point to Danforth, making the total charge against the shipment 28½ cents per 100 pounds. This is the legal charge if the shipment had moved via Canadian National Railways, instead of via Canadian Pacific Railway, to the same consignee at Toronto, and for the same subsequent movement to Danforth.

This shipment was made over Canadian Pacific Railway from Eganville to Toronto, and subsequently was moved to Danforth for delivery on public team track of Canadian National Railways at that point. I do not consider the provisions of Item 255, Canadian Pacific Railway Tariff C.R.C. No. E-4126, governing stop-off and reshipping arrangements on lumber, carloads, are applicable when the stop-off and final destination are both located at the same point, or within the same group of terminals. When the car reached Toronto in the first instance, it was at its ultimate destination, Danforth being a point within Toronto terminals. When subsequently tendered for movement in another car, the shipment becomes subject to local switching movement, which is something over and beyond what is provided for by the tariff arrangement. It would appear that there have been cases where in practice the stop-off arrangement has been applied by the railway companies when the stop-off and final destination are both located at the same point, but in my view this has been without tariff sanction. I consider the legal charge under published tariffs covering the movement of this shipment from Neilson Magann Lumber Company's siding on Canadian Pacific Railway tracks to Canadian National public delivery track at Danforth, was subject to the respective local switching charges of the Canadian Pacific and Canadian National railways, which would be 4½ cents per 100 pounds for each company, providing the switching movement falls within Group "A," page 5, Canadian Pacific Tariff C.R.C. No. E-4134, and Group 1, page 81, Canadian National Railways Tariff C.R.C. No. E-875. While not clearly set out in the papers, I understand the switching movements in question come within the two groups here referred to. The provisions of the interswitching tariffs are not applicable, and consequently there is no obligation, under the provisions of Canadian Pacific Tariff C.R.C. No. E-3668, compelling that company to absorb the switching charge of the Canadian National Railways with respect to this shipment.

This report issued as the ruling of the Board.

Ottawa, August 19, 1926.

Application of the Canadian Shippers' Traffic Bureau for an Order disallowing alleged unlawful rates charged by the Canadian National Railways on carloads of wood-pulp from Bathurst, N.B., Port Arthur, Ont., etc., to Toronto, Ont., in excess of rates contemporaneously in effect to Columbus, Ohio, and other United States destinations.

File 26963.78

JUDGMENT

McLean, Assistant Chief Commissioner:

I

The shipments with which the application, as filed, deals moved between August, 1922, and March, 1925. It is asked that the Board issue an order declaring that the rates on these shipments "are unlawful in that they are not in accordance with the Railway Act, 1919." The sections which it is contended are contravened are 323, subsection 5; 314, subsections 4 and 5; and 316, subsection 6.

The applicant argues that the Board has full power to "order refunds." Following this, it is set out that what is asked for is "the Board's ruling as to what reasonable and proper rates should have been, as well as a declaration that the rates charged are unlawful as well as unduly discriminatory and otherwise unreasonable, is also requested."

II

The power of the Board in regard to refunds was dealt with in a summary way in the application of the applicant, which was before the Board in its judgment of July 21, 1925. In this case, application was made for a refund of $45.56, plus interest, being the amount alleged to be overcharged on a carload shipment of lumber from Baptiste, Ont., to Grand Rapids, Mich., on a bill of lading dated December 23, 1921, routed via "C.N.R. and G.T.R." *Board's Judgments and Orders, Vol. 15, p. 249.*

In dealing with the question of refund then raised, the following language was used:—

> "In the disposition which the facts warrant, it is in reality unnecessary to emphasize the difference between the provisions of the Railway Act in regard to refunds and those of the Act to Regulate Commerce and subsequent amending legislation. Since, however, the applicant contended at the hearing that there was, at least, implied provision under the Railway Act to award refunds, reference may be made to various decisions. In *Canadian Condensing Co. vs. C.P.R. Co., Board's file 16376,* there had been a change in the minimum weight. The shipper made his arrangement on the basis of the old minimum, this working to his detriment in connection with a contract he had entered into: Held that the erroneous assumption as to the minimum applying did not justify a departure from the published tariff, and that no refund could be allowed. See also *G.T. and C.P.R. Cos. vs. Canadian and British American Oil Cos., 13 C.R.C., 201;* also complaint of *F. L. Getzler* above referred to. See also *Dominion Concrete Co. vs. C.P.R. Co., 6 C.R.C., 514.* The Board has no power to make a retroactive alteration in the tariff and grant rebates and refunds of tolls which have been charged."

The lack of power of the Board to order refunds has been may times set out. In view of the fact, however, that the question is again raised in the present application, it may not be amiss to set out in as summary form as possible exactly what the situation is under the Railway Act.

Under date of March 5, 1907, Chief Commissioner Killam ruled in *re Complaint of the Dominion Concrete Co., Ltd., Report Board of Railway Commissioners, 1908, pp. 124, 125,* that the Board is not empowered to make a retroactive alteration in a tariff which is not contrary to any provisions of the Railway Act, so as to apply the alteration to past transactions. He also ruled in *re The E. B. Eddy Co.'s Complaint, Ibid., p. 127,* that the Railway Act gave the Board no power to permit a departure from the lawfully existing tariffs in respect of past transactions, or to legalize rebates from the previously earned tolls specified in such tariffs.

The next step in connection with the definition of the power of the Board in this regard will be found in the decision rendered in 1909 by the late Chief Commissioner Mabee in *British American Oil Co. vs. G.T.R., 9 Can. Ry. Cas., 178.* Here, the following words were used at p. 190:—

> " We find that the legal toll chargeable upon the shipments in question was 20 cents per 100 pounds, and that that toll is still in force; and the respondents should be at liberty to refund the difference between that sum and the sum collected."

In 1911, the same subject matter was before the Board in *British America Oil Co. vs. C.P.R. Co., 12 Can. Ry. Cas., 327.* At p. 333, Chief Commissioner Mabee used the following language:—

> " Of course, the Board has no power to order any refund; it can only declare what the lawful rate was or should have been; and the parties are left to whatever redress they may be entitled to consequent upon that declaration."

On June 4, 1912, decision was rendered by the Supreme Court in *G.T. and C.P.R. Cos. vs. Canadian and British American Oil Co., 14 Can. Ry. Cas., 201.* This decision upheld the power of the Board to make a declaratory Order.

In *C.P.R. Co. and Others vs. Canadian Oil Cos., Ltd. (1914), A.C., 1022,* the Privy Council held that the Board had jurisdiction to make a declaratory order as against the carrier that rates exacted by it between certain dates were illegal.

The situation, then, under the ruling of Chief Commissioner Killam and under decisions of Chief Commissioner Mabee, upheld by the Supreme Court and the Privy Council, is that the Board has no power to order refunds, and that it has power to make a declaratory order in respect of what is the legal rate.

The decisions so rendered have been followed in a long list of cases. In *Davy vs. N., St. C. and T. Ry. Co., 9 Can. Ry. Cas., 493,* it was held, at p. 494, that as the three-cent rate concerned was the lawful rate, according to the tariff effective during the period when shipment moved, the Board had no power to order a refund which had been asked for by applicant. In *Montreal Produce Merchants' Association vs. G.T.R. and C.P.R. Cos., 9 Can. Ry. Cas., 232,* p. 239 quotes the language of Chief Commissioner Killam at the hearing in Montreal on January 2, 1907, viz:—

> " It seems to me, I must say, that the Board cannot insist on refunds where railway companies have collected only the tolls which the tariff existing at the time authorized them to charge."

In *Anchor Elevator and Warehousing and Northern Elevator* vs. *C.N. and C.P.R. Cos., 9 Can. Ry. Cas., 175,* Chief Commissioner Mabee used at p. 178 the following language:—

> " Refunds in excess of the $5 already paid cannot be directed, as, strictly speaking, the companies charged the tolls called for by their tariffs. . . ."

In *re Joint Freight and Passenger Tariffs, 10 Can. Ry. Cas., 343,* the following language is used at p. 345:—

> " The policy which is open to the Interstate Commerce Commission of allowing in individual cases reparation on the basis of the difference between the higher rate found unreasonable and the lower combination of the locals is not open to us, because we have no power to grant reparation, our jurisdiction where a rate has become legally operative being in no sense retroactive. Parliament in so legislating must have seen disadvantages in the practice of reparation, and it is not for us to attempt to widen our control in other ways to offset the conditions arising from lack of power to grant reparation."

British American Oil Co. vs. *C.P.R. Co., 12 Can. Ry. Cas., 327,* has the following words at p. 333:—

> " Of course, the Board has no power to order any refund; it can only declare what the lawful rate was or should have been, and the parties are left to whatever redress they may be entitled to consequent upon that declaration."

Lehnhart vs. *C.N.R. Co., 17 Can. Ry. Cas., 93,* which was decided on July 20, 1914, by Chief Commissioner Drayton, has the following language at p. 94:—

> " The Board has no authority to order refunds or a direction would now be made to order refund of the difference between $184.26 and $216.63."

Security Traffic Bureau vs. Can. Nor. Ry. Co., 22 Can. Ry. Cas., 414, at p. 416 uses the following language:—

> " The Board possesses no power to direct a refund. It cannot, therefore, direct a refund of the difference, if any, between the division received by the Canadian Northern out of the 27-cent rate and the 14-cent local."

Midland Lumber Shippers vs. G.T.R. Co., 22 Can. Ry. Cas., 387, has, at p. 388, the following words:—

> " They (the applicants) ask for the application in future of the Penetang rate from Midland, and also for a refund of the difference. They were advised that the Board has no power to direct the refund of a portion of the rate, said rate having been charged and collected under tariff legally in force."

Complaint of the New York Car Wheel Co. against rates charged by the G.T.R. Co., on Pig Iron from Collingwood to Black Rock, Board's Judgments and Orders, Vol. 12, p. 7, has the following language at p. 9:—

> " Application is made for refund of the excess of the charges over the rate of $3.50 per gross ton. The Board has no power to make a retroactive alteration in the tariff and grant rebates and refunds of tolls which have been charged. *The Dominion Concrete Co. vs. C.P.R. Co., 6 C.R.C., 514."*

United Grain Growers vs. Can. Nat. Rys., 26 Can. Ry. Cas., 26, set out at p. 31: " The Board has no power under the Railway Act to direct funds."

In *re Freight Tolls on Pig Iron, 27 Can. Ry. Cas., 458,* the following language is used at p. 459:—

> " There is no question as to the rate from Welland having been the rate legally in force. The Board has no power to direct a refund; but it may, by declaratory order, state what is the proper tariff of tolls applicable to a certain class of goods, although no consequential relief is granted the applicant. . . ."

"The Board has thus power to declare what is the legal rate, and if the rate charged is in excess of what is declared to be the legal rate, it is open to the parties to obtain a return of the excess through appropriate legal process.

"In the present application, there is no question as to what was the rate legally in force when the shipment moved, and so there is no justification for a declaratory order. The Board's power in the present application is limited to declaring what is a reasonable rate for the future, but no application for this is before it."

It would appear that in the absence of Parliament granting power to order refunds, there should not be an attempt to obtain by indirection what is not directly granted.

The applicant relies upon sections 312 and 317 of the Railway Act as giving the Board power to say whether a rate on a past shipment was unreasonable or unduly discriminatory, and to order refunds in connection therewith. Section 317 of the present Railway Act is the same as section 318 of chapter 37 of the Revised Statutes of 1906. Section 312 of the present Act has, subject to what is set out below, the same subject matter as section 284 of chapter 37 of the Revised Statutes of 1906. The wording of section 312 does not vary from the wording of section 284, except in regard to the following additions:—

(*a*) Subsection 1 (*e*) of section 312 comprises the words:—

"furnish such other service incidental to transportation as is customary or usual in connection with the business of a railway company as may be ordered by the Board;"

(*b*) A subsection now numbered 8 is added. This is an amendment added to section 284 of the Act of 1906 by section 10 of 7-8 Edward VII, chapter 61. In this subsection, now incorporated as subsection 8 in section 312, there are the following amendatory words which were put in in the legislation of 1919. After setting out—

"The Board may make regulations applying generally to any particular railway, or any portion thereof"—

the following words are added:

"or may make an order in any case where it sees fit."

It will thus be seen that so far as the subject-matter of the applicant's representations in regard to rates is concerned, sections 312 and 317 of the present Railway Act do not differ from those contained in the Railway Act of 1906, upon which the decisions in regard to refunds were based; and I am unable to see that the reference to the sections in question enables the applicant to obtain by indirection a power that is not directly granted.

Reference is also made by applicant to *Imperial Munitions Board vs. C.P.R. Co., 24 Can. Ry. Cas., 169.* This was decided in September, 1918. What was involved was a claim that rates on shell bars or shell blanks from Sault Ste. Marie, Ont., to Toronto and Montreal ought not to exceed the rates concurrently charged on what is referred to as commercial bar steel. The report of the Chief Traffic Officer was concurred in by the Chief Commissioner, the Deputy Chief Commissioner, and Commissioners Goodeve and Boyce. At p. 171, the following language was used:—

". . . . While the Board has no power to order a republication for reparation purposes only, it has jurisdiction to declare the rates charged to Montreal since May 1st last unjust, unreasonable and excessive to the extent that they exceeded the rate in force immediately before that date, namely, 24 cents to August 1, inclusive, subject to an increase to 30 cents from August 12 when the Order in Council was made effective."

The report continues setting out what rates would be involved in cutting down to the basis in question, and states: " I would recommend that the Board order accordingly."

The report itself is not quite clear as to whether a refund was " ordered " or " authorized." This is, however, cleared up by reference to Order No. 28165, of March 14, 1919, which implemented the judgment. In clause 2, it was recited:—

> " That the rates charged the complainants by the respondent railway companies on Shell Bars or blanks from Sault Ste. Marie to Toronto and Montreal as aforesaid, since May 1, 1918, were unjust, unreasonable, and excessive to the extent that such rates exceeded the lower rates in effect immediately before May 1, 1918, subject from August 12, 1918, to the increase authorized by Order in Council No. P.C. 1865, dated July 27, 1918."

The order then continued setting out that the respondent railway companies were " authorized " to refund to the complainants the excessive rate so charged and collected. In the recital of the order, it is set out that the respondent railway companies had undertaken to refund the amount declared by the order to have been wrongfully charged and collected on such shipments.

As bearing upon the distinction between " authorizing " and " ordering," reference may be made to the discussion at the hearing of this case on November 5, 1918, *Evid. Vol. 289, p. 3586.* Mr. Thompson, who was appearing for the Imperial Munitions Board, used in his written application the following words:—

> ". . . . and upon your investigation you should find our application in order, we consider we should receive a refund from February 1, 1918 . . . ."

The comment of Chief Commissioner Drayton on this, set out on the same page, reads as follows:—

> " The Chief Commissioner: There is no jurisdiction that I know of to order a refund, Mr. Thompson."

The statement set out in the recital of the order, viz., that the respondent companies had undertaken to refund the amount declared by the order to have been wrongfully charged and collected on such shipments, is material as bearing on the lack of the power of the Board to order. The records show that while the Board thought the redress above set out was proper, it was at the same time set out that it had no power to order it.

On the Board's file is a memorandum of the late Chief Traffic Officer, Mr. Hardwell, dated January 9, 1919, who made the report in question, setting out that, as directed, he had taken up with the Canadian Pacific the question whether in the event of the railway's claim as to billets being overruled this company would be a consenting party to an order declaring the rates charged from Sault Ste. Marie since May 1 last unjust, unreasonable and excessive to the extent of the finding in the report. The Canadian Pacific, the Algoma Central Railways, and the Canadian Government Railways consented.

The situation then is that the railways consented to a refund which the Board had no power to direct. The consent in the particular case and on the particular facts creates no continuing jurisdiction.

In the long list of decisions to which reference has been made, the Board held that it had no power to " order " a refund. In the first of the *Oil Company cases* above referred to, Chief Commissioner Mabee, after stating the Board had power to declare what is the legal rate, said it could " authorize " the refund of the difference. In the latter case, traversing the same subject-

matter, he said the Board had no power to "order" a refund, and that if the railways did not adjust on the basis of the difference in excess of the rate found to be illegal, the parties were left to their own redress.

I submit that the present order goes no further than this. I also desire to point out that in decisions subsequent to this date, the position that the Board had no power to order the refunds was reaffirmed.

III

The application as made involves the following movements of wood-pulp, the rate overcharges being set out as follows:—

Cars	From	To	Claim for overcharge
			$ cts.
15	Bathurst, N.B.	Toronto	372 68
2	Old Lake Road, Que.	"	18 28
22	Port Arthur, Ont.	"	618 81
1	Smooth Rock Falls, Ont.	"	4 73
1	Chatham, N.B.	"	19 96
			1,034 46

The contention that, in regard to past rates on the shipments concerned, the rates are unlawful turns on the question of the construction of the bearing of the tariffs on the long and short haul principle.

It has been held that the words of a tariff govern, and that if there is any ambiguity the tariff is to be construed strictly against the railway and in favour of the shipper. Evidence of intention contravening the words of the tariff is not admissible. In *Application of Robin Hood Mills, Ltd., Moose Jaw, Sask., and Montreal, Que., for ruling as to whether Sections 1 and 2 of General Order No. 234, dated May 22, 1918, were applicable to milled in transit arrangements to destination east of Port Arthur, Fort William and Armstrong, Ont., Board's Judgments and Orders, Vol. 11, p. 469,* the following language was used at p. 477:—

> "In the decision of the former Chief Commissioner, Sir Henry Drayton, already referred to, which led up to issuance of General Order No. 234, the following language was used:—
>
> > "'Tariffs, when ambiguous, if they can reasonably and properly be read in case of the shipper, following the usual practice are so construed.'
>
> "Toll clauses are to be construed with strictness, and it is the public rather than the parties who have obtained the Special Act containing such clauses in whose favour any ambiguity of meaning should be determined.
>
> *"Aberdeen Commercial Co. vs. Gt. North of Scotland Ry Co., 3 Ry. & Can. Traf. Cas., 213.*
>
> "Rulings regarding the wording of the classification may be taken as having a bearing on rulings regarding construction of the provisions of the tariffs. The classification of an article of commerce should be stated in terms that the shipping public may readily understand. The tariffs are to be construed according to their language, and the intention of the framers and the practice of the carriers do not control.
>
> *"Newton Gum Co. vs. C.B. & Q. Rd. Co., 16 I.C.C., 341.*
> *"Pacific Biscuit Co. vs. S. P. & S. Ry. Co., 20 I.C.C., 546.*

"It is established by authority that tariffs are to be strictly construed against the railway. Further, the intention of a tariff, or classification, is to be plainly shown in the wording of the tariff or classification, and it is not to be arrived at by representation as to what the intentions of the carriers were in framing the provision concerned."

See also *Spanish River Pulp and Paper Mills vs. C.P.R. Co., 19 Can. Ry. Cas., 381,* at p. 383, where the following language was used:—

"Tariffs are not to be construed by intention; they are to be construed according to their language. *Nelson vs. Bell Telephone Co., file 13219.*"

Imperial Steel and Wire Co. vs. G.T. and C.P.R. Cos., 24 Can. Ry. Cas., 150, at p. 153, has the following language:—

"It well may be that the intention of the companies was to confine the special transcontinental rate to centres having a large export business, and that they did not so regard Collingwood. The tariff, however, has to speak for itself and must be interpreted literally without having regard to unexpressed railroad intentions."

Dealing with the claim as to overcharges, applicant relies on two methods of approach: First, the power of the Board to direct a refund. What is already set out covers this matter. Even if the Board should find that any or all of the rates in question were at a time in the past *excessive* as distinct from *illegal,* the Board would have no power to order a refund. The second method of approach is from the standpoint of the long and short haul clause.

Bathurst, N.B., to Toronto.—The fifteen cars from Bathurst to Toronto moved between August 29, 1922, and October 25, 1925. The rate charged throughout was 37½ cents. The applicant claims that a rate of 34½ cents should have applied.

The 37½-cent rate charged is quoted in C.N.R. Tariff C.R.C. No. E-475. The Canadian Pacific Railway quoted a rate of 34½ cents in its Tariff C.R.C. No. E-3974 from St. John to Columbus, Ohio; and it is contended that the rate so charged is the maximum to Toronto, which is regarded as intermediate. It is to be noted that the rate which is relied upon as the maximum is contained in Canadian Pacific Railway tariff from St. John to Columbus, and not in the Canadian National tariff. The applicant claims that the long and short haul clause applied. He said, in substance, Bathurst is intermediate to St. John and, therefore, should take the same St. John to Columbus rate by the Canadian National as is published by the Canadian Pacific Railway. The Canadian National, however, had no rate St. John to Columbus or any through rate of 34½ cents applicable. Railways are not obligated to meet the rates of their competitors. *Edmonton Clover Bar Sand Co. vs. G.T.P. Ry. Co., 17 Can. Ry. Cas., 95, p. 97.*

The rate quoted in the Canadian Pacific Railway tariff has no controlling effect on the Bathurst movement, nor is there any evidence of any value submitted by the applicant showing why it should have.

C.N.R. Tariff C.R.C. No. E-475 names rates on wood-pulp between Canadian National stations in Canada. Canadian National Tariff C.R.C. No. E-458 is a joint competitive and proportional freight tariff naming rates on wood-pulp from Canadian National stations to points in central freight territory, and points beyond.

Applicant claimed that the latter tariff applied as a maximum. This tariff, effective July 1, 1922, published a rate of 36½ cents from Bathurst to Columbus, Ohio, which was reduced to 35½ cents effective April 22, 1924. The latter is the rate still in effect. From Bathurst to Detroit and Port Huron, Mich., the rates are the same as published to Columbus. Under the tariff last named, the traffic

from Bathurst to Detroit, Port Huron, or Columbus would be handled through Toronto, and the rule on page 6 of the tariff governing the application of rates to and from intermediate stations read in part:—

> "Rates to stations not named herein will (except as otherwise provided herein), when such stations are directly intermediate, be the same as to the next station beyond to which a rate is herein published."

Subsequent to the period covered by list of cars in question the foregoing rule has been amended to read:—

> "Rates to stations not named herein, will, when such stations are directly intermediate in the United States, be the same as to the next station beyond to which a rate is herein published; will not apply as maxima to intermediate points in Canada."

The situation is that while the cars in question were moving the rates quoted applied as maxima to points intermediate, the rule being wide enough to cover Canadian points. Subsequently, the tariff was amended to except Canadian intermediate points. This raises a situation where there is ambiguity in regard to the effect of the tariffs.

Giving due consideration to the matter, I am of the opinion that Tariff C.R.C. No. E-458 applied as a maximum during the period the shipments were moving and that, therefore, the legal rate on wood-pulp, in carloads, from Bathurst, N.B., to Toronto, was 36½ cents from July 1, 1922, to April 21, 1924; and 35½ cents from April 22, 1924, to November 9, 1925. On the latter date, a rate of 34½ cents was published from Bathurst to Toronto in Canadian National Tariff C.R.C. No. E-999.

Old Lake Road, Que., to Toronto.—As pointed out, there were two cars. One of these moved in July, 1922, and the other in June, 1923. The rate charged was 34 cents; and it is claimed that a rate of 32½ cents should have applied. The 34-cent rate was contained in C.N.R. Tariff C.R.C. No. E-475; the 32½-cent rate claimed is published in C.N.R. Tariff C.R.C. No. E-458 and is applicable to Detroit, Port Huron, Mich., and Columbus, Ohio. Toronto is a directly intermediate station. For the reasons already pointed out, I am of opinion that the 32½-cent rate was the rate legally applicable from Old Lake Road, Que., to Toronto at the time shipments moved.

Port Arthur, Ont., to Toronto.—Twenty-two cars are here involved. The movements took place between August 15, 1922, and May 29, 1923. The rate charged was 40½ cents, with the exception of the last shipment when rate of 40 cents was charged. C.N.R. Tariff C.R.C. No. E-475 carried a rate of 40½ cents from June 29, 1922, to May 28, 1923. No rate sanction for the 40-cent rate referred to appears.

Effective May 29, 1923, the rate was reduced to 37 cents. The applicant claims adjustment on the basis of 37 cents. The hitherto existing rate of 40½ cents has not been found to be illegal; it has not been found to be unreasonable; and no ruling has been made as to what should be a reasonable rate for the future. The voluntary filing by the railway of a rate on a lower basis than that hitherto existing creates no presumption that the hitherto existing rate was unreasonable. No submission has been advanced justifying the application of the 37-cent rate as a maximum in the case of the past rates.

Smooth Rock Falls, Ont., to Toronto.—One car is involved. This moved on November 4, 1922, and was charged a rate of 29 cents. The claim is that adjustment should be made on the 28-cent rate. The rate of 29 cents is contained in C.N.R. Tariff C.R.C. No. E-475, which was the legal rate in effect on the date the shipment moved. The 28-cent rate claimed was applicable at the date of shipment from Smooth Rock Falls to Manistique, Mich. The tariff

shows the rate as being applicable only via Hearst, Ont., over Algoma Central and Hudson Bay Railway and the M. St. P. and S.S.M. Railway. No valid justification for the 28-cent rate in the case of the Canadian National movement has been advanced.

Chatham, N.B., to Toronto.—There is concerned in this case one car which moved on February 5, 1924. Rate of 40 cents was charged, which is the rate carried in C.N.R. Tariff C.R.C. No. E-475. It is claimed that a rate of 36½ cents should have applied as a maximum. This is the rate applying from Chatham, N.B., to Detroit, Port Huron and Columbus in C.N.R. Tariff C.R.C. No. E-458. For the reasons already set out in connection with the discussion of the rates from Bathurst, I am of opinion that this rate should apply as the maximum.

The situation, then, is that in the case of Bathurst, from July 1, 1922, to April 21, 1924, the legal rate to Toronto was 36½ cents; from April 22, 1924, to November 9, 1925, it was 35½ cents.

In the case of Old Lake Road, on the two cars concerned, the 32½-cent rate was the legal rate.

In the case of the twenty-two cars from Port Arthur, the rate basis claimed is not justified.

On the one car from Smooth Rock Falls, the rate basis claimed is not justified.

On the one car from Chatham, N.B., the rate basis claimed is justified.

IV

The applicant also asked that direction be given as to reasonable rates for the future. While during the period the shipments, covered by applicant's claim statement, moved, the rates from the points mentioned therein to Toronto published in the Canadian tariff were higher than the rates published in the joint, competitive international tariff to Detroit and Columbus, the present rates to Toronto, except in the case of Old Lake Road, are lower. The present rate situation from these shipping points to Toronto, Detroit and Columbus is as follows:—

To	From				
	Bathurst	Chatham	Old Lake Road	Smooth Rock Falls	Port Arthur
Toronto	34½	34½	34	29	37
Detroit	35½	35½	32½	31½	39½
Columbus	35½	35½	32½	31½	40½

Applicant contended there should be a reduction in the present rates to Toronto. It was submitted that reasonable rates to Toronto should not exceed 29½ cents from Bathurst, Fort William, Port Arthur, St. John and Edmundston, and 25 cents from Old Lake Road. Applicant's test of the reasonableness of the suggested rates was by comparison with rates in effect on the same commodity between certain United States points, also from certain United States points to Canadian destinations. Rates cited were from Berlin, N.H., to Rittman and Cleveland, Ohio; Bangor, Me., to Cleveland, Ohio; Mount Desert, Me., to Cleveland, Ohio, Toronto and Windsor, Ont.; and from New London, Conn., to Thorold, Ont. Applicant contended that inasmuch as there was a rate of 29½ cents in effect between the points above cited for hauls of equal or greater mileage than from the Canadian shipping points to Toronto that would be a proper measure by which to establish a 29½-cent rate to Toronto.

In dealing with the question thus raised, several general positions which have been developed in the decisions and which are applicable to the present case may well be considered.

(1) *Mileage is not of itself a necessary conclusive measure of reasonableness. British Columbia Pacific Coast Cities vs. C.P.R. Co., 7 Can. Ry. Cas., 125,* at pp. 142 and 143, Chief Coommissioner Killam used the following language:—

> " It appears to me that no inference can be drawn from a mere comparison of distance upon different portions of railways, and that it does not constitute discrimination—much less unjust discrimination—for a railway company to charge higher rates for shorter distances over a line having small business or expensive in construction, maintenance, or operation, than over a line having large business or comparatively inexpensive in construction, maintenance and operation.
>
> " In my opinion, a party raising such a complaint upon a mere comparison of distances should show the nature of the particular lines referred to and that there is a material disproportion of rates as against the shorter line after due allowance is made for the circumstances just mentioned."

Doolittle and Wilcox vs. G.T. and C.P.R. Cos., 8 Can. Ry. Cas., 10, at pp. 11 and 12, Chief Commissioner Mabee, who rendered the decision, used the following language:—

> " The fundamental ground of the application is to have mileage form the sole basis in making these rates. To those who have not had experience in rate-making, the argument of distance must be the principal factor that appeals with force; but the history of these cases shows that while it is of course to be considered, in many cases it is the minor matter; I am not aware that either in England or in the United States it has been held by the rate-controlling tribunals that they are bound to regard mileage as a controlling factor."

Re Freight Tolls, Board's Judgments and Orders, Vol. 8, p. 73:—

> ". . . . under the body of regulation which is developed under the Railway Act, mileage is not a rigid yardstick of discrimination. Discrimination in the sense in which it is forbidden by the Railway Act is a matter of fact to be determined by the Board."

Complaint Spanish River Pulp and Paper Mills, Ltd., vs. C.P.R. Co. et al, 28 Can. Ry. Cas., 100. See summary of decisions on page 109, *Canadian Oil Cos. vs. G.T., C.P., and C.N.R. Cos., 12 Can. Ry. Cas., 350,* at p. 354:—

> ". . . . a mere comparison of distances, without consideration of the peculiar circumstances affecting the traffic is not the final criteria of discrimination."

See also *Hudson Bay Mining Co. vs. Gt. Nor. Ry. Co., 16 Can. Ry. Cas. 254,* where the following language is used at p. 256:—

> " It does not of necessity follow that the rates of one railway are to be taken as a conclusive measure of what it is reasonable to charge on another railway. *Dominion Sugar Co. v. Canadian Freight Association, 14 Can. Ry. Cas., 188,* at p. 192.
>
> " Not simply mileage comparisons, but also comparisons in respect of conditions of operation, cost of carriage, volume of traffic, etc., would be necessary. And these to be conclusive would have to point to similarity, if not to identity of conditions."

Reference may also be made to *Edmonton Clover Bar Sand Co. vs. G.T.P. Ry. Co., 17 Can. Ry. Cas., 95.*

The findings above summarized apply with still greater force when the rates with which comparisons are made are located under another jurisdiction, as are the railways of the United States.

In his presentation of the case, applicant, at p. 1454, in asking that the rate from St. John to Toronto be 29½ cents, figures this by comparison with rates from New London territory, which includes New York to Merritton and Stratford. When he was asked whether conditions were the same, he said the shipments moved in part over lines over which the Board had jurisdiction. What was raised by this comparison was the matter of the mileage basis.

(2) *Blanket or Group Rates Allowable and in Public Interest. Complaint of the Lake Superior Paper Co., Board's Judgments & Orders, Vol. 8, p. 123; Spanish River Pulp & Paper Mills, Board's Judgments and Orders, Vol. 12, p. 283. Fullerton Lumber & Shingle Co. vs. C.P.R. Co., 17 Can. Ry. Cas., 79,* states at p. 87, "A group rate arrangement endeavours to average distance and public convenience."

The rates which applicant desires to build up to Toronto are proposed to be built on mileage; but at the same time, the United States rates with which comparison is made include group rating arrangements. In the course of his presentation, his attention was directed to the fact that rates to American destinations, Detroit and Columbus, on which stress was laid by him, seem to be grouped as to points of origin. At p. 1446 of the evidence, in answer to a question so directed to him, he said:—

> "They seem to be grouped. You take Edmundston and St. John, and Bathurst and Woodlawn and Van Buren, the last two being in Maine, they are all, as you say, Sir, grouped to western points."

In answer to a question on the same page, he stated that the rates moving to American destinations, e.g., Detroit and Columbus, were not on mileage.

Group or blanket arrangements being made on averages of distance and producing averaged conditions do not afford any necessary criteria of what is a reasonable rate on a mileage basis. Group rates in the United States in various cases cover very extensive territories; for example, it was stated by Lewis Spence, Director of Traffic of the Southern Pacific System, in the hearing before the United States Senate Committee of Interstate Commerce Long and Short Haul Charges, 1924, p. 385, that potatoes moved from Minneapolis to Fort Worth, Texas, approximately 1,000 miles, at a rate of 96 cents; they also moved from Idaho Falls, Idaho, to the same destination, a distance of 1,510 miles, at the same rate.

The rate to Columbus, Ohio, as compared with the rate to Toronto having simply a 1-cent difference shows a factor of blanketing. Aside from the fact that from Detroit there is a blanket rate not under the Board's jurisdiction, it may be noted that there was nothing advanced to show that this blanket rate is unreasonable in itself. Manifestly, it is illogical to attempt to build up a mileage structure on the basis of comparison with grouping arrangements.

(3) *What competition exists and what detriment results from the competition? Michigan Sugar Co. vs. C.W. & L.E. Ry. Co., 11 Can. Ry. Cas., 353.* At p. 372 it was stated:—

> " . . . it is amply established in the evidence that there is no competition between the refined product of the Dominion Sugar Company and of the applicant company; there being no such competition, it cannot be alleged that the railway company is in any way limiting the market for the refined sugar."

City of Toronto and Town of Brampton vs. C.P. and G.T. Ry. Cos., 11 Can. Ry. Cas., 370. At p. 375, Chief Commissioner Mabee used the following language:—

> "I do not understand that there is anything wrong or evil in discrimination since it has not hurt any one. . . . In the absence of any injury to individuals or localities, what difference does it make whether there is discrimination."

Kelowna Board of Trade vs. C.P.R. Co., 15 Can. Ry. Cas., 411:—

> "A claim of unjust discrimination cannot be supported when the same circumstances and conditions do not and cannot exist."

Guest Fish Co. vs. Dominion Express Co., 18 Can. Ry. Cas., 1:—

> "It is not unjust discrimination to charge too low a toll to one market as compared with that to another market, when no competition exists between them."

Spanish River Pulp and Paper Mills, Ltd., Supra, at p. 109:—

> "It was pointed out that mere allegation of difference in rate was not conclusive as to the existence of unjust discrimination or undue preference. It is necessary for the applicant before shifting onus on the railway to make out a *prima facie* case of discrimination."

The Don Valley Paper Company, which was represented by the applicant, is concerned for the most part with the manufacture of stiff cardboards and stiff papers. Mr. Watson, for the railway company, at p. 1460, in dealing with the question of wood-pulp rates in Canada, laid stress upon the competition of markets. He said that the large market for the products of the pulp and paper manufacturers being in the United States, the railways had recognized the necessity of making rates from Canadian points in order to enable Canadian producers to increase their output, and enable them to compete with rates from United States mills to consuming points in the United States.

Applicant was questioned at pp. 1471-1474 by the Deputy Chief Commissioner in regard to the nature of the competition, if any, existing between Columbus, Ohio, the point alleged to be favoured, and Toronto. Applicant stated that the Columbus buyer had an advantage over the Toronto buyer because of the rate difference, but did not give such concrete evidence as would enable any conclusion to be arrived at in regard to the effect of this upon the purchases and sales of the product manufactured by the firm which he represented.

The situation as summarized in the evidence (*Vol. 452, pp. 1476-77*) is as follows:—

> "The Assistant Chief: This question of what some one might do if he wakened up, I don't know that we need go into. But this situation of competition, Mr. Killingray, let me understand you correctly. First, as to the shipment of wood-pulp to Columbus, Ohio, you are not in a position to say what the price of wood-pulp purchased by the Columbus producer is, but you make this argument, that there is a difference in rates of 1½ cents, or was a difference, that the Columbus purchaser, or buyer, is able to raise the price by 1½ cents, and the Don Valley people must pay 1½ cents more to meet that.
>
> "Mr. Killingray: Yes, sir.
>
> "The Assistant Chief: Then, second, as to the competition in Canada, as I understand it, you claim that there is competition from American producers, in regard to calendars and so on, but you are not

in a position to say what, if any, competition there is in regard to cardboard manufactured in Columbus, or points like that, and shipped into Canada in competition.

"Mr. KILLINGRAY: No.

(4) *United States Rates.*—The applicant has, as already pointed out, made sundry comparisons with United States rates. Reference was made to the rate from Bathurst to Toronto as compared with the rate from Bathurst to Buffalo. Bathurst to Toronto has a mileage of 856; the rate is 34½ cents. Bathurst to Buffalo, over the route in which the Canadian National is interested, has a mileage of 959; and the rate is 33 cents.

With regard to the rates on wood-pulp from points in Canada to the United States, it is stated by the railway company that the situation is altogether different. It is stated that the great growth of the industry in recent years has resulted in a production very much greater than the consumption within Canada, and consequently to assist the Canadian producer to find a market in the United States and compete with the United States mills, also importations from foreign countries, it was necessary to establish competitive rates from Canada to the United States somewhat relatively lower than the rates within Canada. From Bathurst to Buffalo, 959 miles, the rate is 33 cents. At Buffalo, there is competition from New England mills, also with the Scandinavian countries, with rates in effect as follows:—

From	Routes	To Buffalo	
		Miles	Rate
Woodlawn, Me.	Me. C., Portland, Me., B. & M. Mechanicville, N. Y., D. & H., Binghampton, N.Y., Erie R.R.	892	32
	Me. C., Portland, Me., B. & M., Rotterdam Jct., N.Y., N.Y.C.	823	
Great Works, Pa.	Me. C., Portland, Me., B. & M., Mechanicville, N.Y., D. & H., Binghampton, N.Y., Erie R.R.	765	28½
	Me. C., Portland, Me., B. & M. Rotterdam Jct., N.Y., N.Y.C.	696	
Rumford, Me.	Me. C., Portland, Me., B. & M., Mechnicville, N.Y., D. & H., Binghampton, N.Y., Erie R.R.	703	28½
	Me. C., Portland, Me., B. & M., Rotterdam Jct., N.Y., N.Y.C.	634	
Berlin, N.H.	B. & M., Mechanicville, N.Y., D. & H., Binghampton, N.Y., Erie R.R.	626	25½
	B. & M., Rotterdam Jct., N.Y., N.Y.C.	557	
Mount Tom, Mass.	B. & M., Mechanicville, N.Y., D. & H., Binghampton, N.Y., Erie R.R.	460	25
	B. & M., Rotterdam Jct., N.Y., N.Y.C.	391	
Carthage, N.Y.	New York Central Railroad	225	15½
IMPORT			
Boston, Mass.	B. & M., Rotterdam Jct., N.Y., N.Y.C.	476	23
New York, N.Y.	New York Central Railroad	437	23
	Erie Railroad	423	
Philadelphia, Pa.	Pennsylvania Railroad	416	26½
	Pennsylvania Railroad, N.Y.C.		
Baltimore, Md.	Pennsylvania Railroad	396	26½
	Pennsylvania Railroad, N.Y.C.		

For the reasons given below, it does not appear to be necessary to go into the question of United States rates at length. Dealing with the Bathurst rate and leaving aside the question of the United States rates for the moment, it was contended by applicant, in answer to the Deputy Chief Commissioner, that the rate from Bathurst to Toronto should be comparatively lower than from St. John to Toronto; but he stated he was not in position to state definitely how much lower.

It was pointed out by the representative of the railway, at p. 1463, that from Bathurst to Toronto, a distance of 856 miles, the rate was 34½ cents, and that from St. John to Toronto, a distance of 822 miles, the rate was the same. The matter of the short line mileage by the Canadian Pacific enters in.

The fact that the Canadian National gives a 33-cent rate to Buffalo over its long route from Bathurst as compared with the 34½-cent rate to Toronto was made the subject of analysis by the Deputy Chief Commissioner in the course of the hearing. In the table already quoted, reference is made to the mileage location of various producing points shipping into Buffalo and with which the Canadian National is in competition. The controlling effect of these groups, however, would appear to be in the short distance mileage and the rate attaching thereto. In order that the shipment from Bathurst to Buffalo over the Canadian National, with a distance of 959 miles, may get into Buffalo, it has to compete with the rate from Woodlawn, Me., which is controlled by the short mileage of 823 miles and the rate attaching thereto of 32 cents. The Canadian National movement, 67 miles longer than the long distance mileage to Woodlawn, Me., is charged one cent more.

In the submissions placed before the Board from time to time, it has been contended that American rates shall be the criteria of reasonableness, where such rates are lower than Canadian rates. In *Manitoba Dairymen's Assn. vs. Dominion and Canadian Northern Express Cos., 14 Can. Ry. Cas.*, at p. 149, the following language was used:—

> "As I construe the Railway Act, the Board must find its criteria of the reasonableness of the Canadian rates within Canada."

At p. 148 of the same judgment, in dealing with the question of discrimination, it was pointed out that the Board had already held—

> "that where the traffic compared moves over two different routes, this precludes the mere reference to difference in mileage rates being taken as *prima facie* evidence of discriminatory treatment, and that this held with especial force where comparisons are made with the rates of railways which are not subject to the Board's jurisdiction.

Riley vs. Dominion Express Co., 17 Can. Ry. Cas., 112, at p. 115, it was said:—

> "Rates as arrived at in the United States are not the criteria of reasonable rates in Canada unless the circumstances in both cases are on all fours."

In *re Telegraph Tolls, 20 Can. Ry. Cas., 1,* at p. 6, it was said:—

> "The comparisons between rates in the United States and those in Canada are informative but not conclusive. They have no necessary conclusive bearing on the reasonableness of rates in Canada."

V

The traffic involved covered approximately a three-year period, as set out in the statement of the applicant. Whether this covers all the traffic moving within that period is not set out. There is nothing before the Board bearing upon the volume of traffic now moving which would be affected.

Under the tariff concerned, which covers four provinces, traffic moves from 58 points of origin to 105 destinations. The points of origin are distributed as follows: Nova Scotia, 7; New Brunswick, 4; Quebec, 31; Ontario, 16. The destination points are as follows: Nova Scotia, 6; New Brunswick, 4; Quebec, 51; Ontario, 44.

On the record submitted, there is a lack of detail with regard to Canadian conditions affecting the traffic loading, earnings per car mile or per ton mile, or any other of the factors which would be pertinent as bearing on an application for downward revision of rates. No details bearing on their reasonableness from a Canadian traffic standpoint are submitted. As indicated, the extent covered by the tariff is wide. No figures are before the Board showing the volume of traffic which the tariff covers. The tariff is of general scope; yet no complaint of a general nature has been recorded. There is nothing before the Board to show the amount of traffic the applicant would have which would be affected by the revised rates for which he asks.

There has been no general compaint. At the same time, the various rates have been the matter of gradual adjustment. Change in rates from a limited number of originating points to a limited number of destination points cannot be made without affecting the interests of others who have not been heard.

In my opinion, this phase of the complaint should be dismissed. In regard to the question of the legality of the rates concerned, a declaratory order may issue.

August 12, 1926.

Deputy Chief Commissioner Vien and Commissioners Boyce, Lawrence, and Oliver concurred.

Application of Consolidated Rendering Co., Boston, Mass., for ruling of the Board re *demurrage charges.*

File No. 1700.306

REPORT OF MR. W. E. CAMPBELL, CHIEF TRAFFIC OFFICER OF THE BOARD, DATED SEPTEMBER 21, 1926

This is an application from the Consolidated Rendering Co., Boston, Mass., for a ruling of the Board in the matter of claims against the Canadian National Railways for refund of demurrage charges assessed on a number of carload shipments of fertilizer materials shipped from Lowell, Mass., to various points in Quebec.

There is attached a statement of the record of the cars involved and the demurrage charges assessed thereon.

The delay to the cars for which demurrage is charged was awaiting clearance from customs, for which purpose twenty-four hours' free time allowance is provided under demurrage rule 3 (*a*). In connection with shipments arriving in Canada from United States points of origin in bond, it is necessary for consignee, or his authorized agent, to present certified invoices in duplicate and customs entry to proper customs official at the customs port or outport; make entry as required by Canadian customs requirements, and pay duty if shipment is dutiable. While, when customs requirements are fully understood and promptly complied with, and the necessary documents submitted, there is no difficulty in arranging clearance from customs within the free time allowance provided, at the same time, in practice, it frequently happens that there is delay in clearing customs through non-compliance promptly with customs requirements or absence of some of the necessary documents at the time of arrival of the car, which involves additional delay, and, consequently, assessment of demurrage. The obligation to fulfil customs requirements and present the necessary documents rests solely upon the owner of the goods; this is not an obligation which in any way devolves upon the railway company.

The submissions before the Board indicate that the parties called for by shipping instructions to be notified of arrival of the shipments were in each case promptly notified by the agent of the railway company of the arrival of the cars at the customs port or outport. In a number of cases the record indicates that the agents sent more than one notification. It further appears that the agents of the railway company were in most instances advised by the parties notified that they were arranging customs clearance.

Applicant admits that at the time these particular shipments moved they did not furnish customs entry forms or powers of attorney at the customs clearance point in advance of or at the time of arrival of cars for the reason that they were unfamiliar with the requirements and the proper way to accomplish entry of the goods for customs purposes. It is obvious that the delay to the cars in question was due, therefore, to the applicants not having familiarized themselves in advance of making shipment with the necessary customs requirements so as to enable the shipments to be cleared within the free time of twenty-four hours provided for that purpose; further, that they had not arranged so that the consignees, or parties to whom notice of arrival was directed to be sent, would be in a position to do so. The result was that when the parties notified received notice of arrival of the cars they had to take the matter up and obtain the necessary customs papers, and this entailed delay for which the demurrage is charged.

Applicant contends that the demurrage charges should be refunded on the ground that they as shippers were not notified that the cars were being held, and that this was contrary to the carrier's instructions to their agents, and, therefore, under demurrage rule 8, which stipulates that demurrage shall not be collected for any delay for which the Government or railway officials may be responsible, they are entitled to refund of the demurrage. The demurrage rules do not stipulate that the shippers shall be notified of arrival of cars; demurrage rule 2 provides that notice shall be sent or given the consignee by the carrier. Under the provisions of the demurrage rules, therefore, notification to shippers as well as consignee of arrival of cars is not a requirement, and the failure to notify the shipper would not entitle applicant to exemption under the provisions of demurrage rule 8. As far as relates to carriers' instructions to agents, referred to by applicants, reference is apparently made here to an instruction that agents are to report, within five days of arrival, cars which are on hand refused or unclaimed, but these instructions would not appear to be applicable to the cars in question for the reason that they were neither refused nor unclaimed, and there was no reason to believe that customs clearance would not be completed and the cars released as promptly as possible. There is nothing to indicate that even had shippers been notified it would have resulted in the cars being released from customs any earlier than was done. From the record it would appear that the carrier was justified in assuming that the party notified would arrange clearance from customs with all possible despatch, and which could have been done without involving any delay or assessment of demurrage had the parties concerned familiarized themselves fully with the customs requirements before the shipments were made. This is an obligation that rested upon them rather than on the transportation company.

Under the circumstances of this case as above briefly outlined demurrage charges were properly assessable under the provisions of the demurrage rules as prescribed by the Board's General Orders 201 and 349. The record has been checked and the demurrage items are found to be properly charged, except in the case of car 209464 delayed at Nicolet, on which the proper demurrage charge is $7, although $12 was assessed. Manager Collins, Canadian Car Demurrage Bureau, is prepared to authorize refund of the overcharge of $5 on this car.

The report as above sent out was issued as the report of the Board.

Ottawa, October 22, 1926.

STATEMENT OF DEMURRAGE ON CARS SHIPPED BY CONSOLIDATED RENDERING COMPANY DELAYED WAITING CLEARANCE OF CUSTOMS

QUEBEC, 1924

Number	Initial	Date Arrived	Date Advised	Date Released from Customs	Amount Charged
30587	Me. C	4/5	4/5	4/16	32
25406	G.T	4/5	4/5	4/16	32
QUEBEC, 1925					
19183	G.T	2/9	2/9	2/19	27
37900	N.P	2/9	2/9	2/19	27
DRUMMONDVILLE, 1924					
135760	C.P	2/25	2/26	3/7	27
JOLIETTE, 1924					
550218	C.G	2/11	2/11	2/25	47
141653	C.G	2/16	2/18	2/25	22
RICHMOND, 1924					
81502	N.H	2/18	2/18	2/29	37
15666	G.T	2/18	2/18	2/29	37
48309	B. & M	2/20	2/20	2/29	27
RIVIERE DU LOUP, 1924					
302052	G.T.P	2/19	2/19	3/4	47
NICOLET, Q.M.S., 1924					
209464	C.P	3/4	3/5	3/10	12

Application of the Municipal Corporation of the City of Windsor, Ont., under Section 257, for an Order directing the Canadian Pacific Railway Company, as lessee exercising the franchise of the Ontario and Quebec Railway, to reconstruct bridge to provide a permanent 48-foot roadway together with two 9-foot sidewalks in accordance with plan filed.

File 3526.24.

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made by the city of Windsor, Ont., for an order directing the Canadian Pacific Railway Company, as lessee exercising the franchises of the Ontario and Quebec Railway Company, to reconstruct a bridge which was

approved by the Board of Railway Commissioners under Order No. 20250 dated August 30, 1913, so as to provide a permanent 48-foot roadway, together with two 9-foot sidewalks, in accordance with the plan filed.

It is alleged that the bridge now existing is inadequate and insufficient for the needs of the public and of the municipality. It is stated that the applicant municipality has senior rights over the railway at the point of crossing; and it is further stated that a large excavation was made by the railway through the highway in question for the sole purpose of enabling the railway company to bring its railway tracks down to the level of the waters of the Detroit river, for the purposes of American business, and that earth from the said excavation was thrown up on the sides of the railway right of way and that the said banks have remained down to the present time to the detriment of city property in the vicinity of said banks. It is further stated that had it not been that the said excavation had been made for the railway company's own purpose it would not have been necessary to have excavated across the street in question.

It is submitted by the applicant that owing to the special circumstances of the case the whole cost of reconstruction of the bridge in question should be borne by the railway company.

The highway crossings of the Ontario and Quebec Railway, in the city of Windsor, were before the Railway Committee of the Privy Council for approval, and so far as Wyandotte street is concerned, what was approved was an overhead crossing of the railway by a wooden bridge with a 20-foot carriageway and a footpath 5 feet wide on each side, in addition. This crossing by the Ontario and Quebec Railway extension of the Canadian Pacific Railway was authorized by Order in Council of February 8, 1910. It was alleged and admitted that Wyandotte street was an original street which had rights of seniority at the point of crossing.

On July 9, 1912, plans were before the Board showing proposed replacement of the existing wooden bridge by a steel bridge at Wyandotte street. It was stated that the existing clearance was 21 feet. The plans as submitted and the restricted clearances were approved by Orders Nos. 17096 of July 23, 1912, and 20250 of August 30, 1913. The replacement would have involved a greater vertical clearance. This was objected to by the city. The reconstruction proposal, therefore, did not go on. Reinforcing and repairs were made.

The bridge as now asked for contemplates taking in the whole width of the street, viz., 66 feet. It is estimated that, exclusive of land damages, a structure of this kind will cost from $62,000 to $63,000.

In support of the contention that a new bridge is necessary, it is urged that there is congestion. It was stated that a traffic count had been made within the two weeks preceding the hearing, and that the number of automobiles "reached anywhere from 4,800 in round figures". It was further stated that on the preceding Sunday there had been as high as 7,800 motors crossing the bridge from 7 a.m. to 10 p.m.; and that on an average, during a seven-day period, there had been 6,500 motors per day. So far as the motor traffic was concerned, it was set out that one factor in creating congestion was that of horse-drawn vehicles. Statistics submitted showed an average of about 1,300 pedestrians per day crossing the bridge.

It is admitted that the bridge has still some life in it; but it was contended by the city engineer that it would not stand up under a heavy street roller. The bridge, it was pointed out, was reconstructed in 1912 and 1913 and some repairs have since been made. It is figured by the railway company that it still has four years' life and that it will safely take care of a load of 15 tons. It is further stated by the railway that the existing structure could, as a matter of carriage, take care of the motor or vehicular traffic, exclusive of street cars. It is admitted that the bridge is not capable of carrying the street car traffic.

One of the reasons why the increased width is asked for is so as to enable the street car traffic to be carried over the bridge. The Street Railway system,

which was formerly known as the Windsor and Amherstburg Railway, is operated by the Hydro-Electric Power Commission on behalf of some nine municipalities, one of these being Windsor. It is expected that a double track line of this railway will be operated over the wooden bridge. The evidence explicitly sets out that the desire to have a double track line of the street railway carried across the bridge is one of the reasons why the new structure is asked for.

While the position in regard to the Street Railway is thus set out, the Hydro-Electric Power Commission, hereinafter called the Hydro-Electric, was not a party formally joined in the hearing. Correspondence which has since taken place shows that notwithstanding there having been no formal joining as a party at the hearing, the Hydro-Electric is interested in the extensions.

Another factor which is much emphasized is the growth of motor traffic. Motor traffic has had a greater growth in the city of Windsor than in any other part of Canada, there being one motor in use for every seven persons. This is about the same average as applies for the United States in general. The figures submitted show that there is a large volume of traffic moving over the bridge.

On the evidence before the Board, it thus appears that there is a justification for some increase in the width of the bridge. The city, in the application as launched, which seeks to have the whole cost borne by the railway, is relying on the principle set out in—

> *Application of the City of Hamilton, Ont., for an Order directing the Toronto, Hamilton and Buffalo Railway Company to complete, without delay, the new highway bridge at King Street, Hamilton, Ont., at the intersection of King Street and the Toronto Branch of the Toronto, Hamilton and Buffalo Railway.—Board's Judgments and Orders, Vol. X, p. 31.*

Reference may also be made to—

> *Application of the Municipal Corporation of the County of Essex, Ont., and the Township of Anderdon, Ont., under Sections 241 and 242 of the Railway Act, for an Order directing the Michigan Central Railroad Company and the Canada Southern Railway Company to construct or put into proper and safe state of repair the overhead highway bridge on the Front or River Road in the Township of Anderdon, Ont., over said railway lines.—Board's Judgments and Orders, Vol. XIV, p. 263.*

See also *City of Windsor vs. C. P. Ry. Co., 21 Can. Ry. Cas., 66.*

In the *King Street Bridge Case* above referred to, the general principle was laid down that where provision had been made for a street on the level and the construction of the railway necessitated a cutting by it, thus rendering it necessary to have a bridge constructed, the burden of the cost to be borne by the railway company in respect of the bridge was not limited merely to a bridge sufficient to carry the traffic at the time the structure in question was constructed.

Under the decisions of the Board, there may be, in working this out, taken into consideration various factors:—

(*a*) Congestion. That is to say, that while the bridge in existence may be strong enough to bear all the traffic then moving, it may do so at the expense of congestion.

(*b*) The Board may consider the question of reconstruction in order to permit a new type of traffic to move over, e.g., street railway traffic. See in this connection *City of Windsor vs. C.P.R. Co. (London Street Bridge), 21 Can. Ry. Cas., 66, at p. 69.*

(*c*) The Board may give weight to the question of whether or not the life of the existing structure has expired. In so far as it still has life, this may be considered as bearing on the apportionment of cost.

(*d*) The Board may take into consideration the situation where the increase in highway traffic is due to the changed status of the highway. See *Municipal Corporation of the County of Essex, ut supra, p. 266.*

(*e*) In considering changes in traffic due to the changed status of the highway, I am of opinion that some weight may be given to changes in the nature of the traffic itself. I am not prepared to suggest any rule of mathematical accuracy, but I am of opinion that the situation existing in Windsor in respect of motor traffic does justify some weight being given to this factor.

It is stated that one reason why the streets in Windsor have to be widened is because motor car owners park their cars on either side of the street, thus lessening the available travelling space; and it is further urged that this factor is one which must be taken into consideration when dealing with the width of the bridge structure; that is to say, that while the bridge is obviously a structure for through traffic, it has, as to its width, to be treated in the same way as if it were subjected to the same parking conditions as apply on portions of the street not constructed on the bridge. The matter of parking is, of course, a local one; but I think it would be most unfair to disregard the effect which this has upon the argument advanced by the city in regard to widening the street at the point in question. The city's argument is, in substance, that whatever is done on the city street proper by way of permitting parking has a bearing on the width which the bridge should have. Whatever be the needs in respect of through traffic on the bridge, I for one would be slow to recognize the storage factor as being any final measure of the responsibility of the railway in regard to the reconstruction of the bridge.

(*f*) Another factor which I think may be given weight is, what is the general width of the paved road in the section in question. The width of paved road on Wyandotte street at present is a varying factor. From Wellington avenue west to Glengarry avenue is a distance of approximately 6,000 feet. West of Wellington avenue, the pavement is to be made 46 feet wide. From Ouelette avenue east to Glengarry avenue, a distance of 2,000 feet, the pavement is in part 46 feet wide. From Jeanette avenue east to Ouelette avenue, a distance of 2,000 feet, it is 32 feet wide; while from Jeanette avenue west over the present Wyandotte street bridge to Wellington avenue, a distance of 1,9000 feet, it is 24 feet. It would appear that in the section concerned a paved road of 46 feet gives the present governing width. It was stated that the city had given notice to widen the pavement to 48 feet from Ouelette avenue to Wellington avenue.

It would seem to be advisable in arriving at a conclusion as to the width which should be ordered to the bridge to give some weight to the practice prevailing as to street widths in the applicant municipality.

Adjacent to the location of the bridge is the property of the Cadwell Sand Company. The road alongside the building on this property is on the original level of the street. If the bridge was widened to the full width asked for by the city, this would add seriously to the matter of property damages. This was recognized by the engineer of the city of Windsor, who expressed the opinion that some arrangements could be made to take care of the Cadwell property. The engineer of the Canadian Pacific Railway Company expressed the same opinion.

The existing clearance, as has been pointed out, is a restricted one. This has been in operation for a considerable period of years. The matter of safety is, of course, a very important one; but I think the existing clearance can be maintained without making any serious change in this respect; at the same time, the maintenance of the existing clearance would keep down the cost.

In regard to the question of utilities, there is no water main course across Wyandotte street at present. The city proposes to extend its 6-inch water main. This would have to be carried under the bridge in the same way as is done at London street. The electric light wires are carried overhead. The Gas Com-

pany has a gas main; and in any rearrangements that may be necessitated, the city will have to bear, at its own expense, the cost of carrying the water main across and, similarly, the expense would be on the Electric Company and the Gas Company in regard to the rearrangements that may be found necessary.

I am of opinion that a bridge fifty-six feet wide will take care of the traffic with reasonable adequacy. This will provide a roadway forty-four feet in width with two sidewalks each six feet in width. This will also permit, if desired, of a roadway with a width of forty-six feet and two sidewalks each five feet in width. A forty-four foot roadway will be adequate for a double track street car line, and will also leave room for an automobile on each side between an electric car and the curb. The existing vertical clearance may be allowed.

Taking into consideration the various factors already enumerated, I am of opinion that an order may go against the Canadian Pacific Railway Company for a new bridge fifty-six feet in width; sixty per cent of the cost to be on the Canadian Pacific Railway Company and forty per cent on the city of Windsor. The existing restricted vertical clearance may be permitted.

The cost of maintenance will be on the Canadian Pacific Railway Company. This, however, to be subject to what is set out in the *King Street Bridge Case, Hamilton, 25 Can. Ry. Cas., 379, at p. 384,* as follows:—

> "I do not think that they (the railway company) should be held responsible for placing a covering or surfacing on the substructure thus provided of any different construction or durability than that which they found when the road was severed; and, having provided such a structure with such a covering, I then think the burden should be on the municipality to pave it or cover it with any material which, in their judgment, might be necessary to take care of the traffic in that particular locality."

As has been indicated, while the use of the bridge by the Hydro-Electric, operating the street railway, has been referred to, this body has not been joined as a party. There are no street car tracks at the point in question, although it has been somewhat informally intimated that it is the intention to have a double track electric street railway crossing the proposed bridge. If the city desires, the Hydro-Electric may, on application to the Board, be joined as a party; and thereafter an opportunity will be afforded both to the city and to the Hydro-Electric to make such submissions as they may desire on the question of the distribution, if any, between them of the forty per cent.

The city has asked for an order covering a width of 66 feet. For the reasons given, I do not consider this necessary. If, however, the city still desires this extra width, over what will be provided by a 56-foot structure, then this may be provided by the city entirely at its own expense as to the cost attaching to the additional 10 feet, and such items of cost as may attach thereto.

The city should elect within ten days whether it desires to have the full 66 feet in width; said election should be forthwith notified to the Board and to the Canadian Pacific Railway Company. The burden is then to be on the Canadian Pacific Railway Company to proceed with the construction of the bridge.

As the work is to be carried on by the Canadian Pacific Railway Company, plans are to be prepared by it which are to be submitted to the city of Windsor and also to the Engineering Department of the Board for approval.

October 25, 1926.

Commissioner Lawrence concurred.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 38289

In the matter of the application of the Government of the Province of British Columbia, under Section 392 of the Railway Act, 1919, for leave to prosecute officials of the Canadian Pacific Railway Company for failure to obey the Order of the Board No. 36769, dated September 2, 1925, directing the said Company and the Canadian National Railway Company to file tariffs reducing the rates on grain and flour to Pacific ports within Canada, for export, to the same rates, proportioned to distance, as such grain and flour would carry if moving eastward for export.

File No. 30686.2

MONDAY, the 27th day of September, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, July 13, 1926, and in Prince Rupert, July 30, 1926, in the presence of counsel for the province of British Columbia and the railway company, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

H. A. McKEOWN,
Chief Commissioner.

Application of the Province of British Columbia for an Order granting leave to prosecute the Canadian Pacific Railway Company, its President, each of its Vice-Presidents, and every Director and Managing Director of the Company, for failure to obey Order of the Board No. 36769, dated September 2, 1925.

File No. 30686.2

Heard at Vancouver, B.C., July 13, 1926.

DISSENTING JUDGMENT

COMMISSIONER OLIVER:

Following a Board meeting on September 10, there has been placed before me for consideration, attached to file 30686.2, a draft of a proposed order prepared for the signature of the Assistant Chief Commissioner, refusing an appli-

cation made by the province of British Columbia, through its counsel, Mr. G. G. McGeer, for leave to prosecute the Canadian Pacific Railway Company, its president, vice-presidents, and directors, for failure to obey the order of the Board dated the 2nd day of September, 1925. The following is a copy of the draft of the proposed order refusing the application of the province:—

> "Upon hearing the application at the sittings of the Board held in Vancouver July 13, 1926, in the presence of counsel for the province of British Columbia and the railway company, and what was alleged,—
>
> "*The Board orders:* That the application be, and it is hereby, refused."

The file does not disclose any reasons for the refusal of the application.

In regard to the draft of the proposed order, I desire to observe that the application of July 13, 1926, came before the section of the Board then sitting in Vancouver, which comprised the Chief Commissioner, the Deputy Chief Commissioner, and the undersigned. This section of the Board was sitting with all the powers of the complete Board.

The application of the province of British Columbia was made under subsection (2) of section 392 of the Railway Act. Subsections (1), (2), (3), (4), and (5) read as follows:—

> "(1) Every company and every municipal or other corporation which neglects or refuses to obey any order of the Board made under the provisions of this Act, or any other Act of the Parliament of Canada, shall for every such offence be liable to a penalty of not less than twenty dollars nor more than five thousand dollars.
>
> "(2) Wherever it is proved that any company has neglected or refused to obey an order of the Board made under the provisions of this Act, or any other Act of the Parliament of Canada, the president, the vice-president, each vice-president where there are more than one, and every director and managing director of such company, shall each be guilty of an offence for which he shall be liable to a penalty of not less than twenty dollars, and not more than five thousand dollars, or imprisonment for any period not exceeding twelve months, or both, unless he proves that, according to his position and authority, he took all necessary and proper means in his power to obey and carry out and to procure obedience to, and carrying out of, such order and that he was not at fault for the neglect or refusal to obey the same.
>
> "(3) Wherever it is proved that any municipal or other corporation has neglected or refused to obey any order of the Board, made under the provisions of this Act or any other Act of the Parliament of Canada, the mayor, warden, reeve, or other head of such corporation, and every member of the council or other ruling or executive body of such corporation, shall each be guilty of an offence for which he shall be liable to a penalty of not less than twenty dollars and not more than five thousand dollars, or imprisonment for any period not exceeding twelve months, or both, unless he proves that, according to his position and authority, he took all necessary and proper means in his power to obey and carry out, and to procure obedience to and carrying out of, such order, and that he was not at fault for the neglect or refusal to obey the same.
>
> "(4) Nothing in or done under this section shall lessen or affect any other liability of such company, corporation or person, or prevent or prejudice the enforcement of such orders in any other way.
>
> "(5) No prosecution shall be had under this section except by leave or direction of the Board."

The order of September 2, 1925, which the Canadian Pacific Railway Company is accused of violating, is as follows:—

> " It is ordered that the Canadian Pacific and the Canadian National Railway Companies file tariffs effective not later than the 15th day of September, 1925, reducing the rates on grain and flour to Pacific ports within Canada, for export, to the same rates proportioned to distance, as such grain and flour would carry if moving eastward for export."

The order of September 2, 1925, as above, was appealed against by the Montreal Board of Trade, the Fort William Board of Trade, the Port Arthur Chamber of Commerce, the Canadian Pacific Railway Company, the Provincial Governments of Nova Scotia and New Brunswick, and others. The appeal was heard in Ottawa on October 1, 1925. After a lengthy hearing by the full Board, the appeal was not sustained by a majority. The original order therefore stood, and retained all the force and effect of any and every other order of the Board.

Under the provisions of the Railway Act the appeal might have been carried to the Railway Committee of the Privy Council. As this was not done, the appellants thereby acquiesced in the order of September 2, and therefore were, in my opinion, legally and morally bound to obey it in full without delay or question.

On February 16, 1926, the full Board, sitting in Ottawa, heard the,—

> "Application of the provinces of Alberta and Saskatchewan that rates on grain and flour to Pacific coast ports within Canada for export, as published in C.P.R. Tariff, C.R.C. No. W-2788 and C.N.R. Tariff C.R.C. No. W-432, be corrected to basis of equalization proportionate to distance as such grain and flour would carry if moving eastward for export as provided for in Order No. 36769, dated September 2, 1925."

During the hearing of the application, on Wednesday, February 24, 1926 (as shown pp. 2216 of the Report of Proceedings), Mr. Flintoft, chief counsel for the Canadian Pacific Railway, was asked by the undersigned:—

> "As I understand it, Mr. Flintoft, the complaint is that in fixing the rates on your lines you have added a constructive mileage of about 124 miles."

To this Mr. Flintoft answered:—

> " Yes, that tapers of course."

The admission that " constructive " (non-existent) mileage had been added to the actual mileage of the Canadian Pacific Railway in fixing the rate between the prairies and Vancouver, and would seem to me to establish beyond argument that the order of September 2, 1925, had not been given due effect according to its express terms in the Canadian Pacific Railway Company's tariff complained off.

The application of the province of British Columbia on July 13, 1926, was supported by affidavit of Mr. G. G. McGeer, as counsel for the province. The affidavit included a comparison of rates eastbound and westbound, as follows:—

" Rate on grain and grain products in carload lots—

> " Fort William from Moosomin, Sask., distance of 647 miles, 18 cents.

" Rate on grain to Pacific Coast port—

> " Vancouver from Ogden, Alberta, distance of 647 miles, 21 cents.

" Rate on grain and grain products in carload lots—

> " To Fort William from Pense, Sask., distance of 802 miles, 20 cents.

" Rate on grain to Pacific Coast port—

> " Vancouver from Bowell, Alberta, distance of 803 miles, 23 cents.

" Rate on grain and grain products in carload lots—

" To Fort William from Perceval, Sask., distance of 684 miles, 18 cents.

" Rate on grain to Pacific Coast port—

" Vancouver from Namaka, Alta., distance of 685 miles, 21 cents."

The judgment of the section of the Board then sitting in Vancouver in regard to the province's application was delivered by the Chief Commissioner, who presided at the hearing, as follows:—

> " On the application by Mr. McGeer, which was made to us for liberty to prosecute certain officers and directors of the Canadian Pacific Railway, which arose out of a certain rate case which was heard at Ottawa by the whole Board, and is now under consideration by the Board, it has been decided that this application is deferred, to be taken up by the full Board upon our return to Ottawa."

At the sittings of the Board in Prince Rupert, B.C., on July 30, at which the Chief Commissioner and the undersigned were present, sitting with all the powers of the full Board, Mr. McGeer made formal application to be heard in argument by the full Board before the application of July 13, 1926, would be decided.

I observe that the draft order makes no reference to this application of the counsel for the province.

On the foregoing statement of facts, I find:—

(1) That failure of the Canadian Pacific Railway to comply with the order of the Board of September 2, 1925, was established at the hearing in Ottawa, which began on February 16, 1926;

(2) That failure to so comply was further established by the affidavit submitted by Mr. G. G. McGeer, counsel for the province of British Columbia, with his application of July 13, 1926;

(3) That there has been no subsequent denial of the facts as shown in evidence in the hearing of February 16, 1926, or as set forth in the affidavit of Mr. McGeer, of July 13, 1926, by the Canadian Pacific Railway Company;

(4) That there has been no subsequent amendment of the tariff complained of, to make it conform to the order of September 2, 1925;

(5) That section 392 of the Railway Act is expressly provided to meet such cases as that complained of by the province of British Columbia;

(6) That the province does not ask the Board to prosecute the Canadian Pacific Railway Company for disregard of its orders; that power rests in the courts of law, as expressly provided in the Railway Act. But the Act also provides that the province cannot take its grievance to the courts without permission of the Board. It has formally asked the Board for that permission.

I am therefore of opinion that failure of the Canadian Pacific Railway Company to comply with the Board's Order No. 36769 has been sufficiently established to require that the permission asked for by the province of British Columbia, in its application of July 13, 1926, be granted.

I note that no reference is made to the request of the province of British Columbia through its counsel, to be heard in argument by the full Board, before a decision on the application for leave to prosecute has been given.

I believe that hitherto it has been the practice of the Board to give consideration and reply to any application made in due form by a responsible party in regard to any case of material importance. When the request for a hearing before decision is totally ignored, I can only take it as a suggestion either that the application was in itself frivolous, or was frivolously made.

If that was the idea of the majority of the Board in causing the draft order to be prepared in the form in which it has come to me, I desire to say that I am unable to find myself in agreement with that view. As I understand the matter, the material facts are as follows:—

The rail distance from Edmonton and Calgary to Fort William is approximately the same, and the rate on wheat is 26 cents per 100 pounds, or 15.6 cents a bushel from both the first-mentioned points. The order of September 2, 1925, applied the per mile wheat rates then in force from all prairie points to Fort William, to wheat moving from all prairie points to Vancouver. The distance from Edmonton to Vancouver is 766 miles and from Calgary to Vancouver 640 miles. Following upon the order of September 2, 1925, the railways reduced their wheat rates from both Edmonton and Calgary to Vancouver to 21 cents per 100 pounds, or 12.6 cents per bushel. This was in accordance with the Board's order so far as Edmonton was concerned, but owing to the shorter distance between Calgary and Vancouver, the same gross rate for the shorter as for the longer distance was not, and could not possibly be, in accordance with the Board's order for equalization. At the per mile rate on wheat from Calgary to Fort William, the rate from Calgary to Vancouver should have been approximately 3 cents less than from Edmonton, that is 18 cents per 100 pounds, or 10.8 cents per bushel.

During the twelve months period following the coming into effect of the order of September 2, 1925, over fifty million bushels of wheat was shipped from the prairies to Vancouver. Of this volume, fully half went by way of Calgary. That is over twenty-five million bushels of wheat paid a toll of 1.8 cents per bushel more than the order of September 2, 1925, permitted.

It would therefore appear that by its non-compliance with the Board's order of September 2, 1925, in the instance under consideration, the Canadian Pacific Railway benefited to the extent of something over $450,000, and the farmers of southern Alberta and southwestern Saskatchewan lost that amount out of the price of their wheat crop of 1925. Also, the port of Vancouver lost the handling of the additional amount of wheat that would have reached that port had the per mile rate eastward and westward been equalized in accordance with the Board's order.

The crop of 1926 has already begun to go forward to market. The rates being the same as last year, the proportion of profit to the railway and of loss to the farmer will be the same on the crop this season as on that of last.

I cannot consider a request for a hearing by one of the interested parties in such a case as frivolous in any degree. On the contrary, I am compelled to believe that the amount of money involved in connection with the opening of a new market season imperatively demands the most prompt and fullest attention of the Board.

Section 392 of the Railway Act already quoted definitely provides a means whereby a party believing himself to be aggrieved by neglect or refusal of a railway to obey an order of the Board, may have recourse to the proper courts for the enforcement of his rights through the imposition of penalties as provided in the Act.

Under the circumstances, as I find them to exist, I cannot agree that the application by the province of British Columbia for leave to prosecute has been frivolously made.

Having reference to the means and methods of securing compliance with the Board's orders, I find that subsection (3) of section 448 provides as follows:—

> "Whenever the Board has reasonable ground for belief that any company or any person or corporation is violating or has violated any of the provisions of this Act or any order, rule or regulation of the Board, in respect of which violation a penalty may be imposed under this Act,

the Board may request the Attorney General of Canada to institute and prosecute proceedings, on behalf of His Majesty, against such company or person or corporation for the imposition and recovery of the penalty provided under this Act for such violation, or the Board may cause an information to be filed in the name of the Attorney General of Canada for the imposition and recovery of such penalty."

While section 392 provides that penalties against a railway for non-compliance with the Board's orders may be secured by the aggrieved parties through the courts, subject to the leave of the Board, section 448 provides that the Board may, on its own initiative, bring cases of non-compliance before the courts, for the enforcement of the penalties provided. In my opinion, these provisions of the Railway Act clearly lay upon the Board the responsibility not only of making decisions but of securing compliance with those decisions, when and where necessary, through the imposition of penalties to be awarded not by the Board but by the courts. The fact of non-compliance was, in my opinion, amply established during the lengthy hearing before the full Board which began in Ottawa on February 16, 1926.

In view of the importance of the material interests involved, and further in view of the seasonal recurrence of the conditions specially affected by the order in question, I desire to place on record my opinion:—

(1) That the application of the province of British Columbia to prosecute was not frivolously made;

(2) That the inaction of the Board in regard to the matter, especially since the conclusion of the hearing of February 16, 1926, has been entirely without warrant;

(3) That the refusal of the application of the province of British Columbia without a hearing (which had been applied for in due form) is a course that must bring the decisions of the Board into contempt.

Ottawa, October 12, 1926.

Application of the Department of Highways for Saskatchewan for permission to make use for vehicular traffic of the bridge of the Canadian National Railways across the South Saskatchewan river at St. Louis, Sask.

File No. 10795.65

JUDGMENT

Chief Commissioner McKeown:

The Department of Highways of the province of Saskatchewan has applied to this Board for an order granting permission to use the Canadian National Railway bridge across the South Saskatchewan river at St. Louis, Sask., for vehicular traffic.

The department consents to bear all cost connected with any change in the bridge which may be necessary to accomplish the object it has in view, and is also willing to install, at its own expense, whatever form of protection may be considered advisable in case its application be granted.

There is no doubt that the inhabitants of this locality are extremely inconvenienced because of lack of facilities for crossing the Saskatchewan river. A ferry service operates during the summer time, but in the spring and late fall the public cannot be accommodated in this way. The winter time takes care of itself, as crossing can then be effected on the ice. But at best, there are periods during which great inconvenience is occasioned to those desirous of crossing the river at that point. There is no highway bridge within many miles,

either to the north or to the south. The contour of the country is such that the erection of such a bridge at the point in question would cost many hundreds of thousands of dollars, and in order to overcome this difficulty the attention of the Department of Public Highways has been directed to the railway bridge, with a view of availing itself of its use in the manner indicated.

The Chief Engineer of the province of Saskatchewan has reported to the Deputy Minister of Highways that the projected crossing is possible, that a sixteen-foot clear roadway can be obtained by planking the present bridge floor with four-inch planks running longitudinally, and that the approaches from both banks can be easily constructed.

The bridge, which is over 1,200 feet in length, is single tracked, and is now provided with two lines of guard rails, timber and steel, but these would cease to be effective if the change asked for were made, and as the Chief Bridge Engineer remarks, such change would be in direct contravention to the specifications of this Board, and its special permission would be necessary therefor. His report contains comprehensive features for protection to the public, including locked gates at both ends controlled by watchmen in telephonic communication with each other. It suggests that hand-rails be installed on both sides of the bridge, that unusual loads be regarded as "one way" traffic under special regulation, and also that trains stop before reaching the bridge and cross on signal from the watchmen.

As far as concerns the details of his recommendation, except the last they would seem to resolve themselves into a question of expense, which the province has consented to bear.

It is pointed out by applicants that the train service on this section is very infrequent, there being only three trains each way per week, in addition to certain freight trains which run in the fall of the year when the crop is moving. The case was very strongly put by the Reverend Father Adam, in support of the application, when he said that the railway company uses the bridge about five minutes per day, and the community needed its service day and night for the convenience of travellers.

Opposition on behalf of the railway company is founded on different grounds. Mr. Owens, who appeared for the railway, said that if there was an alternative proposition such as placing side brackets on the bridge which would eliminate all danger, the railway would not have any serious objection to the application, but that the bridge by its construction is essentially for railway purposes, there is no provision at all for the installation of side brackets, and that "it would be abnormally dangerous to have trains and vehicles on the bridge at the same time, or have them both operating over the bridge." His contention is acquiesced in by Mr. Fraser, counsel for the railway company, who has nevertheless stated to the Board that notwithstanding the objections of the company from the standpoint of jurisdiction and otherwise, "the railway is prepared to discuss with the province of Saskatchewan a reasonable proposal for placing the highway on the side of the bridge on brackets, if at any time the province thinks it would be wise to negotiate therefor."

Throughout its correspondence, while denying authority in the Board to order the use of the bridge for the purpose required, the railway company has carefully kept open the door for negotiation between itself and the Government of the province of Saskatchewan in this respect. Apart from the question of safety to the public, counsel for the railway company submits and insists that the application must fail through lack of jurisdiction on the part of the Board to entertain it. He points out that section 251, subsection 6, of the Railway Act, under which this application is made, gives power to the Board to require a railway company to construct a passageway for the use of the public, either as a general highway or otherwise, under or alongside of its track, upon any

bridge, only when such bridge is " being constructed, reconstructed or materially altered by the company ".

Admittedly, the bridge in question is not in the condition indicated by the words of the section immediately above quoted, and under the circumstances I feel compelled to acquiesce in this challenge to the Board's jurisdiction. If the bridge were now being materially altered or reconstructed, or if it were under construction, it would be open to the Board to order the railway company to do what the applicants request, under or alongside of its track, and, if such order were made, the company would be compelled to make the changes necessary to fit the bridge for vahicular and passenger traffic. There may have been good reason for confining the jurisdiction of the Board to instances in which construction, reconstruction or alteration is taking place, but it seems very regrettable that a bridge built with public money could not be utilized for the convenience of the public, and the lack of facilities for crossing the Saskatchewan river creates such extreme inconvenience to the inhabitants of this locality that a no more deserving case could ever be presented to the Board.

It is also unfortunate that the Canadian National Railways did not deem it advisable to meet the request of the applicants, more particularly when the Provincial Government declared its willingness to bear all expenses involved, and to install signals and gates to the satisfaction of the Board for the safety of railway and vehicular traffic.

But, be that as it may, Parliament has not seen fit to clothe the Board with the necessary authority to compel the railway company to do this work. The Board must, under all circumstances, act within the scope of the legislative authority given to it, and in the present instance it does not seem within the power of the Board to make the required order.

But the Board will submit this application with its recommendation to the sympathetic consideration of the Honourable the Minister of Railways and Canals.

Ottawa, October 15, 1926.

Deputy Chief Commissioner Vien and Commissioner Oliver concurred.

Application of the Moose Jaw Board of Trade, Sask.—(a) for an Order permitting the Canadian National Railways to cross the Outlook Branch of the Canadian Pacific Railway; (b) for the establishment of direct track connection Canadian National Railways, with industrial spurs and private sidings at Moose Jaw; (c) for an Order directing the Canadian Pacific Railway to permit the Canadian National Railways to operate switching services over the said industrial spurs and private sidings.

File 6713.114.

Application of the Canadian National Railways for permission to cross the Outlook Branch of the Canadian Pacific Railway, as shown on the plan filed.

File 34351.

JUDGMENT

McLean, Assistant Chief Commissioner:

The matters involved were the subject of hearing; thereafter written submissions were filed and exchanged between the parties. Under date of June 21, 1926, the Board was written to by the Secretary of the Board of Trade of the city of Moose Jaw asking that it be supplied with copies of the additional correspondence which had been exchanged. The Board was written to by the

Canadian Pacific Railway Company, under date of June 24, stating that copy of its submissions had been supplied to the city of Moose Jaw and the Board of Trade. The Board received in the last week of June copies of the Siding Agreements relating to spur tracks " L," " K " and " H." These had been asked for at an earlier date.

Application is made by specified firms in the city of Moose Jaw for the establishment of direct track connection of the Canadian National Railways with industrial spurs and private sidings at Moose Jaw. This representation was forwarded to the Board in a covering letter by the President of the Board of Trade. This letter states that said firms constitute 100 per cent of the shippers. In summary, the covering letter makes clear that this application arises out of action taken by the Board of Trade.

After reciting the conditions as to trackage, the delays alleged to exist, and the economies which it is claimed would flow from the track connection asked for, the application proceeds:—

> " In view of the conditions above recited, the undersigned do hereby apply to the Board of Railway Commissioners for Canada, under sections 252 and 253 of the Railway Act, being chapter 68 of the Revised Statutes of Canada, 1919, and amendments thereto, for an order,—
>
> "(*a*) permitting the lines or tracks of the Canadian National Railways to cross the Outlook Branch of the Canadian Pacific Railway at a point shown on plan attached;
>
> "(*b*) for an order that the lines or tracks of the Canadian National Railways shall be directly connected with the industrial spurs shown on the attached plan, so as to permit of the safe and efficient transfer of the passing of engines, cars, or trains over the tracks or lines of said Canadian National Railways to the said spurs, and that such connection shall be maintained and used; and
>
> "(*c*) that the Board further order the Canadian Pacific Railway Company to permit the Canadian National Railway Company to operate switching services over the said industrial spurs and private sidings in delivery of traffic to and from Canadian National Railway lines."

Attached to the correspondence received from the Board of Trade is a certified copy of Resolution No. 701, passed by the council of the city of Moose Jaw on June 1, 1925. Under date of June 3, 1925, a copy of this was forwarded to the Board by the city clerk. After setting out the application already referred to, the resolution proceeds:—

> " Now, therefore, be it resolved that the council of the city of Moose Jaw is agreeable that the said petition should be granted by the said Board, and is willing that sidings and spur tracks of the city situate within the city of Moose Jaw should be available for the carrying out of the arrangement proposed by the said petition;
>
> " And it is further resolved that in the opinion of this council the granting of the said petition would be of great benefit to the city of Moose Jaw and request that the Board of Railway Commissioners appoint an early date for the hearing of the petitioners."

The main action was taken by the Board of Trade, which organization was represented by counsel at the hearing. The city was also represented by counsel at the hearing.

The application asked *inter alia* that an order be made authorizing the Canadian National to cross the Outlook Branch of the Canadian Pacific Rail-

way. At the hearing, a verbal application for this sanction was made by counsel for the Canadian National Railways. Subsequently a formal written application was made by him.

Counsel for the Board of Trade stated that the application asking for an order permitting the Canadian National Railways to operate a direct switching service to the industrial tracks of the city was not a service to all of the tracks but to the three principal tracks. These industrial tracks were referred to at the hearing as spurs " L," " K " and " H," and are so referred to hereafter. The following is a description of the spurs " L," " K " and " H," the latter being the most northerly of the three:—

Spur " L " starts from the Outlook Branch of the Canadian Pacific Railway at 10th avenue, N.W., thence extends east along the lane in block 13, across 9th avenue, along the lane through block 70, across 8th avenue, N.W., thence along the lane in block 71, across 7th avenue, N.W., along the lane in block 72, across 6th avenue, N.W., and along the lane in block 73, terminating at the west side of 5th avenue, N.W., with sub-spurs to the south in blocks 13, 70, 71, 72, and 73, and also a spur on the north side in block 72.

Spur " K " begins on the Outlook Branch of the Canadian Pacific Railway just west of block 19, in the vicinity of the point where Fairford street abuts the right of way of the railway, thence extending along east the lane in block 19, across 9th avenue, along the lane in block 100, across 7th avenue, N.W., along the lane in block 99, across 6th avenue, N.W., along the lane in block 98, across 5th avenue, N.W., along the lane in block 97, terminating at the west side of 4th avenue, with one sub-spur in block 19, three sub-spurs in block 101, three sub-spurs in block 100, three sub-spurs in block 99, one sub-spur in block 98, and one in block 97.

Spur " H " begins on the main line of the Canadian Pacific Railway, a short distance west of Thunder creek, thence extending in a northeasterly direction across the right of way of the Canadian Pacific Railway across Manitoba street, west through lots 38 to 29, block 128, thence along the lane in block 128 across 4th avenue, along the lane in block 127, across 3rd avenue, N.W., along the lane in block 126, across 2nd avenue, N.W., along the lane in block 125, across 1st avenue, N.W., and along the lane in block 124, terminating at the west side of a lane running north and south which runs to the rear of the lots facing on Main street north. Spur " H " has sub-spurs as follows: One to the premises of the Robin Hood Mills, one sub-spur in block 128, two sub-spurs in block 127, two in block 126, one in block 125, and one in block 124.

While counsel for the Canadian National Railways supported this phase of the application, at the same time he queried the necessity of any such sanction being obtained by the Canadian National under the Railway Act.

It was urged, in substance, that the industrial tracks concerned were the property of the city of Moose Jaw and the city had the right to permit the Canadian National to operate this trackage, and that there was nothing in the Railway Act to prevent such an agreement being entered into.

It was admitted by the Canadian National that permission to cross the Outlook Branch of the Canadian Pacific Railway was absolutely essential if there was to be any operation by the Canadian National of the industrial tracks "L", "K" and "H". Counsel for the Board of Trade stated that its case stood or fell on the question of whether the Canadian National gets the right to cross the Outlook Branch. So far as the Outlook Branch is concerned, the Canadian National placed itself in the hands of the Board as to the question of protection, if any, necessary if the application was granted.

The application as launched urges that granting permission to the Canadian National Railways to make direct connection with Spurs "L", "K" and

"H" would create economies in cost and in time. It was very frankly admitted by counsel for the Board of Trade that one thing desired was to escape the cost attaching to interswitching as it at present exists.

The economies alleged were challenged by the Canadian Pacific and a considerable volume of evidence was received on this subject. In addition, written submissions were submitted by the parties and a further opportunity has been afforded them to check these statements and submit such explanatory material as was deemed proper.

The Canadian Pacific took exception to the joint operation of the spurs in question, a method of operation which would be necessary if the application was granted.

The practical working of the matter as above referred to was set out at great length. It is, however, referred to here only in a summary way, because the primary matter is to determine what power the Board has in the application. Careful consideration has been given to the decisions of the Board in other cases involving industrial trackage, and attention has been devoted to the contentions of the parties regarding the status of the contracts herein involved. The question concerned raises an issue which is not without difficulty.

In the present instance, the right of way is not owned by the Canadian Pacific. The right of way is, in the main, afforded by easements on city lanes and streets. In other cases, later referred to, there have been before the Board applications to direct a railway operating a spur track, under siding agreement, to extend such operation to a point beyond. What is asked for here is not that the Canadian Pacific shall be permitted or directed to operate over the spur or spurs in question to property beyond, but that the Canadian National should also be permitted to operate over the spur or spurs in question.

Spur "K" was built under an agreement entered into between the Canadian Pacific Railway Company, of the First Part, and the City of Moose Jaw, the party of the Second Part, on December 24, 1906. The usual provision is found in the agreement regarding the rental which, in this case, amounts to an annual charge of $108.73. There are some changes in the printed form of the agreement, certain paragraphs as set out hereinafter being stricken out.

Under paragraph 5 of the agreement, which takes the place of paragraph 6 of the printed form but does not differ in wording from the printed form, it is provided that "the times at which and the manner in which the said siding shall be used shall be regulated by the officials of the railway company, provided always that their control shall not interrupt the proper use of said siding for the business of the party of the second part (that is, the City of Moose Jaw)."

Paragraph 6 is in the ordinary agreement form, except that it is renumbered, the printed paragraph being No. 7. This provides that the railway company shall at all times, during the continuation of the agreement, have the use of the said siding in so far as it shall not be required for the use of the party of the second part. Right is reserved to the railway company to permit the use of the siding to all other parties, provided that this does not interfere with the proper use of the siding for the business of the party of the second part. Said use is to be upon proper compensation to be paid to the party of the second part. If an agreement cannot be arrived at between the railway company and the party of the second part in respect of the determination of the compensation, then the matter is to be dealt with by the Board. So far, these provisions deal with rights reserved to the railway company.

In place of paragraph 11 of the printed form of siding agreement, there is put in a typewritten paragraph numbered 10 which provides,—

> " That the rights and privileges of the party of the second part under this agreement shall not be transferred or sublet, either in whole or in part, except with the written consent of the railway company; and in the event of such transfer or subletting taking place without such written consent, the present agreement shall at the option of the railway company come to an end and be terminated from and after the date of such transfer or subletting."

Under paragraph 11 of the printed form, the provision is that if the railway company withholds its consent to such transfer without good and sufficient reason, the party of the second part is to have the right " should the railway company withhold its consent to such transfer or subletting, to appeal to the Board." It is to be noted that in paragraph 10 contained in the present agreement, the provision for appeal to the Board is stricken out.

Paragraph 12 of the printed form is renumbered 11. This provides that if the rental, or any part thereof, is in arrears for the space of two calendar months, then it shall be lawful for the railway company, on written notice, to discontinue to operate the said siding. No right of appeal to the Board is contained in this paragraph.

Paragraph 13 of the printed form is stricken out; this is the paragraph which provides that either party shall have the right to terminate the present agreement at any time by leave of the Board, upon giving notice.

It was stated by counsel for the Board of Trade that the " K " spur was extended under an agreement dated June 14, 1911, and that the city paid for the construction and also paid a rental charge of $39.79. Counsel for the city furnished, on request, copies of the siding agreements in respect of spur tracks "L", "K", and "H". The extension herein referred to is not covered by the siding agreements filed.

Spur track "H" was built under an agreement entered into on June 29, 1912, between the Canadian Pacific Railway Company and the City of Moose Jaw. This form as submitted is on the agreement form for a siding already constructed. There was an annual rental of $321.98. The printed form is used here, there not being the same variations as are contained in the siding agreement dealing with spur "K". Under this, there are the ordinary siding agreement provisions:

(1) That the times at which and the manner in which the said siding shall be used shall be regulated by the officials of the railway company, provided always that their control shall not interrupt the proper use of the said siding for the business of the party of the second part;

(2) That the railway company shall at all times during the continuance of this agreement, have the use of said siding in so far as it shall not be required for the use of the party of the second part as aforesaid;

(3) That the railway company may permit the use of said siding by other parties, provided such use shall not interfere with the proper use of said siding for the business of the party of the second part, upon proper compensation to be paid to the party of the second part, such compensation to be determined by the railway company and the party of the second part, and if they fail to agree then by the Board;

(4) That the rights and privileges of the party of the second part under this agreement shall not be transferred or sublet, either in whole or in part, except with the written consent of the railway company; provided the railway company shall not withhold its consent to such transfer without good and sufficient reason; and the party of the second part shall have the right, should the railway company withhold its consent to such transfer, to appeal to the Board;

(5) Provision is made for termination of the agreement in the event of arrears of rental;

(6) And provision is made for termination of the agreement at any time by leave of the Board, upon notice.

Spur "L" agreement was entered into on June 20, 1912, between the Canadian Pacific Railway Company and the City of Moose Jaw. Under this, there is an annual payment of $166.57 for rental. The ordinary printed form of agreement is used. This contains the usual provisions, the more important of which have been summarized in the details of the preceding spurs.

Orders of the Board in connection with the spurs in question have issued as follows:—

Spur "K"—Orders 2879 of March 15, 1907, and 19930 of October 2, 1911.

Spur "L"—Orders 7263 of June 11, 1909; 11479 of August 25, 1910; 18760 of February 20, 1913; and 34990 of May 3, 1924.

Spur "H"—Order 17506 of September 17, 1912.

Questions arise as to what relation the Board has to the provisions of the Siding Agreements. What sanction, direction or control is reserved to the Board thereunder? The provisions of the Siding Agreements as filed may, in so far as there is any reference to the Board or its powers, be summarized under the following headings:—

(*a*) Undertaking to construct a railway siding on the terms hereinafter mentioned, which the railway company has agreed to, *subject always to the approval of the Board of Railway Commissioners for Canada.*

Spur " K "—the underlined portion is contained.
Spur " L "—the underlined portion is contained.
Spur " H "—the underlined portion is not contained (this agreement form is for a siding already constructed).

(*b*) That the work of constructing the said siding shall be performed and all material . . . shall be furnished by and at the expense of the party of the second part, all to the satisfaction of the railway company and the *Board.*

Spur " K "—the underlined portion is stricken out.
Spur " L "—the underlined portion is contained.
Spur " H "—the underlined portion is not contained.

(*c*) The party of the second part will . . . pay to the railway company all cost and expenses which may be incurred by the railway company by reason of or arising out of any order or direction of the *Board.* . . .

Spur " K "—the underlined portion is stricken out.
Spur " L "—the underlined portion is contained.
Spur " H "—the underlined portion is contained.

(*d*) The party of the second part will not erect, or permit to be erected, or permit to remain if erected, any building or structure, or permit any material to be placed in violation of the law or of the orders of *the Board.*

Spur " K "—the underlined portion is stricken out.
Spur " L "—the underlined portion is stricken out.
Spur " H "—the underlined portion is stricken out.

(*e*) That the railway company may permit the use of the said siding by other parties . . . upon proper compensation to be paid to the party of the second part, such compensation to be determined by the railway company and the party of the second part; *and if they fail to agree then by the Board.*

Spur " K "—the underlined portion is contained.
Spur " L "—the underlined portion is contained.
Spur " H "—the underlined portion is contained.

(*f*) That the rights and privileges of the party of the second part under this agreement shall not be transferred or sublet either in whole or in part, except with written consent of the railway company; provided that the railway company shall not withhold its consent to such transfer without good and sufficient reason; and the party of the second part shall have the right, should the railway company withhold its consent to such transfer, *to appeal to the Board.*

Spur "K"—the underlined portion is stricken out.
Spur "L"—the underlined portion is contained.
Spur "H"—the underlined portion is contained.

(*g*) Provided also that either party shall have the right to terminate the present agreement at any time, *by leave of the Board.* . . .

Spur "K"—the underlined portion is stricken out.
Spur "L"—the underlined portion is contained.
Spur "H"—the underlined portion is contained.

As indicated, the spur tracks in question involve the use of city streets and lanes, and it is contended that the Canadian Pacific Railway Company has no rights of ownership in respect of the location on the city streets and lanes. Counsel for the Canadian National states that these tracks are the city's tracks and that it has complete control over them, except as provided by agreement.

In another connection it was stated by counsel for the Canadian National Railways that if the Board has no jurisdiction to allow it on the tracks in question, it has no jurisdiction to direct that it be kept off the tracks in question.

At p. 3115, Vol. 447, counsel for the Canadian National Railways puts the matter in the following way. Referring to the spurs "K," "L" and "H," he says:—

> "The citizens of Moose Jaw made an agreement and now they want to make another agreement. What is to prevent them? I would like to hear what is to prevent them. My view is that we are perfectly willing to connect with the tracks of the city of Moose Jaw, and we would like permission to connect under section 252 of the Railway Act, because we cannot do it without such permission, as I understand it, and we want permission to cross the Outlook Branch upon proper terms as to protection. . . .
>
> "If the Board will grant us the crossing of the Outlook Branch, we will make an agreement with the city of Moose Jaw, whether you authorize it or not. We have no fear as to the legal position, as far as that is concerned, but we think you should make that provision in view of section 252."

As pointed out, the record submitted to the Board is apparently incomplete in regard to the extensions made in the various spurs and supplementary agreements in connection therewith. On what is before the Board, however, it appears that this does not alter the consideration as to the status of the siding agreements.

The Board's powers in connection with the Branch Line sections as distinct from the Forced Construction section have been passed upon by the courts.

The subject-matter of section 185, of the Act of 1919, is covered by section 226 of the Act of 1906 and by section 176 of the Act of 1903. Section 176 of the Act of 1903 is a new section.

In *Blackwoods and Manitoba Brewing and Malting Co. vs. Canadian Northern Railway and City of Winnipeg, 44 S.C.R., 92*, it was held that the Board of Railway Commissioners for Canada had not the power (except on expropriation or consent of the owner) to order that a private industrial spur-track or siding, constructed and operated under an agreement between a railway company and the owner of the land upon which it is laid and used only in

connection with the business of such owner, shall be also used and operated as a branch of the railway with which it is connected.

In *Clover Bar Coal Co. vs. Humberstone, Grand Trunk Pacific Railway and Clover Bar Sand and Gravel Cos., 45 S.C.R. 346,* it was held that notwithstanding provisions in an agreement under which a private industrial spur or siding has been constructed entitling the railway company to make use of it for the purpose of affording shipping facilities for themselves and persons other than the owners of the land upon which it has been built, the Board of Railway Commissioners for Canada, except on expropriation and compensation, has not the power, on the application under section 226 of the Railway Act (R.S.C., 1906, chap. 37), to order the construction and operation of an extension of such spur or siding as a branch of the railway with which it is connected.

A similar matter was involved in *Boland vs. Grand Trunk Ry. Co., 18 Can. Ry. Cas., 60.* The following language was used at p. 64:—

> " I am of the opinion that construction made under an order issued under the provisions of section 222 is not *ipso facto* railway property. Whatever the effect of such order might be as against the railway company, it cannot in any way affect the title of the others and transfer the right of way on which the siding may be built from them to the railway. While it well may be that the section contemplates the acquisition of the right of way by the railway company, it can only contemplate this being done by agreement with the landowner or after payment of compensation fixed under the appropriate sections of the Act. Nothing of this sort has happened here."

The essence of the decisions is that a spur line constructed under the provisions of section 222 (181 of the present Act) does not become part of the railway of the company where the branch in question is built on the basis of a co-operative construction, as already referred to above.

The decisions establish that in order to make a branch line, whose basis is a consensual arrangement evidenced in a siding agreement, part of the railway, it is necessary to use expropriatory powers; that is to say, the railway acting on the part of the individual concerned, may take steps to expropriate and incorporate the branch line in its own system. The Board has no power to direct the extension of the siding not built under the compulsory construction sections unless there is expropriation. The branch line so situated is, within the reasoning of the decisions, not a part of the railway.

Under section 180 of the Railway Act, provision is made for branch line construction. Here, construction may be undertaken, the railway company exercising its rights as to compulsory taking of land and thereafter completing the work. On the other hand, the branch line may have as its basis a desire on the part of an individual to have a line built to his industry; and here, if the railway and the applicant are in agreement, provision for a co-operative scheme of construction may be entered into. The terms on which a railway so enters upon this construction are defined in the Siding Agreement which sets out a contractual basis. In dealing with matters arising out of siding agreements, the Board, after referring to the fact that the branch line built on a siding agreement basis is not part of the railway, has said:—

> " . . . it would appear that as to the terms of construction of the branch line, the provisions contained in one siding agreement have no necessary bearing upon the terms contained in another siding agreement. . . . An equally fundamental matter is the question of the powers of the Board to make the revision in terms as asked for. . . . If the Board has no power under the 'Branch Lines' sections to fix at the outset the terms as to co-operative construction and cost of main-

tenance, then it also follows that the Board is without power to revise the terms so agreed upon and fixed in a contractual agreement." *Carrol Bros. vs. G.T.R., 28 Can. Ry Cas., 35, at pp. 41-42.*

It had already been pointed out in the same judgment, p. 40, that the Board had no power to compel the construction of a branch line, under the Branch Lines sections, to serve an industry. It is under the Forced Construction section that such action can be taken.

Counsel for the Canadian National, in a recent written submission made in another connection, dealing formally with the construction placed by him on the Siding Agreement and the Board's powers in relation thereto has said:—

> " . . . but the Board decided almost at its conception, and has continually maintained the position, that it is without jurisdiction to approve of siding agreements, or interfere with their terms in any way, unless such siding agreements contain clauses to give effect to which would interfere with public safety as to which the Board's powers are absolute."

The spur, constructed on the basis of a Siding Agreement, not being part of the railway, such powers, if any, as the Board may be able to exercise in reference to said siding must be specifically reserved powers. In this connection, reference may be made to the provisions already summarized. Item (*a*), as indicated, provides for the approval of the Board. Under the decisions, this approval does not make the branch line based on a siding agreement part of the railway. What must the Board consider in connection with the granting of such approval? Under the Railway Act of 1903, there are set out in section 175, subsection 4, the conditions on which the approval of the Board, if satisfied, may be given to a branch line when application therefor is made:—

> " . . . the Board, if satisfied that the branch line is necessary in the public interest, or for the purpose of giving increased facilities to business, and if satisfied with the location of such branch line and the grades and curves as shown on such plan, profile, and book of reference may . . . authorize the construction of the branch line. . . ."

The same provisions are to be found in the Railway Act of 1919, section 182.

Summarizing the conditions precedent to the Board's consent, it must be satisfied,—

(*a*) that the branch line is necessary in the public interest;
(*b*) or that it will give increased facilities to business;
(*c*) and that it is satisfactory from an engineering standpoint.

This provision does not, under the decisions and in the absence of specific reservation in the Siding Agreement, convey any power to the Board to say whether an additional railway shall be permitted to operate on the branch line so approved.

The reservations contained in items (*b*) to (*g*), inclusive, do not have a bearing on the application before the Board.

In the application as launched by the Board of Trade, and supported by the city, there are three inter-related portions. The Canadian National joined as to two phases of the application. The fundamental matter was that of operation on the designated spur tracks. In the absence of the question of operation over these tracks, the need for the other phases of the application is not apparent. The Board has no power to deal with the fundamental phase involving a direction to the Canadian Pacific to permit the Canadian National to operate over spurs "K" "L", and "H". Until there is such a change of status, if change be needed, as will, with legal sanction, permit the addition of operation

as asked for, I do not think the Board would be justified in dealing with the ancillary phases of the application, viz., the request for connection with the spur tracks and the application to cross the Outlook Branch.

November 3, 1926.

Commissioner Boyce concurred.

Application of the Moose Jaw Board of Trade, and the Council of the City of Moose Jaw, Saskatchewan, for the establishment of direct track connection of the Canadian National Railways with industrial spurs and private sidings at Moose Jaw, Sask.

Files 6713.114 34351

Heard at Moose Jaw, Sask., November 23, 1925, by the Assistant Chief Commissioner and Commissioners Boyce and Oliver.

Commissioner Oliver:

The judgment of the Assistant Chief Commissioner, agreed to by Mr. Commissioner Boyce, has been given under date of November 3, 1926.

The judgment begins with the following statement of the case:—

> "Application of the Moose Jaw Board of Trade, Sask.—(*a*) for an order permitting the Canadian National Railways to cross the Outlook Branch of the Canadian Pacific Railway; (*b*) for the establishment of direct track connection Canadian National Railways, with industrial spurs and private sidings at Moose Jaw; (*c*) for an order directing the Canadian Pacific Railway to permit the Canadian National Railways to operate switching services over the said industrial spurs and private sidings. File 6713.114.
>
> "Application of the Canadian National Railways for permission to cross the Outlook Branch of the Canadian Pacific Railway, as shown on the plan filed. File 34351."

The concluding paragraph of the judgment reads as follows:—

> "In the application as launched by the Board of Trade, and supported by the city, there are three inter-related portions. The Canadian National joined as to two phases of the application. The fundamental matter was that of operation on the designated spur tracks. In the absence of the question of operation over these tracks, the need for the other phases of the application is not apparent. The Board has no power to deal with the fundamental phases involving a direction to the Canadian Pacific to permit the Canadian National to operate over spurs "K", "L", and "H". Until there is such a change of status, if change be needed, with legal sanction, permit the addition of operation as asked for, I do not think the Board would be justified in dealing with the ancillary phases of the application, viz., the request for connection with the spur tracks and the application to cross the Outlook Branch."

As I understand the purport of the foregoing paragraph as quoted, it is,—

(1) That the Board has no authority to order the Canadian Pacific Railway to permit the Canadian National Railway to switch cars over the industrial spurs referred to as "K", "L", and "H".
(2) That therefore an order granting the application of the Canadian National Railway for a crossing over the Outlook Branch of the Canadian Pacific Railway, so that the former might conveniently reach the spurs in question, would be unwarranted.

If this understanding is correct I am unable to find myself in agreement with the judgment of the Assistant Chief Commissioner and of Mr. Commissioner Boyce, for the reasons which I shall endeavour to state and explain.

The city of Moose Jaw is situated at an important junction and divisional point on the Canadian Pacific Railway main line. The " Soo " line from Chicago and St. Paul joins the Canadian Pacific main line a few miles east of the city; the Outlook Branch of the Canadian Pacific Railway extends northwesterly with connections to Edmonton; and the Shaunavon Branch extends southwesterly to Lethbridge. The Melville-Regina Branch of the Canadian National Railways passes through Moose Jaw on its way to Riverhurst at the crossing of the South Saskatchewan, and is under construction to connect with the Canadian National line between Saskatoon and Calgary. There are of course a number of subsidiary branches and important connections of both systems besides those mentioned, Such favourable railway connections tend to constitute Moose Jaw a desirable location for distributing enterprises, both industrial and commercial. Naturally those who have the guidance of the city's affairs have always wished to improve the conditions of receiving and distributing from time to time as occasion arose or opportunity offered.

The need of activity on the part of Moose Jaw was impressed by the fact that Regina, the capital of the province, situated 40 miles eastward on the main line of the Canadian Pacific Railway, also having Canadian National connections, and with a number of radiating branches both of Canadian Pacific and Canadian National, is a rival for the distributing trade of at least all the southern part of the province. The territory served by railways radiating from Moose Jaw could be served almost equally well from Regina and also the territory covered by the railways radiating from Regina could be served almost equally well from Moose Jaw. Under such conditions the distributing trade of Moose Jaw is, and must of necessity, be dependent on the promptitude of its service, which again is necessarily dependent upon the certainty, rapidity and low cost of the rail movements both inward and outward.

The city of Moose Jaw centres on the Canadian Pacific Railway Station. The principal business part of the city lies north of the main line of that railway and is approximately equally divided by Main street which runs northward from the railway station. The railway yards lie west from the station. The first receiving, distributing and industrial concerns of the city were located north of the Canadian Pacific Railway tracks, beginning some two blocks west of Main street and extending thence westerly and adjacent to the Canadian Pacific Railway yards. The Robin Hood Mills, a very important export industry are located in the sixth block west of Main street and north of the Canadian Pacific main line. The Outlook Branch of the Canadian Pacific leaves the main line at the street between the eighth and ninth block west of Main street and crosses the outlying western part of the city in a north westerly direction.

With a view no doubt first of attracting distribution and industrial enterprises to the city, and second of securing their location in the western section north of the Canadian Pacific Railway where the larger number of such enterprises were already located, the city entered into an arrangement with the Canadian Pacific by which the lane midway between High and Fairford streets, some distance west of Main street, was occupied by a spur from the Outlook Branch of the Canadian Pacific Railway. By an agreement dated December 24, 1906, the city paid for the grading and ties of the spur and leased the necessary rails, fastenings and switch materials from the Canadian Pacific, at a rental of $108.73 per year. By a supplementary agreement dated June 14, 1911, the spur was extended further eastward along the same lane. The city paid the railway $549 as the cost of construction and pays a rental of $39.79

for the use of the rails, fastenings, etc. At the hearing and in the documents on file, this track is referred to as spur "K".

The agreement between the city and the railway in respect of spur "K" is not altogether in the terms of an ordinary industrial siding agreement, and the spur was not an ordinary industrial spur. A siding agreement is for the purpose of enabling an industrial or commercial enterprise, not located on the main tracks of a railway, to get such connection with these tracks as shall enable it to do business on terms of equal, or approximately equal advantage with other like enterprises located on such tracks. The city is not an industrial or commercial enterprise. The track was not built to enable it to receive or ship freight of any kind. It was to all intents and purposes a separate piece of railway, and was built by the city to enable private industrial and commercial enterprises either located directly on it or on spurs which connected with it, to operate on favourable terms in the section of the city that those having direction of its affairs at that time considered most desirable in the general interests of the city.

That the agreement of 1906 is not an ordinary siding agreement is made evident by the variation from the terms of the ordinary siding agreement in section 10, which reads as follows:—

> "10. That the rights and privileges of the party of the second part (the city) under this agreement shall not be transferred or sublet, either in whole or in part, except with written consent of the railway company; and in the event of any such transfer or sub-letting taking place without such written consent, the present agreement shall, at the option of the railway company come to an end, and be terminated from and after the date of such transfer or sub-letting."

The ordinary siding agreement clause for which the foregoing is substituted and which appears in the agreements regarding the other two spurs, "H" and "L" under consideration, reads as follows:—

> "That the rights and privileges of the party of the second part under this agreement shall not be transferred or sublet either in whole or in part, except with the written consent of the railway company. Provided that the railway company shall not withhold its consent to such transfer without good and sufficient reason and the party of the second part shall have the right, should the railway company withhold its consent from such transfer, to appeal to the Board."

It will be observed that the question of the right to sublet the spur or in other words to admit another railway to its operation, is the important feature of the section and that although the method provided for dealing with a dispute as to subletting is different from that in the ordinary siding agreement as applying to spurs "H" and "L," in so far as there is a difference it more fully confirms the absolute right of ownership in the spur to the city. The Board is given power under the terms of the city's agreement with the Canadian Pacific Railway to refuse the right of subleasing in respect of spurs "L" and "H," but has no such power under the terms of the agreement regarding spur "K."

Approval was given to the first agreement regarding spur "K" by the Board on March 15, 1907, and to the agreement for its extension on October 2, 1911.

In order that there might be no question as to the rights of the city to build railway lines, tracks or spurs within its limits in fulfilment of the purposes in view in the building of spur "K," the Legislature of Saskatchewan in 1912 passed an Act of which the following is section (3):—

> "(3) The city (Moose Jaw) is hereby authorized and empowered to construct, build and operate or enter into an agreement with any rail-

way company to construct, build and operate spur or commercial railway tracks in any part of the said city, and to connect the same or cause the same to be connected with the main or other lines of any railway company built into or operating in the city of Moose Jaw; subject however, to the regulations and supervision of the Board of Railway Commissioners, and for the purpose of such building or construction, the city of Moose Jaw shall have and possess all rights of expropriation granted to cities under the city Act in connection with any property that may at the present time or at any time hereafter be expropriated under such Act; provided that the plans for any railway track to be constructed under the provisions of this section shall first receive the approval of the Minister of Railways for Saskatchewan."

In practical effect this Act gave the city the status of a railway company in regard to spurs built by itself within its own boundaries, whether built before the passing of the Act, as in the case of spur "K," or as in that of spurs "H" and "L," built after it was passed. The legal relationship of the city to these spurs was therefore essentially different from ordinary spurs built under ordinary siding agreements.

The Act was assented to on March 13, 1912. In June of that year agreements for construction and operation of the spurs "L" and "H" were made between the city and the Canadian Pacific Railway. The agreements in both cases were approved by the Board.

Spur "L" left the Outlook Branch at a point further northwesterly than the point at which "K" spur left it and going easterly, occupied the lane midway between Fairford and Ominica streets for a distance of six blocks.

Spur "H" left the main Canadian Pacific line at a point near the Robin Hood Mills and about six blocks west of Main street. After crossing Manitoba street, which fronts on the Canadian Pacific main line property, it entered the lane midway between Manitoba and River streets and followed it easterly five blocks or to within one range of lots of Main street.

When the Grand Trunk Pacific (now the Canadian National) track reached Moose Jaw an arrangement for interswitching was made, whereby cars arriving on Canadian National tracks were switched to sidings operated by the Canadian Pacific at a charge of approximately $10 per car. A statement submitted at the hearing showed that for the sixteen months from January 1, 1924, to May 31, 1925, the Canadian National Railways had collected from Moose Jaw shippers on account of switching services performed by the Canadian Pacific Railway nearly $17,000, and in addition there was a further cost of $14,500 which was absorbed by the Canadian National itself on cars coming from competitive points. It was further stated on behalf of the applicants that if the application were granted the Canadian National would place as desired by shippers, cars coming to the city over their lines without any switching charge.

It was also stated on behalf of the applicants that frequently there were unwarranted delays in the placing of cars arriving by Canadian National, which seriously interfered with the prompt service that was necessary to enable Moose Jaw industrialists and distributors to compete with rivals on the terms to which they felt themselves entitled. Instances of delays were given. A car took two days to reach Moose Jaw from Coppen, 119 miles distant, and took five days to be switched to place for loading. A car from Snipe Lake, 361 miles distant, shipped on the 5th, arrived on the 7th, and was not placed for loading until the 10th. A car from Riverhurst, 72 miles distant, was shipped on January 29, arrived on January 31, and was placed for unloading on February 6. The length of haul involved in the interswitching amounted to 8½ miles and the movements were numerous and complicated. The subject of delays in

placing cars was gone into very fully both at the hearing and by documents afterwards submitted and now on file, supported in some cases by affidavit. Paragraph 25 of the submissions of the President of the Moose Jaw Board of Trade, dated November 20, 1925, reads:—

> "We submit, gentlemen, that the evidence already offered is conclusive and proves that the Canadian Pacific Railway not only do not give reasonable service on interswitched cars, but they do not give service on such cars equal to that given on their own cars . . . . and we further submit that the delays incident to the present service on interswitched cars is a menace to the business of those shippers and consignees who have to depend on such service."

If it were necessary to a decision I would be compelled to say that in my opinion reasonable ground for the complaints of the applicants as to dilatory service has been established; but I do not consider that this must be established as a fact in order that the application should succeed. In this connection I desire to draw attention to section 253 of the Railway Act under which the application of the city of Moose Jaw is made, which says:—

> "(1) Where the lines or tracks of one railway are intersected or crossed by those of another, or upon any application for leave to make any intersection or crossing, or in any case in which the tracks or lines of two different railways run through or into the same city, town or village, the Board may, upon the application of one of the companies, or of a municipal corporation or other public body, or of any person or persons interested, order that the lines or tracks of such railways shall be so connected, at or near the point of intersection or crossing, or in or near such city, town or village, as to admit of the safe and convenient transfer or passing of engines, cars and trains, from the tracks or lines of one railway to those of another, and that such connection shall be maintained and used.
>
> "(2) In and by the order for such connection, or from time to time subsequently, the Board may determine by what company or companies, or other corporations or persons, and in what proportions, the cost of making and maintaining any such connections shall be borne, and upon what terms traffic shall be thereby transferred from the lines of one railway to those of another."

The section continues in subsection (3) to deal with a situation in which joint operation of one railway track under provincial charter and another under Dominion charter is desired.

In no part of the section is there any suggestion that the proposed track connection which is for the convenience of shippers in the handling of their traffic shall be dependent upon the efficiency or sufficiency of the service already being given by one or other of the railways concerned.

It is true that "the Board may" grant the order asked for and therefore it is to be assumed "may not" grant it. But as no conditions are attached to the application, it would appear to me that the interest of the Board in such an application is to decide as to the details and apportion the cost; once it has been satisfied that it is not frivolous or improper in character. In my opinion, the section assumes that wherever joint service is reasonably and fairly practicable, the Board shall see that it is accorded if it is asked for by any one of the several parties concerned.

The city of Moose Jaw, owners of spur tracks "K", "H", and "L", and the Board of Trade representing the industrialists and distributors of the city who must use the tracks, apply for an order of the Board directing connection of these spurs with the Canadian National Railway tracks under section 253 of the

Railway Act, above quoted. The Canadian National Railways apply for leave of the Board to make the connections asked for by the city and Board of Trade and to cross the Outlook Branch of the Canadian Pacific Railway in order to do so. The application of the Canadian National Railways is made under section 252 of the Railway Act, as follows:—

> "(1) The railway lines or tracks of any railway company shall not cross or join or be crossed or joined by or with any railway lines or tracks other than those of such company, whether otherwise within the legislative authority of the Parliament of Canada or not, until leave therefor has been obtained from the Board as hereinafter provided.
>
> "(2) Upon any application for such leave, the applicant shall submit to the Board a plan and profile of such crossing or junction, and such other plans, drawings and specifications as the Board may, in any case, or by regulation, require."

Subsections (3), (4), and (5) give the details regarding construction for which the Board is responsible.

The plan submitted by the Canadian National Railways is identical with that submitted by the city and Board of Trade. It shows a spur leaving the branch of the Canadian National which reaches the Dominion Government elevator west of the Canadian Pacific Railway's Outlook line. It crosses the Outlook line near the point at which spur "K" leaves it. Shortly after crossing the Outlook line it joins spur "K". The plan shows a connection to be made between spurs "K" and "L" by a line which leaves "K" somewhat over a block easterly from the Outlook line. Connection is made with spur "H" by a line which leaves "K" near the Robin Hood mills. There is also a short separate connection to these mills. No question was raised as to the practicability of the connections as proposed, nor as to the proposed crossing of the Outlook line. Traffic on that line is one passenger train each way per day except Sunday besides freight.

The application was opposed by the Canadian Pacific Railway both at the public hearing in Moose Jaw and by documents filed with the Board since that hearing. In a lengthy memorandum dated May 21, 1926, the solicitor for the Canadian Pacific Railway sums up the case for that railway, and in an accompanying letter he asks that the Board dispose of the matter on the record. As I understand the memorandum, he makes his main contentions:—

> "(1) That it (spur "K") cannot be regarded as other than a Canadian Pacific Branch line for the purposes of this application," and
>
> "(2) That the proposed joint operation involves an interference with our services which, it is not out of place to say, would be not only unjustifiable, but intolerable."

I do not find the arguments in support of the Canadian Pacific Railway ownership of spur "K" convincing, particularly in view of the terms of section 10 of the agreement between the city and the Canadian Pacific Railway regarding the operation of that spur, in which the right of the city to sublet (admit to joint operation) another railway, is recognized free of any interference by any other authority. If the company owned the spur there could be no question of a right of subletting by the city. The railway may if it pleases in case the city sublets the right of operation in spur "K", withdraw from the agreement, but it has no other remedy under it, as it must have if it were the owner.

It does not, however, appear to me that the agreements regarding the several spurs, whatever they may be, or have been, are material to the application. If all three spurs were in fact the property of the Canadian Pacific Railway, the Board would in my opinion, still have power to order the connec-

tion asked for, subject only to conditions to be fixed on the responsibility of the Board.

In support of that view, I desire to quote from section 193 of the Railway Act:—

> "(1) The company may take possession of, use or occupy any lands belonging to any other railway company, use or enjoy the whole or any portion of the right of way, tracks, terminals, stations or station grounds of any other railway company, and have and exercise full right and power to run and operate its trains over and upon any portion or portions of the railway or any other railway company, subject always to the approval of the Board first obtained and to any order and direction which the Board may make in regard to the exercise, enjoyment or restriction of such powers or privileges."
>
> "(3) If the parties fail to agree as to compensation, the Board may, by order, fix the amount of compensation to be paid in respect of the powers and privileges so granted."

The power given to one railway to use the tracks of another, subject to the approval of the Board, is not limited by the terms of any lease or agreement, or in any other manner whatsoever. The power of the Board to authorize the taking for use is absolute. Subsection (3) of section 193 makes full provision for the adjustment of compensation by order of the Board for rights infringed upon or for disabilities resulting. But no provision is made whereby the company whose track is to be used by the other company can enforce any objections it may have to the order which authorizes such use. That being the fact, the ownership of the track or tracks affected, or the terms and conditions of their occupation or operation, can have no effect to prevent the connection and use asked for in this case by the city of Moose Jaw, by the Moose Jaw Board of Trade and by the Canadian National Railways from being granted.

As to the second contention of the Canadian Pacific Railway that the leave asked for should not be granted because it would be "unjustifiable," and an "intolerable" interference with the services now being efficiently rendered by that railway. It is to be understood that difficulties may arise in connection with joint operation that do not occur under operation by a single company. Notwithstanding that admitted fact it is plain that the Railway Act assumes by its terms that the advantages to the public outweigh the disadvantages to the railroad. The industrial and distributing enterprises of Moose Jaw are the first points of contact between the railroads and the public who are served from that city. They are apparently unanimous in their belief that the joint service asked for would be a public benefit. They are so convinced, that they have formally invoked the provisions of the Railway Act and the powers of the Board under that Act in order to secure the measure of advantage which they expect would result. If railroads are built and operated to render service to the public, it does not appear to me that the objection of the Canadian Pacific Railway, because of difficulties which are inherent to all such double services over a single track, should prevail.

On February 9, 1926, the Board issued Order No. 37320 by which, on its application, the Canadian Pacific Railway was authorized to operate its trains over spurs of the Canadian National tracks in the city of Kingston, Ont., known as the Cohen and Crawford sidings, on terms to be arranged between the two railways; or in default of their coming to an agreement, then by a further order of the Board.

By the terms of the order the Canadian Pacific Railway was allowed to operate the spurs forthwith. There was no delay in operation while the arrangements as to terms were being negotiated between the railway companies.

This order followed upon a public hearing in Ottawa on December 15, 1925, at which the Assistant Chief Commissioner presided, and at which the Canadian National Railways, owners of the line with which the spurs were connected, objected to the granting of the application.

The railways were unable to come to an agreement as to the terms of joint operation and it was not until the Board had issued Order No. 37744, dated June 16, 1926, that these terms were settled. Both railways objected to the terms imposed by the Board, but notwithstanding their objections the spurs are now being jointly operated subject to those terms.

The facts of the case were that the Canadian National owned the railway line with which the spurs were connected. One of the spurs was entirely the property of the business located on it. The other enterprise had built the grade and provided the ties, but paid an annual rental to the Canadian National Railway for the use of the rails, fastenings, switches, etc. Both were under the usual siding agreement with the Canadian National, duly approved by the Board. The order of February, 1926, permitting the use of these spurs by the Canadian Pacific Railway was given because both industries desired direct service by the Canadian Pacific Railway, which that railway desired to give.

The right to operate cars on the two spurs mentioned was granted the Canadian Pacific Railway, although it could only reach them over the Canadian National track. While the Canadian Pacific Railway operated over that track to Kingston station under a lease of running rights, that lease was not held to give it any right to operate the spurs and its operation of the spurs is made subject only to terms imposed by the Board.

The right to operate these industrial spurs of the Canadian National Railway was granted by the Board to the Canadian Pacific Railway under the provisions of section 193 of the Railway Act and in pursuance of the policy of permitting joint use of industrial tracks as expressed in section 253 of the Act.

I have been unable to find either in the records of the hearing, or in the documents subsequently filed, any suggestion from the Canadian Pacific Railway that its joint operation of these two spurs was either " unjustifiable " or an " intolerable " interference with the service already being rendered on them by the Canadian National Railways. The Canadian Pacific had already the same rights of interswitching on those Canadian National spur tracks at Kingston that the Canadian National now has over the Moose Jaw city (not the Canadian Pacific) spur tracks at Moose Jaw. But the enterprises served wanted direct Canadian Pacific service. The Board having under those circumstances granted the Canadian Pacific Railway the right to give a direct service on the Canadian National spurs at Kingston, I am unable to find a reason why the Canadian National should not be granted the right to give a similar direct service over the city spurs that are connected with the Canadian Pacific tracks at Moose Jaw. This would apply even though the spurs belonged to the Canadian Pacific instead of to the city, as they do.

In regard to the conclusion of the Assistant Chief Commissioner that,—

> " The Board has no power to deal with the fundamental phase involving a direction to the Canadian Pacific to permit the Canadian National to operate over spurs "K", "L" and "N".

I find myself unable to accept that conclusion, because in my opinion,—

(1) The conditions which section 253 of the Railway Act was provided to meet are present in the case of the Moose Jaw application;

(2) The terms of the section fully empowers the Board to deal with the situation, as it has been disclosed at the hearing and in the documents on file;

(3) I cannot find anything in the records of the hearing, in the documents on file or in the terms of the Act that, so far as I can see, in any degree detracts from the power of the Board to grant this application;

(4) While the word " may " is used by the Act in defining the powers and duties of the Board in the matter, in my opinion the context indicates the intent that if the conditions are as set forth in the section, and as they actually exist in this case, the Board " shall " take the action provided.

The concluding words of the finding of the Assistant Chief Commissioner are as follows:—

> "Until there is such a change of status, if change be needed, as will, with legal sanction, permit the addition of operation as asked for, I do not think the Board would be justified in dealing with the ancillary phases of the application, viz., the request for connection with the spur tracks and the application to cross the Outlook Branch."

This is a definite refusal to allow the Canadian National to cross the Outlook Branch as requested by the Canadian National Railways. Unless that branch can be crossed by the Canadian National, its connection with spurs "K", "L" and "H" as desired by the city of Moose Jaw and by the Board of Trade of that city cannot be made. The refusal to allow this crossing is apparently to stand until some suggested, but so far as I can see, as yet undefined, change in the ownership or operation, or both, of the spurs in question has occurred. What change or measure of change is assumed to be required before a crossing is to be allowed, or how the change may be brought about, I have been unable to determine. I will therefore endeavour to define the situation as it appears to me.

The Canadian National desires to cross the Outlook Branch in order to connect directly with the city's spur "K". The city is the owner of the land on which that spur is built. The city paid in full for the building of the grade and for the ties used. It rents the rails, fastenings, switches, etc., from the Canadian Pacific Railway. The city has authorization by provincial statute to build, own, operate or lease that spur, together with the others under consideration. The right of the city to sublet the operation of spur "K" to any other railway is subject only to the cancellation by the Canadian Pacific Railway of its present agreement with the city, which would of course be followed by the withdrawal of the Canadian Pacific from operation of the spur. If the city is willing to accept that alternative, then there is no bar to the lease of spur "K" to the Canadian National Railways. The evidence given at the hearing at Moose Jaw and the documents on file, in my view constitute beyond question an application for an order by the Board establishing a transfer connection as provided in section 253 of the Railway Act.

Only by the terms of the provincial Act which places the tracks built by the city of Moose Jaw under the "regulations and supervision of the Board of Railway Commissioners," has the Board any possible connection with or control over the action of the city with regard to spur "K". It is fair to assume that the legislature which passed the Act the better to enable the city to provide convenient trackage for its manufacturers and merchants, did not contemplate the use of the power then given the Board to prevent the city from deriving the full measure of benefit from the powers so given by the Act and the expenditures made under its provisions. It would seem to me that an amendment of the provincial Act to remove these spurs from the regulations and supervision of the Board would be a feasible means of overcoming the situation created by the judgment under consideration. But it does not seem to me that such action should be necessary to enable the purpose of the city in building the spurs to be achieved.

The application of the Canadian National Railways to cross the Outlook Branch is made under section 252 of the Railway Act, which says, as already quoted:—

"The railway line or tracks of any railway company shall not cross or join or be crossed or joined by or with any railway lines or tracks other than those of such company, whether otherwise within the legislative authority of the Parliament of Canada or not, until leave has been obtained from the Board as hereinafter provided."

The continuing part of the section gives the conditions under which permission of the Board may be given for a crossing, but in no way does it limit the power of the Board to refuse permission.

Clearly the Board has the power in law to prevent the extension of any railway line or branch across any other line or branch of railway with or without assigned cause. So that no matter how urgently the city of Moose Jaw on behalf of its business interests may desire competitive service over the railway spurs built with the city's money, on city lanes, for the benefit of the business interests of the city, the Board has the power to prevent that competitive service by refusing the Canadian National permission to cross the Outlook Branch.

It is of course obvious that such extraordinary power was not placed in the hands of the Board to be exercised otherwise than in the public interest, which again of course is a matter for the judgment of the Board. When the city of Moose Jaw expresses in proper and definite form its desire for competitive service by the Canadian National Railways on its own tracks, unless it is debarred from such cmpetitive service by well defined and amply sufficient considerations, such as are not apparent to me in the judgment of the Assistant Chief Commissioner, or otherwise, I am unable to agree that the Board is warranted in refusing the appilcation.

The arbitrary power of refusal given to the Board is only in my opinion to enable it to deal with frivolous or improper applications. Its use in such a way that a city is thereby prevented from getting the full benefit of its own enterprise and its own expenditures as authorized by the legislative authority from which its powers are derived, it appears to me, demands much stronger and more definite justification than I can find in the judgment under consideration and from which I desire, with due respect, to express my most emphatic dissent.

Ottawa, November 13, 1926.

Application of the Canadian National Railways for an Order directing that the wig-wag signal now installed at the crossing of the Kingston Road, near West Hill, township of Scarboro, be supplemented by another wig-wag signal on the opposite side of the track, the cost of installing same to be paid 25 per cent out of the Railway Grade Crossing Fund, and the remainder to be borne, two-thirds by the Toronto and York Radial Company, and one-third by the applicant company; the cost of maintenance to be borne two-thirds by the Toronto and York Radial Railway Company and one-third by the applicant company.

File 9437.1202

Heard at Toronto, October 14, 1925

JUDGMENT

Commissioner Boyce:

Under date September 8, 1925, the railway company applied for additional protection at this crossing by addition of another bell and wig-wag signal. The crossing is at present protected under Order No. 29710, dated June 2, 1920, by one automatic bell and wig-wag signal, bonded to both tracks in both directions.

Prior to that order, protection was by electric bell, covered by Board's Order No. 27766, dated October 9, 1918, and directed by a previous order dated July 16, 1906. By Order No. 30296, dated November 1, 1920, the cost of installing the said protection was fixed as follows: Twenty-five per centum thereof to be paid out of the Railway Grade Crossing Fund, and the remainder to be borne and paid, two-thirds by the Toronto and York Radial Railway, and one-third by the Grand Trunk Railway Company (then owning and operating the railway); and the cost of maintenance of such protection so ordered, to be borne and paid, as to two-thirds thereof, by the Toronto and York Radial Railway Company, and, as to one-third thereof, by the Grand Trunk Railway Company. In and by said last-mentioned order, it was recited that the Board was then satisfied that the said crossing was then sufficiently protected, and it declared that "for the present", the railway company be relieved from providing further protection at the said crossing.

The Canadian National Railways has since taken over and now owns and operates what was formerly the Grand Trunk Railway, and the Hydro-Electric Power Commission of Ontario has taken over and now owns and operates the Scarboro Division of the Toronto and York Radial Railway on which the said crossing and the former bridge and dump of the Toronto and York Radial Railway is located.

By its application the Canadian National Railways asks that should the additional protection asked for be ordered by the Board, the cost of installation and maintenance be fixed and ordered to be borne in the same proportions as that directed by Order No. 30296 above set forth.

Since the hearing of this application the crossing has been under observation and the Engineers of the Board have had under consideration methods for the further protection and the future possible elimination of this grade crossing.

After Order No. 30296 had been made, the Toronto and York Radial Railway Company applied for and obtained a rehearing upon the question of distribution of cost contending that they were not properly chargeable for any portion of the cost of installing or maintaining such protection, and their application was heard at Toronto on the 27th day of May, 1921, and was refused by Order No. 31051, dated May 30, 1921, so that the provisions of Order No. 30296 as to the present protection and distribution of cost of installation and protection thereof remains in force and unimpaired.

An accident occurred at the crossing on April 15, 1924, whereby John Coughlin, of Toronto, was seriously injured, and John Bezeau, of Trenton, was killed. The report of the Board's officials into the cause of that accident entirely exonerated the railway company from blame, and that accident does not appear to reflect upon the sufficiency and the protection at the crossing, and, by Order No. 35009, dated May 5, 1924, the Board declared that the crossing was then, for the present, protected to the satisfaction of the Board. No accident has been reported since this occurrence.

A previous accident occurred March 23, 1919, whereby one Kathleen McIntosh was killed and Joseph Wilson, Ralph Kerr and Charles Currie were injured. The crossing was then protected, under Order No. 27766, and the previous (original) Order of 1906 above referred to, by an illuminated crossing bell—which was in good order at the time of the accident, as were also the approaches, crossing, sign, planking, return fencing, etc. The report of the inspector into the cause of that accident shows that the accident could easily have been avoided had the occupants of the motor car involved paid any attention to the illuminated electric bell or looked eastward along the railway. The report further shows that the car had been improperly appropriated from its owner and that it was "a joy riding party".

This accident, however, was followed by further investigation and hearing by the Board, as to further protection and resulted in,—

(*a*) Order No. 28260, May 3, 1919, directing that pending hearing by the Board speed of trains be limited to ten miles per hour, in addition to the protection by the electric bell then in force; and

(*b*) Order No. 29710, dated June 2, 1920 (before referred to), directing *inter alia,* installation of electric bell and wig-wag signal, which is the protection now afforded at the crossing.

The Ontario Department of Highways took over that part of the Kingston road as part of its provincial highway system prior to the installation of the bell and wig-wag under Board's Order No. 29710 of June 2, 1920, and, subsequently the department, at the suggestion of the Board, erected, and now maintains on its highway, 300 feet on each side of the crossing, standard highway warning boards.

Under date May 5, 1920, the Department of Public Highways wrote to the Board and made application for the installation at this point of the wig-wag signal and bell, subsequently ordered by Order No. 29710, but at the hearing of this application the chief engineer of that department appeared and claimed the seniority of the highway as a reason why the department should not be asked to contribute any proportion of the cost of installation, or maintenance, of the further protection by bell and wig-wag asked for by the railway company. When pressed upon the subject, Mr. Hogarth, chief engineer of the department, who appeared for the department, said (Volume 444, p. 2190):—

> "We feel that we should not contribute, but in view of your statement I shall submit to the Minister what you have said."

This remark was preceded by the following observation by the Assistant Chief Commissioner, who was presiding (p. 2197):—

> "The Assistant Chief Commissioner: While we have no power to order the Department of Highways of the province of Ontario to contribute, we have the result that by improving of roads by that department, more and more traffic is carried, and we have to look to you as really the guardians of that traffic. Aside from any question of jurisdiction we expect you to implement your guardianship by assistance on the question of protection. That is looking at it from a broad standpoint."

This was followed by Mr. Hogarth's statement, just before quoted. Under date September 27, 1920, Mr. Hogarth wrote the Board that the highway warning signs had been placed in position 300 feet on each side of the highway on the right hand side of traffic approaching the crossing, and added:—

> "These danger signs are very conspicuous day and night and we have great faith in them as a warning to all traffic that they are approaching a railway crossing."

After the hearing of this application, and under date October 17, 1925, Mr. Hogarth, on behalf of the Department of Highways, wrote the Board stating that the matter of contribution by the department to the additional bell and wig-way signal, applied for by the railway company, had been submitted to the minister of the department, who, Mr. Hogarth wrote, was of opinion that a second bell and wig-wag signal would not afford additional protection to the travelling public, that that form of protection was not considered to be the proper solution of the danger that exists at that point; that the department would not, therefore, contribute any portion of any additional protection by bell and wig-wag signal; that the minister considered that grade separation was the proper form

of protection; and that the department was then ready to pay its proportion of any grade separation that may be ordered.

Having regard to the fact, noted hereinbefore, that the same department applied to the Board and asked for the protection of this crossing by bell and wig-wag signal, which was ordered and installed, the latter contention, after its installation, that that form of protection was not the proper solution seems, at least, not to err on the side of consistency.

The protection now installed has not, by any accident referred to, been proven to be inadequate, but the highway traffic has increased, and probably will continue to increase, and due regard must be paid to the fact that this application for the additional protection is made by the railway company.

Several traffic counts have been made of highway and train movements. All show that the crossing is a congested one, and owing to some obscurity of view by the nature of the ground and by the dump of the Radial Electric Railway, and the frequency and high speed of trains and motor traffic, not without features of danger. The last traffic record, for forty-eight hours, October 18 to 20, 1926, shows the following traffic:—

Pedestrians	30	or 0.625	per hour
Vehicles	4,674	or 97.4	"
Trains	94	or 2.0	"

According to the last count, eliminating the pedestrian traffic, which is negligible, the vehicular and train traffic, separated as to day and night, was as follows:—

Oct.	Vehicles	Trains
18—7 a.m. to 7 p.m.	1,562 (or 230.0 per hour)	25 (or 2.0 per hour)
18–19—7 p.m. to 7 a.m.	552 (or 46.0 ")	24 (or 2.0 ")
19—7 a.m. to 7 p.m.	1,759 (or 146.68 ")	24 (or 2.0 ")
19–20—7 p.m. to 7 a.m.	801 (or 66.75 ")	22 (or 1.822 ")

Reduced to minutes the vehicular day traffic appears to average 2.233 per minute, and the vehicular night traffic 0.9478 per minute, while the train traffic, night and day, maintains an average, approximately, of two per hour—or one in every thirty minutes—that is, by day, one train to every 66.990 vehicles, and, by night, one train to every 28.434 vehicles. According to these figures the average frequency of the highway traffic, which is almost entirely motor traffic, at speed of 30 miles an hour, would be approximately one car every 400 yards of the highway, and this means, of course, frequent congestion when slowing up for the crossing so as often to create a " procession " in the highway traffic close to the crossing. The highway traffic is likely to increase especially in the open months of the year.

The Assistant Chief Commissioner and I, accompanied by the Chief Engineer of the Ontario Department of Highways, visited the crossing after the hearing.

The view is, I think, as good as can be obtained having regard to the lay of the country. The dump of the Radial Electric, west of the crossing, with curvature of the railway track, undoubtedly obscures the view to highway traffic from the east, of trains approaching from the west. The view from the highway west of the crossing of trains approaching from westerly direction has been improved under Order No. 29710, but it is considerably shortened by contour of land, curve of railway line, and dump of the Radial Electric Railway. I do not see that it can be improved without tremendous expense, and with the warning sign on the highway marking at 300 feet the proximity to the crossing, and the bell and wig-wag signal at the crossing there should be a minimum of danger to a driver using ordinary care in travelling the highway. The view of the railway to the east of the crossing, from both directions of approach on the highway is, I think, as good as can be obtained.

For the present I would grant the application of the railway company, and have installed another bell and wig-wag signal of the most improved type, bonded 2,000 feet on both tracks in both directions. This will cause both signals to work with every train that approaches, but it is a double track, with high speed trains, and there may be occasions, like that involved in the last reported accident, when trains may move in reverse direction or against the current of traffic. If proper warning by these signals can be given of every approaching train on both tracks in any more effective way, the method of installation to make the protection most effective, and to guard against all contingencies of traffic, can be worked out between the engineers of the Board, the railway and the Highway Department. The work should be commenced immediately and completed before the first day of June, 1927.

I also think that, as recommended by Mr. Inspector McCaul, in his report dated April 24, 1924, upon the last accident, whistling boards on the railway seven hundred feet on both sides of the crossing, should be immediately erected by the railway company and that the railway company be directed to instruct its locomotive engineers to have the whistle (signal 14 (1)) sounded at that point, in addition to and following the usual whistle signal at the 80-rod post. The last whistle should be prolonged until the locomotive reaches the crossing. There would then be warning of the approach of a train from 2,000 feet by bells and wig-wags—from 1,330 feet (80 rods), the statutory whistle signal from the locomotive, and again from 750 feet by a further whistle signal (14 (1)) from the locomotive, prolonged until the crossing is reached. I regard this as desirable on account of (*a*) the high speed of motors on the improved highway, (*b*) the dump west of the crossing which must deaden sound as well as obscure sight, (*c*) the shortened sight lines, and (*d*) the high speed of trains.

Consideration, I think, must be given to the necessity for elimination of this crossing in the near future, by either (*a*) grade separation, or (*b*) diversion of the highway. The grave importance of the subject and the hazard involved compel me to commend to the earnest consideration of the railway company, the Department of Highways, and the Radial Railway Company (Ontario Hydro-Electric) the careful consideration of this subject in the interests of public safety. The protection afforded by the additional bell and wig-wag signal and locomotive whistle signals will, I think, sufficiently protect this crossing as to present traffic, with the exercise of that ordinary care in the management of vehicles on a public highway which every driver is required to use; but the highway traffic is increasing, and will doubtless increase rapidly, and it is most essential that a plan be worked out, as soon as possible, for the elimination of this grade crossing by one or other of the methods I have suggested. The diversion would necessarily involve carrying the highway over the railway by a bridge and the contour of the ground would render a subway a difficult one. Either scheme would be very costly, but I commend it to the parties named for prompt and grave consideration in the hope that this may be accomplished ere the highway traffic gets so heavy that protection now provided for becomes inadequate. The Department of Highways of Ontario has already agreed to bear its proportion of the cost of grade separation. I presume it would also do so if diversion were decided upon.

As to division of cost of the additional bell and wig-wag signal, I think that the Department of Highways should contribute to installation and maintenance. It has declined to do so, but I hope it may reconsider that decision. It surely must accept some responsibility for the tremendous increase of motor traffic brought there as a result of the completion of this splendid highway, and which motor traffic contributes not inconsiderably to provincial revenues. The Board, as pointed out by the Assistant Chief Commissioner at the hearing, has no power to order contribution by the province, but the department will bear in mind that if the highway had remained under municipal control that power

would have existed, and I feel sure that it would not, on reconsideration, desire, by taking over the highway under the Highway Act, greatly improving it and tremendously increasing the traffic thereon, to evade any responsibility for proportion of cost protective devices ordered in the interests of public safety, which its predecessors, the municipality, might have been called upon to bear. I leave the matter in that way to the department for its consideration.

If, on reconsideration, the department still declines to consent to contribute to the cost (some $600) of this additional protection I would divide the cost of installation as follows:—

Forty per cent out of the Railway Grade Crossing Fund;

Two-thirds by the Ontario Hydro-Electric Radial Railways;

One-third by the Railway Company; and the cost of maintenance should be borne by the last two railways in the same proportion, following distribution of cost in previous Orders.

If the Ontario Department of Highways would consent to contribute, I would suggest that, subject to the same contribution to construction from the Grade Crossing Fund, the cost of construction be divided equally between the three parties—one-third each, and maintenance in like proportion.

The order can go forthwith directing the work to be proceeded with, and reserving, for one month from its date, the question of division of cost—it being understood that if the Department of Highways of Ontario does not consent, within that time, to contribute according to the above suggestion, an order will go dividing cost of construction and maintenance as firstly mentioned and as in former orders; otherwise in terms of such consent as the department may give within that time.

Ottawa, November 10, 1926.

Assistant Chief Commissioner McLean concurred.

Application of the Municipal Corporation of the Village of Springfield, Ont., for an Order declaring that the crossing of Superior Street, in the said Village, over the M.C.R., is a public crossing, or, in the alternative, for an Order directing that same be made a public crossing, or that same be protected by a wig-wag signal bell or other apparatus.

File 22572

JUDGMENT

Commissioner Lawrence:

The station in question is located on the north side of the track, just a few feet west of the proposed highway; and there is a siding on the north side of the railway track, the switch of which is located at not a very great distance east of same. Therefore, the view approaching the railway track from the north would be obstructed by the station west of the highway and by standing cars on the siding east of the highway. I understand there is a spur track and buildings immediately east of the proposed highway on the south side of the railway track, which would obstruct the view approaching the railway from the south.

The situation seems to me to be too dangerous a one to justify the opening up of a highway crossing. I am of the opinion that if a highway crossing were established at this place it would be a dangerous one, which would require some sort of protection from the outset; the minimum by way of protection would be electric bells and wig-wags.

I have noted Mr. Blair's memorandum of the 3rd instant and in accordance with the decisions in the cases cited therein the cost of establishing the crossing, together with the cost of protection thereof, would be upon the municipality. November 22, 1926.

McLean, Assistant Chief Commissioner:

I agree in the disposition recommended by Commissioner Lawrence. The opening up of a highway crossing would be too dangerous.

Time was afforded to permit of the exchange of written submissions in regard to the legal status of the crossing. Counsel for the applicant, in his memorandum of September 24, 1926, in developing his position sets out the points which are covered by the following summary:—

(1) Admits that there was no highway over the lands in question prior to the construction of the railway;

(2) Admits that no highway, farm, or other public crossing provided at this point when the railway was constructed;

(3) Admits that the railway is senior;

(4) Mr. Barnum is not prepared to discuss the railway's position that there has been no dedication.

(5) Mr. Barnum is contending (in his memorandum of July 16, 1926) that the full cost of construction and maintenance of protection should be on the railway; says that this should be less such sum as may be payable from the Grade Crossing Fund.

It is to be noted here that such payments are applicable only in the case of crossings in existence on April 1, 1909 (Sec. 262 of Railway Act). It is admitted that gates were in place north and south of the right of way as late as 1913.

The applicant contends that there has been a continuous *user* which establishes a prescriptive right.

The memorandum of the Board's counsel to which Commissioner Lawrence refers reads as follows:—

> " In order that a public highway may be established by dedication, two concurrent conditions must be satisfied: there must be on the part of the owner the actual intention to dedicate; and it must appear that the intention was carried out by the way being thrown open to the public, and that the way has been accepted by the public. *S. O. Bailey and Others, Appellants, and the City of Victoria and Attorney General of British Columbia, Respondents, 60 Sup. Ct. Rep. 38.*
>
> "Apart, therefore, from the question as to the power of a railway company to dedicate a portion of its right of way for use as a public highway without the authority of the Board, it is clear there has been no dedication here, as these conditions have not been met.
>
> "As to the prescriptive right claimed, the decision of the Ontario Court of Appeal in *Grand Trunk Ry. Co. v. Valliear, 3 Can. Ry. Cas., 339,* cited in Messrs. Saunders & Kingsmill's written submission of August 30, pretty effectually, I think, disposes of the claim. That case held that the right must rest upon the presumption of a grant, and if an actual grant would have been illegal and void—the situation here—a grant implied from twenty years user could not be valid. Assuming, however, that a right of way by prescription had been acquired. The right admittedly did not commence to run until after the construction of the railway, and the whole trend of the Board's decisions is that if there was no road allowance or highway in existence, by reservation, or in fact, at the time the railway was constructed, the railway is senior and the cost of any highway construction later authorized by the Board must be borne by the applicant municipality."

This memorandum was prepared after consideration of the submissions as to the legal status made by both parties.

As above indicated, I agree in the disposition recommended by Commissioner Lawrence. I desire to point out, further, that under the decisions the situation is that when a crossing junior in right is given the status of a public crossing over the railway, and the Board is satisfied that coincident with said opening up of the highway there is a dangerous situation justifying the installation of protection, the cost of installation and maintenance of said protection is placed upon the applicant, who is junior in right.

November 22, 1926.

ORDER No. 38368

In the matter of the application of the Canadian Shippers' Traffic Bureau for an Order (a) *disallowing alleged unlawful rates charged by the Canadian National Railways on carloads of wood-pulp from Bathurst, New Brunswick; Chatham, New Brunswick; Old Lake Road, Quebec; Port Arthur, Ontario; and Smooth Rock Falls, Ontario, to Toronto, Ontario, in excess of rates contemporaneously in effect to Columbus, Ohio, and other United States destinations; and* (b) *directing a reduction in the current rates on wood-pulp, in carloads, from the shipping points hereinbefore enumerated to Toronto, Ontario.*

File No. 26963.78

FRIDAY, the 5th day of November, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 16, 1926, the applicant and the railway company being represented at the hearing, and what was alleged; and upon the report of its Chief Traffic Officer,—

The Board declares: That, under the provisions of Canadian National Railways' Tariff C.R.C. No. E-458 and supplements thereto, the legal rates applicable on wood-pulp, in carloads, are as follows:—

From Bathurst, New Brunswick, to Toronto, Ontario, 36½ cents per 100 pounds, from July 1, 1922, to April 21, 1924, inclusive; and 35½ cents per 100 pounds from April 22, 1924, to November 9, 1925.

From Old Lake Road, Quebec, to Toronto, Ontario, 32½ cents per 100 pounds during the period from July 1, 1922, to March 24, 1926.

From Chatham, New Brunswick, to Toronto, Ontario, 36½ cents per 100 pounds from July 1, 1922, to April 21, 1924, inclusive.

And the Board orders: That the application for a reduction in the current rates on wood-pulp from various Canadian shipping points to Toronto, Ontario, be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 38351

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement No. 9 to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.83.

SATURDAY, the 6th day of November, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That Supplement No. 9 to the Express Classification for Canada No. 6, filed under cover of C. N. Ham's letter, dated November 3, 1926, be, and it is hereby approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 38347

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Maniwaki Subdivision, as relocated, between mileage 8.12 and 12.67.

File No. 34612

TUESDAY, the 9th day of November, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Maniwaki Subdivision, as relocated, from mileage 8.12 to 12.67, a distance of 4.55 miles.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 38402

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of the temporary track between Logan Avenue and Eastern Avenue, in the City of Toronto and Province of Ontario.

File No. 1348

THURSDAY, the 11th day of November, A.D. 1926.

Hon. H. A. MCKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of the temporary track between Logan avenue and Eastern avenue, in the city of Toronto and province of Ontario.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 434

In the matter of the General Order of the Board No. 289, dated March 24, 1920, prescribing rules relative to the inspection of locomotives and tenders, attached thereto marked "A"; and General Orders Nos. 379, 390, 396, 431, and 433, dated respectively April 4, 1923; January 25, 1924; March 10, 1924; July 29 1926; and September 17, 1926, amending the "Rules Relative to the Inspection of Locomotives and Tenders," in so far as the same relate to pilots.

File No. 21351.1

TUESDAY, the 16th day of November, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered:

1. That the "Rules Relative to the Inspection of Locomotives and Tenders," prescribed by the said General Order No. 289, dated March 24, 1920, be amended by striking out the last paragraph thereof and substituting therefor the following, namely:—

"*Pilots.*—All locomotives in road service shall be equipped with pilots projecting not less than 24½ inches from the back of the upright which the pilot is built on, to the nose of the pilot; the minimum height from the rail to be three inches and the maximum six inches, securely attached, adequately braced, and maintained in a safe and suitable condition for service.

"Locomotives operating in strictly international service on the lines of the Boston and Maine, Delaware and Hudson, and Rutland Railroad Companies, and the Northern Pacific, Central Vermont, Great Northern, and New York Central Railway companies shall be equipped with pilots; the minimum height from the rail to be three inches and the maximum six inches, of such dimensions as may be permitted by inspection rules and regulations of the Interstate Commerce Commission, securely attached, adequately braced, and maintained in a safe and suitable condition for service."

2. That the said General Orders Nos. 379, 390, 396, 431, and 433 made herein be rescinded.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38455

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Maniwaki Subdivision, as relocated, between mileage 13.26 and 14.6

File No. 34612

THURSDAY, the 25th day of November, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby authorized to open for the carriage of traffic that portion of its Maniwaki Subdivision, as relocated, between mileage 13.26 and 14.6, in the province of Quebec.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaints of Messrs. Alex. McCullough and Sons, Ltd., Winnipeg, and the Palisade Coal Company of Three Hills, Alta., against the Canadian National Railways re *freight rates on coal from Three Hills to points in Alberta and Saskatchewan;*

AND

As to the question of importations into Manitoba of United States domestic fuel (anthracite and substitutes), in 1925 as compared with 1924.

JUDGMENT File 26602.43

Heard at Winnipeg, Man., June 15, 1926.

COMMISSIONER OLIVER:

As to the first complaint: Messrs. McCullough and Sons and Palisade Coal Company operate mines of domestic coal at Three Hills, Alta., on the Tofield-Calgary line of the Canadian National Railways. Their market is chiefly in the province of Saskatchewan, Saskatoon being a convenient, typical marketing and distributing point. The haul to Saskatoon is 416 miles; they pay a freight of $3.20 per ton. Drumheller, on the Calgary-Saskatoon line of the Canadian National, pays $2.80 a ton to Saskatoon for domestic coal of similar quality. The haul is 315 miles. The difference in length of haul is approximately 100 miles and the difference in rate is 40 cents a ton against Three Hills. The actual distance between the two mining districts is about 30 miles.

The complainants do not object to the 40 cents per ton advantage to Drumheller, because that point has 100 miles less haul.

Carbon is situated about 20 miles south of Three Hills, and 20 miles west of Drumheller. It is on the Langdon-Knee Hill-Drumheller Branch of the Canadian Pacific Railway. Coal for domestic use, of similar quality to that mined at Three Hills and Drumheller, is mined at Carbon. As in the case of Three Hills mines, the chief market for Carbon coal is in Saskatchewan, with Saskatoon as a convenient and typical distributing point. The rail haul from Carbon to Saskatoon by Canadian Pacific Railway lines is 556 miles and the freight rate is $2.80 per ton. The Three Hills coal operators express the view that if Carbon, with a haul to Saskatoon 240 miles greater than from Drumheller, is for any reason entitled to the Drumheller rate of $2.80 a ton, Three Hills, producing the same class of coal in the same field and only 20 miles away, should not be compelled to pay $3.20 a ton for a haul that is 140 miles shorter than that from Carbon.

The Three Hills operators point out that there are a number of mutually competing coal mines on the Mountain Park Coal Branch of the Canadian National Railways, at varying distances from the main line, and that these mines all pay the same rate to the points of marketing.

The mines of Three Hills, Carbon, and Drumheller are all situated in the same coal field and compete in the same markets. If one of these mines carries a handicap of 40 cents per ton in freight charges, it must find great difficulty in the competitive sale of its coal. As a matter of fact, at the time of the hearing in Winnipeg on June 15, 1926, the Palisade Coal Company was in a receiver's hands.

Drumheller is given a rate based on the short mileage of the Canadian National line to Saskatoon. The Canadian Pacific Railway is permitted to charge the same rate as the National from Drumheller to Saskatoon and other prairie points over its much longer line. Carbon on the Canadian Pacific is not a competing point, but, being on the Canadian Pacific line, it has been given the Drumheller rate.

To Saskatoon, Moose Jaw, Regina, Minnedosa, and to Middlechurch, a suburb of Winnipeg, the rate from Three Hills is 40 cents a ton more than from Drumheller and Carbon. To Brandon the difference is 30 cents and to Winnipeg 20 cents a ton. If a car from Three Hills is shipped Canadian National, as it must be, to a dealer in Winnipeg whose yard is on a Canadian Pacific spur, there is an extra charge of 10 cents per ton. A car shipped by Canadian National from Drumheller does not pay that charge. In that case the difference against Three Hills becomes 30 cents instead of 20 cents a ton. The rates from Carbon and Drumheller are the same to all the points mentioned.

As a competitor supplying a like article from practically the same field to the same markets, the Three Hills mines, though on a different line of the National system, are entitled to the same rates as those given Carbon, whatever that rate may be, in order that they may have a fair opportunity of competing in the common market.

I am therefore of opinion that the Canadian National Railways should be required to forthwith make such adjustment of its tariffs as will place the Three Hills mines on the same footing as regards freight rates on coal to points in Manitoba and Saskatchewan as the mines shipping from Carbon on the Canadian Pacific Railway.

As to the second complaint: This asks for internal distributing rates on Alberta coal generally as will enable it to compete with United States substitutes for anthracite in the Winnipeg and Manitoba markets.

I am of opinion that this is a matter which properly forms part of the General Freight Rates Inquiry; and that this being the case, the evidence offered by the complainants should be given due consideration when that inquiry is being further dealt with by the Board.

Ottawa, November 4, 1926.

Chief Commissioner McKeown and Deputy Chief Commissioner Vien concurred.

ORDER No. 38450

In the matter of the complaints of Alex. McCullough & Sons, Limited, of Winnipeg, in the Province of Manitoba, and the Palisade Coal Company, Limited, of Three Hills, in the Province of Alberta, against the freight rates charged by the Canadian National Railways on coal from Three Hills to points in Saskatchewan and Manitoba.

File No. 26602.43

MONDAY, the 22nd day of November, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Winnipeg, June 14, 1926, in the presence of counsel for and representatives of the complainants, the Canadian National Railways, and the Canadian Pacific Railway Company, and what was alleged,—

The Board orders: That the Canadian National Railways be, and they are hereby, required forthwith to amend their tariff applying on coal, carloads, by publishing competitive rates on coal from Three Hills, Alberta, to common points in Saskatchewan and Manitoba which shall not exceed the rates published by the Canadian Pacific Railway Company from Carbon, Alberta, to the same destinations on the line of that company.

H. A. McKEOWN,
Chief Commissioner.

Application of the United Farmers of Manitoba, Tilston, Man., for an increase in train service at Tilston, Man., on the Lauder Extension of the Canadian Pacific Railway Company.

File 3693.8

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

This matter was heard before Commissioners Boyce, Oliver, and myself. At the hearing, questions as to the cost of operation were raised, and the railway was directed to submit figures bearing upon the freight and passenger traffic, the out-of-pocket costs, and the cost of operation.

The service which existed and concerning which complaint was made was as follows: A mixed train operating over the Griffin Subdivision, on which Tilston is located, leaves Lauder on Tuesdays and Fridays for Alida and returns on Wednesdays and Saturdays. Freight for points on this subdivision shipped from Brandon and Winnipeg on Saturday afternoon is stated by the railway to arrive at destination Tuesday afternoon; and freight shipped from points on the Griffin subdivision on Wednesdays is stated to be delivered at Brandon on Fridays. Passengers, baggage and express leaving stations on the subdivision in question, eastbound, on Wednesdays and Saturdays make connection at Lauder for either east or west.

The application was to the effect that the existing bi-weekly service was inadequate and that, at least, a tri-weekly service should be afforded. It was contended that the existing service was a detriment to settlement; that the mail service was poor; that the petitioners felt they were being discriminated against

in favour of the Lyleton Branch which had a better service; that a better train service was necessary in order to have proper handling of the outward shipping of eggs and cream; and the petitioners were of opinion that the earnings of the branch justified an increased train service. The branch from Lauder to Alida, a distance of 53.9 miles, serves the needs of the country for about ten miles north and south of the line.

The branch in question comprises the Griffin Subdivision. The freight earnings of the subdivision as filed for the year amount to $188,893.71, while the passenger earnings amount to $7,076.95. The cost of operating an additional mixed train each way per week is given by the railway at $214.95, or a total for the year of $11,177.40.

So far as the handling of grain is concerned, the existing service is not taken exception to in the evidence. (Evid. Vol. 448, p. 3234.) It is the practice of the railway to run additional grain trains from time to time, as the movement of this commodity demands.

On consideration, the Board's Operating Department did not feel justified in recommending that the tri-weekly service throughout the year should be installed.

The details involved were further considered by the Board's Operating Department, which suggested that consideration should be given to the proposition of having a tri-weekly service from September 1 to March 31, instead of the full year, as already referred to.

The railway was written to asking it to show cause why such a service should not be afforded. In its answer, it stated that to give a three-day-a-week service on the subdivision would entail employing another engine and train crew, as the extra trip could not be made with the crews now handling the service on the subdivision, together with other branch line traffic which the crews also perform. The expense was estimated at $859.80 per month, or $6,018.60 for the seven-month period referred to.

It was stated that during the grain rush in the fall the railway from time to time ran an extra train to give prompt movement to the traffic, and this permitted the mixed train to keep more closely to the schedule. It was contended that if an extra train were run on schedule and all the work had to be performed by these trains, there would be more or less delay during the rush season. It was also stated that during the summer months the competition of motor traffic was such that the passenger movement by train was light.

Following additional investigations by the Board's Operating Department, the Chief Operating Officer advised the Board that he did not think there was sufficient traffic to warrant going on with the recommendation for an additional train during the seven-month period already referred to. The matter was gone into and the Operating Department was directed to make further investigations. The Board's Chief Operating Officer made the following report:—

> "The train service under discussion involves supplying a branch line from Lauder to Alida, Man., a distance of 53 miles; Lauder is 41 miles out from Brandon on the Estevan Branch running through Souris, and in the company's operation is served in conjunction with the line Deloraine to Lyleton, 37.2 miles out from Deloraine, which is on the line between Napinka and Winnipeg, also a branch line from Lauder to Boissevain, the latter being on the line between Napinka and Winnipeg also, and some 35.5 miles in length. And with one set of equipment and train crew the company cover all these lines as follows:—

Monday:	A.M.	
Lyleton.....lv.	6.00	
Deloraine.....	8.10	Makes connection with Napinka to La Rivière train.
Napinka.....	9.15	
Brandon.....ar.	11.25	
	P.M.	

Monday:		
Brandon.. .. ..lv.	3.10	
Napinka..	5.25	
Deloraine..	6.30	
Lyleton.. .. ..ar.	9.05	
Tuesday:	A.M.	
Lyleton.. .. ..lv.	6.00	
Deloraine..	8.10	Same connection as above
Boissevain..	9.55	
Lauder.. .. ..ar.	1.00	Makes connection with Estevan to
lv.	4.00	Brandon train and waits connection with Brandon to Estevan train.
Alida.. .. ..ar.	7.55	
	P.M.	
Wednesday:	A.M.	
Alida.. .. ..lv.	9.25	
Lauder.. .. ..ar.	1.00	Same connections as above.
lv.	4.00	
Boissevain..	6.10	
Deloraine..	7.20	
Lyleton.. .. ..ar.	10.00	
	P.M.	
Thursday:	A.M.	
Lyleton.. .. ..lv.	6.00	
Deloraine..	8.10	Same connection as above.
Napinka..	9.15	
Brandon.. .. ..ar.	11.25	
	P.M.	
Brandon.. .. ..lv.	3.10	
Napinka..	5.25	
Deloraine..	6.30	
Lyleton.. .. ..ar.	9.05	
Friday:	A.M.	
Lyleton.. .. ..lv.	6.00	
Deloraine..	8.10	Same connection as above.
Boissevain..	9.55	
Lauder.. .. ..ar.	1.00	
lv.	4.00	Same connections as above
Alida.. .. ..ar.	7.55	
	P.M.	
Saturday:	A.M.	
Alida.. .. ..lv.	9.25	
Lauder.. .. ..ar.	1.00	Same connections as above
lv.	4.00	
Boissevain..	6.10	
Deloraine..	7.20	
Lyleton.. .. ..ar.	10.00	
	P.M.	

"From the above description of the service performed, it is apparent that to increase the service at Tilston, the point from which the application came, would mean running an additional train out to provide a tri-weekly service. This is covered in my memo. of February 24."

The memorandum of February 24 referred to is the one to which reference has already been made to the effect that there was not sufficient traffic to justify the extra train during the seven-month period already referred to.

There was next considered the question of whether or not a service could be afforded by a gas car, this matter having been raised by Commissioner Oliver. Under date of June 8, I placed the following memorandum on file:—

"As I understand the situation, the service asked for would involve the running of additional train in order to afford a tri-weekly service. It does not appear from what is submitted that there is sufficient traffic to justify additional service. As, however, the question of service by gas car was not, as I recollect it, developed at the hearing, I would suggest that this phase of the matter be taken up with the railway, to show cause why gas car service should not be installed."—

and, with the consent of my colleagues, the railway was written to on June 17 as follows:—

> "Referring to the above application (your file C 6341) in connection with the increase of train service at Tilston on the Lauder Subdivision of your line, I am now directed by the Board to ask if you will please consider whether a tri-weekly service by gas or electric car could be given from both the Lauder and Lyleton Branches now served by mixed train, the motor car to be so scheduled that connection with the daily Brandon-Estevan trains could be made at Lauder, and, if not, in your reply to show cause why this service should not be provided."

Mr. McLeod, Minister of Municipal Affairs, Winnipeg, wrote in under date of June 17 asking as to the status of the matter, and was replied to as follows:—

> "I am directed by the Board to acknowledge the receipt of your letter of the 17th instant and to state in reply that the question of additional steam train service has been considered very carefully; but that on what is before the Board it does not so far appear that satisfactory arrangements can be made in this regard which will at the same time cover out-of-pocket costs. I am further directed to state that the question of possible service by gas or electric car is being gone into with the Canadian Pacific Railway Company."

Reply was made by the railway to the effect that it was of opinion that there was not sufficient traffic to warrant a gas or electric car service; and it stated that in the event of such a service being installed it would simply be an additional expense to the service already given, as they could not dispense with the existing mixed train service; and it was alleged that this additional gas or electric car service would not only be inconvenient but unsatisfactory to the company and its patrons.

In reporting on the suggested gas or electric service, the Board's Inspector used the following language:—

> "In selecting the most desirable field for a gas electric service, where economy and operation is desired, the load capacity of the territory to be served should be reasonably small but constant. Keeping this feature in mind and going over the territory now served by this mixed train, it will be found that with the exception of the terminals, which enjoy additional train service, there is only one town that has a population of over 100 people, and this is Waskada on the Lyleton Subdivision, which has a population of 400; nor is the tributary population to these branches large. It is, therefore, obvious that this territory is not suitable for a gas electric car service."

Further recommendation in regard to the use of gas or electric car service was not made, and attention was then turned by the Board's Operating Department to the question of an additional freight movement per week during the grain-shipping season which might thus be utilized to afford a mixed train service. The out-of-pocket costs of the gas or electric service have been checked by the Board's Operating Department, and the minimum out-of-pocket cost for this service is given at $30 per day. On the basis of a $30-charge, this service, operating a round trip per week for fifty-two weeks, would have an additional out-of-pocket cost of $3,120.

The Board has recognized in *Richmond-Coaticook train service, Board's Judgments and Orders, Vol. 9, p. 274,* that it may, in connection with the question of discontinuance of train service, consider whether the train is meeting out-of-pocket expenses. In the particular case, there was a very slight margin of profit, and on the particular facts it was held that the train service in question should not be discontinued.

The same conclusion was arrived at in the *application of the City of Kingston, Ont., et al, for an Order directing the Grand Trunk Railway Company to restore trains Nos. 31 and 32 between Brockville and Belleville, which were discontinued September 28, 1919. Board's Judgments and Orders, Vol. IX, p. 289.*

In the *application of the Foremost Board of Trade, Foremost, Alta., et. al, for a daily passenger service between Lethbridge and Moose Jaw, on the Lethbridge-Weyburn Branch of the C.P.R., Board's Judgments and Orders, Vol. XIV., p. 246,* the Board had before it an application to add to the existing service. Following the cases above cited, it was set out at p. 247 that—

> " The Board is not empowered to put in rates and services with the intention of developing traffic, unless it has reasonable satisfaction that at least the cost of operation will be met in connection with the service installed."

There was submitted by the Board's Operating Department for consideration the suggestion that as the railway had from time to time, as the traffic demanded, put on additional grain trains, these might, during the grain season, be run on a schedule one trip a week in each direction between Alida and Lauder, and that a mixed train service might thus be afforded with very little additional expense.

It was pointed out that as the traffic in the section concerned was handled by Brandon, the movement, if an additional train was put on, would most likely be a movement from Brandon to Alida.

As has already been pointed out, no exception was taken in evidence to the existing service in connection with the carriage of grain. There was nothing submitted to show to what extent, if any, additional grain trains were necessary; and there is nothing before the Board in evidence to show that it would be justifiable to require that there shall be an additional freight train once a week each way during the grain season.

There being nothing in evidence to show that the carriage of grain necessitates an additional freight train once a week during the grain season, the direction that such a service should be afforded would simply mean that it was put in to permit of an additional mixed train service. If the grain movement does not justify a freight service which is fundamental, then the question arises whether the receipts from passenger traffic justify the passenger service which would be instrumental to the installation of the freight service in question.

The figures quoted by the railway for the service throughout the year and for the seven months' service have been given. The figures as given involve adding a complete outfit, and include maintenance of equipment, car inspection, and some additional station expenses. The figures as given work out at $107 per trip. These figures when further checked, and limiting the actual out-of-pocket expenses to those covering wages, fuel and engine-house expenses, reduce the cost per trip to $75. The movements are computed between Brandon and Alida, it being the opinion of the Board's Chief Operating Officer that Brandon is the logical point to and from which train movements should be made. Lauder is 41.8 miles from Brandon, and the train service as at present organized connects at Lauder with passenger trains running between Estevan and Brandon, over the Estevan Subdivision, the town of Souris, on the same subdivision, being 16.4 miles from Brandon.

Computing the out-of-pocket cost on the basis of $75 per trip, as given above, gives a total of $7,800 for the service of one trip per week each way throughout the year. For the additional service during a seven-month period similarly computed, the cost is $4,200; for the grain-shipping season, $2,250; while for the gas electric car service during the year it would be $3,120. In view of what is set out above, it would appear to be reasonable in considering the

extra cost involved to make comparison between the passenger earnings received and the additional passenger earnings which would be required to cover the out-of-pocket cost for the additional services under consideration:—

Service	Additional receipts (in percentage of existing passenger receipts) necessary to cover-out-of-pocket costs. Per Cent
Gas or electric car throughout the year	44
Mixed train service throughout the year	110
Service during seven-month period	59
Service during grain-shipping season	31

There is nothing in evidence before the Board to justify the conclusion that an additional train service would call out such an additional passenger movement as would, as a minimum, offset the additional out-of-pocket cost. If additional passenger movement does not take place, it would simply mean a subdivision of earnings as between the existing and added facilities.

I appreciate the condition existing along the branch in question and would be glad to do something if the facts justified it. The Board, however, is not justified in directing the installation of an additional railway service unless it is satisfied that, as a minimum, the out-of-pocket costs will be obtained.

On the existing state of facts, the Board would not be justified in issuing the order asked for.

November 11, 1926.

Commissioner Boyce concurred.

Heard at Winnipeg, November 25, 1925.

COMMISSIONER OLIVER:

I desire to reaffirm my conclusions as expressed in my memorandum of May 21, 1925, appearing on file 3693.8.

In reference to memoranda and reports of later date appearing on the Board's file, I desire to quote from the report of Inspector LeSage, as follows:—

> "As to the increase in the service during the winter months, I would say that it is during the winter season that an increase in the train service would be of most benefit to these people. When the train service as given on the Alida Branch is compared with the service given from Lyleton to Deloraine, it will appear that the Alida Branch is entitled to better service. . . . In view of the earnings that will accrue from the grain movement, coupled with the fact that extra trains will have to be operated to handle this commodity, a tri-weekly service I believe could be maintained during the winter months without much additional expense."

The Chief Operating Officer of the Board on August 25 approved Inspector LeSage's recommendation as follows:—

> "I agree with the closing comments of Mr. LeSage that a third trip per week could be arranged during the grain movement season, and would suggest that the company be asked to look into the suggestion to run from Alida Monday and Thursday, in time to make connection at Lauder, in addition to the present service, putting on, if it desired, a return trip the same day."

In view of the report of Inspector LeSage and its endorsation by the Chief Operating Officer, as above quoted, I find myself entirely unable to agree with the conclusions expressed in the judgment of the Assistant Chief Commissioner.

In a letter on file, dated July 16, 1926, Mr. Flintoft, Assistant General Solicitor for the Canadian Pacific Railway Company, referring to the suggestion of a gas car service, says:—

> "In the event of such a service being inaugurated, it would simply be an additional expense to the service already given, as we could not dispense with the mixed train service, and moreover it would not only be inconvenient but unsatisfactory to the company and its patrons."

If the traffic in passengers, mails and express is actually as light as has been represented by the railway it must be well within the capacity of a single gas car. And if all that traffic were carried by a gas car, there would be no need of a mixed train. The gas car could keep time on a much faster schedule than a mixed train, and would therefore be of much greater advantage and give much greater satisfaction to the people served.

The Chief Operating Officer of the Board estimates the operating cost of a gas car at $30 to $40 a day. One gas car could conveniently serve the Alida Branch three times a week direct from Brandon, at an operating cost very much below that of a steam train and give a much more useful and satisfactory service, both to Brandon merchants and Alida customers.

If passengers, mails and express were handled by gas car the freight service could be handled by steam train at the convenience of the railway and therefore more economically and satisfactorily both to the railway and to shippers than at present.

The closing sentence of Mr. Flintoft's letter is as follows:—

> "A freight service has to be given in any case, and our officials point out that the same train can take care of all the passenger business."

This sentence seems to give fully and accurately the view of the railway as to the measure and kind of service due the public in the case of the Alida Branch. They are only entitled to passenger, mail and express service based on the volume of freight traffic. But on that very point Inspector LeSage considers that the volume of freight in prospect for the winter requires such a freight movement as would give the passenger, mail and express service for which the public ask, namely, three trains a week.

The refusal of the railway to give the service under such conditions merely amounts to a statement that whatever form or measure of service is cheapest for the railway must be accepted by the public without regard to their convenience or the accommodation afforded other communities in comparable circumstances.

At the hearing it was pointed out—as disclosed by the map—that the Alida Branch is paralleled on each side by lines which also are part of the Canadian Pacific Railway system. That this condition places the region along the Alida Branch under an absolute monopoly of Canadian Pacific Railway service. They are also cut out of hope of future competitive service by the presence of these parallel branches; as they would not be if one or the other had not yet been built. I am of opinion that where a section of the public are so circumstanced, they are especially entitled to consideration at the hands of the Board. The purpose of Parliament in calling the Board into existence was understood at the time to be to check railway monopoly, by giving equal advantages to those sections of the public who did not have railway competition as were enjoyed by those who had.

I submit that the people living along the Alida Branch are fairly entitled to a passenger, mail and express service three times a week, and that if the railway does not see fit to provide such a service by gas car, the Board should order a tri-weekly mixed train service in accordance with the report of its officers now on file.

Ottawa, November 20, 1926.

ORDER No. 38462

In the matter of the application of the Algoma Steel Corporation, Limited; the British Empire Steel Corporation, Limited; the Steel Company of Canada, Limited; and the Lysaght Dominion Sheet Metal Corporation, Limited, for an Order suspending the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4267 and the Canadian National Railways' Tariff C.R.C. No. E-1132, naming rates on iron and steel articles, effective December 1, 1926.

File No. 34952

FRIDAY, the 27th day of November, A.D. 1926.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the applications and on behalf of the Pere Marquette Railway Company, the Canadian National Railways, and the Canadian Freight Association,—

The Board orders: That the following tariff schedules naming rates on iron and steel articles, namely:—

	C.R.C. No.
Canadian National Railways East	1132
Canadian Pacific Railway East	4267
Chatham, Wallaceburg and Lake Erie Railway	785 and 783
Essex Terminal Railway	712 and 713
Grand River Railway	209
Lake Erie and Northern Railway	349
London and Port Stanley Railway	362
Michigan Central Railroad ..... Supplement	27 to 3307
Montreal and Southern Counties Railway	103
Pere Marquette Railway ..... Supplement	40 to 2463
Quebec Railway, Light and Power Company	120
Thousand Islands Railway	439
Toronto, Hamilton and Buffalo Railway	1421
Wabash Railway	1519 and 1516
Windsor, Essex and Lake Shore Rapid Railway	351

be, and they are hereby, suspended pending a hearing by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 38489

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Maniwaki Subdivision, as relocated, between mileage 14.96 and 15.28.

File No. 34612

FRIDAY, the 3rd day of December, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Maniwaki Subdivision, as relocated, between mileage 14.96 and 15.28, in the province of Quebec.

H. A. McKEOWN,
Chief Commissioner.

RE PROTECTION OF HIGHWAYS

The Board desires to bring to the attention of all concerned the following letter and resolution received from the Clerk of the County of Frontenac:—

J. W. BRADSHAW, P.M.,
County Clerk.

COURT HOUSE, KINGSTON, ONT., December 3, 1926.

A. D. CARTWRIGHT, Esq.,
Secretary, Board of Railway Commissioners for Canada,
Ottawa, Canada.

DEAR SIR,—Please find below a copy of a resolution passed by the County of Frontenac Highways Committee on the 25th day of November, 1926.

Yours truly,

(Sgd.) J. W. BRADSHAW,
County Clerk.

COURT HOUSE, KINGSTON, November 25, 1926.

County Highways Committee.

2. Moved by Mr. Jamieson and seconded by Mr. Freeman: That warning signs be procured to install on county roads; 300 feet from railway track, on each side of a crossing. That the County Road Superintendent procure the signs, and have them installed as above. Perth road signs to be installed this fall.

Also that clerk inform Mr. S. L. Squire, Deputy Minister of Highways, Toronto, Ont., of this action by the County Highways Committee;

And to inform Mr. A. D. Cartwright, Secretary, Board of Railway Commissioners for Canada, of action of said committee.—Carried.

(Sgd.) Edw. Sills,
Chairman.

The above resolution was adopted in council on November 26, 1926.

Yours truly,

(Sgd.) J. W. Bradshaw,
County Clerk.

Re *Franking Privileges—Letters and Telegrams*

File No. 27638.1

The following is a copy of the Board's ruling in this matter, dated January 20, 1919:—

> I am directed to inform you that, while the Board has franking privileges for mail, and mail may, therefore, move from and to it free, no such privilege exists in the case of telegrams. The Board pays for telegrams sent of its own initiative and answers necessarily arising from such telegrams. It is the practice that where the applicant initiates the message the expense is borne by him.

Yours truly,

A. D. CARTWRIGHT,
Secretary, B.R.C.

Ottawa, December 6, 1926.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Re *Distribution of Cost—Northwest Grade Separation, Toronto*

Files 32453 and 32453.6

JUDGMENT

McLean, Assistant Chief Commissioner:

I

When Order No. 38424 in the above matter was issued dealing with the distribution of cost of the grade separation concerned, there was not, on account of the volume of work before the Board, an opportunity of preparing and issuing Reasons for Judgment. The Board, however, had before it in dealing with the preparation of the Order working notes. In view of the requests which have been filed asking whether Reasons for Judgment were issuing, it now seems proper to issue these working notes, as setting out the general reasons underlying the Order.

II

Under Order No. 35153, of June 5, 1924—File 32453, Pt. 2—the C.P.R. and the C.N.R. were to construct jointly two subways; one, under the double tracks of the Galt Subdivision and the Toronto, Grey and Bruce tracks of the C.P.R., and the Brampton Subdivision of the C.N.R. at Bloor street; and one under the tracks of the C.P.R. and C.N.R. at Royce avenue. The C.N.R. was also to construct one subway under the tracks of the Newmarket Subdivision on Bloor street. The Order provided that all questions of distribution of cost, interest, or other matters involved under the construction of said works, were to be reserved for further Order of the Board. By Order No. 35308, of July 10, 1924—File 32453, Pt. 2, Order No. 35153 was amended. Clause 1 of Order No. 35153 was stricken out and the following substituted:—

> "That the Canadian Pacific and the Canadian National Railway Companies be directed to construct two subways under their tracks, one on Bloor street and one on Royce avenue, in the said city of Toronto; the Canadian Pacific Railway Company to do all the work on the said subways under the tracks of its Galt and of its Toronto, Grey & Bruce subdivisions, and under the Brampton subdivision of the Canadian National Railway Company, south of the North Toronto Diamond, with the exception of providing and actually placing the girders on the Canadian National Railway Company's tracks, which work is to be performed

by the Canadian National Railway Company; the Canadian National Railway Company to do all the work on the subways north of the Diamond."

By Order No. 36737, of August 22, 1925—File 32453, Pt. 3, the Canadian Pacific Railway Company was authorized to use and operate the subway carrying the tracks of the Galt subdivision and the tracks of the Brampton subdivision of the Canadian National over Bloor street. Order No. 36738, of August 21, 1925, authorized the opening for traffic of Bloor street subway on the Newmarket subdivision of the Canadian National Railways.

Order No. 37239, of January 15, 1926—File 32453.5—authorized the Canadian National and the Canadian Pacific Railways to use and operate the subway at Royce avenue.

The Toronto Transportation Commission, in July, 1925, applied to the Board for an Order under section 252 of the Railway Act granting the applicants leave to construct for the Corporation of the City of Toronto a double track line of street railway, between Dundas street and Lansdowne avenue, in the city of Toronto, upon the highway known as Bloor street, which, by Order of the Board dated June 5, 1924, and numbered 35123, has been carried under certain tracks of the Canadian National Railways and the Canadian Pacific Railway.

As part of said application, which is dated July 15th, 1925, the following is set out:—

> "This application is made without prejudice to any submissions which the applicant may hereafter see fit to make with reference to the jurisdiction of the Board in the premises."

Thereafter Order No. 36693 (File 32453.6) of August 13th, 1925, issued authorizing the applicant to construct its tracks across the tracks of the Newmarket Subdivision of the Canadian National Railways on Bloor Street, between St. Helen's Avenue and Symington Avenue, in the City of Toronto, in the Province of Ontario; and across the Brampton Subdivision of the Canadian National Railways and the Galt Subdivision of the Canadian Pacific Railway Company on Bloor Street, between Perth Avenue and Dundas Street, in the said City of Toronto, by means of the subways constructed under the Order of the Board No. 35153, dated June 5th, 1924, as shown on the said plan and profile on file with the Board under File No. 32453.6; and that the question of contribution to the cost of said subways by the applicant be reserved for further consideration by the Board.

III

In addition to the City of Toronto, the Canadian Pacific, and the Canadian National Railways, notification went to Messrs. Geary, Flintoft, Fraser, the Bell Telephone Company, the Consumers' Gas Company, the Toronto Transportation Commission, the Canadian National Electric Lines, the Hydro-Electric Power Commission of Ontario, the Toronto Hydro-Electric System (the Toronto Electric Commissioners), the Canadian General Electric Company. The Consumers' Gas Company asked under date of February 15th, 1924, by letter, who made the original application, and was informed, on February 16th, 1924, that it was made by the City of Toronto.

IV

The Canadian National Railways, by a statement dated March 30th, 1926, which is to be found on File 32453.3, filed information bearing on the actual expenditures incurred by it during the years 1924-25, and up to February 28th,

1926. This information had been asked for by the Board. It is stated that for Bloor Street subway on the Newmarket Subdivision, Bloor Street subway on the Brampton Subdivision, and Royce Avenue subway on the Brampton Subdivision the total estimated cost was approximately $2,567,000. It is stated that the total actual expenditure to date is as follows:

Bloor Street Subway, Newmarket Subdivision..	$267,357 64
Bloor Street Subway, Brampton Subdivision.. .	32,490 82
Royce Avenue Subway, Brampton Subdivision..	20,281 72

The figures so given are really in the nature of progress estimates, and do not cover land damages. The question of interest is also left to one side.

The Canadian Pacific Railway Company was also asked for information, and its reply will be found on File 32453, Pt. 3. It was also asked for details as to cost by years. What was in mind was the possibility of giving a contribution out of the Grade Crossing Fund spread over a period of years where a work ordered took more than one year to complete. I may say in passing that a similar matter was taken up in connection with Spadina Bridge (part of the Viaduct scheme); and the Toronto Terminal Company has furnished figures for the expenditure on the work during 1925, and an Order has been made for a contribution out of the Grade Crossing Fund. When the figures for 1926 are received further Order can be made for contribution from the Grade Crossing Fund. See File 31297.

The Canadian Pacific Railway Company in its answer (File 32453, Pt. 3), dated April 15th, 1926, stated that " it is practically impossible to give a definite figure as to the amount expended in each of the years on each of the *two* crossings of this company's line over Bloor Street." By *two crossings*, as referred to here, are meant the crossing on the Galt Subdivision and the crossing on the Toronto, Grey & Bruce. These two crossings are separated by the right of way of the C.N.R. It was submitted by the Canadian Pacific that the Board might give contributions out of the Grade Crossing Fund in 1924, 1925 and 1926, on each of the following crossings:

Canadian Pacific—Galt Subdivision.
Canadian National Railways—Brampton Subdivision.
Canadian Pacific—Toronto, Grey & Bruce Subdivision.

The two Subdivisions operated by the Canadian Pacific were, it is set out, constructed by two different companies. It is stated that the actual expenditures to January 31st, 1926, were:

1924..	$100,270 00
1925..	344,580 94
1926..	487 61
	$445,338 55

On File 32453.3, there is a further letter from the Canadian Pacific Railway Company dated April 15th, 1926. This deals with the Royce Avenue subway. It is stated that the amounts expended by it to January 31st, 1926, are shown as—

1924..	$228,949 39
1925..	704,761 70
1926..	31,845 47

In a letter of May 25th, 1926, on the same file, addressed to the Board's Chief Engineer, will be found an argument of the Canadian Pacific Railway Company as to the right of the Board to consider the Toronto, Grey & Bruce line as separate and distinct both from the Canadian National and from the

Galt Subdivision of the Ontario and Quebec Railway, the Canadian National Railways being on the one side of the Toronto, Grey & Bruce and the Ontario and Quebec being on the other.

As to the ability of the Board to contribute out of the Grade Crossing Fund in the way suggested, I direct attention to what was done in connection with the Spadina Avenue Bridge case. I also set out the following for consideration:

Section 262, subsection 2. The 25 per cent limitation is a limitation regarding the total proportion of cost of actual construction work which can be contributed from the Grade Crossing Fund. The section does not require that the total protective work shall have been completed when the payment is made. It does require that there shall have been expenditure on "actual" construction work in the year the grant is made, sufficient to justify the percentage grant. The test is contained in the word "actual," and this may be for work done for a period of years, and justifies, so long as the total 25 per cent limitation is not exceeded, a payment on progress estimates in each of these years.

Attention must, however, be directed to the alternative limitation contained in the section. The provision is that "the total amount of money to be apportioned . . . . shall not, in the case of any one crossing, exceed 25 per cent . . . .," and shall not, in any such case, exceed the sum of $15,000." This limits the payment which may be made in any one year, on any one crossing, in two ways, viz: by the 25 per cent limitation, and, also, by the further limitation of $15,000. This latter limitation may have the effect of holding the actual percentage payment below 25 per cent. The sum so limited has certain provisions attached to its application. It is set out that no such money, that is, the $15,000, or any portion thereof, shall in any one year (*a*) "be applied to more than six crossings on any one railroad in any one municipality" and (*b*) more than one in any one year on any one crossing."

Recognizing the limitations so imposed, it is, I submit, open to make in successive years annual grants to any one crossing. This is, however, subject to the limitation that the sum expended in any one year shall not exceed $15,000; and the further evident intention that the total payment out shall not exceed 25 per cent of the cost of construction.

By the amending legislation of 1926, the percentage limitation is increased from 25 per cent to 40 per cent; while the limitation, as to amount, viz., $15,000, is amended by substituting $40,000.

My suggestion is that there be authorized in aid of the subway construction concerned the maximum payment permissible from the Fund, and that the contributions be made on progress estimates, as I have suggested.

In regard to the suggestion of the Canadian Pacific Railway Company that the Galt Subdivision crossing on Bloor Street and the Toronto, Grey & Bruce crossing be considered as separate crossings, and so treated in grant from the Grade Crossing Fund, I think it would be justifiable to recognize that the Toronto, Grey & Bruce is a distinct legal entity, and that the contribution on this basis may be permitted. The burden, of course, is on the railways to present the accounts in such a way as will comply with the requirements of the Grade Crossing Fund.

V

Leaving aside for later consideration the division of cost to be participated in by the city and the railways, I wish to consider now the other component factors.

(A) The first is the Bell Telephone Company. This, in my opinion, is covered by the Brock Avenue Subway case—*Bell Telephone Co. vs. C.P.R., G.T.R., and City of Toronto, 14 Can. Ry.* Cas., 14. In this case, a grade separation had been ordered at Brock Avenue and apportionment of cost was made.

The level of the city street was lowered, thus involving moving and relocating the telephone line. It was held that "it was not unreasonable to expect the telephone company to bear the cost of any change in its wires made necessary by the change in the street." This ruling so laid down has been followed in other cases.

(B) The Consumers' Gas Company. It was submitted by Counsel for the Gas Company that the application now made is founded on application by the City, and does not proceed from the Board's own motion. In the *North Toronto Case,* to which reference is made below, the work had been begun on the initiation of the Board; and it is thus submitted, as I understand it, that whatever may have been the situation as to cost division when the work was undertaken on the initiative of the Board, a different situation arises when the initiative is that of the City. It was also contended by Council for the Gas Company that the work was of no benefit to the Gas Company and that it never had been a source of danger. It was contended, further, that any cost occasioned by reason of the alteration was covered by statute and decision. Council pointed out that where change was necessitated by an application of the City, the courts had found that the City must pay. Reference is made to *1916, 2 Appeal Cases, P.C. 618, Toronto Corporation vs. Consumers' Gas Co.,* (Evid Vol. 423, P. 4001).

It was pointed out by the Chief Commissioner that the Board had a right to call on the Company for its contribution. Counsel for the Gas Company, admitting the Board's right to order protection, said that under the charter legislation of the company, and under the decisions, the company had the right to claim over against the City, and the Board should not interfere with such rights. It was further submitted that the Board's jurisdiction was limited to the operation within the limits of the right of way. It was set out that while the Board might have jurisdiction under the Dominion statute, it would be inequitable and unjust to take away from the Company any right it might have against the City of Toronto. Counsel for the City submitted that the Board had power and was not hampered by provincial legislation. The same position was in substance taken by Counsel for the Canadian Pacific Ry. Co.

In connection with the North Toronto Grade Separation, there was before the Board an application by the City of Toronto asking that, in substance, the Gas Company be made to reimburse the City for the expenditures which had been made in making the necessary rearrangements of the Gas Company's lay-out as affected by the grade separation. In the Judgment of Chief Commissioner Carvell, of October 16, 1919, it was pointed out that the question turned on the fact that the Gas Company had not been made a party to the procedure culminating in the issue of Order No. 22855; that the Gas Company had billed the City for work done by it and that the same was paid by the City—*Board's Judgments and Orders, Vol. IX, p. 300.* The City then applied to the Board for an Order directing repayment of these sums, and the Judgment of the Board was that the work was done by the Consumers' Gas Company, under direction of the City, and that in reality it was under contract.

The matter was before the Board at an earlier date and was dealt with in the Judgment of August 1, 1919, rendered by Chief Commissioner Drayton—25 Can. Ry. Cas., 372. The question of the contract phase was left to be dealt with as I have indicated. In the Judgment of Chief Commissioner Drayton, the following words are material. He said, at p. 372, "usual practice would have justified an Order directing the work to be done, either at the Company's own expense, or to such other amount as the circumstances might justly require."

The Judgment continued—

> " It developed, however, at the hearing, that the work had been done and without any Order from the Board dealing with the question. As I

> had doubts as to the Board's jurisdiction to make an Order under these circumstances, the work having apparently been arranged between the parties themselves, leave was given to file further submissions. This has been done." p. 373.

The case was accordingly set down for hearing.

I am of opinion that it is open to the Board to direct the Gas Company to bear the cost of the work done by it; and I so recommend. There is one query I raise for discussion here, however, and that is, whether this should be without prejudice to the right of the Gas Company to claim over against the City in respect of the rights, if any, it has against the City.

(C) There now have to be considered a number of utilities owned by the City: (1) The Toronto Transportation Commission. Reference has been made to the Orders under which the tracks of the Toronto Street Railway have been allowed to be carried through the subways. Mr. Fraser (Vol. 423, p. 3981) stated in substance that whether or not a definite Order can be made against the Transportation Commission, or whether they are part of the City, a fair share should be paid by some one other than the steam railway. Mr. Flintoft, at *p. 3909*, stated that the Toronto Transportation Commission was a railway. He said that the Toronto Transportation Commission as a railway should be treated as a general contributor, independent of the City. He stated, further, that the Transportation Commission should be brought in either as a party now, or that when it came to cross the line of railways in the subways it should not be allowed to cross without a proper contribution.

Mr. Fairty's position for the street railway is set out in *Vol. 423, pp. 4008, 4014, 4015, and 4023*, in substance as follows: "The city is the principal, the Transportation Commission is the agent for the city. The Transportation Commission does not create the danger. It does not add one cent to the cost, and the subway is of no benefit to the Transportation Commission." He claims, further, that after a subway has been in existence and a street railway comes along and wants to operate through it, there is no case where it has been asked for a subsequent contribution. At pp. 4014 and 4015, Mr. Fairty, when arguing this, was referred to the provisions of section 45. Mr. Fairty said that might be practicable thereunder, but he was going to argue this later.

The main argument of Mr. Fairty closed without further reference to section 45. At *p. 4041*, Mr. Fairty referred the Board to the decision in the *Syndicate Avenue Crossing Case*, which is referred to below. He relied on this as upholding a proposition that the user of streets by the street railway was only one type of user and that, therefore, the highway should be provided by the city, and it should bear the full cost of providing that highway. *p. 4042*. The portion of Mr. Fairty's argument just referred to did not deal with section 45 of the Railway Act.

In conclusion, at *p. 4023*, his main argument, which covers from pp. 4013-4023, inclusive, Mr. Fairty used the following words:—

> "Then, to summarize, I would just emphasize the three points I have mentioned before. First of all, we do not create the danger. Secondly, we do not add one copper to the cost; and, thirdly, the subway is of no benefit to us; and for those reasons I would respectfully suggest that there be no distribution as against the Toronto Transportation Commission."

Mr. Geary, *Vol. 423, pp. 4066 and 4067*, argued that the Toronto Transportation Commission was making an ordinary use of the highway; that a use of the highway by the different parties is still a use of the highway which has never passed out of the possession of the city, and that, therefore, the Commission should not be specifically charged with any amount. *At p. 4067*, he said.

however, that if anything was put on the Toronto Transportation Commission this should be outside of Toronto's share. In the same connection, Chief Commissioner Carvell asked "Which would you prefer, that we forget the Transportation Commission, Hydro-Electric Power Commission, the Toronto Electric Commission, and assess it all against the city, or would you rather we assess it against them individually and relieve the city?" Mr. Geary said: "I must have it that way if they are going to be added at all."

I am of the opinion that the Toronto Transportation Commission should contribute to the cost of the work. The basis of said contribution requires further consideration. At the hearing, reference was made to the Edmonton case—*The City of Edmonton vs. G.T.P. and C.N.R. (Syndicate Avenue Crossing Case), 15 Can Ry. Cas., 443.* Here the street railway, owned by the city, was carried across the railway track located on the city street, the city street being senior to the railway. It was directed that the city should be at the expense of putting in the diamond and, also, of the crossing, but that the expense connected with protective appliances and the maintenance thereof should be borne equally by the city and the two railway companies. It was argued by Messrs. Flintoft and Fraser that the same principle should be applied here. That is to say, it was submitted that if the street railway had been allowed to cross on the level, the Board would have required half-interlocking protection, and that under the Edmonton decision there would have been a division of cost. It was then urged that where the tracks are now carried through subways the same principle should be applied, and that the measure of contribution should be arrived at by capitalizing the cost of the half-interlocker plant. See in this connection Mr. Flintoft, *Ibid, p. 3912;* also *p. 3921.*

An estimate has been prepared by the Board's Chief Engineer on this basis. Figures submitted to him by the Canadian Pacific, on my direction, have been rechecked; and he estimates that the cost chargeable on this basis in respect of the two subways in which the Canadian Pacific and Canadian National Railways are concerned would be $95,500. The figure which has been estimated by the Canadian Pacific is $135,000. In the case of half-interlocker at Bloor street, Newmarket subdivision, the figure estimated on this basis by him is $41,000 as against a capitalized cost of $44,000 estimated by the Canadian National. The Canadian National Railways also add a factor to cover elimination of delays and reduction of possible damage done by the cars. While the division proposed follows the principle laid down in the *Edmonton Case*, I recommend, as a substitute, the 10 per cent basis of contribution which was made applicable to the Avenue Road crossing in the North Toronto Grade Separation, *North Toronto Grade Separation—Distribution of Cost, Board's Judgments & Orders, Vol. IV, 213.* An estimate submitted to the Board's Chief Engineer gives the approximate cost of the two Bloor street subways constructed jointly by the Canadian Pacific and Canadian National Railways at $625,000, 10 per cent of which would amount to $62,500.

(D) The Hydro-Electric of Ontario was discussed in *Vol. 423, pp. 3867, 4031, 4033, and 4034.* Counsel for the Hydro-Electric Commission for Ontario argued that it was not down upon the highway, but that there was a crossing of the highway at St. Clair and Davenport road in the air; that it had complied with all the statutory requirements for protection at the present time, and that the danger was not of its making; that it was a utility serving the public at cost, and that any increased cost would have to come out of the public; that whatever charge might be made should not be charged against the public indirectly through the Electric Commission, but directly against the City. He argued that whatever increased cost might be involved should be met by making it a charge against the cost of the whole work and not against the Hydro-Electric Commission for Ontario.

The Toronto Hydro-Electric (The Toronto Electric Commissioners), at *Vol. 423, p. 3866* and at *p. 4036*, argued, in substance, that it considered it should not be in a worse position than the Gas Company or the Hydro-Electric of Ontario. At *p. 4037*, Counsel claimed that the supply of light was in the same position as the supply of water. I am of opinion that the principle of the Bell Telephone Company should apply in the case of these two utilities.

VI

Discussion took place in regard to the junior and senior rule, reference being made at *p. 816, Evid. Vol. 415,* by Mr. Geary to the fact that the Board authorized the opening of Perth Avenue, Primrose Avenue and Wallace Avenue. These are not involved in the present case, but the reference is significant in that Mr. Geary said that as soon as they had been opened by the Board the question of the senior and junior rule should not be applied, but that there should be division of cost. See also discussion by Mr. Geary, *Vol. 423, pp. 3867 to 3877,* inclusive. Discussion took place in connection with the senior and junior rule as to the effect of the legislation of 1909, Section 260 of the Railway Act. Mr. Flintoft took the position, regarding additional tracks on Bloor Street and the question of whether they came under the additional burden since 1909, that when the line was in place and additional tracks built subsequent to 1909, this did not mean that there was a new railway being built; that is to say, the rights which accrued prior to 1909 continued. See discussion, Mr. Flintoft, *Vol. 423, pp. 3930-3943; 3966-3970.* Mr. Fraser agreed in this position—*pp. 3977-78.*

Mr. Fraser, at *p. 3999,* referred to what had been done in regard to division of cost of gate protection on the Newmarket Subdivision, and said this should be taken as affording a measure of the basis of apportionment. He referred, for example, at *p. 3994,* to crossings on Bloor Street where there was an even division between the City and the railway. At Davenport Road, one-half was paid by the City and one-quarter paid by the Canadian National Railways and one-quarter by the Toronto Suburban Railway. At Royce Avenue, there were gates where the total cost was on the City. At St. Clair Avenue, which is not involved in the subways before us now, there were gates, costs of which were $\frac{1}{3}$ on the City and $\frac{2}{3}$ on the railway. At *pp. 4000-01*, Mr. Fraser said the Canadian National Railways should not be asked to contribute to subways on the Newmarket Subdivision beyond the proportions they now pay towards gates. Mr. Geary, at *p. 4054,* said that what had been done in regard to the apportionment of cost of gate protection was not pertinent to consideration of subway construction and cost apportionment. In speaking of the basis of cost, Mr. Geary, at *pp. 3879-3888,* claimed the situation was such that the City should not be called upon to pay as large a percentage as it did in the North Toronto Grade Separation. At *p. 3888*, he contended that the Board should not, in general, impose more than 25 per cent on the City and, in particular, 20 per cent in regard to the Newmarket Subdivision. He said that the question of the large number of senior highways was to be relied upon. The general position of the railways favoured, after the deduction of the various items chargeable to other parties, distribution of the balance equally. See Mr. Flintoft's discusion at *pp. 3923, 3927.* At *pp. 3903* and *3904,* the suggestion was made by Mr. Flintoft that the Order should provide for payment by the parties other than the party carrying on the work of their contributions on monthly progress estimates, and that provision should be made for interest. At *p. 3904,* Mr. Geary agreed to provision regarding progress estimates going into the Order. On the same page, Mr. Flintoft said that so long as the matter is understood, he did not care whether the interest provision went into the Order.

Mr. Geary's position in regard to cost may be found in summary on *pages 4047-4067.* Regarding the division of cost between railways, Mr. Flintoft, at

p. 3825, said that the Canadian Pacific handle the portion south of the diamond and that the Canadian National could probably handle the portion to the north of the diamond to better advantage; that when they came to North Toronto and the Newmarket Subdivision, it was a matter for each railway.

At *pp. 3857* and *3858,* the matter was discussed and Chief Commissioner Carvell stated it was his understanding that Mr. Fraser agreed; the Canadian Pacific to do the work south of the diamond and the Canadian National to do the work north. Mr. Fraser stated, at *p. 3858,* that this was what was agreed to. At *pp. 3923-3924,* there was discussion as to how the cost of the joint work in respect of the two Bloor Street subways should be looked after. Mr. Flintoft said that so far as the Canadian Pacific and Canadian National Railways were contributing to the joint work in connection with these two subways, it would be worked out between them. If there was any difficulty, the matter could be brought to the Board. Mr. Flintoft stated the same thing applied to the MacTier Subdivision and the Brampton Subdivision. The MacTier Subdivision, as here referred to, is the Subdivision with which the tracks of the Toronto, Grey & Bruce lines connect.

At *p. 3979,* the Chief Commissioner asked Mr. Fraser:—

> "Do you concur in Mr. Flintoft's suggestion that there should be no division between the two railways, that they should work the matter out themselves, unless they reach the point where they cannot agree?"
>
> "Mr. Fraser: I do Mr. Chairman. I think that will be rather a long and involved matter, depending on a number of factors, and I think we can work it out. If we cannot, we can, of course, always come back to the Board."

This indicates Mr. Fraser's agreement in the statement of Mr. Flintoft above set out.

VII

The question of seniority and juniority has been raised. I think in a large work of this nature (1) we should not have our hands tied by the senior and junior rules, and that the situation at a particular crossing should not be regarded by itself, but that the matter should be looked at from the standpoint of the whole work. A similar condition existed in the *North Toronto Grade Separation Case—Board's Judgments and Orders, Vol. IV, p. 213.*

(2) I do not consider that where railway construction has taken place prior to 1909, the provisions of the 1909 legislation apply to branches subsequently constructed.

(3) I recommend the maximum contribution from the Grade Crossing Fund, based, as I have indicated, on progress estimates spread over a period of years, if the work takes such time.

(4) I recommend that the Bell Telephone Company, the Consumers' Gas Company, the Toronto Transportation Company, the Toronto Hydro-Electric, and the Ontario Hydro-Electric contribute as above set out.

(5) A 50 per cent contribution by the city is justifiable in the present case.

After deducting the contributions from the Grade Crossing Fund and the other parties required to contribute, the balance should be divided between the railways and the city; the city to pay 50 per cent.

I suggest for consideration that the rapid city development and highway traffic which has taken place is a factor which should have some weight, and I think that under the circumstances 50 per cent is a reasonable contribution.

December 15, 1926.

Commissioners Boyce and Oliver concurred.

GENERAL ORDER No. 435

In the matter of the consideration of the question of proposed regulations governing the location of loading racks and unloading points for gasoline, Naphtha, or any inflammable liquid with flash point below 30° F.

File No. 28638.2

THURSDAY, the 2nd day of December, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, March 2, 1926, in the presence of counsel for and representatives of the Railway Association of Canada, the Canadian National Railways, Canadian Pacific Railway Company, Michigan Central Railroad Company, Canadian Bureau of Explosives, Imperial Oil, Limited, and McColl Brothers, Limited, and what was alleged; and upon the report of its Chief Operating Officer—

The Board orders: That the following regulations govering the location of loading racks and unloading points for gasolene, naphtha, or any inflammable liquid with flash point below 30° F. be, and they are hereby, authorized for the observance of railway companies subject to the jurisdiction of the Board, namely:

PART I

RULES GOVERNING THE LOCATION OF NEW LOADING RACKS AND NEW UNLOADING POINTS FOR CASINGHEAD GASOLENE, REFINERY GASOLENE NAPHTHA, OR ANY INFLAMMABLE LIQUID WITH FLASH POINT BELOW 30° F., ESTABLISHED SUBSEQUENT TO JANUARY 5, 1920.

The location of new loading racks and unloading points for volatile inflammable liquids is considered of great importance, and there is at present lack of uniformity in the enforcement of proper safeguards for the protection of life and property. The following rules cover the location of new installations, but are not applicable to present locations.

For the purpose of these rules, casinghead gasolene is defined to be any mixture containing a condensate from casinghead gas or natural gas obtained by either the compression or the absorption process, and having a vapor tension in excess of 8 pounds per square inch.

Loading

1. (*a*) New loading racks for refinery gasolene, benzine, naptha, or any liquid (other than casinghead gasolene) with flash point below 30° F. must not be located nearer than 50 feet to a track over which passenger trains are moved.

(*b*) New loading racks for casinghead gasolene must be located not less than 100 feet distant from a track over which passenger trains are moved. A retaining wall, dike, or earthen embankment shall be placed between the installation and the tracks, so constructed as affectually to prevent liquids from flowing on to the track in case of accident.

(*c*) In loading casinghead gasolene, the tank car and the storage tank shall be so connected as affectually to permit the free flow of the gasolene vapours from the tank car to the storage tank, and positively to prevent the escape of

these vapours to the air, or the vapours must be carried by a vent line to a point not less than 100 feet distant from the nearest track over which passenger trains are moved.

Unloading

2. (*a*) When new unloading points requiring railroad service for the unloading of tank cars of refinery gasolene, benzine, naphtha, or any liquid (other than casinghead gasolene) with flash point below 30° F. are required, the location shall be subject to negotiation between the carrier and the interested oil company.

(*b*) New locations for the unloading of casinghead gasolene shall be placed a minimum distance of 100 feet from a track over which passenger trains are moved. A retaining wall, dike, or earthen embankment shall be placed between the installation and the tracks, so constructed as affectually to prevent liquids from flowing on to the track in case of accident.

Storage

3. (*a*) These regulations apply only to aboveground tanks for which railroad service is required. Underground tanks should be considered by interested railroads as occasion may arise. All storage tanks will be considered above ground unless they are buried so that the top of the tank is covered with at least three feet of earth.

(*b*) All tanks should be set upon a firm foundation.

(*c*) Each tank over 1,000 gallons in capacity shall have all manholes, handholes, vent openings, and other openings which may emit inflammable vapour, provided with 20 by 20 mesh brass wire screen or its equivalent, so attached as to completely cover the openings and be protected against clogging. These screens may be made removable, but should be kept normally firmly attached. Such a tank must also be properly vented or provided with a suitable safety valve, set to operate at not more than 5 pounds per square inch for both interior pressure and vacuum. Manhole covers kept closed by their weight only will be considered satisfactory.

(*d*) Tanks used with a pressure discharge system must have a safety valve set at not more than one-half of the pressure to which the tank was originally tested.

(*e*) Tanks containing over 500 gallons and not exceeding 18,000 gallons of gasolene, benzine, naphtha, casinghead gasolene, or any liquid with flash point below 30° F., must be located not less than 80 feet from a track over which passenger trains are moved.

(*f*) For capacities exceeding 18,000 gallons, the following distances shall govern:—

Capacity of Tanks (in gallons)	Minimum Distance from a track over which passenger trains are moved.
18,000 to 30,000	80 feet
30,001 to 48,000	90 feet
48,001 to 100,000	110 feet
100,001 to 150,000	110 feet
150,001 to 250,000	120 feet
250,001 to 500,000	150 feet
Over 500,000	200 feet

(*g*) Where practicable, tanks should be located on ground sloping away from railroad property. Tanks must be surrounded by dikes of earth, or concrete, or other suitable material, of sufficient capacity to hold all the contents

of the tanks, or of such nature and location that in case of breakage of the tanks the liquid will be diverted to points such that railroad property and passing trains will not be endangered.

General

4. (*a*) In measuring distance from any railroad track to an installation for loading or unloading tank cars, the measurements shall be taken from near rail to near rail opposite centre of spotted car.

(*b*) During the time that the tank car is connected by loading or unloading connections, there must be signs placed on the track or car so as to give necessary warning. The party loading or unloading the tank car is responsible for furnishing, maintaining and placing these signs, and the same party alone has authority to remove them. Tank cars thus protected must not be coupled to or moved. Other cars must not be placed on the same track so as to intercept the view of these signs, without first notifying the party who placed the signs. Before these signs are removed, even temporarily, the party authorized to move them must securely close the outlet valve of the tank car. The outlet valve must not be opened until the tank car is properly protected by signs. Such signs must be at least 12 by 15 inches in size and bear the words "STOP—Tank car connected!" or, "STOP—Men at work!", the word "STOP" being in letters at least 4 inches high and the other words in letters at least 2 inches high. The letters must be white on a blue background.

These requirements are in conformity with rule 26 of the General Train and Interlocking Rules for Single Track, which generally provide as follows:—

> "A blue flag by day and a blue light by night, displayed at one or both ends of an engine, car, or train, indicates that workmen are under or about it; when thus protected it must not be coupled to or moved, and other cars must not be placed on the same track so as to intercept the view of the blue signals, without first notifying the workmen.
>
> "Workmen will display the blue signals and the same workmen are alone authorized to remove them."

(*c*) In laying pipe lines on railroad property for the loading or unloading of tank cars, they must be laid at a depth of at least three feet, and at points where such pipe lines pass under tracks, they must be laid at least four feet below the bottom of the ties.

(*d*) All connections between tank cars and pipe lines must be in good condition and must not permit any leakage. They must be frequently examined by the railway company and replaced by the owner or industry when they become worn, in order to insure at all times absolutely tight connections. Tank cars must not be left connected to pipe lines except when loading or unloading is going on and while a competent man is present and in charge.

(*e*) Except when closed electric lights are available, the loading or unloading of tank cars shall not be permitted except during daylight when artificial light is not required. The presence of flame lanterns, nearby flame switch lights, or other exposed flame lights or fires during the process of loading or unloading is prohibited.

(*f*) Railway companies shall require hopper doors, dampers, and fire-box doors of locomotives in switching service to be closed while passing, and on all locomotives stopping opposite tank cars or cars on the next adjoining track bearing signs as per clause 4 (*b*); also in every case where a locomotive couples to a tank car at a loading or unloading point.

PART II

RULES TO BE OBSERVED IN THE OPERATION OF LOADING, UNLOADING, AND STORAGE FACILITIES ESTABLISHED PRIOR TO JANUARY 5, 1920, FOR THE HANDLING OF CASINGHEAD GASOLENE, REFINERY GASOLENE, NAPHTHA, OR ANY OTHER INFLAMMABLE LIQUID WITH A FLASH POINT BELOW 30° F.

The operation of loading, unloading, and storage facilities for inflammable liquids is of importance, and uniformity in the observance of proper safeguards for the protection of life and property is desirable.

The following rules apply only to facilities established prior to January 5, 1920. The rules governing location and operation of facilities established since January 5, 1920, are contained in Part I hereof.

For the purpose of these rules, casinghead gasolene is defined to be any mixture containing a condensate from casinghead gas, or natural gas obtained by either the compression or the absorption process, and having a vapour tension in excess of 8 pounds per square inch.

Loading

1. In loading casinghead gasolene, the tank car and the storage tank shall be so connected as effectually to permit the free flow of the gasolene vapours from the tank car to the storage tank, and positively to prevent the escape of these vapours to the air, or the vapours must be carried by a vent line to a point not less than 100 feet distant from the nearest track over which passenger trains are moved.

Unloading

2. Where old instalations for unloading casinghead gasolene are located within 75 feet of a track over which passenger trains are moved, a retaining wall, dike, or earthen embankment shall be placed between the installation and the track, so constructed as effectually to prevent liquids from flowing on to the track in case of accident.

Storage

3. (*a*) These regulations apply only to aboveground tanks for which railroad service is required. All storage tanks will be considered aboveground unless they are buried so that the top of the tank is covered with at least three feet of earth.

(*b*) All tanks should be set upon a firm foundation.

(*c*) Each tank over 1,000 gallons in capacity shall have all manholes, handholes, vent openings, and other openings which may emit inflammable vapour, provided with 20 by 20 mesh brass wire screen, or its equivalent, so attached as completely to cover the openings and be protected against clogging. These screens may be made removable, but should be kept normally firmly attached. Manhole covers, when equipped with suitable gaskets, may be kept normally locked down, and need not be provided with screens. Such a tank must be properly vented or equipped with a suitable safety valve set to operate at not more than five pounds per square inch for both interior pressure and vacuum. Manhole covers kept closed by their own weight only will be considered satisfactory.

(*d*) Tanks used with a pressure discharge system must have a safety valve set at not more than one-half of the pressure to which the tank was originally tested.

(*e*) Any tank located within 200 feet of a track over which passenger trains are moved and not on ground sloping away from railroad property must,

when practicable, be protected by dikes of earth, or concrete, or other suitable material, so that any liquid escaping from the tank will be held or diverted away from railroad property.

General

4. (*a*) In measuring distance from any railroad track to an installation for loading or unloading tank cars, the measurements shall be taken from near rail to near rail opposite centre of spotted car.

(*b*) During the time that the tank car is connected by loading or unloading connections, there must be signs placed on the track, or car, so as to give necessary warning. The party loading or unloading the tank car is responsible for furnishing, maintaining, and placing these signs, and the same party alone has authority to remove them. Tank cars thus protected must not be coupled to or moved. Other cars must not be placed on the same track so as to intercept the view of these signs, without first notifying the party who placed the signs. Before these signs are removed, even temporarily, the party authorized to move them must securely close the outlet valve of the tank car. The outlet valve must not be opened until the tank car is properly protected by signs. Such signs must be at least 12 by 15 inches in size, and bear the words "STOP —Tank car connected!", or "STOP—Men at work!", the word "STOP" being in letters at least 4 inches high, and the other words in letters at least 2 inches high. The letters must be white on a blue background.

These requirements are in conformity with rule 26 of the General Train and Interlocking Rules for Single Track, which generally provide as follows:—

> "A blue flag by day and a blue light by night, displayed at one or both ends of an engine, car, or train, indicates that workmen are under or about it. When thus protected, it must not be coupled to or moved, and other cars must not be placed on the same track so as to intercept the view of the blue signals, without first notifying the workmen.
>
> "Workmen will display the blue signals and the same workmen are alone authorized to remove them."

(*c*) Existing aboveground pipe lines on railroad property for the loading or unloading of tank cars should, if required by the railroad in the interest of safety, be laid underground. If practicable these pipe lines should be laid at a depth of at least three feet, and at points where such pipe lines pass under tracks they should be laid at least four feet below the bottom of the ties.

(*d*) All connections between tank cars and pipe lines must be in good condition, and must not permit any leakage. They must be frequently examined by the railway company and replaced by the owner or industry when they become worn, in order to insure at all times absolutely tight connections. Tank cars must not be left connected to pipe lines except when loading or unloading is going on and while a competent man is present and in charge.

(*e*) Except when closed electric lights are available, the loading or unloading of tank cars shall not be permitted except during daylight when artificial light is not required. The presence of flame lanterns, nearby flame switch lights, or other exposed flame lights or fires during the process of loading or unloading is prohibited.

(*f*) Railway companies shall require hopper doors, dampers, and fire-box doors of locomotives in switching service to be closed while passing, and on all locomotives stopping opposite tank car or cars on the next adjoining track bearing signs as per clause (4) (*b*); also in every case where a locomotive couples to a tank car at a loading or unloading point.

H. A. McKEOWN.
Chief Commissioner.

ORDER No. 38511

In the matter of the application of the Quebec Central Railway Company, hereinafter called the "Applicant Company", under Section 334 of the Railway Act, 1919, for approval of its Standard Passenger Tariff C.R.C. No. 296, on file with the Board under file No. 29641.

MONDAY, the 6th day of December, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Standard Passenger Tariff of the applicant company, C.R.C. No. 296, on file with the Board under file No. 29641, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38526

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for temporary operation its Turtleford Southeasterly Branch from mileage 23.0, at Fairholme, to mileage 65.5, at Rabbit Lake, a distance of 42.5 miles. File No. 26653.12

TUESDAY, the 7th day of December, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby authorized to open for the carriage of freight that portion of its Turtleford Southeasterly Branch from mileage 23.0, at Fairholme, to mileage 65.5, at Rabbit Lake, including the wye at Rabbit Lake: Provided trains operated over the said line be limited to a rate of speed not exceeding twelve miles an hour.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 436

In the matter of the General Order of the Board No. 403, dated June 6, 1924, as amended by General Order No. 412, dated December 19, 1924, requiring railway companies subject to the jurisdiction of the Board to install electric lights in the classification and marker lamps of all locomotive engines in service which are now, or in future may be, equipped with electric light installations; all engines put in service in the future with electric light installations to have the electric light installed in the classification and marker lamps before entering the service; and all engines now in service and so equipped to have electric lights placed in the classification and marker lamps not later than December 31, 1925 File No. 6511.8

WEDNESDAY, the 15th day of December, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading the application of the Canadian Pacific Railway Company for a rehearing of the question of marker lamps, and what has been filed on

behalf of the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers as to non-compliance with the provisions of the said General Order No. 403,—

The Board orders that the application, in so far as the same relates to marker lamps, be reheard before the Board, at such time and place as may be ordered; and that, in the meantime, and pending such rehearing and decision thereon, that part of the said General Order No. 403 relating to marker lamps be suspended.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 38563

In the matter of the application of the Canadian Northern Saskatchewan Railway Company, hereinafter called the "Applicant Company," for an Order further extending the time within which it may carry traffic over that portion of its Turtleford Southeasterly Branch from mileage 0, at the junction with the Turtleford Subdivision of the Canadian National Railways at mileage 56.2, to Fairholme, a distance of 23 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile.

File No. 26653.10.

FRIDAY, the 17th day of December, A.D. 1926.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer,—

The Board Orders: That the time within which the applicant company may carry traffic over the said portion of its Turtleford Southeasterly Branch from mileage 0, at the junction with the Turtleford Subdivision of the Canadian National Railways at mileage 56.2, to Fairholme, a distance of 23 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile, be, and it is hereby, further extended until the 1st day of November, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI Ottawa, February 1, 1927 No. 19

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NOTE.—NO ISSUE FOR JANUARY 15, 1927

ORDER No. 38591

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for temporary service the St. Paul Southeasterly Branch, a distance of 19·55 miles, from a junction with the Coronado Subdivision of the Canadian Northern Western Railway, at mileage 120·85 St. Paul, Alberta, to present end of steel at mileage 140·4, Elk Point, Alberta.

File No. 11929.49

THURSDAY, the 23rd day of December, A.D. 1926.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to carry traffic on its St. Paul Southeasterly Branch, a distance of 19·55 miles, from the junction with the Coronado Subdivision of the Canadian Northern Western Railway Company, at mileage 120·85, St. Paul, Alberta, to present end of steel at mileage 140·4, Elk Point, Alberta; said operation to be limited to a speed not exceeding the rate of ten miles per hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38655

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, 1919, for approval of proposed Supplement No. 3 to the Canadian Freight Classification No. 17, as submitted to the Board under date of November 18, 1926.

File No. 33365.68

THURSDAY, the 13th day of January, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Whereas notice has been given by the Canadian Freight Association in the *Canada Gazette*, as required by section 322 of the Railway Act, 1919, and copies of the said supplement furnished the mercantile organizations enumerated in the General Orders of the Board Nos. 271, 348, and 353, with the request that their objections, if any, be filed with the Board within thirty days;

Upon the consent of the Canadian Freight Association to the elimination of the items objected to, without prejudice, and with the understanding that the same may be resubmitted in the next supplement to the Canadian Freight Classification; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That, with the exception of the following items, namely:
Page 3, items 6 and 7, iron and steel shingles, N.O.I.B.N.;
Page 9, items 17, 18, and 19, hair, cattle, hog, or horse;
Page 11, item 8, bands or rods, structural, iron or steel,—

the said Supplement No. 3 to the Canadian Freight Classification No. 17 be, and it is hereby approved.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 437

In the matter of the application of the Railway Association of Canada for an Order amending Rules 19 and D-19 of the General Train and Interlocking Rules, so as to authorize a standard practice of utilizing marker lamps not lighted to indicate the rear of trains during daylight hours, instead of flags as at present.

File No. 4135.71

TUESDAY, the 18th day of January, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Pere Marquette Railway Company, the Rutland Railroad Company, Central Canada Railway Company, British Columbia Electric Railway Company, Limited, the Quebec, Montreal and Southern Railway Company, the Maritime Coal, Railway and Power Company, Limited, the Edmonton, Dunvegan and

British Columbia Railway Company, the International Bridge and Terminal Company, and the Thousand Island Railway Company; and upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the General Train and Interlocking Rules, approved by General Order No. 42, dated July 12, 1909, be, and they are hereby, amended by striking out rules 19 and D-19 thereof and substituting the following, namely:—

"19. The following signals will be displayed, one on each side of the rear of every train, as markers to indicate the rear of the train; by day, marker lamps not lighted; by night, green lights to the front and side, and red lights to the rear, except when the train is clear of the main track, when green lights must be displayed to the front, side, and rear.

"D-19. The following signals will be displayed, one on each side of the rear of every train, as markers to indicate rear of train:—by day, marker lamps not lighted; by night, to the front and side, green lights; by night, to the rear, if the train is running with the current of traffic, red lights; if standing on passing track, clear of main track, green lights; if running against the current of traffic, a green light on the inside and a red light on the opposite side. The lights displayed to the rear must be changed from green to red before a train fouls the main track when leaving a passing track, or returns to the main track with the current of traffic."

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 38684

In the matter of the application of the Grand Trunk Pacific Branch Lines Company, hereinafter called the "Applicant Company", for authority to open for the carriage of traffic a connection 0.28 of a mile long, near Alix, in the Province of Alberta, between mileage 78.92 Three Hills Subdivision of the Applicant Company and mileage 21.75 Brazeau Subdivision of the Canadian Northern Western Railway Company, crossing the Lacombe Branch of the Canadian Pacific Railway Company by a diamond crossing.

File No. 10821.7

FRIDAY, the 21st day of January, A.D. 1927

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a connection 0.28 of a mile long, near Alix, in the province of Alberta, between mileage 78.92 Three Hills Subdivision of the applicant company and mileage 21.75 Brazeau Subdivision of the Canadian Northern Western Railway Company, crossing the Lacombe Branch of the Canadian Pacific Railway Company by a diamond.

S. J. McLEAN,
Assistant Chief Commissioner.

CIRCULAR No. 211

FEBRUARY 7, 1927.

File 1750.210.8, Air brakes on transfer trains or drags in movement between yards

In the movement of cars between yards at terminal or other large centres, such as the different sorting, distribution, or storage yards at the head of the lakes, Vancouver, Toronto, Montreal, etc., the question of the use of air brakes on transfer trains or drags moving between yards has recently, and on several prior occasions, been the subject of discussion between the Board's Operating Department and the railway companies, the latter taking the position that the transfer movements referred to are not trains, and consequently clauses 1 and 2 of General Order No. 236 has not been considered as being applicable.

The Board's records show accidents having occurred that, in the opinion of the Board's operating officers, might have been avoided, or at least minimized, had the air brakes been applied in accordance with clauses 1 and 2 of the Board's General Order No. 236, and the Board's officers are of the opinion that these transfer movements should be subject to the clauses of order above mentioned, and the rules, as at present applied in the case of freight train movements, made applicable to such transfer movements.

Railway companies subject to the Board's jurisdiction, and the railway associations, are requested, within thirty days, to show cause why such a ruling should not be made.

In the case complained of by Mr. C. Lawrence, Legislative Representative of the B. of L.E., under date of December 3, 1917, the attached letter addressed to Mr. Temple of the Canadian Northern, is the Board's decision made at the time, and the same is forwarded herewith for the information of the railway companies.

By order of the Board,

A. D. CARTWRIGHT,
Secretary, B.R.C.

OTTAWA, February 14, 1918.

DEAR SIR,—

File 1750.208, Complaint of B. of L.E. re C.N.R. handling long freight trains between Rosedale and Cherry St. Yards, Toronto.

Referring to the above matter and to your letter of the 6th instant, I am directed to state that the Board is of opinion that the movements between Rosedale and Cherry street yards should be treated as road movements as far as General Order No. 65, section 1, is concerned.

Yours truly,

A. D. CARTWRIGHT,
Secretary, B.R.C.

R. H. M. TEMPLE, Esq.,
Asst. Solicitor, C.N.R.,
Toronto, Ont.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 38763

In the matter of the application of the Canadian Shippers' Traffic Bureau, in behalf of certain corporations and shippers of the City of Toronto, in the Province of Ontario, including the Robert Bury Company, Limited, T. H. Hancock, Limited, Shreiner & Mawson, Boake Manufacturing Company, Limited, for an Order disallowing Supplement No. 4 to the Canadian National Railways' Tariff C.R.C. No. E-1068.

File No. 35083

SATURDAY, the 12th day of February, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Chief Traffic Officer,—

The Board Orders: That the said Supplement No. 4 to the Canadian National Railways' Tariff C.R.C. No. E-1068, owing to lack of proper notice being given therein, be, and it is hereby, disallowed.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 438

In the matter of the General Order of the Board No. 394, dated February 8, 1924, amending General Order No. 78, dated July 14, 1911, prescribing the rules and instructions for the inspection and testing of locomotive boilers and their appurtenances:

File No. 16513.

MONDAY the 14th day of February, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed on behalf of the Railway Association of Canada, the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen; and upon the report and recommendation of its Chief Operating Officer—

The Board Orders: That the said General Order No. 394, dated February 8, 1924, be, and it is hereby, amended by striking out the amendment to clause 18, on page 2 thereof, and substituting the following, namely:—

" 18. *Method of Testing Flexible Staybolts with Caps.*

" (*a*) Except as provided in paragraph (*b*), all staybolts having caps over the outer ends shall have the caps removed upon the completion of twenty-four calendar months actual service, and bolts and sleeves examined for breakage, provided such service is performed within three consecutive years. Portions of calendar months out of service will not be counted. Time out of service must be properly accounted for by out of service reports, and notations of months claimed out of service made on the back of each subsequent inspection report and cabcard. Each time a hydrostatic test is applied, the hammer test required by Rules 16 and 17 shall be made while the boiler is under hydrostatic pressure, not less than the allowed working pressure.

" (*b*) When all flexible staybolts with which any boiler is equipped are provided with a telltale hole not less than three-sixteenths ($\frac{3}{16}$) inch, nor more than seven thirty-seconds ($\frac{7}{32}$) inch in diameter, extending the entire length of the bolt and into the head not less than one-third ($\frac{1}{3}$) of its diameter, and these holes are protected from becoming closed by rust and corrosion by copper plating or other approved method, and are opened and tested each time the hydrostatic test is applied, with an electric or other instrument approved by the Board of Railway Commissioners for Canada, that will positively indicate when the telltale holes are open their entire length, the caps will not be required to be removed. When this test is completed, the hydrostatic test must be applied and all staybolts removed which show leakage through the telltale holes.

" The inner ends of the telltale holes must be kept closed with a fireproof porous material that will exclude foreign matter and permit leakage of steam or water, if the bolt is broken or fractured, into the telltale hole. When this test is completed, the ends of the telltale holes shall be closed with material of different colour than that removed and a record kept of colours used.

" (*c*) The removal of flexible staybolt caps and other tests shall be reported on Form No. 3, and a proper record kept in the office of the railway company of the inspections and tests made.

" (*d*) Firebox sheets *must* be carefully examined at least once every month for mud burn, bulging, and indication of broken staybolts.

" (*e*) Staybolt caps shall be removed, or any of the above tests made, whenever the Board's Inspector, or the railway company's inspector, considers the removal desirable in order thoroughly to determine the condition of staybolts or staybolt sleeves."

H. A. McKEOWN,
Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 38777

In the matter of the application of the Bell Telephone Company of Canada, hereinafter called the "Applicant Company," for approval of the revised rates and charges for local exchange services shown in the Schedule filed with the Board under C.R.C. No. 6057.

Case No. 955.71

MONDAY, the 21st day of February, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 11 and 12, 1926, March 9, 1926, April 19, 20, 21, 22, 23, 27, 28, 29 and 30, 1926, May 4, 5, 6, 7 and 11, 1926, June 8, 1926, August 4, 1926, September 21, 22, 23, 24, 28, 29 and 30, 1926, October 1, 5, 6, 7, 8, 12, 13, 14, 15, 19, 20, 21, 22, 26 and 27, 1926, and November 9, 10, 11, 12, 16, 17, 18, 19, 23, 24, 25 and 26, 1926, in the presence of counsel for and representatives of the applicant company, the cities of Toronto, Hamilton, Brantford, Ottawa, and Montreal, the Montreal and Toronto Boards of Trade, the Hamilton Chamber of Commerce, Union of Canadian Municipalities, Town of Brampton, Government of the Province of Ontario, County of York, Township of York, and the Canadian Manufacturers' Association, the evidence offered, and what was alleged; and upon reading the written submissions and arguments of counsel for the said parties,—judgment, dated February 21, 1927, was delivered by the Board, a certified copy of the said judgment being attached hereto marked "A"—

The Board orders: That leave be, and it is hereby, granted the applicant company to file individual exchange tariffs, and supplements to its general exchange tariff, to become effective not earlier than the first day of March, 1927, to give effect to the rates and charges prescribed and authorized by and in accordance with the said judgment, which is hereby made part of this order.

H. A. McKEOWN,
Chief Commissioner.

"A"

Application of the Bell Telephone Company of Canada, for approval of its Revised Tariff of Rates for Local Exchange Service, C.R.C. No. 6057.

By the Board: Case No. 955.71

On January 25, 1926, the Bell Telephone Company of Canada filed with the Board for approval a revised tariff of rates for local exchange service, which it described as,—

> "A proper schedule of rates, which removes existing discrimination or inequalities, and is so adjusted as to be fair and reasonable to the subscribers, while at the same time providing this company with sufficient revenue to meet its requirements"—

and copies of such tariff were delivered to the municipal authorities in every exchange affected. It was not accompanied by any statement showing the necessity for change, or wherein the present rates fail to produce sufficient income for the company's needs. These matters were developed in evidence and will be referred to hereafter.

The schedule filed was designed to be effective on March 1, 1926, but in view of many protests from localities interested, and no reasons having been then presented to the Board in support of its adoption, it was thought advisable to suspend its operation until opportunity for full and complete hearings should be had. It was intended to supersede all individual exchange tariffs at present in force, and the rates provided for, vary according to the group in which the locality indicated may fall. Such groups are nine in number and on its face the schedule shows the different cities, towns and localities belonging to each group. The cities of Montreal and Toronto are the only ones which fall in group 1. There are none in group 2. Two cities, Hamilton and Ottawa, are found in group 3. Three, namely, London, Quebec, and Windsor, comprise group 4. And an ever enlarging number falls in groups 5, 6, 7, 8 and 9.

II

In support of its application the company has filed numerous exhibits, supplemented by oral testimony, and in justification of the increase in rates points out that it is the owner of property the book value of which is $103,000,000; that against such property there is now a bond issue of $30,000,000; outstanding capital stock amounting to $48,694,600; and that at present it is indebted to its banker for loans since the commencement of this application, to an amount exceeding $6,000,000; that necessary alterations and extensions in its business call for an expenditure within the next five years of a very large sum of money, which it estimates at $87,000,000.

The company submits that it is entitled to earn, and must earn, an eight per cent dividend on its capital stock in order to hold the confidence of the investing public, and to maintain itself in a position to attract capital for extensions from time to time of the company's operation, as well as for necessary alterations.

Since 1918, the applicant company has been before this Board more than once seeking authority for an increase in rates, and some of the questions discussed at length in this application were touched upon, and to a degree determined, by judgments of the Board hereinbefore delivered in 1919, 1921 and 1922. The decisions with regard to such phases of the general question are of record and no good reason appears why they should not, where applicable, and not varied by this judgment, be adopted and concurred in by the Board in this case.

III

It will be admitted that non-discriminatory rates should be established by the company sufficient to produce revenue to cover its operating expenses, its current maintenance expenses, a proper amount for depreciation and amortization, its taxes, including income tax, interests, dividends upon its stock, and a reasonable surplus. Having done this, the public should not be asked to contribute further.

IV

Some argument was made by Mr. Phippen, counsel for the company, and a portion of his brief is based upon the claim, that this public utility service is entitled to earn a " fair return " on the value of the property of the company, the reproduction cost of which, under present conditions, is estimated at $137,000,000—as against a book cost of $103,000,000. The Board is not prepared at present to acquiesce in this view, although aware that within many jurisdictions of the United States this doctrine has been accepted, and to some degree recognized within Canada.

Although counsel for the company laid stress upon its right to earn a " fair return " on the fair value of the corporation property, yet, as the application developed, he expressed himself satisfied with a rate scale sufficient " only to pay the company's operating costs, to pay its bond and other interest, and to permit the company to continue to pay an eight per cent dividend on is stock." The company is upon more solid ground in taking the latter position before the public, and the understanding of its present contention is that it is willing to have this application dealt with from the latter standpoint.

In view of the final position taken by the learned counsel upon this question, it is not necessary for the Board to speak definitely upon the propriety of estimating rates on the basis of a fair return on the value of the property of the company, but in view of the contention made in the company's brief, and repeated in its brief in reply to that of the city of Ottawa, for the present at least, assent cannot be given to the propriety of that method.

V

The company filed as its first exhibit a statement for the year 1925 showing,—

(*a*) its actual revenue and expense at the close of that year, under the present rates of service, using a depreciation rate of 4.75 per cent, and

(*b*) an estimate of what its income and expenditure would have been under the rates now proposed with a depreciation rate of 5.41 per cent.

An exhibit covering 1926, estimated for the portion of the year then unexpired, was also filed using a depreciation ratio of 5.41 per cent, showing,—

(*a*) its estimated revenues and expenses at the close of 1926 under the present rates of services, and

(*b*) an estimate of its income and expenditure during the same period under the rates now proposed.

This latter exhibit disclosed under,—

(*a*) a deficiency in the year's operations estimated at $1,371,000, and under

(*b*) a surplus of $1,240,000.

It may be noted that from the full statement for the year 1926 now available and shown later, the actual deficit is more than the company's estimate above.

For the year 1925 the company carried its depreciation rate at the figure of 4.75, as against a proposed depreciation rate of 5.41 which it used in 1926, and the propriety of the latter rate is in issue in this application. But before examining the various points raised, it may be well to consider briefly the basis of this application and pass in review more fully the present position of the company under which it claims to be suffering loss, and to consider for a moment the general financial position of the company at the present time.

VI

As before remarked, the company finds it necessary to make very substantial and expensive alterations involved in the change from manual to automatic equipment now under way, included in an estimated expenditure during the present year of $17,000,000, and it is obvious that the increased carrying charge must be met. The company urges that it cannot be met under a tariff which now is inadequate to furnish revenue sufficient to give enough margin of safety on its present investment and operation. In the expanding conditions of business, the company cannot stand still—it must enlarge and keep in touch with business affairs. It is unnecessary to dwell at length upon the necessity of efficient and up-to-date telephone service. Business cannot be carried on without it, and the inconvenience and actual financial loss which would result from curtailed or insufficient telephonic communication can hardly be estimated. Unless the income of the company is, or will be, sufficient to take care of the carrying charges imposed by these necessary expenditures, some increase is unavoidable. It is contended by the respondents that the present rates provide ample income for such purpose.

The company alleges that the schedule of rates now under consideration is the lowest that will provide sufficient revenue for its necessary requirements, and that it also serves the purpose of eliminating discriminations which now exist in its present schedule.

The fact appears that immediate large expenditure is forced upon the company not only because of the normal expansion of its service from year to year, but as above remarked, by the necessary alteration of its system by which the automatic telephone service is to supplant the manual operation now largely in use. It therefore insists that it is necessary that its rate schedule be raised, not only to check the heavy encroachments which are now being made upon its surplus, but to provide money for its necessarily increased oulay, which it says the present schedule cannot do. It will be remembered that the claim is put forward that the company has actually not earned its dividend and surplus of two per cent approved by the Board, since 1920, although the dividend has been regularly and duly paid. It says that moneys rightly applicable to a proper depreciation and amortization fund, as well as to the maintenance of a reasonable surplus account, have been withheld from these two latter accounts in order that the credit of the company should not be impaired by the passing of a dividend, or otherwise. If this be true, it is clear that even having regard only to the normal extension of the company's business based upon the operations of the past years, an adjustment of rates is called for; but when, in addition to checking the alleged downward tendency of the company, there is the necessity of enlarged expenditure for reasons heretofore not insistent nor pressing, it is the company's view that the present rates are wholly inadequate to deal with the situation, and that the proposed schedule is the smallest that can be evolved in fairness and safety to the interests affected.

As above remarked, the estimate is that the company will require $87,000,000 for capital expenditures during the coming five years. Mr. Sise's testimony is that such estimate is based on the net growth in the next five years, including 1926, of 225,000 stations, or an average of 45,000 over that

period. This average, he said, is considerably lower than the gain actually accomplished during the last two years of 52,000 last year, 50,000 in 1924, 52,000 in 1923, 33,900 in 1922, and 23,900 in 1921.

The gross additions to the plant, so estimated, involve expenditures for right of way, lands and buildings, central office equipment, exchange lines, station equipment, toll lines; also interest during construction: and an exhibit was filed showing the detailed estimate for each year from 1926 to 1930, inclusive, and the projected expenditure under each head. It calls for an outlay as follows:—

1926	$17,764,000 00
1927	17,601,000 00
1928	16,827,000 00
1929	16,793,000 00
1930	17,950,000 00
	$86,935,000 00

Taking an average capital investment of $17,000,000 each year during the next five years, it involves a yearly addition to the carrying charges for the company's dividend requirements, at the rate now prevailing, of $1,360,000.

VII

This discussion of the company's affairs makes it advisable to pass under review the actual condition of the company at the close of the years 1925 and 1926, as disclosed by the exhibits submitted. And this having been done, attention may then be directed to the company's forecast for the future, with a view of determining upon the necessities of the company from the standpoint of the extensions and alterations proposed to be made.

Immediately below is shown a summary of the company's receipts and expenditures for the year 1925:—

1925—ACTUAL DEPRECIATION EXPENSE AT 4.75 PER CENT

Telephone Revenues:		
Exchange Service Revenues		$19,327,281 40
Toll Service Revenues		6,396,694 32
Miscellaneous Operating Revenues		445,001 70
Sundry Net Earnings		820,847 61
		$26,989,825 03
Total Operating Expenses	$11,852,520 26	
Maintenance	4,466,493 19	
Depreciation and Amortization	4,178,165 31	
Taxes	1,124,000 00	21,621,178 76
Net Earnings		$ 5,368,646 27
Interest		1,488,192 39
Net Profit		$ 3,880,453 88
Dividends		3,889,166 20
Deficit		$ 8,712 32

In the statement for 1925, it is shown that the total operating receipts of the company for the year 1925 were $26,168,977.42, which are increased by sundry net earnings to $26,989,625.03; and the total expenses $21,621,178.76, including in the latter its depreciation and amortization account of $4,178,165.31, calculated at the rate of 4.75 per cent. After deducting interest and dividends, taxes, etc., the exhibit reveals a deficit of $8,712.32.

The respondents claim that the Dominion income taxes charged by the company in 1925 and included in exhibit No. 1 are excessive by approximately $50,000, being based on the former rate of taxes (10½ per cent) which was subsequently lowered to 9 per cent. This was admitted by the company, provided no further assessment is made by the tax authorities in respect to certain other items still pending.

This adjustment has not yet been made, and it is noted that the company's statement for the year 1926 is based on the now current rate of taxes, 9 per cent, and whatever might be claimed for the year 1925 can have little or no effect on the company's position to-day.

In another part of the company's statement it is disclosed that if, during the year 1925, it had been allowed the rates proposed in the new schedule, and had increased its depreciation rate to 5.41 per cent, as against the present rate of 4.75 per cent, the operations of the year would have resulted in a profit of $1,620,785.99. The increased earnings would have amounted to $2,685,021, which would have been reduced by increased expenditure to $1,629,498.31, and would have thus worked out to a credit of over a million and a half dollars. These figures contain no element of uncertainty. They are the result of the actual year's operations under existing rates, compared with what would have been the result had certain factors, now sought to be altered, assumed such altered form at the beginning of the year 1925.

VIII

Coming now to the year 1926, all of the months of this latter year had not expired when the figures were taken out in the exhibit above mentioned, but they are now available and show the following summary of results:—

1926—ACTUAL DEPRECIATION EXPENSE AT 5.41 PER CENT

Telephone Revenues:		
Exchange Service Revenue		$21,008,542 01
Toll Service Revenues		6,982,142 80
Miscellaneous Operating Revennes		470,238 44
Sundry Net Earnings		649,877 00
Total Revenues		$29,110,800 25
Total Operating Expenses	$12,387,951 00	
Maintenance	5,769,720 33	
Depreciation and Amortization	5,586,065 00	
Taxes	1,100,000 00	24,843,736 33
Net Earnings		$ 4,267,063 92
Interest		1,801,188 00
Net Profit		$ 2,465,875 92
Dividends		3,906,803 00
Deficit		$ 1,440,927 08

By a further exhibit the company compared its estimated earnings and expenses for the year 1927 under the present rates, with those under the rates proposed, showing that under the rates now in force its operations will result in a loss of $2,007,000 for the present year. At the proposed rates, the result is estimated to be a surplus of $727,000. The exchange service revenues contemplate an increase of revenue for 1927 of a little over three millions of dollars.

The actual figures for the years 1925, 1926 and the estimate for the year 1927 reveal the following:—

1925—Deficit on operation on existing scale of rates—depreciation ratio 4.75 per cent	$ 8,712 32
1926—Deficit on existing scale of rates—depreciation ratio of 5.41 per cent	1,440,927 08
1927—Estimate of deficit on existing scale of rates—depreciation ratio 5.41 per cent	2,007,000 00

December's monthly report of the company shows bank loans of $6,000,000. This has now been increased by further borrowings of $1,000,000, made on

January 15, 1927, to furnish funds for the dividend for the last quarter of 1926. Cash then on hand of $414,294 by the same report has been utilized, and an overdraft to the amount of $455,332 incurred, as shown by a report furnished the Board on February 4 instant, which also reveals a bank indebtedness on loan account of $7,455,332—against which Dominion Government Bonds have been deposited to the amount of $1,090,000.

In addition to all this it may be observed that the semi-annual bond interest due and payable on March 1 next, to the amount of $750,000 must be provided for.

The above statements summarize the company's financial position at the present time, and such is the situation which has to be met by those who have the responsibility of carrying the affairs of the company, and incidentally the more important responsibility of providing satisfactory telephone service for the business and other interests of the people of Ontario and Quebec. All must admit that items in the expense account which represent wages, taxes, interest and dividends must be paid. By this application, the directors of the company say that, in their opinion, the other items of outlay exhibited in these statements are necessary to keep the plant in proper condition to provide for its due retirements, and in order that the business of the company may be successfully carried on. The company now finds itself confronted with an accumulated deficit on the operations of 1925 and 1926 of over a million dollars—with an inevitable deficit under present rates for the current year which, it says, will be over $2,000,000—with indebtedness for current loans from its bankers of $7,000,000 —and with three quarters of a million dollars to be provided within a few days for bond interest, due March 1 next. Under these circumstances, the company now comes to the Board asking authority to put into effect the schedule of rates filed over a year ago, and which it then asked might become operative on March 1, 1926.

IX

It is contended with earnestness by the respondents that the revenue now derived from the rates presently in force is sufficient to meet all requirements of the company upon any fair basis of calculation.

It is evident that if the respondents are entitled to succeed in their opposition to this application, the basis of success must be found in some criticism of the accounts of the company as submitted, or of its forecast as outlined in evidence, and without hesitation counsel interested have taken issue with the propriety of certain calculations and with the appropriation of certain portions of the income to various branches of the accounts. It is pointed out that whereas the total revenues of the company, including its sundry net earnings, amounted to nearly twenty-seven millions of dollars for the year 1925, its total operating expenses were less than twelve millions of dollars, thereby leaving a balance of over fifteen millions, against which interest and dividends of somewhat over five millions are fairly chargeable, and taxes amounting to a little over another million, so that after all this outlay is provided for, over eight and a half millions of dollars remain, which are absorbed in current maintenance, depreciation and amortization accounts. In addition to maintaining that this latter amount is more than ample for all reasonable purposes, attack is made upon the item of service contract expense amounting this year to $420,000, which will be dealt with later.

It is also emphasized by respondents that the rates already in existence have provided an accumulated surplus account which at the end of the year 1925 had grown to the amount of $4,966,364.70.

The company is not holding that amount in cash, but it has all been invested in plant, which is in ease of borrowed money.

It is contended by the respondents that nearly five millions of dollars having been paid by the telephone users for this purpose, the surplus account is high enough, and provides sufficient reserve for a public utility company whose income can always be regulated by its necessities. And it is further claimed that the sum of eight and a half millions of dollars or thereabouts, represented in the current maintenance and depreciation and amortization accounts of the year 1925, is sufficient upon any calculation to keep the company on an even keel.

Unfortunately, the company's accounts show a most serious impairment of this surplus account. During the year 1926 the company suffered a deficit of $1,440,927, and necessarily has charged it to surplus account, thereby reducing the same to $3,549,867, as shown by the December monthly report submitted to the Board. The present rate scale will—by the company's estimates submitted—result in the present year's operation terminating in a deficit of $2,007,000 (and it may be said that at the beginning of 1926 the company's estimate of deficiency for that year was too low) by which the surplus account will be reduced to $1,542,867, and there can be little doubt that this balance will entirely disappear in 1927 under the present schedule of rates.

Respondents contest the above conclusion, because they say, the depreciation rate is figured too high, and there are features of the company's financing which are indiscreet and can be corrected to its great financial benefit, thereby obviating any necessity for a raise in rates. They criticize chiefly the depreciation ratio which they say has been needlessly raised, the item of $420,000 paid under contract to the American Telegraph and Telephone Company, the relationship existing between the applicant company and the Northern Electric Company. Each of these contentions must be examined, but the discussion thus far makes clear that unless relief can be extracted from the above sources, or elsewhere, the need for a review of rates is imperative and immediate, or a serious impairment will follow.

X

Considering that much debate centres around the question of a proper rate for depreciation and amortization, it may be well to give priority to the discussion of this feature of the problem, for the item is large and the difference involved in the rate of 5.41 per cent as asked by the company, and 4.47 per cent as set up by the respondents' witnesses, amounts to the substantial sum of $842,136 upon the book cost of 1925, and as the value of the plant increases, this item of expense will be augmented. It may be said that for some years prior to 1919, the company charged depreciation and amortization rates which approximated 6.2435 per cent. This rate was in line with that charged by the American Telephone and Telegraph Company, and was considered in an application for increase of rates made in 1918 and disposed of in the following year. (See Vol. 9, p. 63, Board's Orders and Judgments, 1919.) A rate of 5.7 per cent was by this judgment substituted for that of 6.2435, which it was estimated would give a sum of approximately $330,000 per year. And it may be noted that the depreciation rate on the American Telephone and Telegraph Company during the war period was 5.72 per cent, when that company was under the control of the United States Government, and continued until its return to private hands, whereupon it was reduced to 5.3 per cent.

Upon the second application, which is disposed of by the 1921 decision of the Board (Vol. 11, p. 35, 1921) the depreciation rate was further lowered to 4 per cent on the average depreciable plant. In the judgment of the present Assistant Chief Commissioner, it is set out that this might be considered safe for a limited period of time, and it amounts to about 3.64 per cent on the total plant. It was stated that an emergency condition existed during which it would be proper to borrow from the Depreciation Fund for a limited time.

The 4 per cent emergency rate then put in under the direction of the Board, was applied by the company until January 1, 1922, and upon that date it established a rate of 4.85 per cent, which continued during the year 1922. For 1923 it charged 5 per cent; for 1924, 4.85 per cent; and for 1925, 4.75 per cent. For 1926, it charged the rate of 5.41 per cent, being a composite rate which the Board is now asked to approve. The judgments delivered by this Board, both in the year 1919 and in 1921, alluded to the fact that no actual experience on the part of the company could be drawn upon to assist the Board in coming to a conclusion, and also stated that—

> " as soon as possible the company should set about to accumulate such exact details as will enable as definite opinion as possible to be formed on the basis of the ascertained experience of the company."

The above is an extract from the judgment of the Assistant Chief Commissioner at page 43, Vol. 11.

Following out the suggestion or direction embodied in the judgment above referred to, the company has presented to the Board on this application a study of its own, giving the reasons for the necessity of the rate which it asks to be confirmed, namely 5.41 per cent, which is a composite rate made up of individual rates upon some 25 different items. The respondents contest many of these items claiming that the rate asked for is too high, and suggesting a rate calculated by Dr. Maltbie, at the figure of 4.47 per cent; and carried into dollars the difference in depreciation expense—as shown by the company's exhibit, and by an exhibit filed on behalf of the city of Toronto, a respondent—is the excess of $4,867,667 the company's total, over $4,025,531, Dr. Maltbie's total—namely, $842,136, as stated above.

The rate of 5.41 per cent suggested by the company is worked out by Mr. Peterson, the engineer of the Bell Telephone Company, following an exhaustive study, and both he and Dr. Maltbie filed particulars and data supporting the rates submitted by each; both calculations are based upon the average book costs of 1925; and both adopt the use of straight line rates.

The amounts involved in the purchase and upkeep of the company's plant are so large that an alteration of the depreciation ratio, although slight, works out in actual computation to a very considerable amount. As between the estimates made by Mr. Peterson, the company's engineer, and those of Dr. Maltbie, adviser to the city of Toronto, there is about one per cent difference, the former calculating a composite ratio of 5.41 per cent, and the latter placing the proper figure at 4.47 per cent. It needs no argument to show that different classes of property deteriorate in different periods of time, but having regard to the depreciable portion of the plant as a whole, the company submits that its percentage figure above quoted is necessary to produce sufficient to cover its investment at the end of service life, as well as to take care of obsolescence. A considerable volume of testimony was submitted to the Board in support of the propriety of each individual calculation, and in order that the relative importance of such calculations may be appreciated, it may be well to repeat that the difference in dollars between the percentages amounts to $842,136.

XI

For convenient reference, immediately below is a statement showing in its first column the different classes of property upon which depreciation is calculated. In its second column, it shows the average book cost of the different classes of depreciable property, and the figures shown therein are used both by Mr. Peterson and Dr. Maltbie in their several calculations. Column three

contains the depreciation ratio attached by the company to each class of property. Column four shows the depreciation ratio as calculated by the respondent in table 4 of exhibit No. 141.

Class of Property	Average Book Cost 1925 Exhibit 141 Table 1	Company Exhibit 16	Depreciation Rate Dr. Maltbie Exhibit 141	
			Table 4	Table 7
	$			
Buildings	6,978,400	2·0	1·0	1·0
Central Office Eqpt. Manual	17,818,520	6·5	4·8	6·5
Central Office Eqpt. Machine Switching	3,149,000	6·5	3·6	5·0
Other Eqpt. of Central Offices	290,725	6·5	6·5	6·5
Station Apparatus	10,413,726	5·5	5·5	5·5
Station Installations	2,754,942	1·0	1·0	1·0
Interior Block Wires	96,762	3·0	3·0	3·0
Private Branch Exchanges	2,551,385	6·0	5·0	6·0
Booths and Special Fittings	741,896	5·0	5·0	5·0
Exchange Pole Lines	6,741,736	6·7	A 6·3	x 5·8
Exchange Aerial Cable	6,767,550	6·7	A 6·1	x 5·5
Exchange Aerial Wire-Line	2,196,652	9·5	10·9	x 10·2
Exchange Aerial Wire-Drops	2,840,386		3·5	x 3·0
Exchange Underground Conduit	6,106,547	2·0	2·0	2·0
Exchange Underground Cable	10,221,499	4·0	A 3·4	x 3·2
Exchange Submarine Cable	66,176	10·0	10·0	10·0
Toll Pole Lines	4,254,625	7·6	A 6·2	x 5·9
Toll Aerial Cable	501,085	5·4	5·4	x 5·1
Toll Aerial Wire	4,314,183	4·9	A 4·5	x 4·3
Toll Underground Conduit	31,552	2·0	2·0	2·0
Toll Underground Cable	742,362	3·4	3·4	x 3·1
Toll Submarine Cable	70,286	11·0	11·0	11·0
Office Furniture & Fixtures	462,048	7·5	6·0	6·0
Undistributed Capital Expenditures	29,945	5·4	4·47	4·71
Total for Depreciation	$ 90,141,988	5·4	4·47	4·71
Right-of-Way Exchange	26,377	3·0	3·0	3·0
Right-of-Way Toll	89,289	2·0	2·0	2·0
Total for Amortization	$ 115,666	2·23	2·23	2·23

Number of Classes of Property for which depreciation rates are the same 13
Number of Classes of Property for which depreciation rates are different 12
A—Classes of Property involved in 1916 appraisal adjustment treatment.
X—Classes of Property involved in five-year forecast treatment.

An examination of the foregoing shows that there are in all twenty-five separate classes of property upon which depreciation is estimated, and concerning thirteen of these no difference of opinion has developed as to the proper ratio chargeable thereon. It is, therefore, necessary to consider only the remaining twelve upon which a difference exists.

XII

During the hearing, three sets of depreciation rates were filed, as shown in the preceding statement. One on the part of the company, and two others on the part of the respondents. Each is based on the average book cost of the classes of property affected for the year 1925.

The company's officials explained the method by which the rate attached to each class of property was arrived at, and having regard to all of them a composite depreciation of 5·41 per cent was reached.

The second computation, being the first of those submitted on behalf of the respondents, arrives at a composite rate of 4·47 per cent by the following method:—

> The rate used in connection with lands and buildings is supported by Dr. Maltbie's method of computation.

On central office equipment—both manual and automatic—as well as private branch exchanges, the normal life for all these items was assumed.

On exchange pole lines, exchange aerial cable, exchange underground cable, toll pole lines and toll aerial wire, the so-called appraisal of 1916 was used.

In the remaining three—namely, exchange aerial wire lines, exchange aerial wire drops, and office furniture and fixtures—the depreciation figure set for each of these classes was evolved from experience or observation on the part of Dr. Maltbie acting for the respondents.

As above remarked, this calculation gives a composite rate of 4·47 per cent.

The third depreciation ratio calculation, being number seven in the statement referred to, gives a composite ratio of 4.71 per cent.

Concerning buildings, the same remark may be made as under the preceding computation.

And as regards central office equipment, automatic, the opinion of Mr. Wray, an engineer called on behalf of the respondents, was adopted.

As to the other nine items previously enumerated, the turnover cycle method was applied to a five-year forecast; and as regards office furniture and fixtures, the same calculation was made as in table 4.

The Board, therefore, has before it these three several calculations resulting in a composite ratio of 5·41 per cent submitted by the company, and 4·47 per cent and 4·71 per cent submitted by the respondents.

XIII

Dealing now seriatim with the items involved, it is noted that the company has estimated a rate of two per cent on buildings, whereas Dr. Maltbie, for the respondents, makes the rate only half that amount. It may be said that there is really no difference in the final calculations between the parties over this item, except that Dr. Maltbie considers that a rise in value of the land which the company's buildings occupy should be offset against a depreciation of the buildings themselves. He admits that considering the buildings alone, a rate of two per cent is not excessive. From cross-examination it appeared that while Dr. Maltbie holds tenaciously to his view, nevertheless it is not customary that in these calculations any appreciation of the land be offset against the depreciation ratio of the buildings. No doubt an increase in value of land will find its way into the accounts. It is not a question of losing sight of this increment of value. But we are dealing here with depreciable property, and are of opinion that our discussion at present should be confined to it alone, and consequently are in line with the view expressed by the company, that a depreciation ratio of two per cent is reasonable in regard to this class of property.

In central office equipment the company has set its depreciation ratio at 6·5 per cent, and Mr. Wray, for the respondents, estimates the same at 4·8 per cent. The latter estimate is made under the assumption that the manual equipment is to be allowed to live out its normal useful life without being interrupted by what might be regarded as the premature introduction of machine switching. He agrees that having regard to the conditions under which Mr. Peterson made his study, and in view of the fact that the early retirement of the manual equipment is contemplated, 4·8 per cent will not be a proper rate of depreciation, and he accepted 6·5 per cent as accurate. There does not seem to be much difference of opinion between the parties concerned over this item. If the company carries out its projected change from manual to automatic switching, the life of the item under consideration will be thereby shortened, and consequently its depreciation rate heightened, in which event, both parties agree that 6·5 per cent is a fair ratio to set.

On the other hand, Mr. Wray estimates 4.8 per cent as the proper depreciation rate under normal conditions, and of this there is no contradiction. The question is raised here by counsel for the respondents that, having an equipment reasonably satisfactory and concerning which no complaint has been presented, it is unfair to the telephone users that they should be compelled to pay for scrapping their machines before their time of service is at an end The difference lies just here. There are, no doubt, business reasons why it is undesirable to lengthen out the process of change. Whether such reasons prevail in the face of an increase of rates to that amount, is questionable. But it is manifest from the evidence that the company's calculation is not out of the way, having regard to their proposed alteration, and in our opinion it should stand at 6.5 per cent.

As regards the next item, namely machine switching, a noticeable difference in rate prevails.

The company's exhibit No. 16 sets the depreciation ratio upon automatics at 6.5 per cent, the same as is claimed to be applicable to manual operation, whereas in column 4 Mr. Wray submits a rate of 3.6 per cent for this item. He sets this percentage on the same assumption as that referred to above, in connection with his rate of 4.8 per cent for manual equipment, not taking into account inadequacy or obsolescence. It was further stated by Mr. Wray that there is not the body of fact or experience in connection with the automatic that there is with the manual, whereby exact computation can be made. But from all the facts and experience available, and from consideration of the thing in itself, and the conditions under which it will operate, and the causes that may bring about its retirement, he recommends a depreciation rate of five per cent as proper under existing circumstances.

Mr. Kempster B. Miller, an authority in telephone engineering, adheres to the view that it is safer to stay on the level of manual depreciation until something has transpired which will indicate whether the rate should be raised or lowered. One thing develops from the discussion by these experts, and that is, that the estimate of each is little better than a guess. The Board has followed carefully the reasons given by the different experts and is not by any means convinced that, even as a matter of experiment, the depreciation ratio of the automatic machine should be as great as that of the manual. A ratio of 5.5 per cent, instead of 6.5 per cent as set by the company is sufficient.

The ratio to be allowed in the matter of private branch exchanges furnishes the next matter of divergence. The applicant company's engineer has placed this at 6 per cent, whereas Dr. Maltbie estimates the same at 5 per cent in table 4.

The difference of opinion above indicated has developed upon the question of how much per cent of salvage will be available in connection with this class of property. Under Mr. Peterson's calculation, he figures that there should be a salvage of 46 per cent net, whereas Dr. Maltbie places the same at a higher figure, namely 55 per cent, and the difference between the two is represented by a depreciation ratio of 5 and 6 per cent respectively. The definite program for the installation of automatic equipment which is now before the company will no doubt affect the private branch exchanges to some degree. It may be well to say that we are not setting a figure which cannot be altered. The experience of the company can always be brought to bear upon any of these calculations, and while an application of this kind is a serious matter, and imposes upon all parties heavy financial burdens, yet in regard to these depreciation ratios, some of which are experimental, the Board thinks means can be adopted whereby it may review the same. To set a depreciation ratio on this, or any other class of property under special circumstances arising from a change of equipment, may very well result in fixing a ratio excessive under normal

conditions, and this should be avoided. The company says it has taken all that into account. In this item, as well as in a preceding one, regard is had by the company's engineer, to the short life of the class of property under consideration by reason of the fact that a change is imminent. This is not a permanent condition, and a depreciation ratio calculated under such circumstances, even after making allowances, might reflect more than sufficient at ordinary times. The figures involve a difference of somewhat over $25,000. The company's estimate should be allowed.

Up to the present, we have discussed what is known as inside property and upon the different items involved the depreciation ratios were calculated by Mr. Wray and adopted by Dr. Maltbie, who made no personal investigation into the same.

XIV

Coming into what is classed as "outside" property, Dr. Maltbie, by using the five year forecast, has arrived at rates different from those set up by the company upon nine different divisions of the outside property, as shown marked "X" in the statement on page 238.

Mr. Peterson explained how the estimates for the forecast were prepared. He said that there had been a careful study for the first year's requirements in connection with these items of outside plant and station equipment, as well by field officials having charge of the five territorial divisions of the company's work; that their forecast was constructed from a statement of materials and equipment derived from the knowledge of the existing requirements of the plant and its expected growth, and the amount of equipment or plant that would be required for gross additions and what would necessarily be retired. He detailed extensively the thorough method adopted by the officials of the company, showing how the first year's estimate and each of the remaining four years' estimates were arrived at. He stated that,—

> "the difference between the first year's estimate and each of the remaining four years is that in respect of land, buildings and central office equipment, it is estimated on a project basis; but in respect of the outside plant and the station equipment, the first year is a detailed estimate built up from materials and equipment and the prices, whereas for the balance of the five years, that is the four years ahead, it is estimated broadly upon a monetary basis."

The results of this calculation were furnished upon request to Dr. Maltbie, and Mr. Peterson was asked as to the use made by the latter gentleman of such estimates, and said that they were used by him "for the purpose of determining what will be the result on indicated life by applying the turnover cycle method for certain classes of property for the period ending with the year 1930."

The object of the forecast, as detailed by Mr. Peterson, was to arrive at money requirements, not to estimate the retirements on the basis of a depreciation ratio. As against the depreciation ratio thus deduced by Dr. Maltbie from the forecast above made, we have that compiled by Mr. Peterson and thoroughly described in his depreciation study in evidence wherein the methods by which the various ratios of depreciation were arrived at, are minutely and completely described. Tables and explanatory graphs were submitted in support of his conclusions, and while it must be admitted that in a discussion so extremely technical, one follows with difficulty and sometimes with doubt the processes explained and conclusion arrived at, yet the merit of one method as against another is more easily understood. And having examined the studies submitted by Mr. Peterson, the Board has no hesitation in arriving at the conclusion, as against the criticisms made in this particular by the respondents, that the company's figures stand undisturbed.

XV

As to some of the classes of property, a certain use was made by Dr. Maltbie of the so-called 1916 appraisal. This may be said with reference to exchange pole lines, exchange aerial cable, exchange underground cable, toll poll lines, and toll aerial wires. The first four of these items are subject to the observations immediately above, as well as to the remark that as regards the figures shown in table 4 on these classes of plant, Dr. Maltbie arrived at the figures shown in the last named table by using a unit retirement cost taken from the 1916 appraisal, and scaling this down by use of the ratio which the 1916 appraisal figures bore to the 1916 book figures, thereby obtaining certain unit costs which he accepted as representative of book costs as of January 1, 1916. Finding that these scaled down unit costs were lower than the unit costs to which Mr. Peterson had adjusted them as retirement figures, he concluded that Mr. Peterson was in error and that book balances were not on the same price level as his retirement figures. To correct this, Dr. Maltbie calculated the amount by which the book blance should be increased for each class of plant, showing the results in table 11 of exhibit 141; resulting in longer service lives and consequently lower depreciation ratio than found by Mr. Peterson. In examination it developed that Dr. Maltbie had added a fixed amount for the years back of 1914 when the plant was of very much less volume, and it seems plain that in his estimtae he should have used a percentage which if properly calculated would have brought his figures more in line with those of the company. The fact is, that there was no appraisal of outside plant in 1916. If such had been the case there would be justification for using the ratio which such appraisal bore to the 1916 book prices, but it was established that the so-called appraisal of 1916 covered a period of six years, beginning in 1911, when an inventory was made of the Montreal property and priced out at unit costs of that year, and the appraisal of 1916 was accomplished by book additions, dollars additions to June 13, 1916. And in the case of Toronto also, an appraisal was made in 1912 and brought down to June 30, 1916, in the same manner. Such procedure makes it clear that it would be impossible to extract the average costs year by year from the so-called 1916 appraisal. They are not by any means the 1916 costs, but they are an aggregate of cost from the year 1911 to 1916.

XVI

Criticism of the company's ratio, which has for its foundation data collected in the way above described cannot be effective. It is extremely difficult to say whether or not the company's ratio on each individual item is exactly right, but in the Board's opinion it suffers nothing from what has been said against it by the respondents. A study of the reasons adduced by Mr. Peterson and of the methods which were taken by the company's officials to arrive at these figures, affords little ground for altering the same. Having regard to this branch of the inquiry it seems to the Board that it must accept the study and results so made and compiled by the officials of the company, if the same are not impugned for reasons which seem to be valid and effective, and this observation applies not only to the items under consideration but to others as well. If, in the criticism levelled against them, there would seem to be justice and reason, the Board would not hesitate to follow to its logical conclusion any doubt raised as to the accuracy of the company's figures. But where, as in the present case, the criticisms are shown to be based upon premises which are inconclusive, no course seems to be open other than to accept the results compiled by the company upon matters of a wholly technical nature.

The depreciation ratio upon two other classes of property is challenged, and upon one of them at least it is easier to form an estimate. Office furniture and fixtures to the value of nearly half a million dollars are estimated by the

company to bear a depreciation ratio of 7.5 per cent, as against the lower figure of 6.0 per cent set up in tables 4 and 7. The company's rate is arrived at by estimating the life of such property to be twelve and a half years, and this shortens what might under other circumstances be its normal life of fifteen and a half years by reason of the reduction due to a change in policy and practice of the company. No investigation or examination of the property involved was made by Dr. Maltbie upon which he could base his estimate of six per cent, but his conclusion was derived from experience in other directions. In view of the fact that it is admitted that such class of property can reasonably be expected to have a life of between fifteen and sixteen years, as shown in exhibit 84, the onus is certainly on the company to establish its position. The only answer to this is that this class of equipment in the past has resulted in longer life than is to be expected from the present equipment, inasmuch as articles of inefficient equipment, including double desks, are being done away with and standardization inaugurated, better sanitary conditions established, metal cabinets are being introduced for housing important documents; excessive repairs to worn and obsolete typewriters are being avoided by abandonment of the same,—all in order to bring about increased efficiency and better work. It is also pointed out that the company plans to erect a new administration building to centralize its department, which will result in a certain amount of existing equipment being retired. The Board is somewhat in doubt as to the necessity for raising this figure from the amount indicated by a fifteen and a half year life 7.5 per cent, which represents a life of twelve and a half years. But as less than $7,000 is involved in the change, the company's figure may stand for the present.

It is to be noted that a composite depreciation rate of 9.5 per cent is set up by the company in connection with wire lines and wire drops in exchange aerial service. This figure is challenged by Dr. Maltbie, who separates such items in table 4, assigning a figure of 10.9 per cent to wire line, and 3.5 per cent to wire drops. In his criticism of the figures submitted by the company Dr. Maltbie testified that the company's procedure in this regard is out of line with that of other companies operating under the same system of accounts, although he admitted in cross-examination that the practice varies. There are instances, where apparently all drop wires go through maintenance and repair, and practically none of them go through depreciation reserve account. Mr. Peterson in support of his figures testified that in the accounting practices of the Bell Telephone Company all drop wires retired under specific estimates are charged to the reserve, whereas such retirements under routine work are charged to maintenance. A difference in practice is involved here. The company carries the two kinds of wire in one account, instead of setting up a separate rate for line wire and another for drop wire. In work done on a large scale, upon which estimates are necessarily made, drop wires retired thereunder are not charged to maintenance. Under the company's present practice however, it seems impossible to now separate the two accounts for the purpose of arriving at proper rates, and the Board accepts the company's composite rate of 9.5 per cent upon these items.

In the foregoing, for reasons stated, the depreciation rates proposed by the company have been accepted, except that for machine switching, which is put at 5.5 per cent instead of 6.5 per cent. The average book cost of this class of equipment at the end of 1926 is $7,182,653.78, and the company has credited to the depreciation reserve for this item, the sum of $466,872.50. Using the ratio of 5.5 per cent, the amount to be so credited is $395,045.96—a reduction of $71,826.54.

The alteration of the company's ratio on automatic equipment from 6.5 per cent to 5.5 per cent results in a change in the composite ratio from 5.41 per cent to 5.34 per cent.

XVII

It is thus apparent that the use of a depreciation ratio of 5.5 per cent upon automatic equipment, instead of 6.5 per cent as estimated by the company, has a substantial reaction upon the sum total estimated under that head; and as above remarked, it also reduces the composite depreciation ratio to 5.34 per cent, instead of 5.41 per cent, and thereby effects a saving upon that item of $71,826.54. It will further be noted that inasmuch as this class of equipment will increase very materially during the years until manual equipment is supplanted, this difference of one per cent will assume larger proportions. It is estimated that for the year 1927 it will reach the sum of $100,000.

Reference is made to the contention that property is normally about 80 per cent depreciated, and that therefore a reserve equal to 20 per cent of the average plant in service is adequate. This was referred to in the 1919 Case, Part XIII, although it was not deemed necessary to make any ruling on the point. In the present case it has been contended that the existing depreciation reserve is excessive.

In his evidence Dr. Maltbie stated that he understood that engineers for the Bell Telephone system had commonly made the statement that if a plant were growing at the rate of 10 per cent per annum, the amount in depreciation reserve, to be adequate and reasonable, would range from 20 per cent to 22 per cent. Dr. Maltbie is here referring to an opinion understood to have been expressed in the United States.

While the range from 20 per cent to 22 per cent was set out by Dr. Maltbie and based on his understanding of a position " commonly held ", counsel for the city of Toronto states that as the Bell property has been growing more rapidly than 10 per cent per annum, the maximum percentage of reserve should, therefore, be below 20 per cent.

Dr. Maltbie, in stating the understanding above referred to, said he was not quoting it as a fact, but that he was going to use it as an illustration. He was manifestly not expressing this as a concluded opinion based on his own researches. He also referred to the opinion stated, as set out in the argument of counsel, to be " held by many that when a depreciation reserve has reached 20 per cent, the annual depreciation expense charges should be limited to actual losses. . . ." (Argument p. 129.)

The book cost of the Bell Telephone Company in December 31, 1926, was $112,915,126; the depreciation reserve as of the same date was $25,883,116.08, or 22·03 per cent. Included in the book cost is the item of land at $1,494,349, and intangible capital at $76,811. In the *Montreal Case, 15 Can. Ry. Cas. 134*, land was omitted from the base on which the depreciation ratio was computed. The two items referred to total $1,571,160. Deducting these from the book cost, there is a revised sum of $111,343,966. The depreciation reserve is 22·3 per cent.

In view of the element of judgment of necessity involved in connection with depreciation ratios, and the amounts accruing therefrom, it would not be justifiable to say that it would be safe to limit the payment to reserve to losses actually accruing in given years, and regardless of the contingencies of change; nor would it be justifiable to say that on the record now before the Board the percentage of reserve is excessive.

While the amount expended for current maintenance, $5,769,720.33, seems large, yet when it is understood that this item takes care of thousands of calls for repairs to stations, as well as all the company's lines—aerial and underground—central office equipment, etc., it is not surprising that this item has not occasioned serious objection. It includes repairs or additions made daily to apparatus and property, in order to keep the same in a state of efficiency. The actual cost for this maintenance in 1925 was $4,466,493.19. Increased stations undoubtedly mean increased expense, and this is reflected in the increase in this item of over $1,000,000 during the year 1926.

XVIII

The service contract between the American Telephone and Telegraph Company (hereinafter spoken of as the American Company), and the Bell Telephone Company of Canada (hereinafter spoken of as the Canadian Company), is covered by two agreements, one dated May 16, 1923, and another, a supplementary agreement, dated April 17, 1926. (Exhibit No. 20.)

Under an agreement entered into on November 1, 1880, the American Telephone Company had undertaken to deliver to the Canadian Telephone Company, Limited, "the rights" and interest of the former in certain letters patent of the Dominion of Canada theretofore issued to Alexander Graham Bell. The American Telephone Company also undertook to transfer to the Canadian Telephone Company all patent rights or licenses to use patented inventions in the Dominion of Canada which the former company had or might hereafter acquire.

The agreement of 1923 sets out that the A. T. & T. Co. has succeeded to the obligations of the American Telephone Company, and that the Bell Telephone Company of Canada, Limited, has succeeded to the rights possessed by the Canadian Telephone Company, Limited, under the agreement of 1880.

The recitals set out that the agreement of 1880 did not obligate the American Telephone Company, or its successors, to patent its inventions in Canada. The successor to this company desired to be relieved from the obligation to assign to the Canadian Company all letters patent of the Dominion of Canada for telephonic apparatus, etc., which it might hereafter acquire. The Canadian Company desired "to be made secure in their right to use all such inventions of the American Telephone and Telegraph Company relating to said telephone or telephonic apparatus through licenses under patents to be issued therefor." The provisions of the agreement may be summarized as follows:—

1. The Canadian Company releases the American Company from all further obligations under the provisions of the second section of the contract of November 1, 1880. This provided that on the issuance and delivery by the Canadian Company to the American Company of $300,000 of the capital stock of the Canadian Company, the American Company would assign to the Canadian Company the patent issued to Alexander Graham Bell, above referred to, and also the letters patent or licenses in connection therewith, to which reference was also made.

2. The American Company agrees to furnish the Canadian Company with copies of specifications of all applications for United States patents for inventions *re* telephones, including cables which the American Company, or the Western Electric Company, Inc., may hereafter file in the United States of America.

3. On request of the Canadian Company the American Company will patent, or cause to be patented, in the Dominion of Canada and Newfoundland, such of said inventions designated by the Canadian Company as it may have the right to have so patented.

4. The American Company will grant, or cause to be granted, the Canadian Company licenses to make, including the right to have others make and manufacture, use and sell, under each of such patents of the Dominion of Canada and Newfoundland.

5. The American Company agrees that in acquiring other United States patents, or right under such patents, regarding telephonic appliances, etc., it will make reasonable efforts at the same time to acquire such rights for the Dominion of Canada and Newfoundland. That where there is no (*a*) additional expense to the American Company, it will acquire such rights; (*b*) where there is additional expense such rights will be acquired on authorization by the Canadian

Company at the expense of the said company; (c) where such rights are acquired the Canadian Company is to reimburse the American Company for the additional expense.

6. The American Company agrees (a) to afford the Canadian Company to acquire and use, as and when completed and standardized, all new and improved apparatus and developments in the art of telephony resulting from the research and development work conducted by the American Company, provided that where the use of such apparatus and developments includes the use of Canadian patents, not owned or controlled by the American Company, the American Company does not undertake to obtain for the Canadian Company rights under such patents; (b) that it will continuously prosecute its work of research in "the development of plans, methods, systems, and ideas, designed to promote safety, economy, and efficiency in the equipment, construction, and operation of telephone plants, including that of the Canadian Company." It is provided that if the American Company discontinues said fundamental work of research for the associated companies of the Bell System in the United States, then the obligation to the Canadian Company shall also cease. In such event, however, a reasonable amount "to be agreed upon between the parties, will be deducted from the compensation thereinafter provided for."

7. "That it will furnish the Canadian Company advice and assistance in general engineering, plant, traffic, operating, commercial, accounting (including the auditing of accounts), patent, administrative, and other matters including legal matters, so far as reasonably practicable, in view of the difference between the legal systems of the Dominion of Canada and of the United States, pertaining to the efficient, economical, and successful conduct of the telephone business of the Canadian Company; such advice and assistance to be given through the issuance to it of data, discussion, and conclusions, including bulletins, books, circular letters, standard specifications, and blue prints, and through the performance of specific work in cases of unusual magnitude and complexity, rendering such work necessary, as well as through personal conferences between officials and experts of the respective companies, and through extending to representatives of the Canadian Company the privilege of attending conferences of the American Company and its associated companies."

8. "That it will furnish to the Canadian Company advice and assistance in its financing for the extension, development, or improvement of its telephone system and in the general matter of its finances, including assistance in securing funds on fair terms as and when needed for new construction and other expenditures, and active assistance in the marketing of the Canadian Company's securities, but not including any obligation on the part of the American Company to advance its own funds, or to use its own credit for these purposes."

9. In order to improve service throughout its territory, the Canadian Company is entitled to extend to telephone companies with which it may wish to exchange data and advice, the benefit of such engineering and technical advice as is above referred to. This to be done on such terms and conditions as the Canadian Company may determine.

10. "The Canadian Company further agrees that it will pay to the American Company at the office of the latter, at 195 Broadway, New York city, in each year, beginning with the year 1923, the amount stated below:—

"The initial and each succeeding annual payment hereunder shall be the sum of three hundred thousand dollars ($300,000), provided, however, that whenever the gross telephone revenues of the Canadian Company for any calendar year shall be more than twenty million dollars ($20,000,000), by two million dollars ($2,000,000), or by a multiple thereof, then the annual payment for such year shall be an amount equal to the initial annual payment above

fixed, plus ten per cent thereof, where such increase of revenue is two million dollars ($2,000,000), and where such increase is a multiple of two million dollars ($2,000,000), plus an increase equal to a like multiple of ten per cent thereof.

"If the gross telephone revenues of the Canadian Company for any calendar year shall be less by two million dollars ($2,000,000), or any multiple thereof, than the then basis for the computation of the annual payment hereunder, then and in such event for each such two million dollars ($2,000,000) of decrease, or any multiple thereof, the annual payment hereunder shall be decreased by ten per cent of the initial annual payment hereunder, or by a like multiple of such ten per cent; provided, however, that the annual payment hereunder shall in no event be less than the sum of three hundred thousand dollars ($300,000), and provided, further, that the above provisions as to increase in the said annual payment on account of increases in revenue shall continue to be applicable; it being the intention of the parties that the annual payment shall not be less than three hundred thousand dollars ($300,000), and that with this minimum it shall be increased or decreased, as the case may be, as above provided, to correspond with increases or decreases in total gross annual telephone revenues.

"Each such annual payment shall be paid in equal monthly instalments, payable on or before the 10th day of each calendar month, except that the payments covering the months of January, February, and March, 1923, shall be apportioned over the remaining months in said year, so as to make the total payment for the said year equal the initial payment above stated."

11. If the Canadian Company fails to pay for thirty days after the due date any sums herein due, or if either party shall violate any of the other terms or conditions of this agreement, and shall persist in such default or violation, or shall fail to remedy or repair the same for sixty days after written notice, or shall become bankrupt or insolvent, the other party may, by written notice to the party in default, terminate all rights of the said party in default, and to enforce its rights may resort to its remedies in law, or in equity. The contract is to run for ten years from January 1, 1923, and thereafter until either party shall give to the other one year's written notice of its election to terminate the same.

Under the supplementary agreement it is set out (*a*) that, under the agreement of May 16, 1923, "the Canadian Company receives broader patent rights and benefits than it was entitled to enjoy under the contract theretofore in force," said contract being that of November 1, 1880; and particular reference is made to the second section of same. The recitals continue that, under article 1 of the agreement of May 16, 1923, the Canadian Company released the American Company from further obligation under section 2 of said agreement of November 1, 1880. It is further recited that it is the understanding of the parties that upon the termination of the agreement of May 16, 1923, the obligation on the American Company under the second section of the agreement of 1880 revives.

This understanding is then validated by the specific terms of the agreement. It sets out that in consideration of the premises, and for the sum of one dollar ($1) by each to the other in hand paid, the receipt of which is hereby acknowledged, "The parties hereto do hereby agree that, upon the termination at any time, or for any cause whatsoever, of said agreement of May 16, 1923, the said second section of said contract of November 1, 1880, shall be automatically reinstated in full force and effect, and the American Company shall be subject thereto, and the Canadian Company entitled to the benefits thereof, from and after such termination, to the same extent as if said second section had never been abrogated or suspended."

The service is provided for under the agreements which have been set out. The companies concerned are under different jurisdictions—the Canadian Company alone being subject to the jurisdiction of the Board. Under the service contract agreement between the American Company (the A. T. & T.) and the Associated Bell companies in the United States, there is a charge of 4 per cent (formerly 4½ per cent) for the services performed by the parent company. These services cover the lease of the telephones or subscribers' sets, the right to use the telephonic apparatus, methods, and systems covered by the patents owned or controlled by the American Telephone and Telegraph Company; the American Telephone research, investigation, and experimentation to furnish advice and assistance in general engineering, plant, traffic, operating, commercial, accounting, patent, legal, and administrative matters, also to give financial support and assistance, and to guarantee in case of deficiency the operating company's Employee's Benefit Fund.

What has been set out in the abstract of the agreement with the Canadian Company may be referred to as showing in general such differences as exist in respect of the services rendered to the Canadian Company on the one hand, as compared with the associate Bell companies on the other. It is estimated by the Canadian Company that the amount it pays on the basis of 400,000 stations is about 2 per cent.

In the United States the service contract and its incidents has engaged the attention of commissions and courts. The Public Utilities Commission of the State of Missouri, in a case before it, made reductions in the payments to be made under the service contract to the American Company. The matter eventually came before the Supreme Court of the United States in *State of Missouri ex Rel. and South Western Bell, 292 U.S. 276.* The court found that the 4½ per cent charge—the percentage then paid—was the ordinary charge paid by the associate companies, and stated that there was nothing to indicate bad faith, and that it appeared that a proper discretion had been exercised by the South Western Bell Company in entering into the agreement. The decisions show that in a large preponderance of cases in the United States, where the service contract had been the matter of adjudication either by commissions or courts, the sums set out under the contract have been allowed in full.

Witnesses from the American Company have testified in the present case to the nature and extent of the work which is being carried on by the Research Department of that company. The benefit of the engineering and other technical advice and information in respect to construction, maintenance, repair, and operation of plant, received by the Canadian Company from the American Company under the agreement, may in turn be extended by the former to telephone companies operating in Canada and Newfoundland, this to be done on such terms and conditions as the Canadian Company may determine. Testimony has been given in the present hearing by various representative officials of the Canadian Company in respect to the advantages it is contended the Canadian Company obtains under the contract.

The suggestion that the contract is an improper one was, to a great extent, based on the position that the two companies were not dealing at arm's length, and that this tended to create an atmosphere of suspicion.

There is no doubt that services of value are obtained under the contract. So long as present day business organization continues, and public utility corporations are under private ownership, the general business administration of such corporations must, of necessity, be in the hands of their directors. Of course, if they abuse their discretion and enter into improvident contracts, that is a matter which must be given full weight when it arises in connection with a hearing involving rates. In the present instance, on weighing the evidence, there is no such proof of abuse of discretion or improvidence in bargaining as

would justify the Board in taking the position that the agreement should be invalidated in whole or in part. The function of the Board is one of corrective regulation, not of business management.

In the South Western Bell Company case, the United States Supreme Court cited with approval *State Public Utilities Commission ex. Rel. Springfield vs. Springfield Gas and E. Co., 291 Ill. 209, 234,* which stated, "The Commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of corporations, nor can it ignore items charged by the utility as operating expenses, unless there is an abuse of discretion in that regard by the corporate officials."

XIX

In as much as the relationship between the applicant company and the Northern Electric Company was the subject of much comment, it is necessary, before disposing of this application, to pass this matter under review, and concerning this matter it may be said:—

The Bell Telephone Company of Canada purchases its supplies from the Northern Electric Company, under an agreement and a supplementary agreement filed as exhibit 21.

Exhibit 117 sets out that in 1924 the sales by the Northern Electric to the Bell Telephone represented 55.6 per cent of their total sales, and in 1925, 57.8 per cent.

It was submitted by several contestants that an inquiry should be made of all the affairs of the Northern Electric Company.

This question had come up before the Board in previous inquiries. It was dealt with in the 1921 judgment (Board's Orders and Judgments, Vol. 11, pp. 46-47-48).

It was then held that the Board has no general supervisory power in regard to intercorporate relations. The Board's functions are mainly concerned with companies operating under the Railway Act.

The previous decision of the Board was adhered to in this case, viz: that no examination of the finances of the Northern Electric Company should be made unless it were clearly shown that the prices charged to the Bell Telephone Company were enhanced illegitimately, because of the close relations between these two companies.

A study of the agreement and of the supplementary agreement (exhibit No. 21) reveals the four following principal features:—

1. The Northern Electric Company maintains stocks and storerooms at certain points, from which the Bell Telephone Company can draw daily;

2. It acts as the purchasing agent and storekeeper of supplies not manufactured by itself;

3. It performs certain small services, such as classifying, storing and repairing returned material;

4. As regards articles manufactured by the Northern Electric Company, they are sold to the Bell Telephone Company at the most favoured customers' prices.

The maintenance of stocks and storerooms by the Northern Electric Company offers a considerable advantage to the Bell Telephone Company inasmuch as it enables it to save the capital that it would have otherwise to invest for that purpose.

The Northern Electric Company is a competitor in the open market, and sells to the general trade articles which it also manufactures or purchases, stores, maintains and ships to the Bell Telephone Company, at net prices, plus a small remuneration.

The Bell Telephone Company is thereby enabled to buy its requirements at a lower cost than if it did manufacture them itself.

The remuneration varies from 4 per cent to 9 per cent; 4 per cent, if the shipment is made direct from the supplier to the Bell Telephone Company, and 9 per cent if it is stored by the Northern Electric Company.

There is, however, an exception in respect of stationery and office supplies, in respect of which the remuneration is 12 per cent if the shipment is made from stock, and 5 per cent if shipped directly by the supplier to the Bell Telephone Company. This higher charge is due to the fact that stationery and office supplies require greater handling, storage and other expenses, in proportion to its relatively low value.

The Northern Electric Company also performs repairs on returned apparatus. Minor repairs are performed in storerooms in Montreal and Toronto; major repairs are performed at the factory.

This is not an exhaustive list of the services rendered by the Northern Electric Company under its contract. For instance, the Northern Electric Company also inspects for the Bell Telephone Company the various articles that it purchases for it.

Certain special services are charged on the basis of the net cost, plus 4 per cent for remuneration.

The Bell Telephone Company is not obligated to buy anything, or exclusively, from the Northern Electric Company. As a matter of fact, it purchases sand, gravel, cement, poles, printing matters, telephone directories, automobile equipment, motor tires, and various other articles outside.

The Northern Electric Company is obligated to sell to the Bell Telephone Company articles of their own manufacture at prices at least as low as prices charged to the most favoured customer in Canada or elsewhere. The price paid by the Bell Telephone Company is the same for one article or for 1,000; on minimum quantities it gets the maximum discount. Reference may be made to exhibit 86, a comparison of prices on telephone apparatus by the Northern Electric Company to the Telephone Company, and to the general trade; discussed in Record Vol. 457, pp. 3793 to 3799.

Exhibits 87-88-89-90 filed by the company, give a comparison of prices for apparatus manufactured by the Northern Electric Company and its competing manufacturers; prices charged by the Northern Electric Company on specification material to the Bell Telephone Company and to the trade.

Exhibit 91 is an estimate of what it would have cost the Bell Telephone Company in 1925, to buy its own requirements through its own purchasing department and warehouses.

It has been established that the prices charged by the Northern Electric Company, under the most favoured customer's clause, were lower than those which the Bell Telephone Company would have been obliged to pay to other manufacturers.

It also appears obvious that the Northern Electric Company is able, on account of its mass production and volume of trade, to manufacture and sell at a lower cost than the Bell Telephone Company could manufacture or purchase if it were limited only to its own requirements.

There is no evidence of any improper financial arrangements between the two companies, and the agreement and the supplementary agreement which govern their relations are distinctly advantageous to the Bell Telephone Company.

The Board can be concerned only with the effect of the Bell Telephone Company's purchase of materials, from the standpoint of its net revenue.

On consideration of the evidence, one is compelled to reach the conclusion that it has not been shown that the prices charged were unreasonable; on the contrary, it was shown that such prices were as low or lower than those charged to other customers.

This phase of the case must be ended there.

XX

In dealing with the question of income tax, the company in 1919 explained that the practice of the Department of Finance was that where the income tax was greater than the business profits tax, or vice versa, then whichever gave the large amount was charged. The Board stated that the question was, what was the practice of the department? And it stated that the Commissioner of Taxation set out that:—

> "The tax paid under the income tax of 1917 cannot be charged as an expense, but must each year be paid out of surplus. In respect to corporations, it is a tax payable on net profits realized during a calendar year or the fiscal year in excess of $3,000." (Board's Orders and Judgments, Vol. 9, p. 70. Sec. 4).

This position was also followed by the Board in the 1921 case (Board's Orders and Judgments, Vol. 9, p. 43, Sec. 12.)

In the present case reference is made by the company to the 1925 amendments to the Income War Tax Act of 1917 (16-17, Geo. V, Chap. 10, Sec. 2), and it is claimed that the amending legislation in question sets at rest any contention that because dividends were exempt from income tax, the charging of the income tax among the company's expenses, instead of putting it against surplus or deducting it from dividends, amounted to an added return on the investment, since dividends being no longer exempt, it could no longer be claimed that the income tax paid by the company is in ease of the shareholders' burdens.

The present status of the matter, under the legislation, is set out at length in the following communication from the Commissioner of Taxation:—

> "Under the Dominion Income Tax Act it is provided that corporations pay in respect of their income over certain specified statutory exemptions a tax at the rates provided for in the various amendments since the inception of the law in 1917. This tax is a company tax for which the company itself is wholly liable and has no connection with the shareholders whatsoever.
>
> "Corporation tax is presently provided for by section 4, subsection 2 of the Act as amended, which reads:—
>
> > 'Corporations shall pay 9 per cent upon income exceeding $2,000.'
>
> "The dividends of a corporation 'shall be taxable income of the taxpayer in the year in which they are paid or distributed.' This raises a liability as against individuals and has nothing whatever to do with the company as a liability of it.
>
> > 'In computing the amount of profits or gains to be assessed a deduction shall not be allowed in respect of—
> >
> > *(a)* 'disbursements or expenses not wholly, exclusively and necessarily laid out or expended for the purpose of earning the income.' (Sec. 3, ss. 8.)
>
> "Income tax paid this year by a corporation in respect of the profits of the previous year is not a deduction within the meaning of the

above provision for the purpose of arriving at the taxable income of the company for this year. The tax is a division of profits, compelled by statutory law, as between the company and the Crown. That very division, however, depletes the actual profits available by the company for distribution among its shareholders and anything that depletes the profits must be taken as a charge in the books of the company."

XXI

The facts above enumerated leave the ground clear to review the whole situation, and furnish reasons for the conclusions drawn. Nothing can be gained by discussing at length the proposal put forward in some quarters, that different localities should be charged different rates, calculated upon the basis of the expense attaching to the service within individual districts. It is not feasible, nor indeed in the opinion of the Board is it reasonable, to build rates upon such a foundation. The business is one corporate unit operating in different places, and cannot be split up into an indefinite number of sections, each treated upon a different basis. No precedent for such was cited, and the matter does not seem to require further discussion.

Having reached the conclusion that the company should be allowed sufficient revenue to cover operating expenses, current maintenance, depreciation (at a composite of 5.34 per cent), taxes, interest and dividends, and provide an allowance of two per cent surplus on the average capital stock issued, it was found that the application of the company's proposed schedule to the 1926 operations would have provided more revenue than required on the above basis. The same will doubtless hold true for 1927, and consequently a reduction in rates in some directions is possible. This may best be applied to the residential service in groups 1 and 3. The residence exchange service in group 1, now standing at $3.08, is, by the schedule filed, raised to $3.50. A reduction can be made from the latter figure to $3.25, which it is observed is only 17 cents above the existing amount.

A like deduction of 25 cents is feasible upon the two-party line residential service in group 1, reducing that figure from $3 as proposed to $2.75.

In group 3, the rate proposed by the schedule filed for a one-party line is $3.25, as against $2.57 previously charged. It has been observed that $2.57 is by comparison a small amount for residential service for at least one of the cities comprised in group 3. The rate of $3.25 may be reduced, under the present circumstances, to $3.10, and the two-party residential service in the same group from $2.75 to $2.60.

Applying these changed rates to the actual telephones in use as of June, 1926, it is found that the total exchange revenue for the last named year would amount to $23,643,821, and a compilation comparing the revenues and expenses under the present rates changed as above indicated, and using a depreciation rate for machine switching of 5.5 per cent, shows that had such last named depreciation rate and exchange rates been used for 1926, the result would have been a surplus of $978,752, instead of a deficit of $1,440,927. The former amount is two per cent of the average capital stock of $48,835,000, showing that a two per cent surplus can be preserved in face of the alterations above made.

By its schedule the company has sought to readjust the charges so as to remove existing anomalies and discriminations which were referred to in previous judgments. The various exchanges have been placed in groups according to the number of telephones in use, and while cost or investment has not been altogether ignored, it has not controlled the establishment of rates. Except in group 9, which shows reduction affecting exchanges, the heavier burden falls upon the business service and this would seem proper, having regard to the use and value of the service.

The value of telephone service to a business community is incalculable, and while that fact should not render easy the exploitation of the business public, nevertheless in the presence of the insistent demand for efficiency and enlargement, the raise indicated in the schedule filed would not weight in the balance against a failure of the objects sought to be obtained. Perhaps a somewhat different consideration may in many instances apply to residence exchange service. On that assumption it has been thought well to apply whatever lowering can now be effected to this branch of telephone use.

Under existing rates, residential telephones in different districts presented some material features of discrimination. The charge for residence exchange service in the city of Ottawa has been running at $2.57 for a one-party line. Ottawa is classed as a city whose telephone stations are over 20,000 and less than 50,000, and from the schedule it appears that cities having as small a number as 2,000, such as Woodstock, Brockville, and Lachine, carry the same rate of $2.57. If we recognize the principle that the telephone user should pay somewhat in proportion to the facilities provided, that is to say, that a person whose telephone is connected with from 20,000 to 50,000 stations has a service more valuable than is provided by a telephone connected with half that number of stations, it is obvious that great discrimination exists as against Woodstock and other places of that size in favour of the city of Ottawa.

The city of Hamilton made a strong protest against being classed with Ottawa for rate purposes, and looking at the advance in rate in the former city for one-party line residential service, it is seen that under the rate schedule allowed it is raised only two cents per month, and the increase in two-party residential rates will amount to fourteen cents monthly. The almost negligible increase in the one case, and the not unreasonable increase in the other under the schedule as amended, takes from the protest of the users of residence exchange service in Hamilton a great deal of its force. Speaking generally as to residential service rates, it may be said that, under the new schedule, in 49 instances there is a raise of rate, in 18 a decrease, and in 281 no change.

In order to equalise the burden, the company in its schedule filed, makes reductions for other services, which reductions, based on the number of instruments and instrumentalities in use as of June, 1926, are as follows:—

Desk sets	$ 31,003 00	reduction
Extension stations	79,900 00	"
P. B. X. stations	220,982 00	"
Hotel stations	1,004 00	"
Excess mileage	112,903 00	"
	445,792 00	

It will be observed that these reductions account for nearly half a million dollars of the increase provided by the new schedule.

While rates in other places in Canada are by no means conclusive of the propriety of the charges in the provinces of Ontario and Quebec, yet they give a background more or less effective to the contentions which are put forward. The New Brunswick Telephone Company, operating in that province, has in its highest group something over 5,000 stations. For one-party business service therein it charges $7.50 per month—fifty cents more than is now proposed to be charged in Toronto and Montreal—and no two-party lines for business service are available in that group in New Brunswick. For residence, it charges for a one-party line $3, as against $3.25 in Toronto and Montreal, and the same rate, namely $2.75, for a two-party line service prevails.

Comparisons with Manitoba, Alberta, and British Columbia show that rates are more reasonable in Ontario and Quebec than in any of these provinces, if

we take into consideration the service rendered, as evidence by the number of stations available for call by telephone users in the two larger provinces.

In the city of Vancouver the Board has authorized the existing one-party line rates of $6.60 for business and $3.30 for residence service. The number of stations in Vancouver on July 1, 1926, was 47,996. In Toronto on the same date there were 157,932, and in Montreal, 143,314.

From an examination of the exhibits placed before the Board, and having regard to the testimony based thereon, and arguments deduced therefrom, it is clear that along some lines of investigation doubt and uncertainty prevailed, and conclusions were not infrequently admitted to be little more than a guess. This is most particularly applicable to the fixing of depreciation rates, and as the business develops this item will grow larger and larger. It is seen above that even a small deduction in one particular rate entering into the composite ratio stands for a large amount in dollars. Under the present circumstances, in which change is taking place and new equipment being substituted for old before the period of life of the latter has actually expired, this may be calculated at too high a figure.

For this reason, it is imperative that the Board should not lose sight of the results of the company's financial operations, not only from year to year, but calculated during a much shorter period of time. To that end the company should be required to furnish the Board with complete financial statements each month of the year for its information, and keep it closely and continually in touch with the company's operations and in a position to judge as to the actual effect of the rates which are now put in, and direction to that effect will be given.

Inasmuch as some change has been made in the schedule of rates filed by the company, and in order that no misapprehension or error may occur in putting the amended schedule in force, it has been thought well to embody in this judgment the tariff as the same is allowed by the Board. Such rates may be put into effect on the first day of March now next, and are as follows:—

RATES FOR LOCAL EXCHANGE SERVICE WITHIN THE BASE RATE AREAS, AND FOR RURAL SERVICE IN EXCHANGE AREAS, SPECIFIED IN EACH OF THE FOLLOWING RATE GROUPS

Rates shown are for wall type equipment

GROUP I

Rates—Per Month	Business	Residence
One-Party Line	$7 00	$3 25
Two-Party Line	6 00	2 75
Extension Station	1 05	80

Montreal, Toronto

GROUP III

Rates—Per Month	Business	Residence
One-Party Line	$5 50	$3 10
Two-Party Line	4 50	2 60
Rural Party Line	3 25	3 00
Extension Station	1 05	80

Hamilton, Ottawa

GROUP IV

Rates—Per Month	Business	Residence
One-Party Line	$4 75	$3 00
Two-Party Line	4 00	2 50
Rural Party Line	2 85	2 60
Extension Station	1 05	80

London, Quebec, Windsor

Group V

Rates—Per Month	Business	Residence
One-Party Line	$4 25	$2 75
Two-Party Line	3 50	2 25
Rural Party Line	2 50	2 25
Extension Station	80	55

Brantford, Kitchener, Waterloo, St. Catharines, Port Dalhousie, Thorold.

Group VI

Rates—Per Month	Business	Residence
One-Party Line	$3 75	$2 50
Two-Party Line	3 00	2 00
Rural Party Line	2 25	2 00
Extension Station	80	55

Belleville, Chatham, Galt, Guelph, Kingston, Niagara Falls, North Bay, Oshawa, Owen Sound, Peterboro, Sarnia, Sault Ste. Marie, Sherbrooke, Lennoxville, Stratford, Sudbury, Copper Cliff, St. Thomas, Three Rivers, Welland, Ridgeville.

Group VII

Rates—Per Month	Business	Residence
One-Party Line	$3 25	$2 25
Two-Party Line	2 50	1 85
Rural Party Line	2 10	1 85
Extension Station	80	55

Barrie, Brampton, Brockville, Collingwood, Duntroon, Cornwall, Grimsby, Winona, Lachine, Leamington, Lindsay, Midland, New Toronto, Islington, Oakville, Orillia, Pembroke, Port Colborne, Port Credit, Cooksville, Streetsville, Clarkson, Simcoe, Smith's Falls, St. Hyacinthe, St. Johns, St. Lambert, Tillsonburg, Brownsville, Weston, Woodstock,

Group VIII

Rates—Per Month	Business	Residence
One-Party Line	$2 75	$2 05
Two-Party Line	2 25	1 85
Rural Party Line	1 90	1 65
Extension Station	80	55

Almonte, Amherst, Beamsville, Vineland, Blenheim, Bowmanville, Burlington, Campbellford, Carleton Place, Chesley, Clinton, Cobourg, Creemore, Drayton, Dresden, Dundalk, Dundas, Elmira, Essex, Exeter, Crediton, Fergus, Gananoque, Georgetown, Goderich, Granby, Grand'Mere, Huntingdon, Joliette, Kemptville, Kingsville, Lachute, Levis, Listowel, Longueuil, Lynden, St. George, Markdale, Meaford, Milton, Mitchell, Napanee, Newmarket, Orangeville, Paris, Parry Sound, Perth, Petrolia, Picton, Pointe Claire, Port Hope, Port Perry, Preston, Renfrew, Ridgetown, Rodney, West Lorne, Seaforth, Shawinigan Falls, Shelburne, Smithville, Wainfleet, Wellandport, Sorel, Stayner, Stirling, St. Mary's, Thetford Mines, Thornbury, Tilbury, Merlin, Trenton, Valleyfield, Walkerton, Cargill, Wallaceburg, Watford, Alvinston, Whitby, Wingham.

Group IX

Rates—Per Month	Business	Residence
One-Party Line	$2 50	$2 05
Two-Party Line	2 00	1 85
Rural Party Line	1 90	1 65
Extension Station	80	55

Acton,
Actonvale,
Agincourt,
Ailsa Craig,
Alexandria,
Alfred,
Alliston,
Ancaster,
Arnprior,
Arthur,
Atwood,
Aurora,
Avonmore,
Aylmer, Que.,
Ayr,
Ayton,
Beauharnois,
Beaverton,
Bedford,
Beeton,
Belocil,
Berthierville,
Blind River,
Bobcaygeon,
Bracebridge,
Bradford,
Brechin,
Brighton,
Bronte,
Bruce Mines,
Buckingham,
Burford,
Burk's Falls,
Cannington,
Cardinal,
{Cartierville,
{St. Laurent,

Cascades,
Casselman,
Chambly,
Chateauguay,
Chatsworth,
Chesterville,
Clifford,
Cobden,
Coboconk,
Colborne,
Coniston,
{Cookstown,
{Lefroy,
Cowansville,
Desceronto,
Douglas,
Durham,
Dutton,
Elora,
Embro,
Etchemin,
Farnham,
Farran's Point.
Fenelon Falls,
Finch,
Flesherton,
Freelton,
Gilmour,
Glencoe,
Gravenhurst,
Hannon,
Hanover,
Harriston,
Harrow,
{Harrowsmith,
{Sydenham,
Hastings,
Havelock,
Hawkesbury,
Hensall,
Hepworth,
Hespeler,
Holstein,
Hudson,
Huntsville,
Inglewood,
Iroquois,
Kirkfield,
Kirk's Ferry,
Knowlton,
Labelle,
Lacolle,
Lakefield,
Lanark,
Lancaster,
Laprairie,
L'Assomption,
L'Epiphanie,
Lorretteville,
L'Orignal,
Louiseville,
Lucan,
Lucknow,
Madoc,
Magog,
Marieville,
Marlbank,
Marmora,
Massey,
Mattawa,
Maxville,
Megantic,
Merrickville,
Millbridge,
Morrisburg,
Mt. Forest,
Nairn Centre,
Napierville,
Neustadt,
Newburg,
New Dundee,
New Hamburg,
Niagara-on-the-Lake,
North Gower,
Norwich,
Norwood,
Oil Springs,
Omemee,
Otterville,
Pakenham,
Palmerston,
Papineauville,
Parkhill,
Penetanguishene,
Pierreville,
Plantagenet,
Plattsville,
Pte-aux-Trembles,
Portland,
Port Elgin,
Port McNicoll,
Powasson,
Prescott,
{Richmond Hill,
{Thornhill,
Rigaud,
{Rockland,
{Bourget,
{Clarence Creek,
Rockwood,
{Russell,
{Embrum,
Scarboro,
Severn Bridge,
Southampton,
South Mountain,
Spanish,
Strathroy,
Sturgeon Falls,
Sturgeon Point,
Sundridge,
{Sutton,
{Roche's Point,
Ste. Adele,
Ste. Agathe,
St. Andrew's East,
Ste. Anne de Bellevue,
St. Bruno,
St. Cesaire,
St. Eugene,
St. Eustache,
St. Felix de Valois,
St. Jacques L'Achigan,
St. Jerome,
St. Jovite,
St. Lin,
Ste. Marguerite,
Ste. Marie Beauce,
St. Scholastique,
Ste. Therese,
St. Vincent de Paul,
Tara,
Tavistock,
Tecumseh,
Terrebonne,
Thessalon,
Tottenham,
Tweed,
Utterson,
Vankleek Hill,
Varennes,
Vaudreuil,
Vercheres,
Victoriaville,
Waterdown,
Waterloo, Que.
Waubaushene,
Webbwood,
Wellington,
Wheatley,
Wiarton,
Willowdale,
Winchester,
Wolfe Island,
Woodville,
Worthington.

CHARGES FOR PRIVATE BRANCH EXCHANGE SWITCHBOARD SYSTEMS PER MONTH

(Switchboard, including Battery and Generator Circuits)

Cordless	$ 6 00
Cord, non-multiple, per position:—	
Capacity 10 Station Circuits	8 00
Capacity 11–20 Station Circuits	9 00
Capacity 21–30 Station Circuits	10 00
Capacity 31–40 Station Circuits	11 00
Capacity 41–60 Station Circuits	13 00
Capacity 61–80 Station Circuits	15 00
Cord, multiple, per position:—	25 00
Station or Trunk Jacks in excess of one per line, per strip of 10	25
Order Receiving Turrets:—	
Two position	12 00
Additional two position sections	4 00

Groups	I	III	IV	V	VI	VII	VIII	IX
	$	$	$	$	$	$	$	$
EXCHANGE TRUNKS:								
Business	8 75	6 85	5 95	5 30	4 70	4 05	3 45	3 10
Residence	4 35	4 05	3 75	3 45	3 10	2 80	2 55	2 55
Stations	1 50	1 50	1 50	1 00	1 00	1 00	1 00	1 00
Stations Equipped with Dial, Each	1 75	1 75	1 75	1 25	1 25	1 25	1 25	1 25

HOTELS—MESSAGE RATES

Private Branch Exchange Switchboards furnished to Hotels on Message Rate Plan at commercial rates as quoted above. Rates for stations, 65c. each per month.

CHARGES FOR EXTRA MILEAGE IN CENTS PER MONTH

Per ¼ Mile or part thereof, Air Line.

Schedules	1	2	3
Groups	1	III–IV	V–VI–VI VIII–IX
One-Party	75	60	45
Two-Party	45	35	25
Private Branch Exchange Trunk	75	60	45
Battery Circuit	75	60	45
Generator Circuit	75	60	45
Extension Line	75	60	45
Tie Line	75	75	75

CHARGE FOR FOREIGN EXCHANGE SERVICE

	Per month	Min. Charge—Per month
Per ¼ mile or part thereof, Air Line—All Groups	$1 25	$2 50

CHARGE FOR MISCELLANEOUS EQUIPMENT

	Per Month
Desk sets	20c.

H. A. McKEOWN,
Chief Commissioner.

OTTAWA, ONT., February 21, 1927.

Assistant Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioner Boyce concurred.

COMMISSIONER OLIVER:

The Bell Telephone Company of Canada filed with the Board in January, 1926, a revised tariff of rates for local exchange services, to become effective March 1, of that year. This revised tariff was expected to increase the revenues of the company by $2,685,021 per year.

On the ground that the proposed increased charges were excessive and unwarranted, certain large groups of subscribers asked that the tariff be suspended until the Telephone Company had shown cause for the proposed increases; and until the parties opposing had had an opportunity to be heard in objection to them.

The cities of Montreal, Ottawa, Toronto, Hamilton and Brantford were amongst those who entered formal protests. In consideration of these protests, the tariff which it was proposed should become effective on March 1, 1926, was suspended by order of the Board and the case was set down for hearing. The hearing began on March 9, 1926, and was continued at intervals until November 26, 1926. The record of the evidence taken in the case covers 6,208 pages and is accompanied by 178 exhibits. The arguments of counsel for the applicants and contestants as submitted cover 617 pages.

The cities of Toronto, Montreal and Ottawa and the province of Ontario were represented by counsel throughout the hearing and a number of other contestants during parts of it.

Counsel for the company states the purpose of the application on page 2 of his argument, or brief, as follows:—

> "The company submits that the expenditures necessary to maintain properly the service and plant, to protect the property and to pay a reasonable return on the investment, demand the additional revenue to be derived from the proposed exchange service rates".

Under the heading, "Basis of the Present Application," on page 10 of the company's brief, the statement is made:—

> "It (the new rate schedule) is designed to produce sufficient only to pay the company's operating costs, to pay its bonds and other interest charges and to permit the company to pay 8 per cent dividend on its stock".

If the company only desired revenue sufficient, as above stated, to pay operating costs, bond and other interest charges and 8 per cent dividend on its common stock, the present tariff on the present business provides more than sufficient revenue for that purpose.

It is apparent, however, from the paragraph on page 10 of the company's brief immediately following the one above quoted, that the company does ask for revenues over and above those necessary to meet the requirements as stated. The paragraph is as follows:—

> "In order to justify paying 8 per cent dividends, the net earnings of the company must be something over this amount. . . . Mr. Muller thought the surplus earnings should be half the cost of money. The Assistant Chief Commissioner in the 1921 judgment found that it was unescapeable that some surplus should be earned. Mr. Sise testified the company believed the amount should not be less than 3.5 per cent. Mr. T. B. Macaulay testified to the same effect".

It would appear therefore that the company claims in addition to operating expenses, bond interest and a stock dividend of 8 per cent, 3.5 per cent as surplus over and above its regular stock dividend, or an actual earning of 11.5 per cent on its capital stock.

Under the sub-heading "Depreciation Expense," on page 36 of the company's brief, the following appears:—

> "The method of ascertaining the proper annual charge for depreciation expense used by the company is the one commonly known as the straight line method. Under this method the amount of the depreciation loss to be apportioned in the accounting is determined by subtracting from the original cost of the property the net salvage which will be realized upon its retirement from service. The depreciation thus determined is then apportioned in equal increments throughout the various months and years in service of the property in question".

On page 38 of the company's brief the following statement is made regarding the depreciation rate calculated by the company:—

> "It was understood at the conclusion of the last rate case that when the company should come before the Board again in the future it would have prepared a detailed depreciation study based directly on its own plant and records. Through its witness Mr. Peterson the company has placed such a study in evidence in this case together with a table of depreciation rates which applied to the book costs of the various classes of property at the end of the year 1925, produce a composite rate of 5.41 per cent. The study and reasons supporting these rates are given in exhibits 84 and 85. The rates which represent Mr. Peterson's best judgment and which have been considered and approved by the Chief Engineer and the executive of the company, are now (since January 1, 1926), in use by the company in its regular monthly accounting."

From the foregoing it appears that in addition to the 11½ per cent earning on capital stock as previously mentioned in the immediately preceding quotations from its brief, the company claims an additional earning of 5.41 on book cost of depreciable plant to become part of a "depreciation reserve". In the case of the Bell Company, the book cost of its depreciable plant is roughly $100,000,000, while the capital stock is somewhat under $50,000,000. An assessment of 5.41 per cent on 100 millions for depreciation reserve would amount to the same figure as 10.82 per cent on the fifty millions of capital stock. It would appear therefore that the company's demands when amplified by the inclusion of surplus and depreciation reserve amount to not 8 per cent on the capital stock but to an amount equal to 22.32 per cent on the capital stock.

It is quite clear that as between the right of the company to earn an 8 per cent dividend on its capital stock which was the first statement of its claim, and its right to earn a sum equal to 22 and a third per cent on an amount equal to capital stock, as set out in the amplification of its statement, there is room for wide divergence of opinion between the company who would get the money and the telephone users who would pay it. This divergence of view was strongly demonstrated by the evidence and arguments during and following the hearing.

It does not appear to be any part of the duty of the Board to dictate to the company how its business shall be operated or financed. But when the company asks the Board's approval of a new tariff which so largely increases its rates, and bases its claims on grounds of such extreme financial urgency as it has done in this case, it becomes necessary and therefore proper for the Board to consider not only the rates now being and proposed to be charged, but also the disposition by the company of revenues heretofore derived, and as well its proposals for the disbursement of future revenues.

There would seem to be no need to question the correctness of the figures shown in the company's accounting. There is no doubt that the monies received are accurately stated and that they have been disbursed as shown by the company's books. The question to be decided is not as to the correctness of the accounts or as to the methods of accounting, but as to,—

(1) Whether the disbursements are warranted by sound business considerations;

(2) In what proportion the disbursements are properly chargeable to revenue through tolls for service to subscribers, and what proportion to the stockholders of the company, either as capital investment or as charges against their revenue from tolls.

The company recognizes the responsibility of the Board in the following paragraph which appears on page 4 of its brief:—

> "The Board is created a judicial body to stand between the public service corporation and the public. Its duty is to see that the company does not make an unfair use of its property through using its franchise to derive excessive profits from the public and that its rates are not unduly discriminatory, either as between persons or between localities."

Particulars as to the expansion of the business of the company are found in the annual report for 1925.

The Bell Telephone Company of Canada was incorporated in 1880. It supplies telephone service direct to connected telephones or "stations" throughout the provinces of Ontario and Quebec. It also connects, under special agreements, with 129,221 non-company telephones or "stations" in the same provinces.

The number of company's telephones has steadily increased from 40,094 in 1900 to 376,361 in 1920 and to 589,321 in 1925.

The net earnings increased from $881,523 in 1920 to $5,366,019 in 1925. In 1915 the net earnings had been $2,221,985.

The total assets, exclusive of certain stated items, amounted to $7,498,762 in 1900, to $62,050,089 in 1920, and $109,174,692 in 1925. The gross total assets at the end of 1925 is given at $114,288,769. These figures are from the company's annual report for 1925.

The total revenues from the operation of telephones in 1924 was $24,208,-411 and for 1925, $26,168,977, an increase of $1,960,566.

The total operating expense for the same years was, for 1924, $18,671,614; and for 1925, $20,271,030; which gives a net increase of operating revenues over operating expense as between 1924 and 1925 of $361,150.

The company operated under the same rate tariff from its commencement until May of 1919 when a flat increase of 10 per cent in rates was approved by the Board. The application of the company was based on " increased cost of labour and materials and other elements of cost affecting public utilities."

A further flat increase of rates of 12 per cent was allowed by the Board in April, 1921. This increase was granted on the claim of the company that, " The cost of labour and material has continued to advance rapidly and the increased rates approved by Order No. 204 have proved insufficient to provide for the applicants requirements."

A third application for increased rates was refused by the Board in February, 1922.

Since the increases of 1919 and 1921 were granted to meet the then rapidly increasing costs of labour, material and incidentals, there have been substantial decreases in wholesale prices of food and other commodities and materials, labour costs generally have been reduced and the interest on money has gone down.

In view of the steady and rapid expansion of the company's activities and earnings since 1921 and the decreased and still decreasing cost of labour, materials and money since that date, it would seem necessary for the Board to examine very carefully into the statements of the company as to its operations and finances, in the light of the facts and arguments put forward by the contestants, before it approves of the levy of additional charges upon them by the company on the volume of business at present transacted to the amount of approximately two and three-quarters of a million dollars a year.

In this connection it would seem to be proper to state that an expert witness who appeared on behalf of the city of Montreal estimated the increased revenues that might fairly be expected to result from the increased tariff on the basis of the business of 1925 would be over half a million dollars more than the estimate of the company. The company's estimate of increased revenues was $2,685,021, while the estimate of the expert mentioned placed the figure at $3,264,390. The difference in result arose out of a difference in estimate as to the number of present subscribers, now served by one-party or two-party lines, who would take a four-party line service at a reduced rate, rather than pay the proposed increase of rates on their present service. There was also a difference of estimate as to the number of private branch exchanges that would be given up because of increased rates.

It is to be noted that one of the purposes named by the president in his annual report for 1925, as being in view in the request for increased rates was, " To permit of a proper return on the property used in giving service."

On page 4 of the company's brief the following statement by counsel appears:—

> " Compelling the use of the property at less than a fair return on its value is held in the United States to amount to confiscation. Is it any less confiscation in Canada? Unless compelled to do so by competent legislative enactment it is the duty of the Board not to compel rates which are estimated to produce less than a fair return on the company's property, and by so doing to confiscate in whole or in part."

From the above quoted pronouncements of both the president and the counsel of the company it is plain that if the proposed increased rates are granted and are found to realize the estimate of the expert witness for the city of Montreal, instead of the half million lower estimate of the company, the company has very definitely, as a matter of argument, placed itself in a position to hold on to the greater revenues thus realized, instead of being content with the revenue as estimated by itself and placed before the Board as the limit of its present application.

The company in fact demands not only interest on its bonds and dividends on its capital stock, but it further definitely asserts the right to earn a "fair return on the company's property", whether derived from investments of their own money by its shareholders or coming directly from subscribers through tolls paid by them and appearing in the accounts of the company as accumulated surplus revenue, reserve for accrued depreciation, or in whatever form.

The company's balance sheet appearing in the annual report for 1925, shows an amount of $23,295,998.96, as "Reserve for accrued depreciation" as at December 31, of that year. The same balance sheet shows "common stock" $48,694,600, and bonds—1955—5 per cent, Series "A" $30,000,000. Total assets are given as $114,288,769.67. It appears therefore that the Bell Company's reserve for accrued depreciation drawn from subscribers in charges for service and remaining unexpended, has been accumulating from year to year, until at the end of 1926 it had reached an amount equal to 70 per cent of the bond indebtedness, 47 per cent of its capital stock and 20 per cent of its total assets.

A "Reserve for accrued depreciation" is in fact an amount taken from earnings in addition to operating expenses and held in reserve ostensibly to be used in major renewals and replacements not included in charges for current maintenance. Any part not so used, automatically becomes a part of the assets of the company and really forms an addition to its capital. This view is very strongly taken by the Bell Company. On page five of his brief, counsel for the Bell Company says:—

> "It is to be observed that in the United States it has been definitely and finally decided by the Supreme Court that property represented by the depreciation reserve of a company is entitled to earn a return as property acquired in any other manner."

On page six the brief continues:—

> "The company submits that this decision is equally applicable to Canada. There is no distinction in the relation of the companies to the public between United States and Canada. . . . . The company submits that at common law, it has the same right to its property and to the use of its property as have American companies to their property and to its use. Should this Canadian property be confiscated under competent legislative authority the company cannot seek legal redress for the confiscation."

Speaking broadly all material depreciates through use, time or change. If a company works a motor truck there are costs for current maintenance accruing from day to day to be paid for out of day to day earnings. But besides there is the certainty that no matter how carefully the truck is used or in how good condition it is kept by expenditures on current maintenance account, a time finally comes when it must be discarded and replaced. An adequate percentage taken from earnings during the useful life of the truck, in addition to costs of upkeep or current maintenance provides for this inevitable event; and in due course replaces the old machine by a new one without impairing or burdening the capital of the company. This is an ideal application of the principle of a depreciation reserve.

But in the case of any widespread enterprise, and especially if it be a public utility such as a railway or the Bell Telephone Company, there is no final retirement of the property as a whole. The repair or replacement from time to time of the several units which make up its constituent parts, maintains it in good condition interminably.

There is need of adequate provision out of earnings for the costs of repairs and renewals in order that the system may be maintained at a proper standard of efficiency. But when that has been done there is no need of further withdrawals from revenue in order to provide for a condition of wholesale retirement which does not and cannot occur, while the enterprise is maintained as a going concern.

"Current maintenance" is of course provided out of day to day earnings. Major repairs and renewals are supposed to be charged to depreciation reserve. There is no definite line of separation between what may be charged as current maintenance and what must be charged to depreciation reserve. The allotment of the several charges is within the discretion of the company management. It is therefore obvious that the amount drawn from the depreciation reserve in any year is dependent in some degree, first upon whether the policy of the company regarding current maintenance is one of expanded or restricted expenditure, and second upon what proportion of the total cost of repairs and renewals is respectively charged to current maintenance and to depreciation reserve in the discretion of the management.

In 1925 the sum of $4,562,116 was taken from the revenues of that year and transferred to depreciation reserve. In the same year the amount of expenditures for major repairs and renewals over and above current maintenance charges and paid for out of depreciation reserve was $3,138,373, leaving an unexpended balance of $1,423,743 taken out of the revenues from the tolls of that year and added to the capital of the company, for which subscribers received no value. In the four years 1922-1925 the total amount reserved for depreciation was $15,040,013. The amount expended on depreciation was $9,347,825 and the amount added to capital under the name of accrued depreciation reserve was $5,692,188. During the period of fifteen years from 1911 to 1926 the average rate of depreciation charged against earnings by the company was 5.11 per cent.

I do not understand that it is any part of the duty of the Board to direct the Bell Company how it shall conduct its business,—how much or how little it shall charge to earnings in providing for a depreciation reserve. As I understand it, the duty of the Board is to allow the company rates that shall be fair to the subscribers and that will give the company a reasonable return on the capital invested by its shareholders. But when the company asks for approval of higher rates in order that it may increase the percentage that it has already taken from revenue in order to still further add to its capital contributed not by its shareholders but by its subscribers, I find myself unable to agree in sanctioning increased tolls asked for on that ground.

In stating the financial position of the company, as showing its need of largely increased revenues, the following statement is made on page 54 of the company's brief:—

> "The company's position is very plain. After contributing in operating expenses in 1925, $692,081 from its depreciation reserve, it fell short of earning its dividend requirements by $8,712. The shortage in fact was $700,793 ($8,712 + $692,081).

The Bell Company has a service contract under which it purchases equipment and supplies from the Northern Electric Company. The Northern Electric Company manufactures telephone equipment and supplies the Bell Company not only with its products but acts as a wholesale purchasing agent for the Bell. Particulars as to the agreement between the companies were given. It was shown that the total sales by the Northern Electric Company

amounted in 1925 to $20,570,750 and that of this amount $11,883,000, or 57.8 per cent, was to the Bell. In 1924 the percentage of sales to the Bell as compared with the total was 55.6. There was no means of definitely establishing at the hearing whether the prices paid by the Bell Company were fair and reasonable or not. Clearly with such a volume of business passing between them, a very small margin might make a very great difference in the financial showing of either company.

Besides their contract there is an intimate relationship between the two companies. The Bell owns 50 per cent of the stock of the Northern Electric. The Western Electric Company of Chicago, which is a subsidiary of the American Telephone and Telegraph Company, owns 43½ per cent. The remaining 6½ per cent is said by the counsel for the city of Toronto to be owned in part by the directors of the Bell Company, thus giving that company control of an actual majority of the stock of the Northern Electric. As the Northern Electric is a development from the Bell and in its earlier days was owned entirely by the Bell, it can only be concluded that it is now a subsidiary of the Bell Company of Canada and that its activities are in fact directed by the management of the Bell. The Bell is therefore in the position of being both chief customer of and controlling shareholder in the Northern Electric. If the Bell buys oto cheaply from the Northern Electric, the advantage to the Bell must be reflected in disadvantage to the Northern Electric. On the other hand, if the Bell pays unduly high prices, that should be reflected in the prosperity of the Northern Electric, and by corresponding depression in the finances of the Bell.

A comparison between the financial statement appearing in the brief of the Bell Company under the heading "Need for Relief" and quoted above, and that of the Northern Electric, would seem to be in order.

The report of the shareholders of the Northern Electric for the year ending December 31, 1925, shows a balance of net profits for the year, after providing for depreciation, government taxes and interest on bonds (including amortization of bond discount), of $1,520,717. The report continues:—

> "Regular dividends at the rate of 8 per cent per annum and extra dividend of 2 per cent have been paid and an amount of $250,000 has been appropriated to the Employees' Pension and Benefit Fund, leaving an amount of $670,717, to be carried to surplus account, which at December 31, 1925, amount to $2,844,821."

In view of the volume of business between the Bell and the Northern Electric of the proportion of its business with the Bell in comparison with all other customers of the Northern Electric, and comparing the financial statements of the two companies, I am compelled to reach the conclusion that either a revision of the contract between the Bell and the Northern Electric, or of the methods followed in the transaction of business between the two companies, should precede any demand by the Bell Company for increased rates.

The Bell Company holds $3,000,000 (or one-half) of the stock of the Northern Electric. The dividends on that stock are a part of the revenues of the Bell Company. It would appear that in 1925 the Bell received a ten per cent dividend on its Northern Electric stock; eight per cent regular and two per cent extra, or $300,000 in all. But the profits of the Northern Electric for that year amounted to $670,717 over and above the ten per cent dividend of $600,000 and an appropriation of $250,000 to the Employees' Pension and Benefit Fund of the Northern Electric. This amount belonged to the shareholders and was available for distribution amongst them. The Bell Company was entitled to one-half, or $335,358. The decision not to distribute this amongst the shareholders, of whom the Bell was chief, but to carry it into the surplus of the Northern Electric, was in the hands of the Bell Company through its control of a majority of the stock.

The Northern Electric report shows that on December 31, 1925, the depreciation reserve of that company amounted to $5,564,249 and that its surplus (available for distribution amongst shareholders) was $2,844,821. At that date its bonds outstanding and not redeemed by sinking funds amounted to $2,139,500. So that the total of its stock issue and bonds outstanding (the amount of money provided directly or indirectly by shareholders) was over half a million dollars less than the amounts at the credit of surplus account and depreciation reserve, derived in largest measure as it must have been from profits on its dealings with the Bell Company.

The only inference I am able to draw from the ascertained facts is that the Bell has made a contract with its subsidiary, the Northern Electric Company, whereby unduly high prices have been paid for material and equipment and that the Bell, as the controlling shareholder in the Northern Electric, has not permitted itself to benefit from the undue profits reaped by the Northern Electric. So long as the situation between the Bell and the Northern Electric remains as it now appears to me to be, I am unable to find justification in the financial position of the Bell Company for an increase in rates over those at present in force.

The company claims that its necessary expenditures are greater than can be properly met by its present revenues. It therefore asks for an increase in tolls as a means of producing increased revenue. The contestants ask that before granting the demand for increased tolls, the Board make reasonable inquiry as to what expenditures are actually necessary and generally what disposition is being made of the revenues now being received. Amongst the expenditures which were strongly challenged by the contestants was that made under a contract with the American Telephone and Telegraph Company, dated May 16, 1923. Commencing on that date the Bell Company of Canada agreed to pay the A. T. and T. Company $300,000 a year in consideration of certain services to be rendered. It was further agreed that as the gross revenues of the Bell Company increased, the payments to the A. T. and T. Company should increase in fixed proportion. For the year 1925 the actual payment was $390,000 and for 1926, $420,000.

It was developed in this phase of the inquiry that the A. T. and T. Company held 32 per cent of the stock of the Bell Company of Canada. The holdings of Bell stock by individual shareholders of the A. T. and T. Company was not stated, but the conclusion seemed to be accepted that in fact the A. T. and T. through its own holdings of Bell stock and those of its shareholders, was in a position to practically control the policy of the Bell of Canada.

The stated reason as to why the Bell had entered into the agreement was that the A. T. and T had formerly supplied certain information and service free of charge; but that in 1922 it had declined to continue the services hitherto rendered without payment. Such an arrangement had been in force for a number of years between the A. T. and T. Company and its Bell subsidiaries in the United States, and the A. T. and T. decided that it could not give to the Bell of Canada what it sold to companies occupying a somewhat similar relationship in the United States.

It was not made altogether clear just what were all of the services rendered to the Bell Company under the contract, nor what was the fair cash value of such services as were actually rendered. Generally speaking, the contract made the Bell full partner with the A.T. and T. in all knowledge and improvements originated or acquired by the latter. It was represented that the A.T. and T. kept a large and costly research staff constantly at work and that the results of the work thus done were of great practical value to the Bell, without charge except the annual payment under the contract. It was represented that the Bell was thereby relieved from making costly and probably fruitless experi-

ments; was kept abreast of every improvement and was able to standardize its methods and equipment to an extent that would not otherwise have been possible.

On the other hand, it was suggested that to purchase desired improvements from the A.T. and T. would have cost much less than the lump sum agreed to be paid and that the agreement, so far as the Bell was concerned, placed in the hands of the A.T. and T. all initiative towards improvement or invention in the science, in which, above all others, improvement and invention might reasonably be expected to be most active within the next few years.

It must be accepted as a fact that a research department such as that maintained in New York by the A.T. and T. may produce valuable results. It is also a fact that the more complete its organization, the more effective its work and the greater the business interests behind it, the more readily it may be used to kill as well as to create invention. It is not inconceivable that if an invention comes to the attention of the A.T. and T. research bureau and is approved as having merit, that before it is accepted for operation, the management carefully considers whether the present interests of the present company will best be served by putting it into operation or putting it on the shelf.

The connection between the Bell and the A.T. and T. is of long standing. The research bureau of the latter company has been at work for many years. The invention of machine switching did not come from the research bureau of the A.T. and T. Company. It is accepted as a great advance over manual switching in large cities. The Bell Company began the installation of machine switching in the cities of Toronto and Montreal four years ago and will not complete the machine installation in these cities before 1936. The telephone systems of the four western provinces of Canada have been operated by machine switching in all the large cities for many years. The delay in introducing machine switching in the two great cities of Quebec and Ontario by the Bell Company is not evidence that its connection with and subordination to the A.T. and T. has been of advantage to its subscribers by giving them service ahead of or even abreast of the times. Whatever benefits may have accrued to the company by reason of its connection with the A.T. and T., there can be no question that in the vitally important matter of machine switching, subscribers in all the large cities of Ontario and Quebec have suffered from delay very much more greatly than subscribers in other systems not so closely connected with the A.T. and T.

It was stated at the hearing that the lump sum agreed to be paid by the Bell to the A.T. and T. Company on the contract under consideration, would amount to approximately one-seventh of the net revenues of the company.

I am unable to find that the company should be authorized to levy increased tolls upon its subscribers in order that so large a proportion of its net revenue might be transferred to the A.T. and T. without more definite evidence of value received.

As the Bell Company is an extensive and well managed enterprise and as it has regularly paid an 8 per cent dividend, the selling value of its shares has had a fairly wide range and usually well above par. The total share capital authorized is $75,000,000 of which $48,694,600 has been issued and on which 8 per cent dividend has been consistently paid. Of course the percentage of dividend is a matter of judgment of the management subject to the financial position of the company as it stands from time to time.

If the market value of money is say 10 per cent and Bell stock only paid a dividend of 8 per cent, the selling value of its stock would naturally be below par. That is, $100 invested in a share of Bell stock and drawing only 8 per cent dividend would bring the owner $8 a year. If the standard rate of interest at that time were 10 per cent, $80 invested at that rate would bring the

owner $8 a year. Therefore the $100 of Bell stock yielding an 8 per cent dividend would only be earning the same amount as $80 otherwise invested. Under that condition, the value of Bell stock would be below par. An investor would then only pay for a share of Bell stock such price as he might expect the same amount of his money to yield if otherwise invested.

On the other hand if the general value of money which had been 8 per cent dropped to 6 per cent, so long as the Bell Company paid 8 per cent, $100 invested in a share of Bell stock would give the same return as $133.33 otherwise invested at 6 per cent. Therefore during that condition of the money market Bell stock would naturally be above par; that is worth more than $100 —just how much more would depend on many and changing circumstances. As the company sold $30,000,000 of five per cent bonds in 1923, it is safe to assume that money at that date was certainly not worth 8 per cent, probably not more than 6 per cent.

In the years 1921 to 1925 the company sold to shareholders $17,843,900 stock at par. At the low average market value of the stock in each month in which sales to shareholders were made, this stock had a marketable value of $21,373,117, or a difference between the par value at which it was sold and the minimum market value at time of sale of $3,529,217.

Money received from sales of stock is the original capital of a company. If the stock sells below par, as is frequently the case, the company must stand the loss. It therefore appears reasonable that if stock issued will sell above par, the company should have the benefit. In some instances the company did take the benefit of the selling value of the stock when it went above par. In that case the actual value of the stock was vested in the company and became part of its assets. But in the case of the stock sales mentioned between 1921 and 1925 inclusive, in which the sales were at par, the individual shareholder and not the company got the benefit of the difference between par and market price.

The practice of the company in selling shares worth more than par to its shareholders at par was defended by the president of the company. It was stated that it was a not unusual practice with prosperous companies. On this point it would seem to be proper to draw a distinction between a company engaged in competitive business and a company having a monopoly in operating a public utility. In the case of the competitive company the burden of its acts rests upon itself. But in the case of the company whose service is a monopoly and whose tolls are fixed or varied on the responsibility of public authority, presumably having regard for the public interest, I am unable to concede that the company should be authorized to charge tolls which have in view the payment of an 8 per cent dividend on stock which did not realize for the company the increased assets that its actual value made available, to the amount of $3,529,217 on the $17,843,900 of stock which was sold to shareholders at par in the years 1921 to 1925.

In this connection it is worthy of mention that the financial columns of the Montreal *Star* of February 18 last report Bell common stock as selling at $146.50 at the opening of that day's market, jumping rapidly to $158.50, the highest level since November, 1915. After the peak of $158.50, there was a reaction to $152, with a subsequent recovery to $153, the net gain during the day being 8 points. The opening price of $146.50 indicated a value of money, expressed in terms of Bell Company shares expected to pay an 8 per cent dividend, of less than 6 per cent. Increased tolls that would enable the company to earn a 3.5 per cent surplus over and above the 8 per cent dividend, and in addition substantial increases in depreciation reserve, when money for Bell Company shares is freely offered at less than 6 per cent, would not seem to me to have sufficient warrant.

It was stated during the hearing that the program of development and improvement by the company involved capital expenditures of $87,000,000 within the next five years. The total assets of the company at the end of 1925 amounted to $114,000,000. An addition of $87,000,000 would be more than 75 per cent of the present total. It is difficult to appreciate the useful purpose of such large additions to or changes in the present plant and equipment as would involve such large expenditures in such a short time. That, however, is not a concern of the Board. But I do understand it to be a concern of the Board to give the company due notice that capital expenditure made for the benefit of stockholders cannot be charged to subscribers in increased rates, without convincing evidence that the best interests of subscribers as well as shareholders will thereby be served.

The company is in process of installing machine switching apparatus in the cities of Toronto, Montreal and Quebec. Its present program in regard to these cities was begun in 1924 and will not be completed until 1936. No suggestion was offered that the lesser cities or towns of the two central provinces throughout which the Bell has a monopoly of telephone service were to be given the benefit of the modern apparatus. While the suggestion was made that the installation of machine switching in Toronto and Montreal was a costly operation, it was not asserted that it would involve the expenditure of $87,000,000 or any considerable part of that amount.

It was agreed by witnesses both for the company and for the contestants that the installation of machine switching would mean substantial savings to the company in operating expenses. That being accepted, there would seem to be no ground for increased tolls because of capital investment made with the express purpose of reducing operating costs.

On page 54 of the company's brief the statement is made that,—

> "In 1926, assuming the estimated last three months as actual, the company fell short of earning its dividend by $1,428,000."
>
> * * * * * * * *
>
> "According to Mr. Sise's rebuttal testimony it is estimated, based on a careful study of 1927, that if the present rates remain in force, the company will fail to earn its dividend by $2,007,000."

It would appear from this that there were extraordinary expenses in 1926, as compared with 1925, and still more expected in 1927. Of the extra expenses in 1926 over 1925 there would of course be the difference in percentage going to the credit of depreciation reserve, which was 4.75 per cent in 1925 and 5.41 in 1926 and 1927. On a depreciable plant of say $100,000,000 that would amount to $660,000. There was also an increase of nearly a million dollars in current maintenance, as between 1925 and 1926. The large increase in this account was said to have arisen out of the changes from manual to machine switching in progress in Toronto, Montreal and Quebec. But it is not apparent that current maintenance should be charged with any part of the extra expense following upon the installation of a new system of operation. It would seem fair that whatever extra expense was entailed by the installation of machine switching should be a part of the capital cost to be borne by the shareholders for the sake of the increased efficiency of the service they were thereby able to give, and also for the sake of the greater economy in operation they were able to attain.

Even if the higher current maintenance charges during installation of the new system were properly chargeable to current revenue, it would be entirely improper that tolls should be fixed on the basis of these higher charges, to be effective after the economies of the new system had accrued.

In his statement appearing in the company's report for 1925 the president gives as the first reason for the application:—

> "To establish a more equitable schedule of rates, removing inequalities and discriminations which have arisen from changed conditions in the communities served."

It is of course a fact that changed conditions may increase or decrease the value received by a telephone subscriber and that therefore changes of rates so that they shall be more nearly proportioned to value of service, are in order from time to time. It does not appear, however, that a radical readjustment of rates should be accompanied by a radical gross increase. In the case of the present application, a proposed gross increase of two and three-quarter millions a year is proposed to be placed in by far the largest proportion upon the business phones in the cities of Montreal and Toronto. If there were no gross increase proposed, the question of the proportion of gross revenue to be paid by the various classes of service could be more easily and amicably adjusted. If that were once settled and an increase of rates ever became necessary, all telephone users would pay in equal proportion and there would not be the sense of grievance that prevails in regard to the present application under which a special class is singled out to bear very much the greater part of the burden.

I am unable to concede that a proper readjustment demands that the rates shall be increased as contemplated by the present application.

In making its claim for increased rates the company asserts the right to earn a surplus of 3.5 per cent over an 8 per cent dividend on capital stock; it also claims an earning of 5.41 per cent on its depreciable property, which is an increase of 0.3 per cent on the average of the past fifteen years; it also claims the right to earn dividends on the estimated total value of its property.

The new schedule of rates proposed is of course intended to meet these several claims. It therefore, to that extent, provides for an increased earning by the company without regard to service rendered the subscribers.

The evidence brought before the Board has in my opinion established:—

(1) That the rates approved by the Board in 1921 were not only adequate but ample to meet the proper requirements of the company as of that date.

(2) That since 1921 there has been a continuous and regular expansion of the company's business accompanied by continuously substantial and increasing profits on operation.

(3) That it was not established by evidence at the hearing that there had been any necessary increase in basic costs of any kind since 1921.

(4) That common knowledge of the decreased costs of food, labour, materials and money since 1921 was confirmed at the hearing.

Having regard to these facts, I am of opinion that the company has failed to sufficiently support its application, and that the application should be dismissed.

Ottawa, February 21, 1927.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVI Ottawa, March 8, 1927 No. 22a

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Application of the Bell Telephone Company of Canada for approval of revised tariff of rates for local exchange services which tariff is submitted for approval as a proper schedule of rates which removes existing discriminations or inequalities and is so adjusted to be fair and reasonable to the subscribers while at the same time providing the company with sufficient revenue to meet its requirements.

File 955.71

COMMISSIONER LAWRENCE:

I agree with the judgment of Mr. Commissioner Oliver, and wish to say that the following extract from the proceedings of the Board of November 25, 1926, of the cross-examination of Mr. C. F. Sise, which is self explanatory, might be of interest to the telephone subscribers of Ontario and Quebec.

"C. F. Sise, Cross-Examination Resumed by Mr. Geary, Thursday, November 25, 1926 (Vol. 485, p. 16715)

"Q. What is your service contract expense, in 1925?—A. $390,000.

"Q. And in 1926?—A. $420,000.

"Q. And in 1927, estimated?—A. $450,000.

"Q. That is, under the present rates?—A. Yes.

"Q. Under the rates asked for, how much would they be in 1927?—A. It is shown on Exhibit No. 176.

"Q. How much?—A. $480,000.

"Q. That is shown on what amount, on the $33,184,000, as shown in Exhibit 176; is that right?—A. Yes, that is right.

"Q. That is really on the basis of $32,000,000, is it not?—A. I worked it out, Mr. Geary. I think it must be that. On the basis of $30,000,000, it is $450,000, and on $32,000,000 it would be $480,000.

"Q. So that you note an increase to just $816,000 to get an extra $30,000; you make it $510,000, is that right?—A. Yes.

"Q. That is, your revenue, if you get this proposed increase in 1927, would provide the American Telephone and Telegraph Company automatically with an increase of $30,000?—A. Yes.

"Q. It would entitle the American Telephone & Telegraph Company to that amount of money?—A. Yes.

"Q. And bring your receipts within $816,000 of the amount required to give them still another $30,000?—A. That is right.

"Q. The point of my question is this, that automatically and without any further growth in business at all, an increase of rates would immediately jump your contract expenses up $30,000?—A. That is correct.

The contract speaks for itself. It says 'Payment on revenue'.

"Q. You do not dispute that that is the case?—A. No, sir.

"Q. That is, without any extra service or anything of that sort?

"COMMISSIONER LAWRENCE: Do I understand that that is without any extra service?

"Mr. GEARY: If the company were to get the increase in rates it asks for, there would be $30,000 more payable to the American Telephone and Telegraph Company at once, without their having to take on any extra services at all, no extra complexity of plant, or anything like that. That is, the increase in rates automatically increases the payment to the American Telephone and Telegraph Company."

Mr. Oliver has explained a considerable part of the relationship between the Bell Telephone Company, the Northern Electric Company and the Northern Electric Manufacturing Company. Also between the Bell Telephone Company and the American Telegraph and Telephone Company, but I think there should be an investigation into the transactions between these companies, for a contract that will automatically, without any further growth in business or any extra service, immediately jump the contract expenses up $30,000, is unfair to subscribers of the Bell Telephone Company.

I understand that the law does not permit of an investigation into the affairs of the companies mentioned above, and think that an amendment along this line might be considered.

March 8, 1927.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 38793

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to publish, on less than statutory notice, supplements to their tariffs, to provide for stop-off charge on lumber, which was omitted in error.

File No. 35083

THURSDAY, the 24th day of February, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application, and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the applicants be, and they are hereby, granted leave to issue forthwith supplements to their tariffs C.R.C. Nos. E-697, E-1068, and E-1069, incorporating a charge for stop-off on lumber, dressed, resawed, kiln-dryed, or sorted and reshipped, which, through a clerical error, was omitted from supplements published pursuant to the order of the Board No. 37681, dated May 29, 1926, upon one day's notice; the title pages of the said supplements to bear a note to the effect that they were issued under authority of this order, to correct clerical error.

H. A. McKEOWN,
Chief Commissioner.

THE BOARD OF

RAILWAY COMMISSIONERS FOR CANADA

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OF

JUDGMENTS, ORDERS, REGULATIONS AND RULINGS OF THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII | Ottawa, April 1, 1927 | No. 1

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the Chief Accountant, Department of Public Printing and Stationery, Ottawa. Remittances to be made payable to the order of the Chief Accountant, P.O. Money or Postal Orders preferred. Cheques or drafts must be made payable at par at Ottawa. Postage Stamps will not be accepted.

ORDER No. 38831

In the matter of the Order of the Board No. 38450, dated November 22, 1926, requiring the Canadian National Railways forthwith to amend their tariff applying on coal, carloads, by publishing competitive rates on coal from Three Hills, Alberta, to common points in Saskatchewan and Manitoba which shall not exceed the rates published by the Canadian Pacific Railway Company from Carbon, Alberta, to the same destinations on the line of that company; and the application of the Canadian National Railways for an Order suspending the said Order No. 38450, pending a review of the case on the record as it now stands.

File No. 26602.43

TUESDAY, the 15th day of March, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That, pending a review by the Board of the case on the record as it now stands, the said Order No. 38450, dated November 22, 1926, be, and it is hereby, suspended.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38839

In the matter of the application of the Burrard Inlet Tunnel and Bridge Company, hereinafter called the "Applicant Company", for approval of its tariff of standard maximum tolls, C.R.C. No. 2, covering bridge tolls, on file with the Board under file No. 15732.8.

WEDNESDAY, the 16th day of March, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's said tariff of standard maximum tolls, C.R.C. No. 2, on file with the Board under file No. 15732.8, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 439

In the matter of the application of the Canadian National Railways for a ruling by the Board in the matter of an additional charge of ten per cent made by the Railway Company for supervision and overhead expenses in connection with the protection required by the Board to be provided at highway crossings.

File No. 9437.1184.

MONDAY, the 21st day of March, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed on behalf of the applicants, and its appearing to the Board that a supervision and overhead charge of ten per cent in connection with such protection is a fair and reasonable charge,—

It is ordered: That railway companies subject to the jurisdiction of the Board be, and they are hereby, authorized to make an additional charge of ten per cent for supervision and overhead expenses in connection with the protection required by the Board to be provided at highway crossings.

H. A. McKEOWN,
Chief Commissioner.

Re *Railway Mail Service*

File 23656.1

Complaint was made by the General Superintendent of Postal Service that the Canadian National Railways proposed to operate their train No. 6 out of Sarnia as a fast train, thereby eliminating all stops between Sarnia and London, and that if the stops for important places such as Strathroy, Watford, and Wyoming were eliminated, the postal car service would be practically worthless.

The Chief Operating Officer of the Board, who investigated the complaint, reported among other things that the existing passenger service appeared to be satisfactory, and that no complaint had been made to the Board since train No. 6 was placed on the present through schedule making no stops Sarnia to London.

RULING

The Board ruled that it did not consider it should attempt to rearrange passenger service having regard to mail service alone; that passenger trains are run primarily for passenger service; and that it is not the function of the Board to make train schedules for the carriage of mail.

OTTAWA, March 11, 1927.

Application of McGregor & McIntyre, Limited, Toronto, Ont., per the Dominion Traffic Association for a ruling of the Board in the matter of a claim against the Canadian Pacific Railway Company covering an alleged overcharge on a shipment of a derrick on its own wheels from West Toronto to applicant company's siding at North Toronto.

File No. 19367.135

The applicant company's claim is set out in a letter dated September 16, 1926, which reads as follows:—

"We filed a claim against the Canadian Pacific Railway claiming that as this was bridge builders' erection equipment, the actual weight of car and contents, less 50 per cent, should be applicable, whereas under the Canadian Pacific's file 160375, they declined it, stating it should come under classification of cranes and derricks, railway or wrecking, giving as their authority item 2, page 26, Supplement 10 of Canadian Classification No. 16.

"The item under which we are claiming 50 per cent of the actual weight of car and contents is No. 46, page 116 of Classification No. 16. The shipment actually consisted of bridge builders' erection equipment, containing frame, boom, rigging, engines, etc., and was of such a construction that it could be knocked down for shipping, as it was in this instance. Our principals also advise us that it is altogether different from a railway derrick, in that the latter is a permanent structure. This shipment was on a car supplied by the shipper and we feel that our contention is correct, and would ask that you kindly give a ruling as to the correct rate to be applied in this instance."

A copy of the application was sent to the Chairman of the Canadian Freight Association, who filed the following submissions:—

"This particular derrick was one that could not be unloaded from the car as it was part of the car itself and was one that could only be operated from a railway track. All such articles are charged the actual weight of car, trucks and contents. See item 2, page 26 of Supplement 10; item 82, page 111 of Classification No. 16.

"On investigating I find that the car, subject of correspondence, was originally built and equipped by the Canada Foundry Company at Davenport, Ont., was later absorbed by the Canadian Allis-Chambers Ltd., and in 1921 was disposed of to Messrs. McGregor & McIntyre, Ltd. The understructure is entirely of steel, specially designed and constructed for the permanent reception of a contractor's outfit, particularly building of bridges, and consists of a crane or derrick, donkey engine, winch and an appliance for moving the car back or forward on the track. If the crane or derrick and other parts of the outfit were removed from the car, it could not be used in ordinary service without being practically reconstructed. The derrick being a permanent fixture is operated from the platform of the car, on which it is constructed, and is never unloaded from the car at the point where used. It is a car of practically the same under construction as all of the wrecking cars equipped with a crane or derrick used by the railway companies, except that the crane or derrick of the railways is of a shorter arm construction than that used generally in the building of bridges and other classes of construction work."

To which the applicant company replied:—

"The car in question has an understructure of steel, and although used for the sole purpose of transporting bridge-building erection out-

fits, it certainly could be used for other purposes by the simple way of unbolting the engine, base of boom, winch, etc., and removing them from the car.

"In transit this car ceases to be a derrick, in that the boom and rigging is dismantled and loaded on another car and therefore is not a permanent fixture as inferred by the Canadian Freight Association. The articles being bolted to the floor is similar to any other shipments such as traction engines and threshers being blocked and spiked to the floor of a car, and could be easily removed by unbolting.

"This erection equipment, we admit, is not unloaded after once being set up after it has reached the point where it is to be used, till the work is finished, and then the boom and rigging are again dismantled; although if unloaded it could still be used as erection equipment and the car would still remain a car and could be used for transporting girders, beams, etc.

"This outfit differs from the railway cranes which the writer has seen, in that the boom and arm are fabricated accordingly to length required, and the base remains stationary, the arm swinging on a swivel on the base, whereas the railway cranes were of a solid arm construction and swung with the base."

RULING

The Board ruled that item 2, page 26, Supplement 10 to Canadian Freight Classification No. 16, in effect at the time the shipment moved, was properly applicable, and that the shipment in question consisted of a derrick on its own wheels.

OTTAWA, March 14, 1927.

Re *Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders Nos. 201 and 349.*

File No. 1700

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1926.

(NOTE.—First two days over free time, $1 per day; three days or more, $5 per day.)

EASTERN CANADA

Month, 1926	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
January	177,604	166,735	93·88	10,869	6·12	8,457	4·76	2,412	1·36
February	178,689	168,432	94·26	10,257	5·74	8,138	4·56	2,119	1·18
March	212,141	198,118	93·39	14,023	6·61	11,294	5·32	2,729	1·29
April	193,533	181,514	93·79	12,018	6·21	9,247	4·78	2,771	1·43
May	209,180	197,152	94·25	12,028	5·75	9,872	4·72	2,156	1·03
June	224,880	210,892	93·78	13,988	6·22	11,134	4·95	2,854	1·27
July	226,150	211,405	93·48	14,745	6·52	11,522	5·09	3,223	1·43
August	211,027	197,775	93·72	13,252	6·28	10,400	4·93	2,852	1·35
September	217,053	204,399	94·17	12,654	5·83	10,241	4·72	2,413	1·11
October	242,196	226,671	93·59	15,525	6·41	12,382	5·11	3,143	1·30
November	229,140	213,444	93·15	15,696	6·85	12,301	5·37	3,395	1·48
December	203,481	187,874	92·33	15,607	7·67	12,423	6·11	3,184	1·56
Monthly average	210,423	197,034	93·65	13,388	6·35	10,618	5·06	2,771	1·32

WESTERN CANADA

Months, 1926	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
January	94,273	89,371	94·80	4,802	5·20	4,074	4·32	728	·88
February	78,607	74,402	94·65	4,205	5·35	3,550	4·51	655	·84
March	85,078	79,599	93·56	5,479	6·44	4,814	5·66	665	·78
April	74,712	70,954	94·97	3,758	5·03	3,035	4·06	723	·97
May	86,324	83,113	96·28	3,211	3·72	2,640	3·06	571	·66
June	85,695	82,567	96·35	3,128	3·65	2,550	2·98	578	·67
July	79,802	76,211	95·50	3,591	4·50	2,946	3·69	645	·81
August	85,171	80,725	94·78	4,446	5·22	3,627	4·26	819	·96
September	137,209	131,872	96·11	5,337	3·89	4,369	3·18	968	·71
October	179,663	171,686	95·56	7,977	4·44	6,568	3·66	1,409	·78
November	186,949	177,489	94·94	9,460	5·06	7,638	4·09	1,822	·97
December	140,614	134,047	95·33	6,567	4·67	5,394	3·84	1,173	·83
Monthly average	109,508	104,336	95·24	5,164	4·76	4,267	3·94	896	·82

R. RICHARDSON,
Assistant Secretary and Registrar, B.R.C.

OTTAWA, March 17, 1926.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Dangerous Practices of Motorists, Drivers of Other Vehicles, and of Pedestrians, at Railway Crossings.

Files Nos. 45.8.1, 45.8.2, and 45.8.3

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines, from June 13, 1926, to March 31, 1927, show 91 cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Toronto, Hamilton and Buffalo lines, from October 25, 1926, to March 15, 1927, show one case.

The Canadian Pacific Railway lines, from July 15, 1926, to January 31, 1927, show 111 cases of danger practices by automobile drivers; 95,203 cases of pedestrians; and 8,574 cases of bicycles, passing under lowered gates.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this. If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926				
June 13.....	11.10 p.m...	Kingston Road, Cobourg, Ont.	262–742	Allowed car to run up to gate instead of coming to a dead stop.
" 23.....	4.44 p.m...	First Ave., Lachine, Que.	307	Passed over crossing when electric bell was sounding and passenger train approaching.
" 24.....	5.45 p.m...	Strachan Ave., Toronto, Ont.	38–062	Ran under one gate; lifted other gate.
" 25.....	10.30 a.m...	First crossing west of St. Boniface Station, Grand Mere Subd.	F. 9098	Attempted to drive over crossing in front of train; one killed and three injured.
" 27.....	5.30 p.m...	Egerton St., London, Ont.	99–265	Auto driver failed to heed signals of yard man to stop. Just missed hitting train.

CANADIAN NATIONAL RAILWAYS—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926				
June 29	5.40 p.m.	Hastings St., Hastings, Ont.	50-158	Did not heed crossing signal; crossed in front of train.
July 1	9.50 p.m.	Notre Dame St., Victoriaville, Que.	.....	Brakes refused to work and auto ran into gates, breaking same.
" 5	7.50 p.m.	Victoria St., Thamesville, Ont.	M. 1-020	Ran into gates; just missed engine.
" 6	11.40 p.m.	Devonshire Road, Walkerville, Ont.	.....	Ran into gates, breaking same.
" 9	4.55 p.m.	Essa St. crossing, Allandale, Ont.	53-886	" " "
" 12	10.00 a.m.	First crossing east of Bois Blanc Stn., Que.	F. 9978	Attempted to drive auto over track in front of train; struck by train.
" 13	6.05 p.m.	Queen St., Toronto....	63-888	Reckless driving; drove into gates breaking same; driver arrested.
" 13	4.15 p.m.	Cadillac St., Montreal	62980	Brakes applied too late; was struck by train.
" 17	8.03 a.m.	Ontario St., Port Hope, Ont.	329-944	Drove across track as train was coming.
" 17	10.53 a.m.	Walton St., Port Hope, Ont.	257-544	Disregarded signal.
" 21	4.20 p.m.	Walton St., Port Hope, Ont.	52-622	"
" 22	6.45 p.m.	Cannon St., Hamilton, Ont.	89-925	Did not heed stop signal.
" 25	3.35 a.m.	Riverdale crossing, Toronto.	447-587	Driver meant to back up but came forward striking gate.
" 26	6.45 p.m.	Laframboise St., St. Hyacinthe, Que.	F-869	Disregarded signal.
" 28	12.30 p.m.	East Main St., Welland, Ont.	150-495	Reckless driving.
Aug. 2	5.00 p.m.	Gamebridge East public crossing, Capreol, Ont.	255724	Auto struck engine, injuring the motorist.
" 2	5.30 a.m.	Charlotte St., Peterboro, Ont.	263-834	Speeding. Broke gate.
" 2	3.00 p.m.	Kingston Road, Scarboro Jct., Ont.	C-12318	Ran into relay box on wigwag, breaking same.
" 7	5.05 p.m.	Highway crossing west of station at Napanee, Ont.	282-102	Drove too close to train; drove into a switch stand.
" 10	3.30 p.m.	Prince Edward St., Brighton, Ont.	273766	Careless driving; drove into gates.
" 11	6.00 a.m.	Public crossing, Grand Mere, Que.	78006	Tried to pass over crossing when train was switching.
" 14	3.55 p.m.	Keele St., crossing, Toronto.	35-611	Reckless driving.
" 18	9.43 a.m.	Main St., Hamilton, Ont.	82-506	Shot over crossing in front of train.
" 18	6.30 p.m.	St. Clair Ave., 11th District, Toronto.	71-276	Tried to beat gates when being low-lowered.
" 19	7.45 a.m.	Ottawa St., Hamilton, Ont.	96-093	Ran into gate when being lowered after bell had been sounded; broke gate.
" 20	7.18 p.m.	Bridge St., Hastings, Ont.	265-526	Did not heed stop signal; passed in front of train.
" 24	9.20 p.m.	Pape Ave., Toronto.	164-636	Ran into gates; stopped between gates.
" 25	9.50 a.m.	Egerton St., Race Course tracks, London, Ont.	1-246	Did not heed watchman's signal; crossed tracks in front of yard engine.
" 28	6.55 a.m.	Egerton St., London, Ont.	99-622	Did not heed warning; passed just in front of train.
" 31	.....	Kingston Road crossing, near Scarboro Jct.	C-12-316	Damaged wigwag signal.
Sept. 2	7.50 p.m.	Main St., Glencoe, Ont.	.....	Drove into gates as they were being lowered.
" 7	7.45 a.m.	John St., Aylmer, Ont.	200-834	Speeding, passed in front of train.
" 8	6.40 p.m.	Main St., Glencoe, Ont.	109140	Drove under gates while they were coming down, breaking same.
" 16	7.00 a.m.	Bronson Ave., Ottawa, Ont.	131-135	Ran into gate breaking same.
" 21	6.25 p.m.	St. Charles Baromme St., Joliette, Que.	F-7461	Tried to cross track ahead of approaching train; auto smashed.

CANADIAN NATIONAL RAILWAYS—*Continued*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
Oct. 6.....	1.42 p.m...	Queen St., Ottawa....	T-2202	Backed into gates, breaking same.
" 9.....	11.15 a.m...	Dundas St., Trenton, Ont.	290-841	Crossed track ahead of train.
" 9.....	10.50 p.m...	Walker Road, Walkerville.	115-420	Ran into gates and broke same.
" 15.....	12.55 p.m...	Hastings St., Hastings, Ont.	269420	Disregarded stop signal and crossed in front of train.
" 22.....	1.43 p.m...	Main and Ferguson Ave., Hamilton.	C-13-837	Refused to comply with stop signal.
" 23.....	7.30 p.m...	Lindsay St., Lindsay, Ont.	261-919	Failed to observe warning sign; drove in front of train.
" 29.....	9.05 p.m...	Queen St., Ottawa....	T-2226	Ran into gates while down; broke same.
Nov. 5.....	12.01 p.m...	Lindsay crossing, Drummondville, Que.	47154	While bell was sounding and gates being lowered, auto passed under gates breaking them.
" 8.....	11.48 p.m...	William St., Chatham, Ont.	206-107	Failed to notice gates down and ran into them, breaking them.
" 9.....	7.25 p.m...	William St., Chatham, Ont.	203-458	Failed to notice gates and ran into them —broke same.
" 22.....	3.00 p.m...	Front St., Orillia, Ont.	244929	Auto skidded into lower gate, breaking same
" 23.....	9.50 a.m...	Queen St., Chatham, Ont.	208560	Backed into gates account of ice, breaking gate.
" 25.....	11.50 a.m...	Queen St., Chatham, Ont.	.....	Tried to run through gates while being lowered.
" 26.....	.....	Beverley St., Galt, Ont.	188221	Made wrong turn and went up track instead of street.
" 30.....	11.00 p.m...	Main St., Ottawa, Ont.	130630	Ran into gates while lowered, damaging same.
Dec. 1.....	2.35 p.m...	Queen St., Ottawa....	S-3130	Bus struck gate while being lowered, breaking it.
" 2.....	8.00 p.m...	Lindsay St., Drummondville, Que.	.....	Ran into descending gates, breaking them.
" 2.....	3.05 p.m...	Lusignan St., Montreal	16747	Reckless driving; ran into lowered gates, damaging same.
" 5.....	7.10 p.m...	Montreal.....	60984	Ran into lowered gate, damaging same.
" 7.....	8.00 p.m...	Devonshire Road, Walkerville, Ont.	970336	Ran into gate while lowered; broke same.
" 7.....	3.30 p.m...	Lindsay crossing, Drummondville, Que.	F-6626	Ran into lowered gate, breaking same.
" 7.....	9.15 p.m...	East Main St., Welland, Ont.	159165	Ran into lowered gate, damaged same.
" 9.....	3.45 p.m...	St. Ambroise St., Montreal.	25636	Struck lowered gate, damaged same.
" 31.....	3.15 p.m...	St. Onge Station crossing, Montreal.	4752	Car driven too fast down hill to be stopped when driver saw train. Side swiped train.
1927				
Jan. 2.....	5.50 p.m...	Charlevoix St., Montreal.	25988	Driving auto under influence of liquor. Not careful at crossing.
" 3.....	4.05 p.m...	Bridge St., Hastings, Ont.	316859	Failed to comply with stop signal; crossed in front of engine.
" 5.....	2.05 p.m...	Queen St., Ottawa....	C-20445	Ran into gates, breaking same; train was approaching.
" 6.....	3.50 p.m...	Ottawa Ave., South River, Ont.	.....	Disregarded flagman's signal, passed in front of train.
" 12.....	6.55 p.m...	Notre Dame St., Montreal.	F-1329	Auto approached crossing without being under control, broke through lowered gates.
" 17.....	1.10 a.m...	Devonshire Road, Walkerville, Ont.	327-585	Ran into gates while lowered, breaking same.
" 27.....	4.30 p.m...	Chambly St., Point St. Charles, Que.	F-2972	Approached crossing at excessive speed and broke through lowered gates.
" 30.....	3.05 p.m...	Charlevoix St., Montreal.	T-667	Reckless driving; ran into lowered gates breaking same.
Feb. 1.....	9.00 a.m...	King St., Hamilton, Ont.	102327	Ignored signal, crossed in front of moving train.
" 2.....	10.08 a.m.	St. Remi Street, Turcot, Que.	60970	Ran into gates while down breaking same.
" 8.....	8.40 a.m.	Laurier Ave., Levis, Que.	T-5677	Ran into gates, while down breaking same.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1927				
Feb. 8	10.30 p.m.	Atwater Ave., Point St. Charles, Que.	31900	Approached crossing at excessive speed and broke into lowered gates.
" 14	10.20 p.m.	Atwater Ave., Montreal.	F-761	Ran into gates while lowered and bell ringing.
" 15	8.25 p.m.	Manitoba St., St. Thomas, Ont.	235-280	Fast driving; put gates out of commission.
" 18	11.25 p.m.	Devonshire Road, Walkerville, Ont.	135-734	Started to go forward before gates had risen sufficient to allow car to go under; damaged gates.
" 19	10.20 a.m.	Second public crossing, Capreol, Ont.	256492	Ran into empty box car attached to moving train.
" 22	7.15 p.m.	Queen St., Chatham, Ont.	242-612	Started forward before the gates had risen sufficient to allow car to pass under; broke gates.
" 22	9.30 a.m.	Atwater Ave., Montreal.	F-2598	Broke through crossing gate.
" 24	5.40 p.m.	Wellington St., London, Ont.	126-431	Drove under gates while they were being lowered.
" 25	3.40 p.m.	Walker Road, Walkerville, Ont.	C-23-650	Ran into gates while down and gong ringing.
" 27	4.50 a.m.	East Main St., Welland, Ont.	179-971	Drove into lowered gate.
Mar. 8	6.20 p.m.	Ontario St., Montreal.	F-8581	Running through and breaking gate.
" 9	6.05..—	Desery St., Montreal.	60220	Running through gates after being lowered.
" 17	3.05 p.m.	Darling St., Montreal.	F-1725	Driving through gate after same had been lowered.
" 21	12.15 a.m.	St. Remi St., Montreal.	H-13155	Approached railroad crossing too fast, breaking through gate.
" 21	8.30 a.m.	Prefontaine St., Montreal.	S-3320	Running through gates after same had been lowered.

CANADIAN PACIFIC RAILWAY

MANITOBA DISTRICT

Date and Time	Point of Accident	License Number of Auto	Dangerous Practice
1926			
July 15	M.P. 57·5 Carberry S.D.		Auto ran into side of tender of No. 4 on eastbound track.
" 17	Marion St., crossing, Winnipeg		Auto heading east ran into car C.P. 271416, while train backing over crossing.
Aug. 14	Crossing at rear of Manitoba Bridge and Iron Works, Winnipeg.		Auto drove up on to crossing and was struck by No. 6151.
Sept. 3	Princess St. crossing, across Logan Ave., Winnipeg.	50-664	Auto ran into side of freight train which was pulling out of spur track.
" 4	Chalmers Ave., crossing, Winnipeg.		Auto struck on this crossing by Extra 5322 from East.
" 20	Mile 95·3 Napinka S.D. near Leighton.		Ford car struck by left cylinder of Engine 2104, Train 121.
" 15	Park Road crossing, Current River, Port Arthur.		Driver failed to see train. McLaughlin car struck by No. 951.
Oct. 6	2nd Ave. crossing, Port Arthur		Driver failed to see train and could not stop in time to avoid running into engine, Ex. 5088 West.
" 31	Eagle River, Ont., M.P. 79·34, Ignace S.D.		Auto struck by train 3rd No. 1. Driver failed to see train approaching.
Dec. 16	2nd Avenue crossing, Port Arthur.		Driver failed to see train approaching. Auto struck by Ex. 5019 East.
Nov. 25 16·12K	Main Street, Portage la Prairie, Man.	3-648	Ran by watchman stationed at crossing with "Stop" disc displayed when train close to crossing.
Dec. 6 19·35K.	Montcalm St., St. Boniface...		Trying to get across Railway crossing when gates were being lowered.
Dec. 21 14·28K	Main Street, Portage la Prairie, Man.	36-820	Ran by watchman stationed at crossing with "Stop" disc displayed when train close to crossing.

CANADIAN PACIFIC RAILWAY—*Continued*

SASKATCHEWAN DISTRICT

Date and Time	Point of Accident	License Number of Auto	Dangerous Practice
1926			
Sept.14.....	M.P. 130 Indian Head S.D....	22-624	Chevrolet struck at rear right wheel.
Nov.26.....	First crossing East of Winnipeg street, Regina, Indian Head S.D.	Vehicle.....	Sleigh and team struck by 2nd No. 1 Engine 2347.
Dec. 3.....	M.P. 67·7 Portal S.D. crossing East end of Yellow Grass Yard.	Vehicle.....	Sleigh ran on to crossing. Struck by No. 316, Engine 2593.
" 7.....	Government Road, Weyburn (over Portal S.D.), Third St. crossing.	Sask. T-6741	Ford truck ran on to crossing, struck by Extra North 1033.
Nov.13.....	First public crossing South of Sovereign.	.....	Ford car struck Extra No. 677 North, standing at station, blocking crossing.
Nov.17.....	Public crossing, East of Shaunavon Yard.	84812	Ford car struck yard engine in switching service, damaging radiator of car.
July 25.....	Avenue C, Saskatoon Yard....	.....	Auto truck struck rear of tender Ex. West 2558.
Sept 1.....	Myrtle Avenue, Yorkton.....	.....	Auto struck train No. 76.
Sept.26.....	Crossing East Switch, Balcarres.	.....	Ford car collided with mail car on Train 59.
Nov.13.....	Public crossing, Perdue Yard.	.....	Auto truck driven into side of Train 51.
Dec. 2..... 8·20K	Broadway Street, Yorkton....	.....	Drove milk wagon across in front of train against watchman's signal.
Dec. 9..... 17.30K	Broadway Street, Yorkton....	Vehicle.....	Drove team of horses with sleigh across in front of engine switching, against watchman's signal.

ALBERTA DISTRICT

Sept. 22.....	Crossing south end High River Yard.	21-722.....	Ford car ran into side of engine on crossing.
Oct. 12.....	Pearce Avenue, Wetaskiwin...	L. 464.....	Auto ran into No. 987 attempting to cross ahead of train when there was not sufficient time.
" 22.....	4 poles west of MP. 9, Wetaskiwin SD.	Threshing machine	Threshing machine stalled on track.
" 29.....	First crossing North of Cayley	22-228.....	Auto ran into side of train L/94 while standing on crossing.
Nov. 8.....	1 mile N. of Carbon, Mile 59 Langdon S.D.	.....	Ford truck without chains unable to stop on slippery ground ran into Ex. North No. 591.
" 22.....	104th Street, Edmonton.....	86365.....	Chevrolet touring car skidded into Train Ex. 2000 through failure of driver to exercise proper precaution approaching crossing.
" 30.....	Crossing mile 71·5 Aldersyde S.D.	Vehicle.....	Team of horses killed by train 544. Driver failed to observe train.
Dec. 18.....	Mile 3·7 Cardston S.D.....	61-474.....	Ford truck struck Ex. North No. 3224.
Nov. 21..... 15.20K.	4th St. West, Calgary.....	11-658.....	Truck of Big Chief Oil Co. ran through gates which were down protecting train movement over crossing.
Dec. 4..... 11.30K.	4th St. West, Calgary.....	.....	Unknown car damaged gate protecting engine movement over siding of Robin Hood Mills.

BRITISH COLUMBIA DISTRICT

Oct. 25.....	Water St., Kelowna.....	BC-24576.....	Auto struck by C.P. No. 24576, while truck attempting to cross tracks.
Nov. 13.....	Schubert St., Vernon.....	BC-26-670.....	Auto ran into C.P. No. 286942.
Dec. 8.....	Barnard St., Vernon.....	BC-23-977.....	Auto struck by C.N. No. Extra South 2103.
July 5.....	Hastings St., Vancouver.....	BC-37-151.....	Auto ran into gates.
" 29.....	Columbia Ave., Vancouver....	BC-35-857.....	Auto ran into and damaged gates.
Aug. 12.....	Gore Avenue, Vancouver.....	BC-36-396.....	Auto ran into side of train No. 1/1.
" 19.....	North Vancouver Ferry, Vancouver.	BC-53-453.....	Auto ran into and damaged gates.
" 26.....	Station crossing at Agassiz....	.....	No. 706 backed into auto bus.
Sept. 15.....	Shaughnessy St., Coquitlam..	BC-33-696.....	Auto ran into side of engine.
" 17.....	Hastings St., Vancouver.....	BC-44-804.....	Auto ran into gates.
Oct. 30.....	North Vancouver Ferry, Vancouver.	BC-43-636.....	Auto ran into gates.
Nov. 4.....	Essendene Ave., Abbotsford..	BC-62-110.....	Auto ran into side of train.
Dec. 8.....	North Vancouver Ferry, Vancouver.	BC-16-910.....	Auto ran into side of engine.

KETTLE VALLEY RAILWAY

Date and Time	Point of Accident	License Number of Auto	Dangerous Practice
1926 Oct. 22....	South Penticton.....	BC–21–299.....	Auto ran into side of train standing on Fairview Road Crossing.

ESQUIMALT AND NANAIMO RAILWAY

Oct. 1.....	Comox Rd. Crossing, Nanaimo City.	.....	Driver of auto ran into side of train No. 2.

CANADIAN PACIFIC RAILWAY

EASTERN LINES—PROTECTED HIGHWAY CROSSINGS

Quebec District

Montreal Terminals Div.

1926 Aug. 27...	.....	Westminster Ave., Montreal.	Que. H-4416.....	Auto ran under descending gates.
Sept. 1...	.....	" " ..	Que. T-804.....	" "
Oct. 2...	.....	Park, Avenue, Montreal...	Que, 18205.....	Auto ran against gates which had been lowered for train but did not break same.
" 7...	.....	Rockland Ave., Montreal.	Que. F-2167.....	Auto ran through and broke south gate.
" 12...	.....	Westminster Ave., Montreal.	Que. 21992.....	Auto ran under descending gates.
" 19...	.....	" " ..	Que. H-7336.....	" "
" 24...	.....	Rockland Ave., Montreal.	Que. 67447.....	Auto ran through and broke North arm of gate.
" 27...	.....	Westminster Ave., Montreal.	Que. H-4287.....	Auto ran under descending gates.

Laurentian Division

Aug. 7...	.....	St. Valier St., Quebec.....	Que. T-1465.....	Auto passed under West gate but struck and broke East gate.
" 9...	.....	Bonaventure St., Three Rivers.	Que. T-2091.....	Auto, running without lights, ran into and broke North gate.
Sept. 4...	.....	Dorchester St., Quebec...	Que. T–1805.....	Auto, going about thirty miles an hour, ran into and broke North gate.
" 6...	.....	Crown St., Quebec.....	Que. 12234.....	Auto ran through and broke all four gates, escaping being hit by train by few yards.
" 11...	.....	Dorchester St., Quebec...	Que. 68484.....	Gates were down for train but before last one lifted auto ran through and broke it.
Sept. 22...	.....	Gouin Boulevard, Bordeaux.	Que. 27871.....	Auto ran through and broke gates while train was standing at station.
" 28...	.....	" "	Que. F–11450...	Auto ran through and broke one arm of gates.
Oct. 10...	.....	" "	Que. 20750.....	Three gates were lowered and fourth was being lowered when auto passed under same, stopped and started to back up, breaking arm of gate.

CANADIAN PACIFIC RAILWAY—*Continued*

QUEBEC DISTRICT—*Concluded*

Ottawa Division

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926				
Aug. 14	.....	Montcalm St., Hull.....	Unknown.....	Auto ran through gates, springing same up and knocking crossing lamp off.
" 21	.....	" "	Que. 81975.....	Auto ran through and broke gates.
" 21	.....	" "	Unknown.....	" "
Sept. 4	.....	" "	N.Y. 5–P–1334..	Auto going East ran through gates.
" 9	.....	" "	Ont. 131–247....	" "
" 11	.....	" "	Ont. 20–306 C...	Auto ran through and broke gates.
Oct. 23	.....	" "	Que. 5599–F.....	Auto, account defective brakes, ran through and damages gates.

Smiths Falls Division

Aug. 29	.....	Lake Shore Road, Vaudreuil.	Ont. 305–035....	Auto, unable to stop in time, broke casting of drum of gate.

ONTARIO DISTRICT

Trenton Division

Aug. 17	11.50 a.m...	Bowmanville (Scugog St.)	Ont. 257–244....	Ignored wayfreight conductor's signals while protecting a crossing during switching operations, drove on crossing and narrowly escaped being struck by cars being backed out of shed.
" 18	6.10 p.m...	Wilson St., Perth.....	Ont. 293–460....	Crossed track dangerously close ahead of fast passenger train No. 37.
Sept. 10	3.35 p.m...	Second pub. crossing, West of Brighton.	.....	Team and wagon driven over crossing so close ahead of No. 38 train had to be stopped by emergency application of brake to avoid striking them. View good. Owner G. E. Oakes, driver was his hired man.
Oct. 2	Day.....	Kennedy Road, 1 mile West of Agincourt.	Ont. 347–491....	Crossed track dangerously close ahead of light engine 892 in face of repeated whistle warnings.
" 2	12.02 p.m...	Kingston Road, Belleville S.D.	GMC.–C5–254..	Drove up on crossing while wig-wag signal was working to show a train approaching. Struck by No. 20. Truck destroyed and other damage done by ignited gasoline. Two men killed and several injured.
" 8	8.30 a.m...	First crossing East of Bonarlaw.	Ont. 231–816....	Crossed track dangerously close ahead of ex. 3896.
" 17	Day.....	Kennedy Road, Agincourt	Ont. 50–344.....	Drove on track in way of light engine 753 in face of repeated whistle signals. Auto destroyed and two occupants badly injured.

London Division

Aug. 2	10.55 a.m...	Richmond St., London....	Unable to secure	Auto driving East on Ann Street found gate arm lowered, turned over sidewalk, drove around end of gate and up on to tracks at Richmond Street in front of freight train, and approaching passenger train, turned and drove up on to station platform.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT

London Division—Continued

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926				
Aug. 4...	.....	Brock Road, Puslinch....	Ont. 83-738.....	Notwithstanding wig-wag working engine whistle sounded, and engine bell ringing, driver of auto thought he had time to beat them over crossing, but had to turn car parallel with tracks to avoid a more serious accident, and car was struck by train and damaged.
Aug. 6...	7.15 a.m...	Ann St., London.....	Not secured....	While gates were down for ap proaching train, a man walking the track was nearly hit by engine of passenger train.
" 20...	1.50 p.m...	Wellington St., Chatham.	Ont. 205905.....	Ford sedan ran into side of yard engine 6146. Lady driver got excited and failed to apply brakes on auto. Crossing protected by a warning bell, which was ringing.
" 20...	5.22 p.m...	Dundas St., Cooksville...	Ont. 249527.....	Train No. 641 struck Chevrolet touring car. A freight train had just cleared crossing and auto started up as passenger train on opposite track approached, notwithstanding engine whistle being sounded very loudly and wig-wag signal working. Auto stopped foul of rails and was struck by engine.
" 27...	7.50 p.m...	Waterloo St., London....	Ont. 103-553....	After south gate had been lowered and while north gate being lowered, auto travelling fast ran into south gate breaking it. Warning gong was ringing while gates being lowered. Auto skidded 33 feet on pavement.
Sept. 11...	2.45 p.m...	King St., Chatham.....	Ont. 207-015....	Gateman was about to pull down gates for a freight train going West when Orville Lickfield drove on to track. Gateman pulled down gate behind him, when auto stopped, apparently not seeing the train coming, to pick up a girl. Gateman was pulling the other two gates down and called to Mr. Lickfield to come on and get out of the way, but instead of going across the track, he shoved back through the gate that was down behind him, breaking the end board.
" 18...	12.30 a.m...	Richmond St., London....	Ont. 175-218....	Chas. E. Stevens, in auto, ran around other cars that were standing at the crossing waiting to get over. He ran through s.e. gate breaking it off, also went through north gates, but did not break them.
" 23...	9.50 p.m...	" " ...	Ont. 173-616....	Gateman had North and South gates down and bell was ringing, when Ford coupe came from North and went through North gate, breaking it, also lamp. Driver of car saw red light but thought it was tail light of car ahead. Very severe rain storm at time, and pavement slippery.
Oct. 19...	5.00 p.m...	Eramosa Road, Guelph...	Ont. C-9621.....	Truck driven by L. Greer, Puslinch, ran through gate breaking it and gate casting. Man unable to hold, heavily loaded truck.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Con.*

London District—Concluded

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926 Oct. 20.....	11.15 a.m...	Wellington St., Chatham..	Ont. 629–1097...	While yard engine backing up, with six cars attached, crossing bell was ringing, engine whistle sounded and engine bell ringing, auto truck did not hear warnings given and drove over crossing and was struck by cars.
Oct. 23.....	7.00 a.m...	Adelaide St., London.....	Ont. 107-335....	Auto passed Watchman's stop signal while yard engine approached crossing shoving a coach, and seriously escaped being hit.
Oct. 23.....	11.15 a.m...	Pall Mall St., London.....	Ont. 107-03.....	Auto drove under gate being lowered for approaching passenger train, breaking gate. Crossing bell was ringing at the time.
Oct. 29.....	8.40 p.m...	William St., London.....	Ont. 100-934.....	Auto passed crossing, bell ringing and illuminated with red light and ran into south side of leading car on string being pushed by yard engine.

Bruce Division

Sept. 15.....	7.35 p.m...	Church St., Weston.....	37-073.....	Driver of auto came up on the railway tracks between two crossings' gates and deliberately turned around on the crossing between the gates, whereas he could have turned on the road at different places. Fortunately no train was approaching at the time.
Oct. 26.....	5.55 p.m...	St. Clair Ave., W. Toronto	Auto. 74-419... / Truck C. 22-066	C.N. yard engine 7141 was about to back over the crossing. The gateman rang bell, then put down the east gate and then got the west gates half way down when the above auto and truck came up at an excessive rate of speed to the west gate, and would have broken same only the Gateman raised them. A Canadian National constable called to the drivers to stop but they kept on going until they got between the C.N. and C.P. tracks when the auto stopped and the truck ran up against it.

Toronto Terminals Division

Oct. 27...	4.40 a.m...	Cherry St., Toronto.....	Ont. 11916.....	Drove over crossing in front of engine disregarding stop signal displayed by watchman.
Aug. 21...	3.00 a.m...	Dufferin St., Toronto.....	38964.....	Ran into and damaged crossing gates.
Aug. 12...	11.45 a.m...	Front St. "	C3-486.....	Drove on to crossing after gates on opposite side were lowered.
Aug. 14...	10.20 a.m...	" "	76-378.....	Drove on to crossing after gates on opposite side were lowered.
Aug. 19...	4.25 p.m...	" "	68-071.....	Drove on to crossing after gates on opposite side were lowered.
Oct. 7...	2.10 p.m...	" "	232033.....	Drove on to crossing after gates on opposite side were lowered.

CANADIAN PACIFIC RAILWAY—*Continued*

ONTARIO DISTRICT—*Continued*

Toronto Terminals Division—Con.

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926				
Oct. 16...	1.45 p.m...	Front St. Toronto.....	4–198.....	Drove on to crossing after gates on opposite side were lowered.
Oct. 28...	3.50 p.m...	" "	80–137.....	Drove on to crossing after gates on opposite side were lowered.
Oct. 2...	7.45 a.m...	Peter St. "	72–240, 6–832....	Drove over crossing disregarding stop signal displayed by watchman.
Oct. 8...	2.45 p.m...	" "	46–144.....	Drove over crossing disregarding stop signal displayed by watchman.
Oct. 12...	2.07 p.m...	" "	5–061.....	Drove over crossing disregarding stop signal displayed by watchman.
Oct. 13...	8.10 a.m...	" "	49–414.....	Drove over crossing disregarding stop signal displayed by watchman.
Oct. 14...	8.19 a.m...	" "	C42716..... 65–718.....	Drove over crossing disregarding stop signal displayed by watchman.
Oct. 23...	11.58 a.m...	" "	56–371.....	Drove over crossing disregarding stop signal displayed by watchman.

During August, September and October, pedestrians and bicycles passed over the following crossings while gates were down:—

Crossing	Pedestrians	Bicycles
Bartlett Ave., Toronto—		
August	419	130
September	630	191
October	621	211
	1,670	532
Cherry St.—		
August	537	34
September	703	97
October	578	47
	1,818	178
Dufferin St.—		
August	2,331	825
September	2,522	620
October	2,106	635
	6,959	2,080
Eastern Ave.—		
August	532	217
September	635	211
October	730	212
	1,897	640
Front St.—		
August	717	62
September	612	73
October	809	73
	2,138	208
John St., Toronto—		
August	6,127	3
September	7,137	3
October	8,865	7
	22,129	13
Lansdowne Ave.—		
August	9,227	365
September	12,113	562
October	12,666	532
	34,006	1,459
McLennan Ave.—		
August	246	62
September	378	59
October	682	96
	1,306	217
Osler Avenue—		
August	4,117	460
September	4,290	603
October	4,098	527
	12,505	1,590
Peter Street—		
August	515	–
September	534	–
October	635	–
	1,684	–
Symington Ave.—		
August	2,997	490
September	4,001	553
October	1,858	513
	8,856	1,556
Trinity St., Toronto—		
August	78	1
September	94	–
October	64	–
	236	1

CANADIAN PACIFIC RAILWAY—*Con.*

Eastern Lines—Protected Highway Crossings

New Brunswick District.

Nil

Quebec District

Farnham Division

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926 Nov. 13		Main St., Farnham	Unknown	Auto ran through South gate while same were down to allow engine to pass.

Montreal Terminals

1926 Nov. 2		St. Hubert Street	Que. S–2431	Montreal Tramways' Buss ran into and broke crossing gate.
" 4		Westminster Ave	Unknown	Auto ran under descending arms of gates which were being lowered to allow train to pass.
" 16		Papineau Ave	Unknown	Auto ran under descending arms of gates which were being lowered to allow train to pass.
" 15		St. Hubert St	Que. S–2440	Montreal Tramways' Buss stopped under gates preventing them from being lowered to protect crossing.
" 20		Westminster Ave	Que. H–1803	Auto ran under descending arms of gates which were being lowered to allow train to pass.
" 25		St. Hubert St	Que. M–2416	Motorcycle ran into gate but did not break same.
Dec. 14		Westminster Ave	Que. F–2724	Auto ran into and broke gate.
1927 Jan. 31		"	Que. F–9392	Auto ran into and broke gate.

Laurentian Division

1926 Nov. 10		Bridge St., Quebec	Que. 71165	Gates had been lowered for train when auto ran through and broke Northeast gate.
" 20		St. Maurice St., Three Rivers.	Unknown	North gate was struck by auto and both arms broken. Auto backed out and went away by another street before license number could be taken.
" 29		Dorchester, St., Quebec	Que. 12169	Gates were lowered for train when auto ran through, broke North gate and struck engine. Auto was destroyed and one occupant killed and two others injured.
Dec. 19		Dorchester St., Quebec	Unknown	Auto ran through and broke North gate.
1927 Jan. 24		Crown St., Quebec	Unknown	Auto, running at high rate of speed, ran through and broke three gates.
" 28		Dorchester St., Quebec	Que. T–1734	Ran through and broke Southeast gate which had been lowered for train.

CANADIAN PACIFIC RAILWAY—*Con.*

EASTERN LINES—PROTECTED HIGHWAY CROSSINGS—*Con.*

QUEBEC DISTRICT—*Con.*

Ottawa Division

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926				
Dec. 2	.....	Chelsea Road, Hull.....	Ont. 129–724....	Auto ran through and broke point off gate although light was burning on gate at time.
" 5	.....	" "	Unknown.....	Gates were lowered for train when auto ran through and broke Southeast gate.
" 24	.....	" "	Ont. 125–838....	Auto stopped at gates and then started again too soon and broke Northwest gate.

Smith Falls Division

Dec. 24	.....	Raglan St., Renfrew.....	Ont. 299–001....	Auto ran under gates as train was approaching and stopped on tracks. Train was stopped and car backed off tracks.

ONTARIO DISTRICT

Trenton Division

1927				
Jan. 5	..10.35 a.m...	First Public crossing East of Eldon Station.	331–718 (1926)...	Drove up to crossing in snow storm and was so close to track before saw mixed train No. 605 coming they had to turn auto into return fence to avoid being struck.
" 10	..12.40 p.m...	Montreal St., Kingston....	329–126 (1927)...	Drove on crossing looking one way only and car was struck by engine from other direction Fender damaged.

London Division

1926				
Nov. 3	..10.00 p.m...	Wellington St., London....	208862.....	Auto approached crossing and not able to stop slid into side of engine on freight train. Engineer had whistled twice for crossing, and crossing bell was also ringing.
" 12	.. 2.45 p.m...	West St., Chatham.....	211–342.....	Overland sedan struck by cars backing over crossing with yard engine, killing driver of auto, Mrs. F. H. Jewkes.
" 11	.. 7.35 p.m...	Waterloo, St., London.....	98–668.....	When gates lowered and bell ringing, auto struck gate, breaking it.
" 11	.. 7.00 p.m...	Richmond St.....	227085.....	While gates down and crossing bell ringing, car approached from North, struck North gate, breaking it.
" 12	.. 9.35 a.m...	Thames St., Ingersoll.....	Unable to secure	While gates were down for approach of freight train, auto ran through gates, breaking them.
" 10	.. 7.20 p.m...	Colborne St., London.....	Did not secure..	While engine backing over crossing, notwithstanding crossing bell ringing, also whistle sounded for crossing and engine bell ringing, auto was struck by engine. Streets were very slippery.

CANADIAN PACIFIC RAILWAY—*Con.*

EASTERN LINES—PROTECTED HIGHWAY CROSSINGS—*Con.*

ONTARIO DISTRICT—*Con.*

London District—Con.

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926 Nov. 21.....	4.55 p.m...	Brock Road.....	340-266.....	While train standing at station, auto ran into north side of coach fourth car from engine. Driver claimed could not stop on slippery pavement.
" 22.....	11.55 p.m...	Richmond St., London....	C-1308.....	Auto going South did not notice gate barrier or hear crossing bell ringing; when saw red lantern on gates applied brakes, skidded on slippery pavement, striking gate arm, breaking it off.
" 26.....	.....	Allen's Road, Guelph.....	C-28541.....	At 9.55 a.m. truck ran into side of engine 2059 on No. 637; crossing bell ringing, engine whistle sounded, engine bell ringing; driver slightly injured; truck badly wrecked.
" 26.....	6.45 p.m...	Richmond St., London....	225-722.....	Auto ran through south gate. .Said he thought red light on gate was for some road work.
" 24.....	7.55 p.m...	Thames St., Ingersoll.....	171-040.....	Notwithstanding whistle and bell signals, auto ran into side of gas motor car 44 on crossing.
" 29.....	1.55 a.m...	King St., Chatham.....	Unable to secure	While all gates down, and train backing on to crossing, auto ran through gate and over tracks to other gate.
Dec. 2.....	2.43 p.m...	Allen's Road, Guelph.....	C-28415.....	Notwithstanding automatic crossing bell ringing, whistle sounded, and gong ringing on electric coach, auto truck crossed over in front of coach and was struck. Driver admitted hearing whistle and became confused changing gears on his car.
" 7.....	4.55 p.m...	Richmond St., London....	100816.....	While gates being lowered auto struck Northwest gate, breaking it. Streets very slippery account sleet storm.
" 13.....	3.55 p.m...	Talbot St., St. Thomas...	199-883.....	Train No. 658 struck auto on crossing; engine whistle sounded, engine bell ringing and crossing bell ringing; driver said he did not see or hear train coming.
" 21.....	6.35 a.m...	Richmond St., London....	Unable to secure	Auto going North at rapid rate of speed crashed into South gate, breaking it; then turned West and drove over sidewalk around end of gate barrier on Anne Street.
" 25.....	6.30 a.m...	Richmond St., London....	Unable to secure	While gates were down and bell ringing, auto driving at rapid rate of speed broke end off South gate and crossed over in front of passenger train No. 20.
" 24.....	9.30 p.m...	Adelaide St., London.....	101625.....	As train approaching watchman gave auto stop signal. Auto stopped and as engine 25 feet from crossing started ahead, watchman stood in his path, and auto pushed watchman over tracks.
" 25.....	3.00 p.m...	Adelaide St., London.....	107362.....	Auto passed stop signal displayed by watchman and crossed tracks in front of switch engine.
" 28.....	8.00 p.m...	Queen St., Chatham.....	Mich. 6611.....	Auto ran into North gate breaking it. Driver said he could not see gate; claims blinded by lights of auto on opposite side of crossing.

CANADIAN PADIFIC RAILWAY—*Con.*

EASTERN LINES PROTECTED HIGHWAY CROSSINGS—*Con.*

ONTARIO DISTRICT—*Con.*

London District—Con.

Date	Time	Crossing	License No. of Auto	Dangerous Practice
1926 Dec. 31	8.45 p.m.	Pall Mall St., London	100067	Taxi cab struck East gate, breaking it.
1927 Jan. 1	3.05 a.m.	Richmond St., London	Unable to secure	Auto ran through both gates, breaking end off gates. Gates were down with lights displayed and crossing bell ringing.
" 12	11.20 a.m.	Queen St., Chatham	Unable to secure	As gates were down for No. 19, an auto travelling at high speed crashed through both gates breaking them.
" 16	6.58 p.m.	Richmond St., London	99–225	Auto passed under North gate as being lowered over tracks and into Southwest gate, breaking it.
" 17	10.35 p.m.	Anne St., London	98–332	Taxi drove into gate arm, breaking it; driver claims did not see light on gate although red lamp hanging from centre of it.
" 24	3.50 p.m.	King St., Ingersoll	C31–881	No. 661 struck C.N.R. Express truck. Driver failed to hear engine whistle, engine bell and crossing bell until too late to stop, in view of slippery condition of road.

Toronto Terminals Division

1926 Dec. 22	10.50 a.m.	Eastern Ave., Toronto	No. 60–608	Drove onto crossing after gates on opposite side were lowered.
1927 Jan. 13	11.30 p.m.	Eastern Ave., Toronto	No. 352–855	Drove on to crossing after gates on opposite side were lowered.
1926 Nov. 27	12.50 a.m.	Lansdowne Ave., Toronto	No. 29–065	Drove on to crossing after gates on opposite side were lowered.
Dec. 28	9.00 p.m.	Front St., Toronto	No. 4–157	Drove on to crossing after gates on opposite side were lowered.

During November, December and January, pedestrians and bicycles passed over the following crossings while gates were down:—

Crossing	Pedestrians	Bicycles
Bartlett Ave., Toronto—		
1926—November	756	205
December	944	158
1927—January	900	146
	2,600	509
Cherry St., Toronto—		
1926—November	471	11
December	434	9
1927—January	403	5
	1,308	25
Dufferin St., Toronto—		
1926—November	2,344	625
December	1,890	528
1927—January	2,397	393
	7,041	1,586
Eastern Ave., Toronto—		
1926—November	725	142
December	688	126
1927—January	657	101
	1,970	369
John St., Toronto—		
1926—November	12,951	2
December	8,079	1
1927—January	8,449	1
	27,479	4
Lansdowne Ave., Toronto—		
1926—November	11,083	385
December	10,705	243
1927—January	13,501	202
	35,289	830

Crossing	Pedestrians	Bicycles
Front St., Toronto—		
1926—November	816	68
December	501	15
1927—January	480	9
	1,697	92
McLennan Ave., Toronto—		
1926—November	600	116
December	336	98
1927—January	443	47
	1,479	261
Osler Ave., Toronto—		
1926—November	4,675	462
December	4,229	353
1927—January	3,729	340
	11,633	1,155

Crossing	Pedestrians	Bicycles
Peter St., Toronto—		
1926—November	778	–
December	536	–
1927—January	567	–
	1,539	–
Symington Ave., Toronto—		
1926—November	1,901	468
December	1,706	452
1927—January	1,728	382
	5,335	1,302
Trinity St., Toronto—		
1926—November	95	–
December	94	–
1927—January	147	–
	336	–

TORONTO, HAMILTON AND BUFFALO RAILWAY LINES

Date	Time	Crossing	License Number of Auto	Dangerous Practice
1926 Dec. 20...	.. 6.30 p.m...	King St. E., Hamilton, Ont.	.....	Fast driving.

MOTOR-VEHICLE ACCIDENTS AT HIGHWAY CROSSINGS— YEAR 1926

I respectfully submit statements showing how the motor accidents at highway crossings in the various provinces are distributed, as well as a statement showing the distribution over the whole Dominion for the year 1926.

Of the total of 235 accidents you will observe that 211 occurred on improved highways. The province of Ontario again takes the lead with a total number of 142 accidents, an increase of 7 over the year 1925. The province of Quebec shows a decrease of 10, having 25 accidents in 1926, as against 35 in 1925. There was no accident on Prince Edward Island, as against one last year. Manitoba shows a decrease of one; Nova Scotia increase two; New Brunswick increase three; Saskatchewan increase six; Alberta increase six; British Columbia increase two; all of which tends to show a gradual increase in accidents involving motor vehicles at crossings.

The statement covering the Dominion shows the particulars with regard to type of vehicle, licenses, etc., there being only 13 foreign licenses involved in the 235 accidents for 1926.

GEO. SPENCER,
Chief Operating Officer.

February 28, 1927.

1926—DOMINION OF CANADA

Number of Highway Crossing Accidents, involving motor vehicles, investigated—235.. Killed 80 Injured 341

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Urban	6	10	.....	.....	.....	.....	8	1	7	.....
Provincial Highways, Rural	2	36	.....	.....	.....	.....	12	1	21	4
Improved Highways, Urban	37	66	89	8	5	1	50	9	36	8
Improved Highways, Rural	6	48	15	21	15	3	1	4	45	4
Unimproved, Urban	2	9	7	2	1	1	.....	.....	.....	.....
Unimproved, Rural	1	12	4	.....	6	3	.....	.....	.....	.....
	54	181	115	31	27	8	71	15	109	16

Cases of running into side of trains..... 55—Urban 27, Rural 28

Disregarding signals..... 8—Urban 7, Rural 1

Attempting to beat train..... 9—Urban 8, Rural 1

Licenses—Ont..... 133
Que..... 24
Man..... 9
Sask..... 15
Alta..... 12
B.C..... 16
N.B..... 6
N.S..... 7
N.Y..... 5
Mich..... 1
N.J..... 2
Ohio..... 1
Vt..... 1
Minn..... 2
Cal..... 1

Passenger cars..... 180
Trucks..... 53
Busses..... 1
Motorcycles..... 1

Slow orders were in effect at 28 of the 181 "unprotected" crossings.

1926—ONTARIO

Number of Highway Crossing Accidents, involving motor vehicles, investigated—142.. Killed 43 Injured 210

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Urban	6	3	.....	.....	.....	.....	7	.....	2	.....
Provincial Highways, Rural	.....	15	.....	.....	.....	.....	11	.....	4	.....
Improved Highways Urban	29	39	55	8	5	.....	42	3	21	2
Improved Highways, Rural	6	31	2	20	15	.....	1	2	34	.....
Unimproved, Urban	2	4	3	2	1	.....	.....	.....	.....	.....
Unimproved, Rural	1	6	1	.....	6	.....	.....	.....	.....	.....
	44	98	61	30	27	.....	61	5	61	2

Cases of running into the side of trains..... 31—Urban 14, Rural 17

Disregarding signals..... 5—Urban crossings

Attempting to beat train..... 6—Urban crossings

Licenses—Ont..... 133
N.Y..... 5
Mich..... 1
N.J..... 2
Ohio..... 1

Passenger cars..... 105
Trucks..... 36
Busses..... 1

Slow orders were in effect at 14 of the "unprotected" crossings.

1926—QUEBEC

Number of Highway Crossing Accidents, involving motor vehicles, investigated—25 — Killed 15 — Injured 34

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Urban	.....	3	.....	.....	.....	.....	1	1	1	.....
Provincial Highways, Rural	1	2	.....	.....	.....	.....	.....	1	2	.....
Improved Highways, Urban	3	3	6	.....	.....	.....	3	3	.....	.....
Improved Highways, Rural	.....	7	4	.....	.....	3	.....	2	5	.....
Unimproved, Urban	.....	3	2	.....	.....	1	.....	.....	.....	.....
Unimproved, Rural	.....	3	.....	.....	.....	3	.....	.....	.....	.....
	4	21	12	.....	.....	7	4	7	8	.....

Cases of running into side of trains ..... 6—Urban 1, Rural 5
Disregarding signals ..... 1—Rural crossing
Attempting to beat train ..... 2—Urban crossings

Licenses—Que ..... 24, Vt 1
Passenger cars 19
Trucks 5
Motor cycles 1

Slow orders were in effect at 4 of the "unprotected" crossings.

1926—NEW BRUNSWICK

Number of Highway Crossing Accidents, involving motor vehicles, investigated—7 — Killed 4 — Injured 10

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Urban	.....	1	.....	.....	.....	.....	.....	.....	1	.....
Provincial Highways, Rural	1	1	.....	.....	.....	.....	.....	.....	2	.....
Improved Highways, Urban	.....	1	.....	.....	.....	1	.....	1	.....	.....
Improved Highways, Rural	.....	1	.....	1	.....	.....	.....	.....	1	.....
Unimproved, Urban	.....	1	1	.....	.....	.....	.....	.....	.....	.....
Unimproved.., Rural	.....	1	1	.....	.....	.....	.....	.....	.....	.....
	1	6	2	1	.....	1	.....	1	4	.....

Cases of running into side of trains ..... 3—Urban 2, Rural 1

Licenses—N.B ..... 6, Cal 1
Passenger cars 6
Trucks 1

Slow order in effect at 1 of the "unprotected" crossings.

1926—NOVA SCOTIA

	Killed	Injured
Number of Highway Crossing Accidents, involving motor vehicles, investigated—7..	5	11

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Rural		4							4	
Improved Highways, Urban		2	2				2			
Improved Highways, Rural		1	1						1	
		7	3				2		5	

Disregarding signals ..... 1—Urban crossing

Licenses—N.S. ..... 7 Passenger cars 5
Trucks 2

1926—MANITOBA

	Killed	Injured
Number of Highway Crossing Accidents, involving motor vehicles, investigated...9	6	18

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Rural		3								3
Improved Highways, Urban	2	2	4				1		3	
Improved Highways, Rural		2	2						1	1
	2	7	6				1		4	4

Cases of running into side of trains ..... 4—Urban 2
Rural 2
Disregarding signals ..... 1—Urban
Attempting to beat trains ..... 1—Rural

Licenses ..... Man. 9 Passenger cars 9

Slow order was in effect at one of the "unprotected" crossings.

1926—SASKATCHEWAN

	Killed	Injured
Number of Highway Crossing Accidents, involving motor vehicles, investigated.. 16	6	17

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Rural		3							2	1
Improved Highways, Urban	2	6	8						2	6
Improved Highways, Rural		4	4						1	3
Unimproved, Rural		1	1							
	2	14	13						5	10

1926—SASKATCHEWAN—*Con.*

Cases of running into side of trains..... 1—Urban crossing

Licenses.....Sask.—14 Passenger cars.....13
Minn.— 2 Trucks..... 3

Slow orders were in effect at two of the "unprotected" crossings.

1926—ALBERTA

		Killed	Injured
Number of Highway Crossing Accidents, involving motor vehicles, investigated..	13	1	18

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Urban	.....	2	.....	.....	.....	.....	.....	.....	2	.....
Provincial Highways, Rural	.....	2	.....	.....	.....	.....	.....	.....	2	.....
Improved Highways, Urban	.....	6	6	.....	.....	.....	1	.....	5	.....
Improved Highways, Rural	.....	1	1	.....	.....	.....	.....	.....	1	.....
Unimproved, Urban	.....	1	1	.....	.....	.....	.....	.....	.....	.....
Unimproved, Rural	.....	1	1	.....	.....	.....	.....	.....	.....	.....
	.....	13	9	.....	.....	.....	1	.....	10	.....

Cases of running into side of trains..... 2—Urban crossings.

Licences.....Alta.12 Passenger cars..... 12
Sask. 1 Trucks..... 1

Slow orders were in effect at three of the "unprotected" crossings.

1926—BRITISH COLUMBIA

		Killed	Injured
Number of Highway Crossing Accidents, involving motor vehicles, investigated..	16	–	23

—	Protected	Unprotected	Jurisdiction				Paved	Macadam	Gravel	Graded clay
			Municipality	County	Township	Parish				
Provincial Highways, Urban	.....	1	.....	.....	.....	.....	.....	.....	1	
Provincial Highways, Rural	.....	6	.....	.....	.....	.....	1	.....	5	.....
Improved Highways, Urban	1	7	8	.....	.....	.....	1	2	5	.....
Improved Highways, Rural	.....	1	1	.....	.....	.....	.....	.....	1	.....
	1	15	9	.....	.....	.....	2	2	12	.....

Cases of running into side of trains..... 8—Urban 5
Rural 3

Licenses.....B.C.—16 Passenger cars..... 11
Trucks..... 5

Slow orders were in effect at 3 of the "unprotected" crossings.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, April 15, 1927 No. 3

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the Chief Accountant, Department of Public Printing and Stationery, Ottawa. Remittances to be made payable to the order of the Chief Accountant, P.O. Money or Postal Orders preferred. Cheques or drafts must be made payable at par at Ottawa. Postage Stamps will not be accepted.

In the matter of the application of The Ross Leaf Tobacco Company, Limited, of Kingsville, Ontario, for a transit rate on partly processed raw leaf tobacco from St. Thomas to Kingsville with stop-over privileges at Kingsville, for shipments en route to the seaboard or final destination in the Dominion of Canada.

File No. 34906

REPORT OF MR. A. G. BLAIR, K.C., AND MR. GEORGE A. BROWN, COUNSEL AND ASSISTANT CHIEF TRAFFIC OFFICER OF THE BOARD RESPECTIVELY

The application was heard at Toronto, February 22, 1927. Mr. E. H. Villar, secretary-treasurer of the company, appeared for the applicants, and Mr. G. C. Ransom for the Canadian Freight Association.

The applicants asked for special rates from St. Thomas to the seaboard, via Kingsville, with stop-over privileges at Kingsville, in order that the tobacco may be completed and then shipped to the seaboard. It is not alleged that the present rates are unreasonably high, nor that in refusing stop-over privileges at Kingsville the railways are unjustly discriminating against the applicants and in favour of other industries similarly situated.

The principal ground upon which the tobacco company bases its application, as developed by the correspondence and at the hearing, is, shortly, that its endeavour to establish a new industry, in connection with which a large sum of money has already been invested, should be assisted. It was pointed out to Mr. Villar that the Board has held that its jurisdiction as to tolls concerns only their reasonableness; that no matter how much the development of an industry may be in the public interest, the Board is not authorized to be an arbiter of industrial or public policy, and cannot strike a low toll basis independent of its reasonableness (Crushed Stone, Limited, *et al.* v. Grand Trunk Ry. Co., 23 Can. Ry. Cas. 132), unless of course unjust discrimination prohibited by the Act is shown to exist; that the Board is not justified in ordering the fixing of experimental tolls, since it has not been established that the tolls charged are unreasonable (British Columbia News Co. v. Express Traffic Assn., 13 Can. Ry. Cas. 176); that the Board cannot take into account matters of business policy and railway administration, but can only inquire whether tolls are excessive or unfair. Western Ontario Municipalities v. Grand Trunk, Michigan Central, and Pere Marquette Ry. Cos., 18 Can. Ry. Cas. 329.

As to the stop-over privilege at Kingsville in order that the tobacco may be completed and then shipped to the seaboard. Kingsville is located on the

Pere Marquette Railway, 97 miles west of St. Thomas. As the Pere Marquette ends at St. Thomas, it publishes no rates from that point to destinations east. The tobacco is back-hauled locally by the Pere Marquette from St. Thomas to Kingsville, where it is unloaded, reloaded when cured, and forwarded under a joint tariff to the seaboard.

The stop-over privilege applies usually in connection with through rates, the traffic, when forwarded from the stop-over point, being subject to the through rate plus the stop-over charge and out of line haul charge, if any. Since there is no through rate in effect from St. Thomas via Kingsville to the seaboard, and as the movement is a combination of the local rate from St. Thomas to Kingsville, and a joint rate from the latter point, it is not a case where the stop-over arrangement applies, even assuming the Board had power to order that the privilege be granted.

It was also pointed out to the applicants at the hearing that the Board, by many rulings prior to the consolidation and revision of the Railway Act, 1919, at any rate, had decided that shippers were not entitled to a stop-over privilege as a matter of right; that it was entirely discretionary with the companies, unless here again it was shown that the discriminatory clauses of the Act had been or were being violated.

In the application for a stop-over privilege on telephone poles, it was held that the creosoting of telephone poles in transit is not a customary or usual service in connection with the business of a railway company, within the meaning and intent of subsection (*c*) (1) of section 312 of the Railway Act, as amended in 1919, and that, therefore, the Board is without jurisdiction to require companies to give the service asked for, unless necessary to intervene to prevent unjust discrimination or difference of treatment. Province of Alberta v. Canadian Pacific Ry. Co., 27 Can. Ry. Cas. 317.

For these reasons our recommendation is that the application be dismissed.

The Board adopted the report above set out as its judgment and directed that an order be issued accordingly.

Ottawa, March 9, 1927.

Application for an informal ruling by the Board on the question of rates applicable on October and November 22, 1924, on Bituminous Coal, carloads, from Erieau, Ontario, to Waterford, Ontario, via the Pere Marquette and Michigan Central Railways.

File 26963.88

JUDGMENT

McLean, Assistant Chief Commissioner:

Application is made by the Canadian Canners Limited for an informal ruling on the question of rates applicable in October and November, 1924, on bituminous coal, in carloads, from Erieau, Ont., to Waterford, Ont., via the Pere Marquette and the Michigan Central Railways. It is set out that the Michigan Central Railway charged at the rate of $1.40 per ton. Applicants submit that the 90 cents rate from Erieau to Hamilton is the maximum which should not be exceeded under the long and short haul clause. It is represented by the railway that two carloads of coal are concerned. The railway states the cars were shipped on November 4, 1924.

The applicants refer to section 328 of the Railway Act of 1919 as classifying freight tariffs. Then, reference is made to section 329, subsection (3), which deals with special freight tariffs. Reference is also made to subsection (4) as dealing with competitive tariffs.

Under R.S.C., 1906, chapter 37, section 315, subsection (5), it is provided: "The Board shall not approve or allow any tolls which for the like description of goods . . . carried under substantially similar circumstances and conditions in the same direction over the same line is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Board is satisfied that owing to competition it is expedient to allow such toll".

Under the legislation above cited, one criterion of what is forbidden is found in the consideration of whether the movement was "in the same direction *over the same* line". The successor in the Railway Act of 1919 of this provision is to be found in section 314, subsection (5). With one exception, the wording is identical—the change is the substitution for the words "*over the same line*" of the words "*over the same line or route*". The additional word "route" introduces a new feature.

Section 326, subsection (3) of the legislation of 1906 is the predecessor of section 329, subsection (3), of the present Act.

The legislation of 1906 sets out what special freight tariffs are to specify. The only portion which it is necessary to quote is that dealing with the long and short haul clause, viz., "And greater tolls shall not be charged thereon for a shorter than for a longer distance over the same line in the same direction, if such shorter distance is included in the longer."

Here again what is significant are the words "*over the same line.*"

Section 329, subsection (3), of the legislation of 1919 is in identical words with section 326, subsection (3), of the previous Act, both as to the portion of the subsection which has been quoted as well as in the case of the portion which has not been quoted. Here again the significant words are "*over the same line*".

The difference in wording which has been pointed out must be given weight. The application as launched deals with a special freight tariff which, in terms of the application, is treated as falling within section 329, subsection (3). The situation then is that under existing legislation section 314, subsection (5), is applicable to a movement "*over the same line or route*". Section 329, subsection (3), which the applicant considers is governing, is concerned with the movement "*over the same line*".

The word "route" implies two or more lines of railway over which the movement takes place. The word "line", having in mind the amendment by Parliament, means something different from "route". "Same line" must mean one line.

The rate to Hamilton, which is appealed to as a maximum, necessitates a movement over the Pere Marquette, the Michigan Central, and the Toronto, Hamilton, and Buffalo Railways. It is urged that while the Toronto, Hamilton, and Buffalo Railway is a separate company under a management separate from the Michigan Central, both of these railways are constituent parts of the New York Central Railway. Even if this were accepted as conclusive, there would have to be borne in mind that there is another line, the Pere Marquette, participating in the movement. As a matter of fact, however, the Canadian Pacific Railway is also interested in the Toronto, Hamilton, and Buffalo Railway.

The movement from Erieau to Waterford involves a movement over two lines. Neither Waterford, the shorter distance point, nor Hamilton, the longer distance point, is, on the facts stated, on the "same line"; consequently, the application fails.

Ottawa, March 26, 1927.

Chief Commissioner McKeown, Deputy Chief Commissioner Vien, and Commissioner Boyce concurred.

30

ORDER No. 38893

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", for permission to publish, on three days' notice, supplements cancelling the joint tariffs in respect of which the Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, and the Alberta and Great Waterways Railway Company have withdrawn their concurrences.

File No. 34940

THURSDAY, the 7th day of April, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and its appearing that the cancellation of the said joint tariffs is necessary owing to the withdrawal of concurrences by the Edmonton, Dunvegan and British Columbia Railway Company, which action has removed the basis for the joint tariffs,—

The Board orders: That the applicant company be, and it is hereby, granted leave to issue supplements forthwith cancelling the joint tariffs in respect of which the Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, and the Alberta and Great Waterways Railway Company have withdrawn their concurrences, on three days' notice..

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, May 15, 1927 No. 4

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NOTE.—Will subscribers please change pages 1, 2, 3 and 4 of pamphlet No. 3, Vol. XVII (April 15th, 1927) to 27, 28, 29 and 30.

No issue for May 1, 1927.

In the matter of the complaint of the Canadian Lumbermen's Association, et al, re *proposed change in rule governing out of line haul charge in transit tariffs, and, in the matter of Order of the Board No. 37681, dated 29th May, 1926, suspending certain tariff schedules, pending a hearing by the Board.*

File 26615.84

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The matter involved is connected with, and arises out of, the *Application of the Canadian Lumbermen's Association for a ruling of the Board in the matter of charge for extra haul out of the direct run on lumber shipped from Pembroke, Ontario, to Ottawa for working and reshipment to Toronto and points west thereof, via Canadian National Railways.* In this application, the report of the Chief Traffic Officer which follows issued as a Ruling of the Board in the matter. The report in question sets out, with particularity, the questions which were involved, and it appears to be of advantage, in connecting up the matters concerned in the application, to cite the report *in extenso.* The report is as follows:—

> "The question here at issue relates to the propriety of assessing a charge for extra haul out of the direct run with respect to lumber shipped from Pembroke to Ottawa for dressing, etc., and reshipment to points Toronto and west thereof, which is handled via Canadian National Railways. The written submissions of both applicant and the railway company have been filed with the Board.
>
> "The regulations governing stop off and reshipping on lumber, carloads, for dressing, etc., are contained in Canadian National Railways Tariff C.R.C. No. E-697. The tariff stipulates that,—
>
> 'Shipments of rough lumber, carloads, for dressing, resawing, kilndrying or sorting, and reshipment, within six (6) months after

40293—1

arrival at stop-off point, may be given the benefit of through rate, from original shipping point to final destination, plus one (1) cent per 100 pounds, minimum $5 per car for stop-off (provided stop-off point is on the direct run, see rule (C) under the conditions shown herein.'

Rule C which is referred to provides:—

'C. If stop-off point is not in the direct run a charge of 1 cent per ton per mile (minimum 20 miles) for haul out of direct run will be made in addition to stop-off charge, except that such charge will not be made between Sudbury Junction and Sudbury, Ont., on lumber for dressing at Sudbury, Ont., and reshipment to points south of Sudbury Junction, Ont. Short line mileage to govern on competitive traffic.'

"With respect to traffic originating on the Canadian National Railways at Pembroke and destined to Toronto, there are three available routes: (1) via Golden Lake and Scotia Junction; (2) via National Junction and Ottawa; and (3) via National Junction and Rideau Junction; the mileages via those routes being 301.7, 337.2, and 322.4, respectively.

"Applicant sets out that traffic from Pembroke to Toronto or points west is handled by the Canadian National Railways via Ottawa; that the railway company contends that, as the short mileage is via Golden Lake and Scotia Junction, when the traffic is consigned for dressing, etc., at Ottawa and reshipment, they are entitled to a charge for extra haul out of the direct run based on the difference between the mileage from Pembroke to Toronto via Golden Lake and Scotia Junction as against the mileage via National Junction and Ottawa. Applicant contends that as the railway company undertakes to move this traffic through Ottawa for reasons of economy or service or both, by so doing they establish the movement via Ottawa as the natural route for this traffic, and consequently are not entitled to make a charge for extra haul out of the direct run.

"Counsel for the railway company states that the rates and distances from each individual station must be dealt with specifically; that the rate on lumber from Pembroke to Toronto is based on a constructive mileage scale which is via Scotia Junction. He further states that if the shippers were prepared to pay on the basis of the actual mileage via Ottawa they might have some argument against the assessment of an out of line haul charge. In the issue that is here presented I do not see that there is any relationship between the rate itself, which is not in question, and the charge for a haul out of the direct run. However, the foregoing statement of counsel for the railway company is particularly interesting for the reason that the specific lumber rates to which he refers are built up on a mileage scale, and under this mileage scale the same rate applies for distances over 300 but not over 350 miles. It will be noted, therefore, that regardless of the mileages via the three routes, varying from 301.7 to 337.2, they would all take the same rate under the mileage scale on which the tariff is constructed. Consequently, as the rate constructed on the mileage through Ottawa would be the same as through Scotia Junction, in the terms of the railway company's submission it appears that it agrees that the shippers have an argument against the assessment of a charge for out of line haul.

"However, in my opinion the proper determination of the issue here presented really lies in the answer to the question, why is a charge for haul out of direct run justified and authorized? When the traffic is

stopped off at a point on the direct run and reshipped within six months it is entitled, under the terms of the tariff as already quoted herein, to the through rate plus 1 cent per 100 pounds, minimum $5 per car, for stop-off. If, however, the stop-off point is not on the direct run, obviously additional service is involved over and above what is required of the railway company when the stop-off point is on the direct run, consequently it has been held that this additional service justifies some extra charge therefor over and above the through rate and the stop-off charge, and which is authorized by the tariff provision already quoted.

"It will be further noted that the charge of 1 cent per ton per mile (minimum 20 miles) for haul out of direct run applies "*if stop-off point is not on the direct run*". It is stated that although the mileage via Scotia Junction is shorter the traffic here involved is moved through Ottawa for the convenience of the railway company and in the interest of being able to give better service to the traffic. Whatever the reason, if the traffic is handled through Ottawa, how can it be held that Ottawa is not "on the direct run", and how can a charge which is justified and authorized for an additional service be with propriety assessed when no additional service either in accord with the spirit or the wording of the tariff provision, as I see it, is performed?

"The Interstate Commerce Commission apparently considered and dealt with a similar issue to what is here involved, and in the case of Rea-Patterson Milling Company v. M.K. & T. Ry. Co., Unrep. Op. A-653, stated:—

> 'Where the back haul from Coffeyville to Parsons was an additional service performed by the carrier for his own convenience, a charge exacted for such service was unreasonable.'
>
> "In my opinion a charge for haul out of direct run in this case is not shown to be justified or authorized by the railway company."

Application involving the same principle was lodged by the Canadian Shippers' Traffic Bureau on September 21, 1925. Written submissions from the applicant and the Canadian National Railways were received and considered. The Board thereafter ruled that the complaint fell within the principle referred to in the report quoted above and was, therefore, governed by the conclusion therein.

On December 21, 1925, the Canadian National Railways asked that before the ruling in the Pembroke case was applied, either generally or to the present case, there should be a public hearing. Under the right reserved under section 19, subsection (2) of the Railway Act, the request for a public hearing was granted.

Subsequently, and before hearing had been held in this matter, the Canadian National and the Canadian Pacific Railway companies issued amendments to various transit tariffs which provided, *inter alia*, that "The out of line haul will be the difference between the distance via the shortest route from point of origin to final destination, and the shortest distance from point of origin to final destination via the stop-off point". The tariff provision prior to this time had merely stipulated that if stop-off point is not on the direct run, the charge as specified would be made for haul out of direct run.

Under date of May 26, 1926, the Canadian Lumbermen's Association made complaint against these tariff amendments and asked for their suspension pending hearing. An examination of the tariff amendments proposed showed that the effect thereof would be to set aside the ruling of the Board in the Pembroke case above referred to, a review of which ruling was still pending as a result of the application of the railway company; further, that the change in tariffs would, in some cases, constitute an advance, although an advance symbol was not shown in the tariffs, nor was statutory notice given in the case of Canadian National tariffs C.R.C. Nos. E-697 and 1069.

By Order No. 37681 of May 29, 1926, the tariffs of the Canadian National and Canadian Pacific containing the proposed rule, were suspended. Other railway companies in eastern and western Canada have also published a similar rule; and the disposition hereinafter directed in this matter should cover the tariffs of the other railway companies as well.

At the hearing of this matter in Ottawa, November 4, 1926, the Canadian Shippers' Traffic Bureau, the Canadian Lumbermen's Association, and others, appeared in opposition to the suspended rule.

The railway companies contended that they had always considered that the out of line haul for which a charge is assessed, represented the difference between the distance via the shortest route from point of origin to final destination and the distance between said points via the stop-off point; that this having been their interpretation and practice, the change in wording was simply for the purpose of clarifying the tariff in view of some disputes having arisen under the wording that had been contained in the tariffs for many years past. It was admitted that the effect of the changed wording of the rule would be to nullify the ruling of the Board in the Pembroke case, and which ruling, under a similar state of facts, would be of general application. It was admitted by the carriers that even if the traffic did not move over the short line mileage, the latter would be used as a determining factor in assessing charge for out of line haul.

The Canadian Lumbermen's Association at the hearing, alleged that the rule concerned, as contained in the amended wording and interpreted as above set out, had not been enforced in all cases in the past. Written submissions bearing on this were filed and were submitted to the railways. Other tariffs governing transit arrangements, on file with the Board, show a number of instances where traffic may be stopped off at a point which is not on the shortest direct line, without being subject to a charge for extra haul. This reveals that there has not in the past been a rigid uniform application of the practice, or rule, such as now proposed in the suspended schedules, but that on the other hand there have been apparent, in practice as well as under the provisions of certain tariffs, exceptions to such a rule or practice.

On consideration, the ruling in the Pembroke case should be reaffirmed. The justification for the collection of a charge for an out of line haul is the performance by the railway of an additional service beyond what is involved when the stop-off point is on the direct run—the direct run being the route over which the traffic moves. When the stop-off point is on the route over which the traffic moves between point of origin and final destination, there is no justification for the charge.

Order should, therefore, go disallowing, in the tariffs under suspension by Order No. 37681, as well as all other tariffs filed with the Board by the railways subject to its jurisdiction, rules contained therein which provide that the out of line haul will be the difference between the distance via the shortest route from point of origin to final destination, and the shortest distance from point of origin to final destination via the stop-off point.

The rules under suspension provided a table of rates showing how to compute the charge for haul out of direct run. No exception to these has been filed with the Board. The railway companies may republish the same, with an advance symbol, on thirty days' notice. This, of course, is subject to any complaint that may subsequently be received. Such complaint, if any, may be launched in the ordinary manner.

Ottawa, March 31, 1927.

Deputy Chief Commissioner Vien and Commissioners Boyce and Oliver concurred.

Re interchange track at Pembroke, Ontario, between the Canadian National Railways and the Canadian Pacific Railway.

File No. 6713.50.

On the 10th January, 1927, the Canadian Pacific Railway Company applied for an order amending Order No. 35810, dated November 24, 1924, providing for the maintenance of the interchange track by the Canadian National and directing the Canadian Pacific Railway Company to maintain, at the expense of the Canadian National, the portion of the interchange track within the right of way of the Canadian Pacific Railway shown in yellow on the plan which accompanied the application, as well as the ditch shown in green on the said plan.

At the request of the two railway companies the matter was referred to an engineer of the Board, and, under date of April 4, 1927, Assistant Chief Engineer Drury reported as follows:—

> "On the 31st March, I made an inspection of part of the interchange track and ditching on the Canadian Pacific Railway right of way. I was accompanied by Mr. Gordon Grant, Principal Assistant Engineer, and Mr. S. McIlwain, Division Engineer of the C.N.R., and Mr. J. R. Caswell, Division Engineer of the C.P.R.
>
> "On going into the matter of the drainage, I found the ditch was reconstructed on the C.P.R. right of way by the C.N.R. at their expense at the time the interchange track was built and there is no doubt that there is a great deal more water brought by way of this drainage ditch than there was originally. On discussing the question of maintenance of the ditch, it was agreed that the C.N.R. take care of the maintenance.
>
> "As to the maintenance of the interchange track, on the C.P.R. right of way, it was pointed out that the interchange or transfer track, was built solely for the benefit of the C.N.R., that they, the C.N.R., should maintain it. The 1,200 feet of extra track on the C.P.R. right of way was constructed to provide a proper switching lead for the interchange track. I am of the opinion that the C.P.R. should maintain the portion of track coming from the switch off the main line up to, but not including, the derail, a distance of 270 feet and that the Canadian National Railway maintain the balance of the track on the C.P.R. right of way, the C.N.R. to have the right to use the switching lead down as far as the derail provided they do not interfere with the C.P.R. switching to the Pembroke Shook Mills and the interchange sidings."

The Chief Engineer of the Board concurred in the report, and on the 8th of April copies thereof were sent to the representatives of the railway companies, with a request to show cause in writing within ten days why an order should not be made in accordance therewith.

On the 20th of April, Mr. E. P. Flintoft, Assistant General Solicitor, Canadian Pacific Railway Company, advised the Board that the report was satisfactory to that company, and that he had no objection to an order issuing in accordance therewith.

Under date of April 21, Mr. Alistair Fraser, K.C., Commission Counsel, Canadian National Railways, filed a letter dated April 13, from Mr. F. L. C. Bond, General Superintendent to Mr. A. E. Warren, General Manager, Canadian National Railways, which he asked to be treated as the answer of the Canadian National Railways, and from which letter the following is extracted:—

> "It would appear that the major portion of the water which reaches the ditch on C.P.R. property comes through the ditch paralleling our interchange track, which was visibly evident at the time inspection was

made by Mr. Drury, Assistant Chief Engineer of the Board. As the maintenance of the ditch is practically nil, there having been no expense incurred since its construction in 1925, it is therefore considered that the finding by Mr. Drury be accepted with regard to this ditch.

"As to the maintenance of the extension of lead to the interchange track switch and the C.P.R. main track switch, it is felt that the C.P.R. benefited by the extension of this track, which enables them to switch the interchange tracks proper without using the main track, although they could have carried on switching operations by using their main track. There is no doubt that we benefit to a certain extent by the extension of lead, particularly on account of the limited space on the interchange tracks proper, which at times necessitates using the extension when more cars are offered than the interchange tracks will accommodate. This, however, does not alter the fact that the C.P.R. also benefit from use of the extension of this track, and they should be expected to bear their proportion of maintenance.

"If, however, the Board consider that the C.N.R. should maintain the extension of the C.P.R. passing track, which is used as a lead for the interchange track, it should therefore be distinctly understood that the C.N.R. will have the privilege of using this track for the advancement of its interests, as it would appear that the Pembroke Shook Mills previously considered the desirability of the C.N.R. constructing an independent siding to their plant. This no doubt, could be undertaken by making a connection at the west end of the interchange track, in which case it would be necessary for our trains to use the extension to the C.P.R. track to reach the Shook Mills tracks.

"Under these circumstances, I would be in favour of accepting the maintenance of the extension of the track, as suggested in report from Mr. Drury."

The last-mentioned letter was referred to Mr. Drury for further report, and on April 26 he reported as follows:—

"*Re* Mr. Bond's letter of April 13 asking for my comments, paragraph marked A1, would say that the extension was constructed to enable the C.P.R. to switch in a proper manner into the interchange track without using their main line track, and was constructed for the benefit of the Canadian National Railways. I am still of the opinion that the Canadian National Railways should bear the maintenance cost of the extension from the derail east to the old C.P.R. connection.

"As to paragraph marked A2, I wish to point out that the extension is not used as a *passing* track, but only as a lead to the interchange track.

"As to the C.N.R. privilege of using the extension for the advancement of their interests in order to construct an independent track into the Pembroke Shook Mills, I think I cover this in my report where I say the C.N.R. to have the right to use the switching lead down as far as the derail provided they do not interfere with the C.P.R. switching to the Pembroke Mills and the interchange track."

This report was concurred in by the Chief Engineer of the Board, and on May 2 copies were sent to the representatives of the two railway companies with an intimation that the report had been adopted as the ruling of the Board in the matter.

OTTAWA, May 2, 1927.

ORDER No. 38903

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", for permission to correct typographical error, on less than statutory notice, in the rate on asbestos waste, in carloads, Danville, Quebec, to Nashua, New Hampshire.

File No. 27612.28

THURSDAY, the 14th day of April, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, through a typographical error, a rate of 29½ cents per 100 pounds was published in Tariff C.R.C. No. E-1182, instead of 20½ cents per 100 pounds, as shown in previous Tariff C.R.C. No. E-744,—

The Board orders: That the applicants be, and they are hereby, permitted to file a supplement to the said Tariff C.R.C. No. E-1182, to correct such error, upon one day's notice; a reference to the number and date of this order to be shown on the title page of the supplement.

H. A. McKEOWN,
Chief Commissioner

ORDER No. 38951

In the matter of the train service of the Quebec Oriental Railway and the Atlantic, Quebec and Western Railway Companies between Matapedia and Gaspé, in the Province of Quebec.

File No. 21514.1

MONDAY, the 25th day of April, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed on behalf of the fishermen of Gaspé and the railway companies, and upon the report of its Chief Operating Officer,—

The Board orders:

1. That the Quebec Oriental and the Atlantic, Quebec and Western Railway Companies be, and they are hereby, directed to furnish a train service during the summer and winter seasons, between Matapedia and Gaspé, in the province of Quebec, as follows, namely:—

(*a*) The summer season shall extend from May 16 until January 7, both days inclusive, and during such period a daily, except Sunday, through passenger service shall be provided in each direction; and

(*b*) The winter season shall extend from January 8 to May 15, both days inclusive, and during such period the following train service shall be provided: A through passenger service eastbound, leaving Matapedia on Tuesdays, Thursdays, and Saturdays; westbound, leaving Gaspé on Mondays, Wednesdays,

and Fridays, and on the alternate days, a local mixed train service, eastbound, Matapedia to New Carlisle and New Carlisle to Gaspé, on Mondays, Wednesdays, and Fridays; westbound, Gaspé to New Carlisle and New Carlisle to Matapedia, on Tuesdays, Thursdays, and Saturdays.

2. That Orders Nos. 38392 and 38460, dated respectively November 12, 1926, and November 26, 1926, made herein, be rescinded.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38968

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", for permission to file, on less than statutory notice, certain tariffs and supplements in lieu of those rejected.

File No. 27612.29

THURSDAY, the 28th day of April, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that certain tariffs and supplements filed with the Interstate Commerce Commission did not reach Washington in time to give the thirty days' notice required, and were also rejected by this Board to preserve uniformity of filing of international schedules,—

The Board orders: That the applicants be, and they are hereby, permitted to file, effective May 14, 1927, tariffs and supplements in lieu of the following, which have been rejected, namely:—

Canadian National Railways, C.R.C. No. E-1190.
Supplement No. 1 to Canadian National Railways' C.R.C. E-1182.
Supplement No. 2 to Canadian National Railways' C.R.C. E-1182.
Supplement No. 1 to Canadian National Railways' C.R.C. E-965.
Supplement No. 1 to Grand Trunk Railway's C.R.C. E-79.
Supplement No. 1 to Canadian National Railways' C.R.C. E-1037.
Supplement No. 1 to Grand Trunk Railway's C.R.C. E-102.
Supplement No. 1 to Canadian National Railways' C.R.C. E-1091.
Grand Trunk Railway Tariff C.R.C. E-123.
Grand Trunk Railway Tariff C.R.C. E-122.
Supplement No. 3 to Grand Trunk Railway's C.R.C. E-4770.
Supplement No. 81 to Grand Trunk Railway's C.R.C. E-4219.
Supplement No. 3 to Grand Trunk Railway's C.R.C. E-4232.
Canada Atlantic Transit Company's C.R.C. T-105.
Supplement No. 1 to Canada Atlantic Transit Company's C.R.C. T-102.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 38974

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 348 of the Railway Act, 1919, for approval of a special form of ticket, being a release of liability in respect of passengers travelling in automobiles on the car ferry between the main land and Prince Edward Island, on file with the Board under file No. 35223:

MONDAY, the 2nd day of May, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the said special form of ticket, being a release of liability in respect of passengers travelling in automobiles loaded on flat cars handled by the car ferry on regular passenger trips between the main land and Prince Edward Island, on file with the Board under file No. 35223, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 38979

In the matter of the application of the Canadian Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for traffic its Eston Southeasterly Branch, mileage 29.7 to 34.75.

File No. 29410.12.

WEDNESDAY, the 4th day of May, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer,—

The Board Orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Eston Southeasterly Branch from mileage 29.7 to 34.75, provided the operation of trains over the said line shall be limited to a rate of speed not exceeding fifteen miles an hour.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38989

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic the third track between Gerrard Street and Danforth Yard, in the City of Toronto and Province of Ontario.

File No. 588.44

MONDAY, the 9th day of May, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the third track between Gerrard street and Danforth yard, in the city of Toronto and province of Ontario.

H. A. McKEOWN,
Chief Commissioner.

CIRCULAR No. 212

May 9, 1927.

File 26602.66

Railway companies under the jurisdiction of the Board are directed to show cause why a general order should not issue requiring all such railway companies to observe and perform the directions given on bills of lading by shippers, as to the routing of traffic, when routing is opened under the tariffs in force.

I am further directed to state that all railway companies are required to file, within twenty days, their respective submissions showing cause against such an order, after filing of which the matter will be set down for hearing at a convenient date.

By order of the Board.

A. D. CARTWRIGHT,
Secretary, B.R.C.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Province of British Columbia for an Order directing the Canadian Pacific Railway Company and the Canadian National Railways to give transportation to any police force maintained by and under the direction of the Government of any province while travelling in His Majesty's service on their railways, at the rate of 2½ cents per mile, in accordance with the provisions of an Order of the Governor General in Council dated March 11, 1926.

File No. 496.41.1

JUDGMENT

CHIEF COMMISSIONER MCKEOWN:

The Attorney General of the province of British Columbia has submitted a petition to this Board dated the 22nd day of September, 1926, setting out that on the 11th day of March, 1926, His Excellency the Governor General in Council, under authority of section 351 of the Railway Act, 1919, by Order in Council made and established a regulation as follows:—

"AT THE GOVERNMENT HOUSE AT OTTAWA
"THURSDAY, the 11th day of March, 1926.

" PRESENT
" HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

" Whereas section 351 of the Railway Act, 1919, chapter 68, among other things, provides that all policemen, constables or others travelling on His Majesty's service shall at all times when required by any person having the superintendence and command of such force be carried on the railway on such terms and conditions and under such regulations as the Governor in Council makes;

"And whereas by an Order in Council, dated the twenty-fourth day of October, 1919, it is provided that the Royal Northwest Mounted Police (now the Royal Canadian Mounted Police) shall be carried on the railway at the rate of two and one-half cents per mile;

"And whereas the Minister of Justice reports that the Attorneys General of several of the provinces have requested that provincial police be placed on the same footing as the Royal Canadian Police Force with

respect to such rates, and that he considers it reasonable and expedient that authority be granted accordingly:

"Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and in accordance with the authority above cited, is pleased to make the following regulation, and the same is hereby made and established accordingly; viz:

"All members of any police force maintained by and under the direction of the Government of any province while travelling on His Majesty's service shall be given first-class transportation on the railways at the rate of two and one-half cents per mile when required by any person having the superintendence and command of any such force as provided by section 351 of the Railway Act, 1919.

"(Signed) E. J. LEMAIRE,
"*Clerk of the Privy Council.*"

The petition further sets out that such regulation was duly proclaimed in the *Canada Gazette* of the twentieth day of March, 1926, but that notwithstanding the above, the Canadian Pacific Railway Company and the Canadian National Railways have refused to recognize or obey such regulation, or to give transportation to police officers of British Columbia maintained under and by the direction of the Government of the said province of British Columbia, while travelling on His Majesty's service, at the rate mentioned in such regulation, and therefore prays that this Board order and direct the railway companies aforesaid to recognize and obey such regulation and to give transportation to police officers maintained by and under the direction of the Government of any province while travelling on His Majesty's service on their railways, at the rate of two and one-half cents per mile, following the provisions of such regulation.

At the sitting of the Board held in Victoria, B.C., on July 20, 1926, and before such petition was filed, the Deputy Attorney General of the province of British Columbia, in the presence of Mr. Alistair Fraser, K.C., counsel for the Canadian National Railways, drew the attention of the Board to section 351 of the Railway Act and to the Order in Council and regulation aforesaid, as well as to the refusal of the railways to follow the same, and thereupon moved for an Order of this Board to implement the Order in Council aforesaid, and in such motion Mr. Chard, for the province of Alberta, associated himself in support thereof.

On behalf of the Canadian National Railways, Mr. Fraser replied that the Board is without power to thus implement an Order in Council passed under the provisions of section 351 of the Railway Act, taking the ground that the section in question does not include provincial police, but that the service to be rendered by the railways under the section of the Railway Act referred to is confined to His Majesty in the right of the Dominion of Canada, and not in right of the several provinces.

He submitted further, that the railway had not received any notice that the matter would be spoken to at the then session of the Board at Victoria, and stated that if a copy of the application were served upon him, he would make formal reply on behalf of the railway within the time fixed, and the matter was compelled to rest at that point.

Since the session at Victoria in July last, the petition above referred to has been submitted to the Board and served upon the railways. An answer thereto has been filed by Mr. Flintoft, Assistant General Solicitor for the Canadian Pacific Railway Company, concurred in by Mr. Fraser, on behalf of the Canadian National Railways. They agree in contending that there is no authority under section 351 of the Railway Act for issuing the Order in Council in question; that it is, therefore, void and of no effect, by reason whereof no order of this Board should be made, but that the application should be dismissed.

The dispute between the parties now before the Board is within a very narrow compass, and is involved in the construction of section 351 of the Railway Act, which reads as follows:—

"Carrying His Majesty's Mail and Forces

"351. His Majesty's mail, His Majesty's naval or military forces or militia, and all artillery, ammunition, provisions or other stores for their use, and all policemen, constables or others travelling on His Majesty's service, shall, at all times, when required by the Postmaster General of Canada, the Minister of Militia or the Deputy Minister of Militia, or any person having the superintendence and command of any police force, respectively, be carried on the railway, and with the whole resources of the company if required, on such terms and conditions and under such regulations as the Governor in Council makes."

The above-recited section throws upon the railway companies the burden of carrying "any person having the superintendence and command of any police force . . . on such terms and conditions . . . as the Governor in Council makes", and the Order in Council has directed that members of any provincial police force, while travelling on His Majesty's service, be given a reduced rate as therein specified by regulation concerning the carriage of the parties named therein, no part of which required any sanction or order on the part of this Board to make effective.

If members of the several provicial police forces maintained by and under the direction of the governments of the several provinces come within the section immediately above quoted, the railway in compliance with the Act should perform its duty as defined therein.

The section of the Railway Act which clothes the Board with certain powers respecting reduced rates and free transportation, being section 345, has been construed as giving the Board no originating jurisdiction, but as empowering the Board to approve or permit of free carriage or reduced rates in certain instances therein set out. It makes no reference to the parties mentioned in section 351 which is entitled "Carrying His Majesty's Mail and Forces", and there seems to be no relation between these two sections of the Act.

The railways contend that there is no power in the Governor in Council to make the regulation referred to. Concerning this question no opinion is expressed. It seems clear, however, that no action of the Board is contemplated; neither is any such action necessary to implement what may properly be done under section 351, and for that reason I am of opinion that the petition should stand dismissed.

Ottawa, May 11, 1927.

Commissioner Oliver concurred.

GENERAL ORDER No. 441

In the matter of the consideration of the question of proposed regulations governing the location of loading racks and unloading points for gasolene, naphtha, or any inflammable liquid with flash point below 30° F.

File No. 28638.2

Wednesday, the 4th day of May, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*
C. Lawrence, *Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, March 2, 1926, in the presence of counsel for and representatives of the Rail-

way Association of Canada, the Michigan Central Railroad Company, the Canadian National Railways, Canadian Pacific Railway Company, Canadian Bureau of Explosives, Imperial Oil Limited, and McColl Brothers, Limited, and what was alleged; and upon the report of its Chief Operating Officer,—

The Board orders: That the following regulations governing the location and operation of loading racks and unloading points for gasolene, naphtha, or any inflammable liquid with flash point below 30° F., be, and they are hereby, authorized for the observance of railway companies subject to the jurisdiction of the Board, namely:—

(For the purpose of these rules, casinghead gasolene is defined to be any mixture containing a condensate from casinghead gas or natural gas obtained either by the compression or the absorption process, and having a vapour tension in excess of 8 pounds per square inch.)

Part I

Rules Governing the Location and Operation of New Loading Racks and New Unloading Points for Casinghead Gasolene, Refinery Gasolene, Naphtha, or any Inflammable Liquid with Flash Point Below 30° F.

LOADING

1. (*a*) New loading racks for refinery gasolene, benzine, naphtha, or any liquid (other than casinghead gasolene) with flash point below 30° F., must not be located nearer than 50 feet from a track over which passenger trains are moved.

(*b*) New loading racks for casinghead gasolene must be located not less than 100 feet distant from a track over which passenger trains are moved. A retaining wall, dike, or earthen embankment shall be placed between the installation and the track, so constructed as effectually to prevent liquids from flowing on to the track in case of accident.

(*c*) In loading casinghead gasolene, the tank car and the storage tank shall be so connected as effectually to permit the free flow of the gasolene vapours from the tank car to the storage tank, and positively to prevent the escape of these vapours to the air, or the vapours must be carried by a vent line to a point not less than 100 feet distant from the nearest track over which passenger trains are moved.

UNLOADING

2. (*a*) When the new unloading points requiring railroad service for the unloading of tank cars of refinery gasolene, benzine, naphtha, or any liquid (other than casinghead gasolene) with flash point below 30° F. are required, the location shall be subject to negotiation between the carrier and the interested oil company.

(*b*) New locations for the unloading of cashinghead gasolene shall be placed a minimum distance of 100 feet from a track over which passenger trains are moved. A retaining wall, dike, or earthen embankment shall be placed between the installation and the track, so constructed as effectually to prevent liquids from flowing on to the track in case of accident.

STORAGE

3. (*a*) Tanks containing over 500 gallons and not exceeding 18,000 gallons of gasolene, benzine, naphtha, casinghead gasolene, or any liquid with flash point below 30° F., must be located not less than 80 feet from a track over which passenger trains are moved.

(*b*) For capacities exceeding 18,000 gallons, the following distances shall govern:—

Capacity of Tanks (in gallons)	Minimum distance from a track over which passenger trains are moved
18,000 to 30,000	80 feet
30,001 to 48,000	90 "
48,001 to 100,000	110 "
100,001 to 150,000	110 "
150,001 to 250,000	120 "
250,001 to 500,000	150 "
over 500,000	200 "

(*c*) Where practicable, tanks should be located on ground sloping away from railroad property. Tanks must be surrounded by dikes of earth, or concrete, or rather suitable material, of sufficient capacity to hold all the contents of the tanks, or of such nature and location that in case of breakage of the tanks the liquid will be diverted to points such that railroad property and passing trains will not be endangered.

Part II

Rules to be Observed in the Operation of Loading, Unloading, and Storage Facilities Established Prior to the Date of This Order for the Handling of Casinghead Gasolene, Refinery Gasolene, Naphtha, or Any Other Inflammable Liquid with a Flash Point Below 30° F.

LOADING

1. In loading casinghead gasolene, the tank car and the storage tank shall be so connected as effectually to permit the free flow of the gasolene vapours from the tank car to the storage tank, and positively to prevent the escape of these vapours to the air, or the vapours must be carried by a vent line to a point not less than 100 feet distant from the nearest track over which passenger trains are moved.

UNLOADING

2. Where old installations for unloading casinghead gasolene are located within 75 feet of a track over which passenger trains are moved, a retaining wall, dike, or earthen embankment shall be placed between the installation and the track, so constructed as effectually to prevent liquids from flowing on to the track in case of accident.

STORAGE

3. Any tank located within 200 feet of a track over which passenger trains are moved and not on ground sloping away from railroad property must, when practicable, be protected by dikes of earth, or concrete, or other suitable material, so that any liquid escaping from the tank will be held or diverted away from railroad property.

General Rules Applicable to Present and Future Installations

STORAGE

4. (*a*) These regulations apply only to above-ground tanks for which railroad service is required. Underground tanks should be considered by interested railroads as occasion may arise. All storage tanks will be considered above-ground unless they are buried so that the top of the tank is covered with at least three feet of earth.

(*b*) All tanks should be set upon a firm foundation.

(*c*) Each tank over 1,000 gallons in capacity shall have all manholes, handholes, vent openings, and other openings which may emit inflammable vapour, provided with 20 by 20 mesh brass wire screen, or its equivalent, so attached as completely to cover the openings and be protected against clogging. These screens may be made removable, but should be kept normally firmly attached. Manhole covers, when equipped with suitable gaskets, may be kept normally locked down, and need not be provided with screens. Such a tank must be properly vented or equipped with a suitable safety valve set to operate at not more than five pounds per square inch for both interior pressure and vacuum. Manhole covers kept closed by their own weight only will be considered satisfactory.

(*d*) Tanks used with a pressure discharge system must have a safety valve set at not more than one-half of the pressure to which the tank was originally tested.

OPERATION

5. (*a*) In measuring distance from any railroad track to an installation for loading or unloading tank cars, the measurements shall be taken from near rail to near rails opposite centre of spotted car.

(*b*) During the time that the tank car is connected by loading or unloading connections, there must be signs placed on the track, or car, so as to give necessary warning. The party loading or unloading the tank car is responsible for furnishing, maintaining, and placing these signs, and the same party alone has authority to remove them. Tank cars thus protected must not be coupled to or moved. Other cars must not be placed on the same track so as to intercept the view of these signs, without first notifying the party who placed the signs. Before these signs are removed, even temporarily, the party authorized to move them must securely close the outlet valve of the tank car. The outlet valve must not be opened until the tank car is properly protected by signs. Such signs must be at least 12 by 15 inches in size and bear the words "STOP —Tank Car Connected!" or "STOP—Men at Work!", the word "STOP" being in letters at least 4 inches high, and the other words in letters at least 2 inches high. The letters must be white on a blue background.

(*c*) These requirements are in conformity with rule 26 of the General Train and Interlocking Rules for Single Track, which generally provide as follows:—

> "A blue flag by day and a blue light at night, displayed at one or both ends of an engine, car, or train indicates that workmen are under or about it; when thus protected it must not be coupled to or moved, and other cars must not be placed on the same track so as to intercept the view of the blue signals, without first notifying the workmen.
>
> "Workmen will display the blue signals and the same workmen are alone authorized to remove them."

(*d*) All connections between tank cars and pipe lines must be in good condition, and must not permit any leakage. They must be frequently examined by the railway company and replaced by the owner or industry when they become worn, in order to ensure at all times absolutely tight connections. Tank cars must not be left connected to pipe lines except when loading or unloading is going on and while a competent man is present and in charge.

(*e*) Except when closed electric lights are available, the loading or unloading of tank cars shall not be permitted except during daylight when artificial light is not required. The presence of flame lanterns, nearby flame switch lights, or other exposed flame lights or fires during the process of loading or unloading is prohibited.

(*f*) Railway companies shall require hopper doors, dampers, and firebox doors of locomotives in switching service to be closed while passing, and on all locomotives stopping opposite tank car or cars on next adjoining track bearing signs as per clause 5 (*b*); also in every case where a locomotive couples to a tank car at a loading or unloading point.

PIPE LINES

6. (*a*) In laying new pipe lines on railroad property for the loading or unloading of tank cars, they must be laid at a depth of at least three feet, and at points where such pipe lines pass under tracks, they must be laid at least four feet below the bottom of the ties.

(*b*) Existing aboveground pipe lines on railroad property for the loading or unloading of tank cars should, if required by the railroad in the interest of safety, be laid underground. If practicable, these pipe lines should be laid at a depth of at least three feet, and at points where such pipe lines pass under tracks, they should be laid at least four feet below the bottom of the ties.

And the Board further orders: That General Order No. 435, dated December 2, 1926, made therein, be, and it is herby, rescinded.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 440

In the matter of the complaint of the Canadian Lumbermen's Association, et al, *regarding proposed change in the rule governing out of line haul charge in transit tariffs; and the Order of the Board No. 37681, dated May 29, 1926, suspending certain tariff schedules pending a hearing by the Board.*

File No. 26615.84

THURSDAY, the 5th day of May, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, November 4, 1926, the Canadian Lumbermen's Association, Canadian Freight Association, Canadian Shippers' Traffic Bureau, Maple Leaf Milling Company, Quaker Oats Company, W. C. Edwards & Company, Limited, the Canadian National and the Canadian Pacific Railway Companies, and the Boards of Trade of Toronto and Montreal being represented at the hearing, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders:

1. That in Canadian National Railway Tariffs C.R.C. No. E-1068, C.R.C. No. E-1069, and Supplement No. 2 to C.R.C. No. E-697, and Canadian Pacific Railway Corrections Nos. 148, 149, 152, and 153 to Tariff C.R.C. No. E-4126, as well as all other tariffs filed with the Board by railway companies subject to its jurisdiction, rules contained therein which provide that the out of line haul will be the difference between the distance via the shortest route from point of origin to final destination, and the shortest distance from point of original to final destination via the stop-off point, be, and they are hereby, disallowed.

2. That the said Order No. 37681, dated May 29, 1926, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 442

In the matter of the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight, prescribed and approved by General Orders Nos. 203, 204, and 206, dated August 11 and September 7, 1917;

And in the matter of the application of the Canadian Explosives, Limited, for permission to use a certain type of container originally imported from Great Britain for the carriage of black powder from the applicant's plant at Belœil, Quebec, to its Safety Fuse Works at Staynerville, Quebec.

File No. 1717.44

TUESDAY, the 10th day of May, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is field in support of the application and on behalf of the Bureau of Explosives; and upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That paragraph No. 1534, on page 10 of the said Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight, be, and it is hereby, amended by adding at the end thereof the following, namely:—

"Heavy tin cans complying with the regulations of the United Kingdom may be used for the transportation of black powder under the following conditions:—

"(*a*) Not more than fifty pounds of black powder may be shipped in one container, which must be lined with a cloth bag, and after filling the neck of the bag must be securely tied and pushed through the opening into the can. The opening must then be tightly closed by a metal screw cap.

"(*b*) Two of these containers must be placed on their sides in a strong box, with cover, and separated by a piece of fibre or felt for their entire length."

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 38998

In the matter of the application of the Maine Central Railroad Company, hereinafter called the "Applicant Company", for permission to file cancellation supplements to certain freight and passenger tariffs, upon one day's notice.

File No. 27612.20

THURSDAY, the 12th day of May, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company be, and it is hereby, permitted to file cancellation supplements to the following schedules, upon one day's notice, namely:—

Freight.—C.R.C. No. C-2502.

Passenger.—C.R.C. Nos. 298, 299, and 300.

H. A. McKEOWN,
Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application for:

(a) The elimination of all level crossings in the City of Montreal, on the lines of the Canadian National Railways, from the Bonaventure terminus westward to such points within the city as may be considered advisable;

(b) The complaint of the Business Men's Association of Montreal East, submitted by Mr. C. Robitaille, M.P., with respect to crossings in Montreal East, from Moreau-Street Station to the Bout de l'Ile, on the Canadian National Railways;

(c) Consideration of a general scheme for grade separation within the City of Montreal, on the Canadian National Railways, and the electrification of steam engines within the said city.

Files Nos. 13571; 9437.319; 9437.635; 9437.1141; 24218; 24218.1; 27419; 35162; 34904

JUDGMENT

THOMAS VIEN, K.C., *Deputy Chief Commissioner:*

These matters were heard in Montreal, on May 10, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence and myself.

There appeared before us: Alistair Fraser, K.C. (Commission Counsel), for the Canadian National Railways; Paul Mercier, K.C., M.P., and Hon. Alfred Leduc, M.P.P., for the various interests included in St. Henri, St. Cunegonde and other wesctern parts of Montreal; W. H. Butler, K.C., for the Corporation of the City of Montreal; J. K. Smith, for the Montreal Board of Trade; Francois Fauteux, for the City of Verdun; J. C. Groves-Contant and S. Ouimet, for the Montreal Chamber of Commerce; C. N. Armstrong, for the Montreal Central Terminal Company; Pierre Beullac, K.C., for the Bell Telephone Company; William Tremblay, for Maisonneuve; William L. Best, for the Brotherhood of Locomotive Firemen and Enginemen; W. L. Scott, K.C., for the New York Central Railway Company.

The question of grade separation, or the abolition of grade crossings on the Canadian National Railways' tracks between Turcot Yard and Bonaventure Station; and St. Henri and Point St. Charles was raised by the Montreal District Board of Trade in 1910. In the same year the mayor, in his inaugural

address, stated that among other things the efforts of the Board of Control would be in the direction of urging the consideration of plans for the abolition of railway crossings on the street level. The matter was also referred to by Ex-Mayor Payette in his valedictory address, and by Alderman Lapointe in his reply to the inaugural address. On April 12, 1910, the Board made an order (No. 10117) fixing April 28 as the date for hearing the question of doing away with all level crossings referred to by the Board of Trade of the district of Montreal, particularly those of the Grand Trunk Railway in the city of Montreal, west of Bonaventure Station. The city of Montreal, the Montreal Street Railway, the Montreal Water Power Company, the City Waterworks of Montreal, the Bell Telephone Company, the Canadian Pacific Railway Telegraph Company, the Great Northwestern Telegraph Company, and the Grand Trunk Railway were made parties to the proceedings.

At the hearing, there was no discussion as to the necessity of the construction of a viaduct, it appearing to be the general opinion that there should be grade separation, and Mr. Archambault, for the city, stated that the city of Montreal was ready to abide by any decision which might be given by the Board in connection with the question of elevation of the tracks of the Grand Trunk Railway, and further, that the city had been given permission to borrow $2,000,000 as its share of the cost of track elevation.

After further discussion, it was agreed that the Grand Trunk Railway should have until August 1 to prepare preliminary plans and, after considerable delay, the railway filed plans about the end of April, 1911, and at a hearing in Montreal on May 18, 1911, the city asked for further delay so that it could prepare plans, together with criticism of the Grand Trunk proposition which delay was granted.

The plan submitted by the railway shows track elevation from Bonaventure Station to the east end of the Turcot yard, which I will call Section A, and from St. Henri Station to the west end of the Point St. Charles yard at Wellington street, which I will call Section B. On Section A there are street openings shown at Mountain, Guy, St. Martin, Chatham, Fulford, Vinet, Atwater, Rose de Lima, St. Henry Place, St. Marguerite and St. Elizabeth (now De Courcelles) streets, and at Cote St. Paul road (now St. Remi street). The distances between these openings vary from 580 feet to 1,490 feet.

On Section B openings are shown at Notre Dame, St. Ambroise, St. Patrick, Atwater, D'Argenson, Charlevoix, Hibernia and Wellington, varying in distance apart from 670 feet to 1,610 feet.

The estimate of the company, which is not of much value now, for a four-track viaduct (five tracks from Atwater avenue to the Bonaventure Station) and not including the station, amounted to $5,600,000. In order to provide for this number of tracks, considerable land would have to be acquired. Mr. Mountain, then Chief Engineer of the Board, made estimates (1) of what it would cost to elevate the Grand Trunk Railway tracks at present on the level, and (2) in addition, what it would cost to elevate all the ground that the Grand Trunk now have without adding additional tracks, but leaving the embankment ready for additional tracks, if required, and not including the structures for the additional tracks. The estimate for the former was $4,046,952.80 and for the latter $5,000,000.

At the hearing in Montreal, February 22, 1912, it was practically decided that all the streets should be left open except one near Mountain street. That would mean some thirty-one openings in all. As to seniority, it was claimed that twelve of the streets were in existence at the time the railway was built, and are therefore senior to the railway. The list follows: Mountain, Acqueduct, Guy, Richmond, Seigneurs, Chatham, Canning, Upper Lachine road (St. Henri Square), Cote St. Paul road (now St. Remi street), Charlevoix, Notre Dame (St. Henri station), and Wellington; a total of 12.

The railway claimed seniority at the following: Versailles, Lusignan, St. Martin, Fulford, Dominion, Vinet, Atwater, Rose de Lima, Convent or Metcalfe, St. Ferdinand, St. Philippe, St. Margaret, St. Elizabeth (now De Courcelles street), Notre Dame, St. Ambroise, St. Patrick, Atwater, D'Argenson, Hibernia; a total of 19.

Between 1912 and 1916 a great deal of discussion took place, many details were settled, and on February 25, 1916, Mr. Mountain, Chief Engineer of the Board, made a new estimate of the cost of grade separation, placing it at $7,680,787.

The matter dragged on until 1920, by which time everything had advanced so much in price that all the parties, apparently, were content to let it die, and nothing appears on the file as to grade separation since the above date.

Herewith is a list of the crossings where accidents have occurred, the dates and the cause where it was ascertainable:—

St. Henri Square—Gates

Oct. 10 1926	1 killed.
Mar. 11, 1914	1 injured.

St. Martin Street—Gates

Jan. 22, 1910	I injured.
Oct. 9, 1926	1 killed.

St. Elizabeth Street (now De Courcelles street)—

Nov. 12, 1910	1 killed. Passed under gates.
May 29, 1913	1 killed. Passed under gates.
Aug. 24, 1918	1 injured. Passed under gates.
May 31, 1921	1 killed. Passed under gates.
Oct. 14, 1921	1 injured. Improper operation of gates.
Jan. 6, 1924	1 injured. Passed under gates.
May 4, 1926	1 injured. Improper operation of gates.

Vinet Street—

Feb. 21, 1908	1 killed. Gates out of order.
June 5, 1911	1 killed. Passed under gates.
Dec. 22, 1914	1 killed. Intoxicated.
Dec. 5, 1916	1 killed. Walking on track.
May 15, 1918	1 killed. Passed under gates.
Oct. 18, 1919	1 killed. Passed under gates.

Atwater Avenue—

Oct. 8, 1909	1 injured. Passed under gates.
Nov. 11, 1914	Ambulance wrecked. Gates being rebuilt, 2 watchmen on duty.
Nov. 25, 1914	1 killed.
Feb. 5, 1916	1 killed. Passed under gates.
Sept. 5, 1918	1 injured. New gates being installed. Crossing protected by watchman.
Oct. 2, 1923	1 injured. Passed under gates.
Oct. 15, 1924	1 injured. Passed under gates.
Dec. 19, 1925	1 injured.

St. Marguerite Street—

Feb. 27, 1909	1 killed. No protection.
Dec. 20, 1915	1 injured. No protection. Gates installed 1918.

Rose de Lima Street—

Aug. 20, 1907	1 injured.
May 5, 1908	2 injured.
Aug. 10, 1913	1 injured. Passed under gates.
Feb. 5, 1921	1 injured.

Acqueduct Street—

Nov. 25, 1911	1 killed. Passed under gates.
Aug. 1, 1918	1 injured. Passed under gates.
July 17, 1922	1 injured. Passed under gates.
July 23, 1924	1 injured. Passed under gates.

Lusignan Street—

Nov. 4, 1925	1 injured. Passed under gates.
April 21, 1926	1 injured. Passed under gates.

Chatham Street—

Sept. 23, 1913	1 killed. No witnesses. Gates.
Dec. 14, 1917	1 killed. Passed under gates.
Oct. 15, 1918	1 injured. Passed under gates.
May 10, 1920	1 injured. Passed under gates.
June 19, 1920	1 injured. Passed under gates.
April 19, 1924	1 injured. Passed under gates.

Richmond Street—

Sept. 9, 1909	1 killed. Gates not lowered in time.
Jan. 17, 1919	2 injured. Passed under gates.
Mar. 1, 1921	1 injured. Trespasser.
Jan. 18, 1923	1 killed; 1 injured. Passed under gates.
Sept. 22, 1925	1 injured. Passed under gates.
June 7, 1926	1 injured. Passed under gates.
Aug. 1, 1926	1 injured. Passed under gates.

Canning Street—

July 27, 1915	1 killed. Passed under gates.
Oct. 13, 1923	1 killed; 1 injured. Passed under gates.
Dec. 18, 1923	1 injured. Passed under gates.

St. Philippe Street—

March 23, 1906	1 killed. No protection.
Aug. 6, 1906	1 injured. No protection.
Dec. 12, 1908	1 injured. No protection.
Feb. 2, 1916	1 injured. No protection. Gates installed 1918.
Sept. 13, 1921	1 injured. Passed under gates.
Oct. 29, 1923	1 injured. Passed under gates.
Feb. 2, 1924	1 injured. Passed under gates.

Notre Dame Street (near St. Ferdinand)—

Dec. 28, 1907	Collision between engine and street car. No one hurt
Mar. 29, 1908	1 trespasser injured.
Oct. 8, 1908	1 injured. Passed under gates.
Oct. 28, 1924	1 killed. Passed under gates.

St. Ambroise Street—

Nov. 18, 1913	1 killed. No protection. Gates installed 1918.

Hibernia Road—

Oct. 23, 1911	1 injured. Passed under gates.
Nov. 17, 1913	1 injured. Passed under gates.
Dec. 28, 1918	1 injured. Passed under gates.
Jan. 26, 1919	1 injured. Passed under gates.
Dec. 6, 1922	1 injured. Passed under gates.

Convent Street—

June 10, 1909	1 injured. No protection.
April 20, 1913	1 injured. Day watchman.
Aug. 7, 1916	1 injured. Day watchman.
Jan. 20, 1917	2 injured. Day watchman.
Nov. 20, 1917	1 injured. Day watchman. Gates installed 1918.

Fulford Street—

May 27, 1912	1 killed. Passed under gates.
June 9, 1914	1 injured. Passed under gates.
June 22, 1920	1 killed. Passed under gates.

Guy Street—

Nov. 1, 1911	Collision with street car. 2 injured. Gate protection and interlocking plant.
Nov. 22, 1911	1 injured. Engineer passed stop signal.
May 30, 1914	1 injured. Passed under gates.
Dec. 9, 1917	8 injured. Collision with street car. Engineer passed stop signal.
June 30, 1922	1 injured. Passed under gates.
July 8, 1924	1 injured. Passed under gates.

Versailles Street—

Dec. 10, 1910	1 injured. Passed under gates.
Mar. 18, 1913	2 injured. Gates improperly operated.
Feb. 16, 1918	1 killed; 1 injured. Gates improperly operated
Oct. 3, 1924	1 injured. Passed under gates.

Mountain Street—

There are thirteen tracks across Mountain street, some protected by gates and others by watchmen.

Aug. 12, 1912	1 killed. Passed under gates.
June 7, 1913	1 killed. Warned by conductor to keep off track.
Oct. 28, 1919	1 injured. Passed under gates.
Feb. 3, 1922	1 killed. Flagman left crossing.
Nov. 7, 1925	1 injured. Boy ran into side of car.

St. Remi Street (Cote St. Paul road)—

Oct. 26, 1908	1 killed. Passed under gates.
Feb. 9, 1911	1 killed; 1 injured. Passed under gates.
Feb. 22, 1913	1 killed. Passed under gates.
Feb. 4, 1914	1 injured. Horse bolted under gates.
Nov. 3, 1916	1 killed. Passed under gates.
Nov. 29, 1916	1 injured. Passed under gates.
July 25, 1917	1 injured. Passed under gates.
April 10, 1920	1 injured. Gates improperly operated.
April 4, 1923	1 injured. Passed under gates.
Oct. 21, 1924	1 injured. Passed under gates.

The above list, which is probably incomplete during the earlier years of the Board, covers the period from 1906 to the end of 1925 and shows that thirty-four people were killed and eighty-three people were injured. Quite a number of these accidents occurred through the improper operation of gates. It is the practice of some of the gatemen to leave the gates down for some minutes at a time until vehicles require to cross. During the intervals when the gates are down unnecessarily, pedestrians naturally get tired of waiting and pass under the gates. This sort of thing soon gets to be a habit, and eventually some one gets caught.

In 1925, the business men of St. Henri made application to the Board for relief and proposed that an overhead bridge for pedestrians be constructed at De Courcelles street and one for general traffic connecting St. James and Notre Dame streets, in the vicinity of St. Marguerite street. The latter would cost a large amount, and, if constructed, would have to be scrapped in the event of a general scheme for grade separation being undertaken.

At Montreal, on the 10th of May, 1927, appearing on behalf of the city of Montreal, Mr. Butler (volume 512, page 8415 et s.) stated: "I do not think there can be any doubt—at all events it is the opinion of the corporation of the city of Montreal—that these level crossings, at all events from Bonaventure west, are dangerous and they should disappear, both because they are dangerous and for the inconvenience and delay they cause to the circulation of traffic".

Mr. Fraser, appearing on behalf of the Canadian National Railways (volume 512, page 8418 et s.), stated: "Mr. Chairman, on behalf of the Canadian National Railways, we recognize that the time has arrived when the whole question of grade crossings in the city of Montreal will have to be faced. It was dealt with, as the Board knows, some years ago, and for various reasons it had to be postponed; but it will have to be faced in the immediate future." And at page 8419: "The Board might appoint your own Chief Engineer to take hold of the whole situation and make a report to the Board on what the situation is to-day." And further: "I am in agreement with Mr. Butler in that respect, except that I go further and suggest that this procedure be adopted, and so far as we are concerned, speaking for the management, we are prepared now to face the situation in a large way."

Mr. Paul Mercier, M.P., on behalf of the citizens of St. Henri, and the Hon. Alfred Leduc, M.P.P., on behalf of St. Cunegonde and other western parts of Montreal, also expressed their gratification at seeing the Board set this matter down for hearing and requested the Board energetically to deal with the whole problem.

This matter is of great importance and we must proceed very carefully. There is a great deal of money involved and a scheme of elimination must be involved which will give the greatest possible degree of protection and convenience to the public, with the least possible expenditure of money.

Under section 69 of the Railway Act, the Board may appoint, or direct any person to make an inquiry and report upon any application, complaint or dispute pending before the Board, or upon any matter or thing over which the Board has jurisdiction.

I am therefore of the opinion that all these matters should be referred to the Chief Engineer, who should be appointed and directed to make an inquiry and report on the whole situation of level crossings in Montreal, on the Canadian National Railways from the Bonaventure Station west, and from the Moreau Street Station east. The Chief Engineer should report progress to the Board, from time to time, and evolve a scheme for the consideration of the Board.

The Board shall then act, after due notice to all interested parties.

Commissioners Boyce and Lawrence concurred.

Ottawa, May 27, 1927.

ORDER No. 39079

In the matter of (a) the application for the elimination of all level crossings in the City of Montreal, on the Canadian National Railways, from the Bonaventure terminus westward to such points within the city as may be considered advisable; (b) the complaint of the Business Men's Association of Montreal East with respect to crossings in Montreal East, from Moreau Street Station to Bout de l'Ile, on the Canadian National Railways; and (c) the consideration of a general scheme for grade separation within the City of Montreal, on the Canadian National Railways, and the electrification of steam engines within the said city.

Files Nos. 13571, 9437.319, 9437.635, 9437.1141, 24218, 24218.1, 27419, 35162, and 34904.

Friday, the 27th day of May, A.D. 1927.

Thomas Vien, K.C., *Deputy Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*
C. Lawrence, *Commissioner.*

In pursuance of the powers conferred by sections 62 and 69 of the Railway Act, 1919,—

The Board orders: That Thomas L. Simmons, its Chief Engineer, be, and he is hereby, appointed and authorized to make inquiry and report to the Board upon the whole situation of level crossings in Montreal, on the Canadian National Railways, from Bonaventure Station west, and from Moreau Street Station east; to report progress to the Board from time to time; and to evolve a scheme for the consideration of the Board.

THOMAS VIEN,
Deputy Chief Commissioner.

Application of the City of Montreal, P.Q., under Sections 256 and 257 of the Railway Act, 1919, for an Order authorizing the widening of the present St. Remi Street crossing over the Canadian National Railways, and the installation of double gates at said crossing, instead of single gates as at present.

File No. 9437.647

JUDGMENT

THOMAS VIEN, Esq., K.C., *Deputy Chief Commissioner:*

This application was heard at Montreal on May 12, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence, and myself.

There appeared before us W. H. Butler, Esq., K.C., on behalf of the city of Montreal, and Alistair Fraser, Esq., K.C., on behalf of the Canadian National Railways.

Saint-Remi street is an old King's highway, within the city of Montreal, running from Cote St-Paul across the canal, and down and across Notre-Dame street, and up into the upper part of the city. It was in existence much before the construction of the Grand Trunk Railway. It is presently 40 feet wide, and the city has decided to widen it to 66 feet.

It is crossed by the Grand Trunk Railway tracks, and the railway is junior to the highway.

It does not appear that when the railway crossing was established any provision was made for the protection of the crossing, but, at a certain time which could not accurately be ascertained, the Grand Trunk Railway Company felt that it had become necessary to erect gates for the protection and safety of the public, and, voluntarily, and at its own expense, installed, maintained, and operated them.

This voluntary action of the Grand Trunk Railway Company was not peculiar to the crossing at Saint-Remi street, but identically the same action was taken by the company at a number of other streets within the city of Montreal, and elsewhere in Canada.

Later the company appeared before the Board and requested an order for the purpose of legalizing these gates and, on October 9, 1918, Order No. 27770 issued accordingly.

At present the gates are single-arm gates, erected on each side of the railway right of way, operated day and night from a tower. The widening of the street and of the crossing will necessitate the installation of double-arm gates, and the moving back of certain fences, sidings or industrial spurs.

The city agrees to pay all the cost of construction, including the additional arms of the gates, the removal of those sidings and their restoration if necessary; it further agrees to pay 50 per cent of the maintenance, including the maintenance of the highway within the railway right of way; in fact, every item of expense except the cost of operation.

The railway company does not oppose the application. It simply requests that the city be ordered to pay 40 per cent of the cost of operation, and that is the only point in controversy.

The railway company admits that, for the time being, the operation of a double-arm gate would probably not cost more than the operation of the single-arm gate. It points out, however, that if the traffic grows, an additional watchman will be necessary. (Record, vol. 513, p. 8648.)

The city submits that, as it is senior to the railway, and undertakes to pay all the expenses of construction, and 50 per cent of all the expenses of

maintenance incurred by the change, and as the cost of operation will not be greater after the change than before, the railway company should continue to operate the gates at its own expense.

I read in the Record, vol. 513, page 8649, the following:—

> Mr. Fraser: "I will not take time to give the reasons. . . but, as I say, the universal practice is that when two parties come in and join in a situation, they bear the cost of that situation in proportion to their user of it. They say that the additional cost is not a controlling factor, but supposing that it was necessary for this 20 feet for them to set up their own plant and operate it, they would have to bear the whole cost. If they come to us and say: You operate it for us in more difficult circumstances, it is harder to get the gates down, it is a simple act of justice."
>
> Mr. Butler: "But the expense is not increasing in operating it. . . . Are we going to pay for something, or are we going to contribute for something, for operating these gates, when it is the same man who operates them, receiving the same salary? Why should we be asked to contribute one penny?"

Authorities were quoted both by the railway and by the city on this matter.

No iron rule was ever set down by the Board on the question of the apportionment of the cost of protection at railway crossings. Each case is judged on its own merit.

Generally speaking, when a crossing is established, and protection ordered, the junior bears the cost of such protection. When protection is ordered after the crossing has been in existence for some time, the cost of protection is not always apportioned according to the junior and senior rule.

The tendency has rather been to consider whether protection was rendered necessary by increased traffic on the highway or on the railway, or on both, and to apportion the cost accordingly.

In this instance, the seniority of the city is undisputed and no additional protection is necessary.

The widening of the street will necessitate some rearrangement of fences and sidings, entail additional maintenance of the street within the railway tracks, and another arm to the gates.

For the time being, no extra expense of operation will be incurred. The same gateman will operate a double-arm gate as well as it does a single-arm gate, from the same tower, with the same lever.

Reserving decision as to the cost of any further protection which it might be necessary for the Board to order, I think that the application should be granted, authorizing the city, under sections 256-257 of the Railway Act of 1919, to widen the present Saint-Remi street crossing over the Canadian National Railways, and authorizing the installation of double-arm gates at said crossing instead of the single-arm gates as at present, including the removal of sidings and their restoration if necessary. The whole cost of construction to be at the expense of the applicant; the cost of the maintenance of the gates and of the highway within the right of way of the company to be divided equally between the city of Montreal and the Canadian National Railways; the cost of operation to continue to be as at present, at the expense of the railway company.

Commissioners Boyce and Lawrence concurred.

Ottawa, June 1, 1927.

Application on the question of protection at the crossing of Guy Street, Montreal, P.Q., Canadian National Railways.

File No. 9437.787

JUDGMENT

THOMAS VIEN, Esq., K.C., *Deputy Chief Commissioner:*

This matter was heard at Montreal on May 12, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence, and myself.

There appeared before us: on behalf of the Canadian National Railways, Alistair Fraser, Esq., K.C., and on behalf of the Montreal Tramways Company, the Hon. J. L. Perron, K.C.

This matter originated with a report from our inspector, Mr. McCaul, dated January 29, 1927, at the occasion of a serious accident which occurred on the line of the Canadian National Railways, Montreal terminals, at Guy street crossing, on January 25, 1927, at 6.33 p.m., when the Canadian National Railways engine No. 5278, moving light, tender first, from Bonaventure station to Turcot shops, came in collision with the Montreal Tramways electric car No. 772, moving on Guy street, northbound.

The engine was moving at a speed of eight or ten miles per hour when, about 40 feet from the street line, the engineer saw the electric car coming on the crossing. He immediately applied his air-brake in emergency, and closed the throttle.

The driving wheels of the engine locked and skidded, and the tender struck the electric car, throwing it off its trucks and turning it on its side.

There is an interlocking plant at the Guy street crossing since a number of years. The gates, derails, on the Montreal Tramway line, and the signals, on the Canadian National railway, are interlocked.

After the accident, it became apparent that more adequate protection was necessary at that crossing for the safety of the public, and of both the railway and the tramway companies.

The railway company at the hearing at Montreal filed a plan, No. SD-1061A, dated April 26, 1927, describing a system of dwarf signals to be installed in lieu of the present semaphore signal system.

The Montreal Tramways Company has no objection to the change suggested by the railway company, but requests that it be at the expense of the latter.

The Chief Engineer and the Chief Operator Officer of the Board both concur in a recommendation that the railway company be authorized to remove the semaphore signals shown in yellow on the plan above referred to, and install the dwarf signals as shown in red on the same plan.

The adequacy of the proposed additional protection is not in controversy. The only question to be determined is the apportionment of the cost thereof.

The Montreal Tramways Company have filed an agreement executed at Montreal on August 11, 1899, between the Grand Trunk Railway Company, represented by Mr. Charles Hayes, General Manager, and the Montreal Street Tramways Company, represented by the Hon. L. Forget, president, and Mr. Martin K. Watts, Secretary.

The agreement refers to three orders of the Railway Committee of the Privy Council of Canada, dated November 29, 1894, May 11, 1896, and December 29, 1896, respectively.

It is then stated that a dispute has arisen between the two parties as to the extent of their respective obligation under the said orders, and that they have agreed to terminate all disputes between themselves for the future.

Clause 1 reads as follows:—

> "The Montreal Company agrees to pay to the Grand Trunk and the Grand Trunk agrees to accept the sum of one hundred dollars per month, payable on the last day of each month, commencing from the first day of January last past, *in full and in lieu of all payments, work or obligations of the Montreal Company towards the Grand Trunk in respect of the said crossings or of any orders made or to be made by the Railway Committee of the Privy Council of Canada in regard thereto.*"

Mr. Fraser, on behalf of the Canadian National Railways, submitted that the payment of $100 per month by the tramway company was in respect of its obligations then due, and not in respect of all further obligations in connection with that crossing. (Record, volume 513, p. 8601 and following.)

Confronted with the exact language of the section quoted to him by Commissioner Boyce, Mr. Fraser was obliged to say:—

> "I am not facing this agreement with a great deal of confidence; . . . if I were to argue on the other side, I would argue it a great deal more strongly."

The Hon. Mr. Perron, on behalf of the tramways company, submitted that conditions had not changed at Guy street crossing since the two Orders in Council of 1894-96 and the agreement of 1899. That, because an accident occurred last year, the Canadian National Railways are not entitled to ask to set aside an agreement in existence since 1899, voluntarily entered into by both companies, and that no good reason could be advanced to justify the Board in disregarding a contract binding both companies.

Mr. Fraser submitted further (pp. 8608-09-10) that, notwithstanding the agreement, if it were necessary to increase the protection, the Board under sections 256-257 of the Act could and should issue a just and reasonable order in respect of such protection, and submitted that it was not a fair and a proper thing for the railway company to bear such a substantial proportion of the cost of that crossing as it was doing at the present time, under the agreement.

Mr. Fraser quoted the Board's decision in the King's street crossing at Hamilton, but, as pointed out at the hearing, in that case there was no change made to the agreement entered into between the railway company and the municipality. Under the agreement, the municipality could not ask the railway company to build a bigger bridge, but they come to the Board, and the Board, exercising its discretion under the Railway Act, apportioned the cost of the additional construction as it deemed fit.

Mr. Fraser also suggests the possibility of a grade separation at Guy street, and the unreasonableness of compelling the railway company to shoulder alone the enormous expense that would be involved if a subway were ordered.

I do not believe that the Board is called upon to determine now what its decision should be in respect of the apportionment of the cost of a grade separation at Guy street crossing. This will be considered when the occasion arises.

In the present instance, the whole question boils down to the rearrangement of the signals to insure a greater degree of safety both to the railway company and to the tramway company.

I am unable to find on file or in the record any good reason why an agreement voluntarily entered into between two companies like the Grand Trunk Railway Company and the Montreal Tramways Company should be set aside, when the very language of the agreement states that the parties intend thereby to terminate all disputes between them for the future, and when, in consideration of the payment of $100 per month, the Grand Trunk Railway Company undertakes to relieve the Montreal Tramways Company of all payments, work or obligations in respect of the said crossings or of any orders made or to be made by the Railway Committee of the Privy Council in regard thereto.

Without committing the Board to any decision on the apportionment of the cost if the occasion arose of ordering a grade separation at Guy street crossing, I am of the opinion that the railway company should be authorized to remove the semaphore signals shown in yellow on plan No. SD-1061A of April 26, 1927, on file, and to install and maintain in lieu thereof the dwarf signals shown in red on the said plan; the cost of such removal, installation and maintenance to be at the expense of the railway company.

Commissioners Boyce and Lawrence concurred.

Ottawa, June 2, 1927.

Consideration of the question of protection at First Avenue crossing, Lachine, P.Q., Canadian National Railways

(File No. 30528).

JUDGMENT

Thomas Vien, K.C., *Deputy Chief Commissioner:*

This matter was heard at Montreal on May 11, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence and myself.

There appeared before us: on behalf of the Canadian National Railways, Alistair Fraser, Esq., K.C., and on behalf of the municipality of Lachine, A. S. Pelletier, Esq., K.C.

This matter was brought to our attention by a report of our inspector Mr. McCaul, on the 3rd of March, 1924, in connection with an accident whereby a man was killed, on the 26th of September, 1923. On the 31st of May, 1924, our inspector Mr. Lafontaine reported another accident which occurred on the 19th of May, 1924, wherein another man was killed. On the 16th of September, 1926, our inspector Mr. McCaul further reported this crossing at the occasion of an accident which occurred on the 31st of August, 1926, wherein two persons were killed and one seriously injured.

The town of Lachine made an application for the installation of gates to replace the present automatic electric bell, submitting that constant shunting on industrial spurs nearby causes the bell to ring at times when no train is crossing, which has the effect of making the people careless.

Our Chief Engineer, reporting on September 29, 1926, states that while he was on the ground, a train shunting at some distance to the east kept the bell ringing for fifteen minutes.

The recommendation was that double bells and wigwags should be added to the existing protection. On December 2, 1926, the town informed the Board that it considered that no additional protection should be ordered for the time being.

After the last accident which took place, a statutory "Slow" order was placed at the crossing, and the railway urgently requested that such "Slow" order should be lifted. In view of the numerous accidents which had occurred, the Board felt unable to lift the "Slow" order, pending further investigation, and the matter was set down for hearing.

At the hearing, it was revealed that at the station of Dominion, a thousand feet away, the way-freight has some shunting to do, within the bonded area, which causes the bell to ring even if no train passes over the crossing. It is quite apparent that a bell and wigwag is not a suitable mode of protection at a crossing where shunting is taking place within the bonded area; nor would gates meet the situation adequately for the same reason.

It would appear that the best protection in this case would be provided by the appointment of watchmen, working in two shifts, from 6 o'clock in the morning until 10 o'clock at night.

Mr. Pelletier, on behalf of the town of Lachine, submitted that the railway company should be called upon to bear part of the expense, because the protection of that crossing is required on account of the operations of the railway. He admitted (Record, volume 513, page 8518) that if it were an ordinary crossing, the municipality would have to be burdened with the maintenance of the protection, but invoked, as a special circumstance, the fact that the additional protection was required by the special operations of the railway.

It is admitted that the railway is senior to the highway. This crossing was formerly a farm crossing, and was converted into a public crossing on July 11, 1911, by order of the Board No. 14462. The Order provides that the crossing will be protected by an automatic electric bell, at the expense of the town. It is to be noted that Second avenue mentioned in Order No. 14462 is now First avenue, and this crossing is dealt with in paragraph 4 of the order.

The evidence does not bear out Mr. Pelletier's suggestion that the railway is carrying out there extraordinary operations. It is an ordinary crossing. There is some shunting done within the bonded area, but there is nothing extraordinary in that.

It does not appear from the evidence that there is any good reason to change the decision of the Board as to the apportionment of the cost of protection.

I am therefore of the opinion that an order should issue, directing this crossing to be further protected daily, in addition to the existing electric bell, by a flagman, between the hours of 6 a.m. and 10 p.m.; such flagman to be appointed by the Canadian National Railways, and the city of Lachine to pay the wages of such flagman to the Canadian National Railways, upon accounts being rendered therefor monthly.

Commissioners Boyce and Lawrence concurred.

Ottawa, June 2, 1927.

Application of Benjamin Leduc, of the City and District of Joliette, Que., for the reconstruction, maintenance and upkeep of a private bridge to serve as a means of communication between portions of lot 163 severed by the railway tracks of the Canadian Pacific Railway.

File No. 1750.18.163

JUDGMENT

Thomas Vien, Esq., K.C,. *Deputy Chief Commissioner:*

This matter was heard at Montreal, on May 11, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence and myself.

There appeared on behalf of the applicant: Mr. F. G. Coffin and Mr. Maurice Tellier, solicitors; and, on behalf of the Canadian Pacific Railway, MM. E. P. Flintoft, and L. G. Prévost, and for the city of Montreal, W. H. Butler, Esq., K.C.—with a watching brief.

The applicant submitted that, by virtue of a deed of sale before A. C. Décary, N.P., dated Montreal, June 11, 1888, his father and predecessor in title Gilbert Leduc had sold to the Atlantic and Northwest Railway Company, for the purpose of its right of way, a certain strip of land forming part of lot No. 163 of the plan and official book of reference of the cadastre of the municipality of the parish of Montreal, as appears at an authentic copy of the deed on file.

Among other conditions, the railway company undertook to construct, maintain and operate over their railway right of way an elevated bridge, fifteen feet wide, with a hand-rail at a point as near as possible the centre of said lot No. 163, for the use and convenience of the vendor, his heirs and assigns, so as to allow them to cross the railway at any time. The railway company then took possession, built the bridge and maintained it ever since. The Canadian Pacific Railway Company now operates the Atlantic and Northwest Railway, and has assumed its obligations.

The applicant is an assign of Gilbert Leduc, Sr., by virtue of a donation, dated the 8th of April, 1918, and duly registered on April 27, 1918, under the No. 359192 of the registration office of the county of Hochelaga and Jacques-Cartier, of lots 245-246 of the subdivision of the original lot No. 163 of the plan and official book of reference of the parish of Montreal, with all the appurtenances active and passive, apparent or occult, just as it is at present, without any exception or reserves on the part of the donor.

Subsequent to the deed of sale by Leduc to the railway company, lot No. 163 was subdivided by its owners into several scores of building lots. A street allowance was provided, approximately in the middle of the lot, and is now known as Grand Boulevard; the bridge built by the railway company is also in the middle of lot No. 163, and opens at both ends on the Grand Boulevard.

In 1908, the Canadian Industrial Co. Ltd., then the owners of a large part of this property conveyed this street allowance to the town of Notre-Dame de Grâce, from the Lachine road up to the northerly end of lot 163 and its subdivisions, and away past Sherbrooke street on both sides of the Railway, the town to have immediate possession, but only for the purpose of a public street. The bridge existed then since 1888, but no mention is made of it in the deed of conveyance to the town.

Soon thereafter Grand Boulevard was opened to the public, lots were sold on each side and were gradually built upon.

At the hearing, Mr. Flintoft stated, without contradiction, that the company was constant in its efforts to prevent the use of this bridge by the public, but without success, although signs and gates had been erected. Sherbrooke street was in a very bad condition, and the Boulevard became a regular motor highway to Montreal West and beyond. The bridge became a menace to the public, its structure being too weak for the heavy traffic passing upon it.

On April 28, 1925, the Canadian Pacific Railway drew the attention of the Board to this danegrous situation, and to the impossibility for the railway company to prevent such trespassing, gates and warning signs being of no avail.

This matter was set down for hearing on May 11, 1925.

Appearing on behalf of the city of Montreal, Mr. Butler requested that this matter should be allowed to stand. He admitted that it had been used in spite of the objections of the Canadian Pacific Railway as a highway crossing. He suggested, however, that this bridge was the only one that gave access from the north to the south side of Décary Boulevard and to Montreal West, and if it were shut down at once, the public would be exposed to a great deal of inconvenience. The matter of giving access from one side to the other was under advisement by the city, and it was a matter which would take some time before a decision could be reached. (Record Vol. 440, pp. 665-666.)

On October 17, 1925, no further action having been taken by the city, one of our inspectors strongly urged an immediate decision by the Board, and, on November 14, 1925, a similar request was made by the railway company.

The matter was again set down for hearing, at Montreal, on January 7, 1926.

Mr. Butler appeared and stated that the city of Montreal had had, for some time, and had still under consideration the question of a crossing somewhere in the neighbourhood, but had arrived at no decision. (Record, vol. 449, p. 129.)

Mr. McLeod, the City Engineer, added that the structural engineers of the city were than at work on a scheme. (Ibid, page 135.)

There was on file and on the record abundant evidence that the bridge was dangerous, being much narrower than the street, and much too weak for the heavy motors passing over it; that it was impossible for the railway company to prevent the public from using it, because it opened at both ends on a public street, and people would trespass, notwithstanding the existing gates and warning signs; it appeared moreover that the bridge structure did not provide the standard clearances required by our regulations.

A fatal accident had occurred on March 3, 1925, wherein engineer Carmody was instantly killed, whilst leaning out from the vestibule door of the engine to see if any water was escaping from his hose-bag, and while in this position, his head came in contact with a post on the bridge.

Upon inspection, the clearances were found insufficient, and standard side-clearances of six feet were recommended.

On January 22, 1926, the Board issued Order No. 37273, directing the Canadian Pacific Railway Company to remove that bridge within four months, so as to give a reasonable time to the city to act if it deemed it advisable. At the expiration of the four months, after due notice to the city, the bridge was removed.

The applicant now requests that an Order do issue directing the railway company to reconstruct and maintain the said elevated bridge, with the conditions specified in the deed of sale filed as exhibit No. 1 of the applicant, viz: the deed of sale by Gilbert Leduc to the Atlantic and Northwest Electric Company, on June 11, 1888.

The applicant, as mentioned above, is the successor in title of Gilbert Leduc to the extent of the two subdivided lots Nos. 245-246 of what was originally a farm and known under lot No. 163 of the parish of Montreal.

It is important to note that he became the owner of these two subdivisions on April 10, 1918, i.e., ten years after the dedication of the street allowance to the town, and that the deed of donation to him by his father describes the property: "just as it is at present, without any exception or reserve on the part of the donor," no mention being made of the right of passage originally reserved.

In 1908, the Canadian Industrial Co., Ltd., also a successor in title of Gilbert Leduc for a large part of the property, including the street allowance on which the bridge opened, having conveyed to the town this strip of land to be used as a public street, by its own act rendered it impossible that the bridge be used any longer exclusively as a farm crossing.

The town of Notre-Dame de Grace, and later the city of Montreal, never claimed the bridge as part of its street. At the hearing, Mr. Butler said: "Our position was that that was a private bridge, and did not concern us, and we took no part." (Record, vol. 513, page 8526.)

When the Board issued Order No. 37273, lot No. 163 was no longer a farm, in the parish of Montreal, as originally; it was subdivided into lots, built upon, within the city. The crossing reserved by Gilbert Leduc was being used illegally by the public at large. This illegal conversion of a private crossing into a public crossing was rendered possible by the act of one of the successors in title of Gilbert Leduc. Such was the situation since ten years when the applicant himself became the donee of these two lots "just as they were then," namely: without access to the crossing, except through Grand Boulevard.

Under section 257 of the Railway Act, when a railway is already constructed upon, along or across any highway, the Board may, of its own motion

or upon complaint or application, determine all matters and things in respect of such crossing, and may make such order as to the protection, safety and convenience of the public, as it deems expedient. The Board felt that it would be derelict in its duty if it allowed such a bridge to continue to be a menace to the public and to railway employees, on account of its narrowness, its weak structure and its insufficient clearances.

At the hearing, Mr. Coffin admitted that the bridge was a private farm crossing (volume 513, page 8530). He also admitted that the Board's Order No. 37273 did not deprive the applicant from any of his civil rights under the agreement. (Ibid page 8532.)

The applicant contends that in removing this bridge, the Canadian Pacific Railway is in breach of its agreement, and applies to this Board, under section 35 of the Railway Act. (Ibidem, page 8533.) He admits that Grand boulevard is a street in the city and that the bridge would be a connecting link between two trunk parts of the boulevard. (Ibdem, page 8535.)

Admittedly, the railway company is not by the agreement bound to anything more than an elevated bridge, 15 feet wide, for the purpose of a private crossing. The city does not ask a public crossing.

I am therefore of the opinion that this Board cannot with due regard to the safety and convenience of the public, order the railway company to reconstruct and maintain there a bridge of that description.

If, and when the city deems it advisable to apply for a public crossing over the railway at Grand Boulevard, such application will be duly considered.

Commissioners Boyce and Lawrence concurred.

Ottawa, June 6, 1927.

Application of the ratepayers of St. Brigid's Parish, Iberville county P.Q., asking that train service on the Canadian National Railways, between Ste. Angèle and St. Brigid's, be resumed, and for a revision of the Order of the Board, dated June 30, 1925.

(File No. 26918).

JUDGMENT

Thomas Vien, K.C., *Deputy Chief Commissioner:*

This matter was heard at Montreal on May 11, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence, and myself.

There appeared before us: on behalf of the applicants, Mr. A. J. Benoit, M.P., Jacques Cartier, Esq., K.C., solicitor; on behalf of the Canadian National Railways, Alistair Fraser, Esq., K.C.

The application is for the rescission of order of the Board No. 36550, issued on the 30th of June, 1925, permitting the Canadian National Railway Company to withdraw its steam trains from Marieville to Montreal and reroute them via St. Johns; to abandon the line between Farnham and Marieville, with the exception of that portion between Ste. Angèle and Marieville, which was to be electrified; and to withdraw the mixed train running between Marieville and Farnham. The order is reported in the Judgments, Orders, Regulations and Rulings of the Board, volume 15, page 174, and the judgment issued in connection therewith by the Chief Commissioner is reported in the same volume, at page 170.

The details concerning the former hearing of the case and its disposition are contained in the reasons for judgment preceding the order, which is challenged.

The application upon which the order issued was made by the parish of St. Brigid d'Iberville, the parish of St. Angèle de Monnoir, the town of Marieville, the village of Richelieu, the parish of Notre-Dame de Bonsecours, the village of Chambly Canton, the village of Chambly Basin, the parish of St. Joseph de Chambly.

The applicants urged that the electric cars in use were inconvenient, the heating system inadequate, the roadway so bad that riding was uncomfortable and dangerous, the handling of the baggage defective, the mail service disorganized, and that the proposed change would create a disturbance to the traffic.

The railway company represented that a joint electric and steam service, between Marieville and St. Lambert, was unsatisfactory; that the steam trains were delayed by the electric operation; that the amount of traffic handled by the steam trains did not justify their conntinuance over that route; that the considerable saving in ton mileage, between Farnham and St. Johns, would more than offset a slight increase in mileage between Montreal and Waterloo via St. Johns as against via St. Lambert and Marieville; that the total train mileage saved was 144.16 steam train miles a day.

After hearing all pros and cons, the Board issued its Order No. 36550, providing for the electrification of the line from Marieville to Ste. Angèle, and allowed the Company to drop all railway service from Ste. Angèle to Farnham. The Railway Company acted accordingly.

St. Brigid is situated between Marieville and Farnham, 3.3 miles from Ste. Angèle, according to the Canadian National Railways' statement, and 2.8 miles according to Mr. Cartier. (Record, volume 513, pages 8494 and 8496).

At the hearing at Montreal on May 11, 1927, the Canadian National Railways took the following position:—

> Mr. Fraser: "The strictly legal position is that we have definitely abandoned the line, and I think under the Board's decisions, that is the beginning and the end. I think, no line, no jurisdiction. At the same time I would like my friends to appreciate the fact that in the first place we did not proceed hastily, nor are we proceeding hastily now; nor indeed did the Board proceed hastily. You will remember that the Chief Commissioner had many reports on the situation. There was a great deal involved. We improved the electric service very considerably, and on the whole satisfied ourselves that no injustice of any kind would be done to any of the people. Therefore, in view of the short distance they have to haul, I submit that the application should fail." (Record, volume 513, page 8497).

At page 8496, Mr. Fraser had said:

> "In order to carry out the electrification suggested, it would cost us about $24,000, even if we were in a position to do it, and we estimate, after a very careful census, a loss of $7,000 a year."

The applicants called in Mr. René Boulais, who gave an estimation of the traffic that the Canadian National Railways could fairly expect to receive if their line were extended to St. Brigid. His evidence can be briefly summarized as follows: He is a merchant established at St. Brigid; his freight-sheds and scales are there; he would receive five or six carloads of coal, three carloads of cement, three carloads of shingles, three carloads of lumbr, a few carloads of other goods, in all fifteen or sixteen carloads of freight, giving to the Railway Company an average of $100 per car, a year. He used to pay, every year, from $400 to $500 for express charges. He would also ship eggs, 150 or 200 cases a year, giving about $80 in freight charges.

One butter factory would ship fifteen cans of cream a day; another, seventy-five cans of cream a day, or the equivalent in butter, yielding yearly $450 to the railway company. Mr. Paquete, a baker, would receive nine carloads and pay

$500 or $550 a year, Mr. Massier, $175 to $300; the two butter manufacturers, a carload of coal each every year; Mr. Souchez would pay about $200; the blacksmith, $50 a year; the express charges paid by other people would amount $200. In 1924, some 250 carloads of hay were shipped, and in 1925, 200 carloads.

He estimated the slump in land values in St. Brigid, due to the discontinuance of the train service, to be at least $100,000, and the loss to farmers and shippers by reason of additional haulage, at $1 a ton. There were 75 or 80 farmers interested. In his opinion the Company would receive from the Parish and the village of St. Brigid at least $10,000 a year of freight charges. (Vol. 513, pp. 8500 & s.)

Mr Cartier stated that at the hearing held in Montreal on May 12, 1925, the parish of St. Brigid was not represented, and, so far as they were concerned, it was an ex parte case. In his opinion, if they had had the opportunity of being heard, they would have convinced the Board that the retention of the train service as far as St. Brigid was desirable. (Ibid. p. 8497.)

The line of railway between Farnham and Marieville was constructed and owned originally by the Stanstead, Shefford and Chambly Railway Company. Later, the Central Vermont Railway Company purchased it.

To-day part of the capital stock of the Central Vermont Railway Company is held in the treasury of the Canadian National Railways Company, but it is still operated under its own charter, and it is leased, for the time being, to the Canadian National Railways Company. It is not therefore the Canadian National Railways' Act, but the Railway Act, which governs the situation.

Under the Railway Act, a railway company can discontinue operating a line of railway, unless the Special Act of incorporation provides otherwise, and the Board has no jurisdiction to compel a company to resume operations, even if the public were injuriously affected by reason of the discontinuance.

Such was the decision of the Board in a number of cases, and in particular in the Red Mountain case: Rossland Board of Trade vs. Great Northern Railway Co., 28 Canadian Railway Cases, page 24 & s., wherein precedents were quoted and followed.

When the first application came up, in 1925, the Board found itself without jurisdiction, but it was thought preferable to give the complainants an occasion to voice their grievances in open court, with a view to enabling them freely to set out the facts and, perhaps, to convince the railway company that it could operate without loss. The railway company, persisting in its determination to discontinue operations on that part of its railway line from Ste. Angèle to Farnham, and undertaking only to electrify and operate electrically its line from Marieville to Ste. Angèle, there was no power in the Board to compel it to go further.

When the present application was received, it being represented that certain residents of St. Brigid had not had their day in court, and that they desired to be heard, this matter was again set down for hearing; perhaps this time the applicants might succeed in convincing the railway company that conditions had so changed as to make it profitable for the company to extend its electrification and electrical operations from Ste. Angèle to St. Brigid. As previously set out herein, the applicants estimated that the railway company would receive traffic yielding a gross revenue of approximately $10,000 per annum. The railway company persisted in its determination.

Under the Railway Act, as construed by the Board in precedent cases, the Board has no compulsory powers. The application must therefore be dismissed.

Commissioners Boyce and Lawrence concurred.

Ottawa, June 8, 1927.

Complaint of The Renfrew Machinery Company, Limited, Renfrew, Ont., that the Canadian Pacific Railway Company refuse to make a siding a private one which has been a team track siding.

File 35225

The complainant company alleges that the position of this case is rather peculiar in its way, inasmuch as the land owned by the siding, which is tributary to the main line of the Canadian Pacific Railway at Renfrew, belongs to the municipality of Renfrew; that the complainant company leased this piece of land from the town feeling that there would be no trouble in getting a special or private siding; that, after making the necessary arrangements with the town of Renfrew in connection with the leasing of this property, the complainant company then applied to the Canadian Pacific Railway Company to make the siding a private one under the name of the complainant company, with the assurance that the complainant company would not interfere with others using the siding at all; that the complainant company wished to split its freight business to a certain extent, and besides, it would be far better off if it had a private siding; that its own plan layout does not permit of a siding directly into the plant and, therefore, the complainant company thought it well to lease the team track siding across the street, and that it has the lease now on the property and the railway company refuses the complainant company a private siding lease of the siding itself.

The assistant general solicitor of the Canadian Pacific Railway Company, in his answer, states that his instructions are that the siding in question is built on the railway company's own land, except for a small portion at the end of it, which is on Lochiel street; that the street is no doubt owned by the municipality, but he does not quite see how it could have come to lease it to the Renfrew Machinery Company; that the purpose of the application is to secure an advantage in the matter of switching charges; that the railway company is not sympathetic to this aspiration; and that, seeing that the track would still be really a team track, the railway company thinks there is no merit in the application.

The Board had one of its inspectors look over the situation on the ground, who reported that approximately fifty feet of the west rail of the siding is on Lochiel street, the balance on the property of the railway company; that the street intersection shown on the plan at the south end of the Renfrew Rolling Mills is O'Gorman street, the building on the south side of that street being the property of the Renfrew Rolling Mills, and that he was informed that they had the ground leased from the Canadian Pacific Railway Company on an annual rental. He also reported that the assessment roll of the town shows that lots 36, 37, 38, and 39 are owned by the railway company, and that the siding in question has occupied the present position since the days of the Canada Central Railway Company and was installed about 1877 or 1878 for the purpose of serving Mr. Russell's lumber shipments; that later a granary was constructed, and the siding was also used to serve that business; that none of the siding is on the property of the Renfrew Machinery Company, Limited; and that the town has a large oil storage tank at the north end of the siding for the purpose of storing the oil it uses on the streets.

RULING

The Renfrew Machinery Company, Limited, was advised by the Board that the siding in question is 238 feet in length, 50 feet of this being on the street, the remainder on the right of way of the railway; that the right of way

of the railway was acquired for the general purposes of the traffic of the railway; that team traffic use is for the general service; and that the Board is not empowered to direct that a team track, or portion of a team track located on a railway should be converted into a private siding as is requested in the present application.

OTTAWA, June 4, 1927.

Application of William J. Muldoon et al *for the establishment of a flag station on the Ottawa-Waltham Branch of the Canadian Pacific Railway between lots 26 and 27, 4th range of South Onslow, between Parker Station and Mohr, Que.*

File 35256

The applicants, some twenty-seven in number, ask for a flag station at the above-mentioned point and state that, on account of the location of the roads in the district, the present accommodation is very inconvenient to the applicants, and that there would be a large amount of freight at the point in question, especially milk, cream, etc.

The Board took the application up with the Canadian Pacific Railway Company, which answered as follows:—

1. That the matter had been carefully investigated but, in view of the fact that the district in the location of South Onslow is well served with stations at the present time, the company regretted that it could not see its way clear to install any additional stations.

2. That the location at which this flag station is suggested is approximately mileage 24.8 Waltham Subdivision; that the company now has stations at Parkers, mile 22.8, and Mohr, mile 26.8, or two miles on either side of the suggested location; that a thorough investigation on the ground showed that about twenty-six families might lay claim to advantage through a new station, as it would cut off the distance they now have to travel to reach one of the company's stations by some two miles; that two miles cannot be considered a great distance for persons in a sparsely settled territory to travel for a train; and that it was not apparent that anyone was suffering under the conditions as they now exist.

3. That there is very little business received at Parkers and Mohr, the milk business amounting to between four and five cans daily, and very often only one can, and that there is a cheese factory at Parkers, and during the cheese-making time there are not many milk shipments.

The railway company further pointed out that the Board had long recognized the principle that initial discretion in the matter of location of stations is with the railway company, and that the Board should intervene only when there has been an unreasonable exercise of this discretion, and cited *Hartin* et al *vs. Canadian Northern Railway Company (Twin Elm Flag Stop), 21 C.R.C., 437, and Kelley vs. Grand Trunk Railway Company, 24 C.R.C., 367.*

RULING

The Board ruled that, in view of the fact that there is a flag station at Parkers, two miles on one side from the point where the flag station is asked for by the applicants, and also a flag station two miles on the other side of the suggested location, it did not seem to the Board that the railway company, on

what was before the Board, acted in an unreasonable way in so spacing the stations and that the Board would not be justified in directing that a flag station be installed at the point where the applicants desire it; that in the west the Board had recognized that distances of seven miles between stations were not unreasonable, that it had in various cases in the east recognized that distances from five to seven miles were not unreasonable; and that it is not the function of railway companies to equalize highway disadvantages; their obligation is to afford facilities spaced a reasonable distance apart.

OTTAWA, June 6, 1927.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Submission of Nova Scotia Shippers Association, Kentville, N.S., per Butchell and Ralston, Halifax, N.S., re rates charged by the Dominion Atlantic Railway on apples in carloads to Halifax for export.

(File No. 26560.4)

JUDGMENT

THOMAS VIEN, K.C., *The Deputy Chief Commissioner:*

This matter was heard at Ottawa, on the 17th of June, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence, and myself.

There appeared before us: on behalf of the Nova Scotia Shippers Association, J. L. Ilsley, Esq., K.C., M.P., and Mr. F. C. Cornell; on behalf of the Fruit Branch of the Department of Agriculture, Major R. L. Wheeler; and on behalf of the Dominion Atlantic Railway Co., E. P. Flintoft, Esq., Mr. F. J. Comeau, and Major W. M. Kirkpatrick (Foreign Freight Traffic Manager, C.P.R. Co.).

The present complaint was filed with the Board in July, 1926. It is to the effect that freight rates on apples in carloads to Halifax for export should be substantially reduced and that such reduction be at least sufficient to make such export rates bear the proportion to the otherwise effective class rates, which existed prior to the increases of September 10, 1919, and that such proportion be not exceeded hereafter in any adjustment of such export rates.

The railway company submitted that there has never been a fixed relationship between the class rates and export rates on apples, nor is there any reason for such relationship; that present rates on apples for export were just and reasonable, and not unjustly discriminatory; that the financial results of the operations of the defendant company was such as to warrant an increase in rates and that no reduction could be justified.

Exhibit No. 1 filed by the complainants at the hearing gives a graphic picture of what is involved. It is as follows:—

NOTE.—These rates are in cents per barrel of 155 lbs. for apples, and in cents per barrel of 180 lbs. for potatoes, their equivalent in cents per 100 lbs. was used in working out their proportions of class rates.

EVOLUTION OF STANDARD MILEAGE, TOWN TARIFF AND EXPORT COMMODITY RATES FROM BERWICK TO HALIFAX

—	Standard Mileage Rates		Town Tariff Rates		Commodity Rates on Apples for Export			Commodity Rates on Potatoes for Export		
	5th	8th	5th	8th	—	% of S.M.	% of T.T.	—	% of S.M.	% of T.T.
	c.	c.	c.	c.	c.	c.	c.	c.	c.	c.
Sept. 1, 1915...	16	13	15	12	.....	.....	.....	.....	.....	.....
Dec. 1, 1915...	.....	.....	.....	.....	17	68·5	73·1	.....	.....	.....
Dec. 10, 1915...	.....	.....	.....	.....	.....	.....	.....	16½	70·5	76·4
Mar. 15, 1918...	18½	15	17½	14	19½	68·0	71·9	19	70·4	75·4
Aug. 12, 1918...	23	19	22	17½	.....	.....	.....	.....	.....	.....
Sept. 1, 1918...	.....	.....	.....	.....	24½	68·7	71·8	24	70·2	76·2
Sept. 10, 1919...	.....	.....	.....	.....	27½	77·1	80·6	.....	.....	.....
Sept. 13, 1920...	32	26½	31	24½	38½	77·6	80·0	33½	70·2	76·0
Jan. 1, 1921...	31	25½	29½	23½	37	77·0	80·9	32½	70·8	76·8
Dec. 1, 1921...	29	24	27½	22	.....	82·3	86·8	. . .	75·2	82·1
Aug. 1, 1922. .	. . . .	. . . .	. . . .	. . . .	.....	.....	.....	30	69·4	75·8
Aug. 25, 1922...	.....	.....	.....	.....	.....	.....	.....	28	64·8	70·7
Sept. 2, 1922...	.....	.....	.....	.....	34½	77·0	80·9	.....	.....	.....

This exhibit gives us standard mileage and town tariff rates, fifth and eighth classes, and commodity rates on apples and on potatoes for export, and the percentage relationship of these commodity rates to the standard mileage and town tariff rates.

It shows that prior to September 10, 1919, these rates had the following relativity:—

Standard Mileage Rates		Town Tariff Rates		Commodity Rates on Apples for Export			Commodity Rates on Potatoes for Export		
5th	8th	5th	8th	—	% of S.M.	% of T.T.	—	% of S.M.	% of T.T.
c.	c.	c.	c.	c.	c.	c.	c.	c.	c.
23	19	22	17½	24½	68·7	71·8	24	70·2	76·2

In August, 1919, the carriers gave notice that they would publish new commodity rates on apples for export, showing an increase of 20 per cent. Apple growers strongly protested; a conference was held; it was agreed that these rates should be raised from 24½ cents to 27½ cents per barrel, but that the weight of a barrel should come up from 150 pounds to 155 pounds.

The complainants contend that it was also provided in the agreement that if any general increase in rates were ordered by the Board, the increase of 3 cents per barrel above referred to would be taken into account, and deducted from such general increase. This was not put down in writing; the statement is supported by verbal evidence, but flatly denied by the carriers. I do not doubt the good faith of those who testified, but, in presence of such contradictory evidence, it is difficult for the Board accurately to determine in 1927 what did actually take place in August, 1919.

The point is not of paramount importance, however, the Board being not bound by any such agreement, and it being open to all interested parties to show whether the present rates on apples are just and reasonable or not.

The various increases and decreases which took place later had the effect of raising a rate of $1 in 1920 to $1.25 to-day, and the rate of 27½ cents on apples was subject to the same fluctuations.

The complainants, on the strength of the said verbal agreement of 1919, contend that this percentage increase should have been based on the rate of 24½ cents per barrel, and not on the rate of 27½ cents, which would have the effect of reducing the present rate from 34½ cents to 30½ cents. They submit that the apple growers and shippers were singled out in 1919; that the relationship which their commodity rates bore to the other rates was disturbed.

It is of record that in August, 1919, the railways thought the rate of 24½ cents per barrel on apples for export unreasonably low and quite inadequate. They gave notice of their intention of increasing it by 20 per cent. The apple growers and shippers protested, but finally agreed to an increase of 3 cents. It is not unreasonable to assume that this rate of 27½ cents per barrel of 155 pounds was, in 1919, a just and reasonable rate, in the opinion of carriers and shippers.

The railways filed several exhibits, giving the rates on similar commodities elsewhere in Eastern Canada; nowhere does it appear that any lower rate is published. The railway company also filed statistics showing its earnings and expenses. The result for the last four years is a deficit ranging from $9,000 to $124,000.

Apples constitute a very important portion of the freight moved in that district, and if the rate were reduced as desired, the railway would suffer an additional loss estimated at $25,000 a year.

The complainants alleged at the hearing that they had not received as favourable a treatment as that meted out to growers of potatoes. The carriers urged that the commodity rate on potatoes for export was held down by water competition, to which the complainants replied that water competition existed prior to 1919, when the rate on potatoes was 24 cents as compared with .24½ on apples, and to-day the rate on potatoes was .28 as compared with .24½ on apples; they admitted however, that prior to 1919, Kingsport, N.S., was a port of call for small schooners only, when to-day big tramp vessels ply there.

Under sections 314, 317, 320, 329 and 332 of the Railway Act, it is quite permissible for the carriers to publish competitive tariffs for the purpose of securing the traffic in respect of which they are made.

I was much impressed by the very able presentation of the complainants' case made by Mr. Ilsley, but judging the complaint on its merits, and upon the evidence submitted, I am unable to find the present commodity rates on apples from points in Nova Scotia to Halifax, for export, to be either unjust, unreasonable, unduly burdensome to the industry, or excessively remunerative to the carriers, or unjustly discriminatory against producers or shippers of any locality.

For these reasons, in my opinion, the application should be dismissed.

Ottawa, June 20, 1927.

Commissioners Boyce and Lawrence concurred.

In the matter of the protest by counsel for the provinces of Alberta, Saskatchewan and British Columbia, read to the Board on the 30th day of April last, during the hearing in the General Freight Rates Investigation, against Mr. Commissioner Lawrence taking part in the disposition of the matters presently before the Board in the above inquiry, owing to his protracted absence during the final hearing.

File No. 34123

JUDGMENT

Chief Commissioner McKeown:

On the 30th day of April last, and during the hearing under the General Freight Rates Investigation, Mr. Woods, K.C., counsel for the province of Alberta, on his own behalf and on behalf of counsel for the provinces of Saskatchewan and British Columbia, read the following protest to the Board:—

"Now there is only one other matter that I wish to mention: that is a matter that I have been asked to submit on behalf of my friends from Saskatchewan and my friend from British Columbia, as well as myself.

"During the last three days the Board has been augmented by the addition of a Commissioner who was present only during the first six days of the final hearing. During that period the whole time was occupied with the filing of exhibits and the hearing of the portion of the evidence of one witness upon the issue of the mountain differential.

"This Commissioner took no part in the eastern or western sittings of the Board preceding the final hearing, with the exception of four days in March when evidence was given in connection with the submission of the Quebec Harbour Commission.

"Since this Commissioner ceased to attend the final hearing, the Board has heard evidence on fifty-one days, and argument has proceeded for an additional sixteen days, of which only three have been in the present week, and were occupied by part of the argument of counsel for the railway companies.

"Our clients' interest require that we point out to the Board that it is impossible that a Commissioner so circumstanced can adequately deal with the many important and complex issues raised. For him to take part in the disposition of any or all of these issues would necessarily constitute a very serious ground of objection to the validity of any judgment the Board may give, whatever might be his share in that judgment, and whether or not on any given issue his should prove to be the deciding voice.

"The undersigned take objection to the jurisdiction of this Commissioner to take part in the disposition of the matters presently before the Board in this inquiry.

"Dated at Ottawa, this 28th day of April, 1927.

(Signed) "S. B. WOODS,
Counsel for Alberta.

"W. H. McEWEN,
Counsel for Saskatchewan.

"G. G. McGEER,
Counsel for British Columbia."

Addressing the Chief Commissioner, Mr. Woods said:—

> "I am submitting that to you as a matter of law for your decision. We have raised there the jurisdiction of one of the Commissioners to determine the matters before this Board."

No other counsel signified assent to the position taken by the counsel for Alberta, British Columbia, and Saskatchewan. Mr. Tilley, K.C., leading counsel for the Canadian Pacific Railway Company, supported by Mr. Pitblado and Mr. Rogers, maintained the right of Mr. Commissioner Lawrence to take part in the judgment, and argued that the question raised is not a matter of law, such as contemplated by subsection 2 of section 12 of the Railway Act, which subsection reads as follows:—

> "12. (2) The Chief Commissioner, when present, shall preside, and the Assistant Chief Commissioner, when present, in the absence of the Chief Commissioner, shall preside, and the opinion of either of them upon any question arising when he is presiding, which in the opinion of the Commissioners is a question of law, shall prevail."

The question of law here sought to be raised is whether or not the absence of Mr. Commissioner Lawrence from the sittings of the Board, as set out under circumstances concerning which there is no dispute, has disqualified him from participating in the judgment to be pronounced under the instructions given in Order in Council, P.C. 886, by virtue of which this investigation is being held. It will be observed that the subsection confers no power upon the Chief Commissioner, or the Assistant Chief Commissioner, to determine of himself whether any question which may arise is, or is not, a question of law. His opinion prevails only upon a question which " in the opinion of the Commissioners is a question of law." The expression of such opinion on the part of the other Commissioners is a condition precedent to any decision by the Chief Commissioner, or the Assistant Chief Commissioner, and it hardly need be said that, if, in the opinion of the other Commissioners, no question of law is involved, the opinion of the Chief Commissioner, or the Assistant Chief Commissioner, is not decisive upon the question which may have arisen.

The protest so made was taken under consideration at a meeting of the Board attended by all the Commissioners, with one exception, and it was resolved that the submission of counsel for the provinces above named raises a question of law, inasmuch as it involves the determination of the right of one of the Commissioners to take part in the judgment to be rendered, under circumstances concerning which there are no disputed facts, and I shall deal with the application from that standpoint.

This is the first time such question has been raised before the Board. and it is well, I think, to draw attention to the provisions of the Act regarding hearings by the Board, and the attendance of Commissioners thereat.

In the first place, it is provided by section 12, subsection 1, of the Railway Act, that two Commissioners shall form a quorum, and not less than two Commissioners shall attend at the hearing of every case.

Section 18 provides:—

> " The Board may hold more than one sitting at the same time, and whenever circumstances render it expedient to hold a sitting elsewhere than in Ottawa, may hold such sitting in any part of Canada."

Section 20 reads as follows:—

> " Subject to the provisions of this Act, the Board may make rules and provisions respecting—
>
> "(*a*) the sittings of the Board;
>
> "(*b*) the manner of dealing with matters and business before the Board;

"(*c*) the apportionment of the work of the Board among its members, and the assignment of members to sit at hearings, and to preside thereat; and,

"(*d*) generally, the carrying on of the work of the Board, the management of its internal affairs, and the duties of its officers and employees; and in the absence of other rule or provision as to any such matter, such matter shall be in the charge and control of the Chief Commissioner or such other member or members of the Board as the Board directs."

No rule or provision has been made touching the apportionment of the work of the Board among its members and the assignment of members to sit at hearings, consequently such matter is, for the present, in charge of the Chief Commissioner, or as the latter portion of the above quoted section provides.

For the purpose of carrying out instructions under the Order in Council, P.C. 886, and under assignments duly made, the Board held sessions in Eastern Canada, at Montreal, Windsor, Toronto, Moncton, and St. John, as well as at many cities in Western Canada, and at none of these did the full Board sit. The members of the Board assigned thereat were:—

At Montreal: the Chief Commissioner, the Deputy Chief Commissioner, and Mr. Commissioner Boyce;

At Windsor and at Toronto: the Chief Commissioner and Mr. Commissioner Lawrence;

At Moncton and St. John: the Chief Commissioner, the Assistant Chief Commissioner, and Mr. Commissioner Oliver;

At Winnipeg and throughout the west: the Chief Commissioner, the Deputy Chief Commissioner, and Mr. Commissioner Oliver.

It is apparent from the above that all members of the Board were not expected to sit at every hearing.

At the conclusion of these preliminary sessions, a final hearing was arranged, to be held at Ottawa, opening on the 30th day of November, 1926, to which the full membership of the Board was assigned.

Under proper assignment duly made, Mr. Commissioner Lawrence took his seat at the commencement of the final hearing at Ottawa, and became, in my opinion, fully seized of authority and jurisdiction to sit and deliberate and give judgment in the matters which had then previously been considered under the Order in Council, as well as upon those which still waited hearing and discussion.

During the 113 days in which the Board was engaged in the work, including preliminary and final hearings, the assignments and sittings, and attendances, were as follows:—

The Chief Commissioner was assigned to sit at 113 meetings of the Board, and sat 92 days.

The Assistant Chief Commissioner was assigned to 85 meetings, and sat 83½ days.

The Deputy Chief Commissioner was assigned to 106 meetings, and sat 94 days.

Mr. Commissioner Boyce was assigned to 82 meetings, and sat 70 days.

Mr. Commissioner Lawrence was assigned to 84 meetings, and sat 20 days.

Mr. Commissioner Oliver was assigned to 109 meetings, and sat 100 days.

Inasmuch as Mr. Commissioner Lawrence was fully clothed with jurisdiction to sit at the final hearing, his right to participate in the judgment cannot be questioned, unless it be held that the absences above set out have wrought a disqualification against him. The ground of disqualification alleged is, that Mr. Commissioner Lawrence will be unable, by reason of protracted absence, to "adequately deal with the many important and complex issues raised." It

was pointed out by Mr. Tilley, K.C., that no member of the Board has been present every day during the final hearing. From time to time, in fulfilment of immediate pressing Board duties and through illness, different members of the Board were compelled to absent themselves occasionally during the final hearing, and this question must, therefore, present itself in the form of an inquiry as to what degree of absence, if any, would work the disqualification alleged. To answer this question, consideration must be given to the scope and nature of the inquiry, and what must be considered to be the duty of a Commissioner in regard thereto. If by virtue of assignment properly made, a Commissioner has become seized of jurisdiction to sit, and if notwithstanding necessary absences, he can, be availing himself of the typewritten transcript of evidence, acquaint himself with all that has been testified and urged in argument, so as thereby to enable him to bring his personal judgment to bear upon the matters involved, I cannot see that any disqualification has arisen, because he has not heard all the evidence and argument.

It is urged, *inter alia*, in support of the disqualification alleged, that Mr. Commissioner Lawrence "took no part in the eastern or western sittings of the Board preceding the final hearing, with the exception of four days in March when evidence was given in connection with the submission of the Quebec Harbour Commission." Of the preliminary sittings of the Board above referred to, prior to the final hearing, Mr. Commissioner Lawrence was assigned to Toronto, Windsor, and Ottawa for sessions, which occupied nine days, and he sat at all of them throughout. Argument for disqualification cannot be supported because of the fact that a Commissioner has not heard evidence taken at meetings of the Board held at places at which he was not assigned to sit. It is always presumed that a perusal of the transcript of evidence taken at such hearings puts such Commissioner in a position to acquaint himself with what was done and said in his absence.

Having regard to the contention here put forward, I cannot say that, as a matter of law, the protracted absences of Mr. Commissioner Lawrence have disqualified him from taking part in the judgment. In my view, such result cannot follow as a matter of law. Whether as a question of fact, his absence has made it impossible to acquaint himself with the subject-matter being dealt with, does not come within my jurisdiction to decide; and I do not think any rule of law can be laid down in that particular. The petitioners say that it is impossible for him to do justice to these issues, but the determination of that question is not a matter of law, but a matter of fact, involving the scope of the inquiry and the mastery of the different questions which are submitted.

The parties in interest have a right to the individual judgment of every Commissioner, brought to bear upon the evidence and arguments which have been urged before the Board. If a Commissioner, despite certain absences, be able to bring to the consideration of the questions his personal judgment, founded upon a perusal and understanding of the records and exhibits, he is entitled to express his opinion. A Commissioner once being clothed with jurisdiction to hear the case, but being unavoidably absent for a period, must decide for himself whether he can competently discharge the duty he owes to the litigants. I do not think any one else can decide that fact for him. He must be the keeper of his own conscience in this respect.

The application to declare Mr. Commissioner Lawrence disqualified, for the reasons above set forth, must be dismissed.

Ottawa, June 21, 1927.

ORDER No. 39162

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", under the Maritime Freight Rates, Act, 1927, for approval of standard and special joint freight distance tariffs.

File No. 34822.2

SATURDAY, the 11th day of June, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the applicants' Standard and Special Joint Freight Distance Tariffs C.R.C. Nos. E-1209 and E-1210, on file with the Board under file No. 34822.2, be, and they are hereby, approved; the said tariffs, with a reference to this order, to be published in at least two weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39163

In the matter of the application of the Inverness Railway and Coal Company, hereinafter called the "Applicant Company", under the Maritime Freight Rates Act, 1927, for approval of its Standard Freight Distance Tariff C.R.C. No. 19, on file with the Board under file No. 34822.5.

MONDAY, the 13th day of June, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the applicant company's Standard Freight Distance Tariff C.R.C. No. 19, on file with the Board under file No. 34822.5, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39180

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement "H" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.47.

MONDAY, the 13th day of June, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Supplement "H" to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.47, be, and it is hereby, approved, with the exception of the item revising estimated weights of eggs; the said supplement to be published as Supplement No. 10.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39191

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway from Lloydminster, mileage 76.25, to Clandonald, mileage 117.0.

File No. 10758.54

MONDAY, the 13th day of June, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway from Lloydminster, at mileage 76.25, to Clandonald, at mileage 117.0.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39197

In the matter of the complaint of the Bathurst Company, Limited, Fraser Companies, Limited, and the Nashwaak Pulp and Paper Company, Limited, against the cancellation, effective June 27, 1927, of rates published in Canadian National Railways' tariff C.R.C. No. E-1049, on pulpwood, in carloads, to Bathurst, Chatham, Edmundston, and St. John, New Brunswick, for manufacture and reshipment via Canadian National Railways.

File No. 34822.1.

Friday, the 17th day of June, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway company; and upon the report and recommendation of its Chief Traffic Officer,—

The Board Orders: That the proposed cancellation, effective June 27, 1927, of rates on pulpwood, in carloads, from stations in Quebec and New Brunswick to Bathurst, Chatham, Edmundston, and St. John, New Brunswick, for manufacture and reshipment via Canadian National Railways, as published in Canadian National Railways' Tariff C.R.C. No. E-1049, be, and it is hereby, disallowed.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39202

In the matter of the complaint of the Guy G. Porter Company, Limited, of Perth, in the province of New Brunswick, against rates on potatoes to eastern United States points.

File No. 23414.26

Saturday, the 18th day of June, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in St. John, April 12, 1926, the St. John Board of Trade, the Canadian Pacific and the Canadian National Railway Companies, and the complainant being represented at the hearing, and what was alleged; and upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the rates on potatoes, in carloads, from points on the Tobique Subdivision of the Canadian Pacific Railway Company to destinations shown in the said company's tariff C.R.C. No. E-4005, be reduced to the same basis as now published from St. Leonards, New Brunswick, to the same destinations.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 443

In the matter of the application of the Eburne Saw Mills, Limited, et al., *for an Order requiring the railway companies under the Board's jurisdiction to file joint tariffs covering the movement of all commodities originating upon the Vancouver and Lulu Island Railway destined to points on other lines of railway, in the same way that joint tariffs are filed covering the movement of all commodities originating on the Canadian National Railways, the Canadian Pacific Railway, and the said the Vancouver and Lulu Island Railway, within the interswitching area set out in General Order No. 252; and that all privileges and rights in respect of interswitching in the said area shall be extended to the Applicants;*

And in the matter of the amended application of the said Applicants for an Order, in the alternative, requiring the said railway companies to extend the limits of the interswitching areas so as to include that portion of the Canadian Pacific Railway Company's lines known as the Vancouver and Lulu Island Railway, now operated by the British Columbia Electric Railway Company, Limited; and to extend to all shippers or consignees on the said Vancouver and Lulu Island Railway the same rights and privileges that are extended to shippers in the interswitching areas in the City of Vancouver and in the City of New Westminster in the matter of services and transportation costs;

And, further, in the alternative, requiring the said railway companies to file joint tariffs covering the movement of all traffic originating at or destined to points on the said Vancouver and Lulu Island Railway, and extending to shippers and consignees on the said Vancouver and Lulu Island Railway the same rates and facilities as are enjoyed by shippers on either the Canadian Pacific or the Canadian National Railways in the natural terminal area of greater Vancouver.

File No. 6713.213

Tuesday, the 21st day of June, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Vancouver on the 9th day of July, 1926, and in Ottawa on the 3rd day of May, 1927, in the presence of counsel for the applicants, the Canadian Pacific Railway Company, and the British Columbia Electric Railway Company, Limited, and what was alleged; and upon its appearing that the same rates and privileges are now accorded to all shippers on the Vancouver and Lulu Island Railway within the interswitching limits of Vancouver and New Westminster as are accorded to all other shippers within such limits, and that the said railway companies are prepared, upon request, to publish joint rates between points on the said Vancouver and Lulu Island Railway outside of the said interswitching limits and points on the Canadian National Railways on the same relative basis as applies from other local points on the lines of the Canadian Pacific Railway Company outside the said interswitching limits in the vicinity of Vancouver and New Westminster,—

The Board orders: That the railway companies under the jurisdiction of the Board be, and they are hereby, authorized and directed to publish tariffs to give effect to the foregoing.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39237

In the matter of the application of the Express Traffic Association for permission to make effective, on less than statutory notice, revised weights, on berry boxes, in crates.

File No. 27612.30

FRIDAY, the 24th day of June, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an agreement has been made between the Express Traffic Association and the Joint Transportation Committee of the Niagara Peninsula and Ontario Fruit Growers' Association for the establishment of estimated weights on berry boxes, in crates, as in effect last season, and published in Express Traffic Association Tariff C.R.C. No. E.T.909; and its being necessary to give immediate effect to the arrangement to cover traffic now moving,—

The Board orders: That the Express Traffic Association be, and it is hereby, permitted to publish, in Tariff C.R.C. No. E.T.980, effective June 27, 1927, the estimated weights on berry boxes, in crates, as formerly published in Tariff C.R.C. No. E.T.909; reference to this order to be shown in the title page of the said Tariff C.R.C. No. E.T.980.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39238

In the matter of the Order of the Board No. 39180, dated June 13, 1927, approving Supplement "H" to the Express Classification for Canada No. 6, with the exception of the item revising estimated weights of eggs.

File No. 4397.47

FRIDAY, the 24th day of June, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Order No. 39180, dated June 13, 1927, be, and it is hereby, amended by inserting the words "on thirty dozen cases" after the word "weights" in the fourth line of the operative part of the order.

H. A. McKEOWN,
Chief Commissioner.

June 18, 1927.

CIRCULAR No. 213

File No. 34822—Maritime Freight Rates Act, 17 Geo. V, Chap. 44

1. At the last session of Parliament the Maritime Freight Rates Act (17 Geo. 5, Chap. 44) was passed and provided, among other things, the following:—

"9. (1) Other companies owning or operating lines of railway in or extending into the select territory may file with the Board tariffs of tolls respecting freight movements similar to the preferred movements, meeting the statutory rates referred to in section seven of this Act. The Board, subject to all the provisions of the Railway Act respecting tariff of tolls, not inconsistent with this Act, shall approve the tariffs of tolls filed under this section.

"(2) The provisions of subsection two of section three and of sections seven and eight of this Act shall apply to the tariffs of tolls filed under this section.

"(3) The Board on approving any tariff under this section shall certify the normal tolls which but for this Act would have been effective and shall, in the case of each company, at the end of each calendar year promptly ascertain and certify to the Minister of Railways and Canals the amount of the difference between the tariff tolls and the normal tolls above referred to on all traffic moved by the company during such year under the tariff so approved. The company shall be entitled to payment of the amount of the difference so certified, and the Minister of Railways and Canals shall submit such amount to Parliament if then in session (or if not, then at the first session following the end of such calendar year) as an item of the estimates for the Department of Railways and Canals."

2. Section 11 of the said Act reads as follows:—

"11. The Board may hear and determine all questions arising under this Act subject to such rights of appeal as are provided in the Railway Act."

3. Companies owning or operating lines of railway in or extending into the select territory have applied to the Board for a ruling as to the interpretation of above quoted section of the Act with regard to the freight movements with respect to which they may file reduced tariffs of tolls and claim compensation under the provisions of subsection 3 of said section 9.

I am, therefore, directed to inform you that the Board has made the following rulings on the interpretation to be given to section 9 of the said Act:—

(*a*) "Select territory" covers all railway lines in the whole territory of the provinces of New Brunswick, Nova Scotia, and Prince Edward Island, and that part of the province of Quebec from its eastern boundary to Diamond Junction and Levis, including the whole of the Matapedia valley and Gaspe peninsula.

(*b*) "Freight movements similar to the preferred movements" embraces the traffic defined in section 4, subsection 1, namely, local traffic all-rail between points in select territory; traffic moving outward, westbound, all-rail, from points in the select territory to points in Canada, beyond the limit thereof; traffic moving outward, export traffic, rail and sea, from points in the select territory through ocean ports in said select territory destined overseas.

(*c*) "Meeting the statutory rates" means that these other companies, with respect to freight movements similar to the preferred movements, may reduce

their rates to the level of the rates reduced under the provisions of section 3 of the Act; provided, however, that such reduction shall in no case exceed 20 per cent from the normal rates to be certified by the Board.

(*d*) That with respect to tariffs that the companies may file in conformity with the above interpretations, the companies will be entitled to the payment of the difference between the tariff tolls and normal tolls certified by the Board under section 9, subsection 3, of the Act.

By Order of the Board.

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No. 214

June 20, 1927.

Re *Daylight Saving Time for watchmen or gatemen*

File No. 27921.1.

The question of changing the hours of a crossing watchman or a gateman at a level crossing within the limits of a city or town that adopts daylight saving time for a certain period of the year, where such watchman or gateman is employed less than the full twenty-four hours of the day, has been raised.

Until further order the Board rules that any order fixing the hours of employment of such watchman or gateman shall be made to conform to the daylight saving hours during the period adopted by the council of such municipality.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, July 15, 1927 No. 8

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GENERAL ORDER NO. 444

In the Matter of the General Order of the Board No. 151, dated November 8, 1915, prescribing the regulations governing baggage car traffic for the observance of every railway company within the legislative authority of the Parliament of Canada, as amended by General Orders Nos. 179, 181, 191, and 262, dated respectively January 29, February 3, and May 26, 1917, and May 8, 1919; and the application for an Order further amending the said Rules:

File No. 23328.

MONDAY, THE 20TH DAY OF JUNE, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board Orders: That the said Regulations Governing Baggage Car Traffic be, and they are hereby, further amended as follows, namely:

Subsection (*a*) of rule 5 to be struck out and the following substituted therefor:—

"RULE 5. (*a*) Baby carriages, cribs (collapsible), go-carts, baby sleighs, children's velocipedes and tricycles or similar vehicles, when used in connection with journey of child, will be checked upon payment of charge in accordance with current tariff. Collapsible cribs must be folded and securely fastened or roped. Such articles do not form any part of the free baggage allowance, and the charge therefor is separate from and has no connection with the charge for excess baggage."

Rule 8 to be struck out and the following substituted therefor:—

"Dogs and Small Household Pets (such as Cats, Birds, etc.)

"Rule 8. (*a*) Dogs not exceeding twenty-five dollars ($25) in value, when not intended for commercial purposes, exhibition, bench shows, or field trials, and provided with securely fitting collar or harness, and chain or leash, if properly muzzled, all of sufficient strength, or in crates of sufficient strength, provided with handles, and if accompanied by owner or caretaker, will be checked and transported in baggage cars on payment of charge in accordance with current tariff. Dogs properly crated or boxed may be checked through irrespective of wagon transfers en route, but dogs on chain or leash will not be checked beyond a transfer point where a wagon transfer is involved.

"(*b*) Dogs used in producing a theatrical performance or other public entertainment, indoors or out of doors, will be considered as public entertainment paraphernalia, provided they are carried in strong crates or other substantial containers fitted with handles, and will be handled under the provisions of rule 13.

" (*c*) Dogs intended for exhibition, bench shows, field trials, races, or coursing matches will not be regarded as public entertainment paraphernalia, nor will any uncrated dog of any class be so regarded.

" (*d*) Dogs must be claimed immediately upon arrival at destination, otherwise they may be disposed of at the carrier's discretion. Carriers do not assume obligation to feed or water dogs en route, or to store or care for them at stations.

" (*e*) When checked from stations where an agent is on duty, all charges must be prepaid.

" (*f*) Dogs do not form any part of the free baggage allowance, and the charge therefor is separate from and has no connection with the charge for excess baggage.

" (*g*) Any dog or crate of dogs exceeding twenty-five dollars ($25) in value, or intended for commercial purposes, exhibition, bench shows, or field trials will not be transported in baggage service.

"(*h*) The carrier will not be responsible for any sum greater than twenty-five dollars ($25) for loss of or injury to any one dog on chain or leash, or shipment of dogs in crate, whether caused by or resulting from negligence of the carrier, its servants, or agents, or otherwise howsoever.

"Small Household Pets (such as Cats, Birds, etc.)

" (*i*) When accompanied by a passenger presenting valid transportation, small household pets (such as cats, birds, etc.) not exceeding twenty-five dollars ($25) in value, and not intended for other persons nor for sale, when in substantial crates or cages, will be transported in baggage cars on payment of charge in accordance with current tariff. The limit of value of one or more pets in crate or cage will be twenty-five dollars ($25).

" (*j*) Pets will not be checked beyond junction points where wagon or ferry transfer is required.

" (*k*) Pets must be claimed immediately upon arrival at destination. Carriers do not assume obligation to store or care for pets at stations. Passengers must attend to feeding and watering pets en route and at stations.

" (*l*) When pets are checked from a station where an agent is on duty, all charges must be prepaid.

" (*m*) Pets do not form any part of the free baggage allowance, and the charge therefor is separate from and has no connection with the charge for excess baggage.

" (*n*) The carriers will not accept nor transport in regular baggage service small household pets, such as cats, birds, etc., where the declared value is more than twenty-five dollars ($25) per shipment."

Rule 12 to be struck out and the following substituted in lieu therefor:—

" Miscellaneous Articles

" Rule 12. (*a*) *To Destinations in Canada,* the following miscellaneous articles, other than baggage, will be checked and included in the weight of passengers' baggage, and carried at owner's risk, namely, tool chests, miners' and prospectors' packs, collapsible steamer chairs (roped), invalids' chairs (when for use of an invalid travelling on same train), unloaded guns in leather or wooden cases, saddles in bags, surveyors' tools wrapped, except transits, levels, compasses, and other similar instruments liable to injury; personal baggage in bundles, when properly wrapped in canvas or other strong material (paper wrapping excepted) and securely roped; golf, cricket, baseball, or other club paraphernalia in closed receptacles; travellers' rugs, curling stones, snowshoes for personal use when properly tied together, tents and tent poles (not exceeding fifteen (15) feet in length), and fishing rods properly encased.

" (*b*) *To Destinations in the United States,* the following miscellaneous articles other than baggage will be checked and included in the weight of passengers' baggage, and carried at owner's risk, namely, tool chests, miners' and prospectors' packs, invalids' chairs (when for use of an invalid travelling on same train), surveyors' tools wrapped, except transits, levels, compasses, and other similar instruments liable to injury; personal baggage in bundles, when properly wrapped in canvas or other strong material (paper wrapping excepted) and securely roped; golf, cricket, baseball, or other club paraphernalia when enclosed in trunks or other rigid containers having at least two flat sides opposite each other.

" (*c*) *To Destinations in the United States,* the following miscellaneous articles other than baggage will be checked upon payment of charge in accordance with current tariff, namely, collapsible steamer chairs (roped), unloaded guns in leather or wooden cases, saddles in bags, golf, cricket, baseball, or other club paraphernalia when in closed receptacles other than trunks or other rigid containers having at least two flat sides opposite each other, travellers' rugs, curling stones, snowshoes for personal use when properly tied together, fishing rods and tackle in closed receptacles.

" The carrier shall not be liable in respect of or consequent upon loss of or damage or delay to any receptacle containing any of the articles specified and the contents thereof, or any of such articles not contained in a receptacle, for any amount in excess of five dollars ($5), whether such loss, damage, or delay is caused by or results from the negligence of the carrier, its servants, or agents, or otherwise howsoever, unless a greater value is declared and extra charge paid at time of checking, in accordance with current tariff of the carrier.

"(*d*) *To Destinations in Canada,* sportmen's and campers' outfits in dunnage bags or medium-sized boxes with proper handles, including unloaded guns in leather or wooden cases, tents and tent poles (not exceeding fifteen (15) feet in length), and fishing rods properly encased, will be checked and included in the weight of passengers' baggage and carried at owner's risk, subject to the regular tariff regulations as to size and weight.

"Provisions, when inclosed in wooden boxes of medium size and of sufficient strength to withstand ordinary handling, may be accepted and checked subject to charge in accordance with current tariff. The carrier will not be liable in respect of or consequent upon any loss of or damage to any shipment of provisions for any amount in excess of twenty-five dollars ($25), which sum shall be deemed to be the value of any such shipment, unless a greater value is declared and excess charge paid at time of checking, in accordance with current tariff.

"Row boats, motor launches, gasolene, acetylene, coal oil, or liquids of any description, or articles of an explosive or inflammable nature, will not be accepted for carriage in regular or special baggage car service.

"Carcasses of deer, boxes of fish, etc., must be handled by express.

"(*e*) *To Destinations in the United States,* sportsmen's and campers' outfits for private hunting, fishing, or camping parties, consisting of tent poles not exceeding fifteen (15) feet in length, tents, small bundles of bedding, and folding cots when securely wrapped, roped, or strapped, also cooking utensils when in boxes or crates provided with handles, will be accepted and checked and charged for in accordance with current tariff.

"The carrier will not accept a greater liability than twenty-five dollars ($25) per passenger for any one or more receptacles, packages, or articles so checked and transported, unless a greater value is declared at time of delivery to carrier, and charges paid for such increased valuation in accordance with current tariff."

Subsection (*d*) of rule 13 to be struck out and the following substituted therefor:—

"(*d*) Aeroplanes, airships, automobiles, motor-cycles, and other conveyances or machines propelled or operated by engines or motors, attached or detached, will not be accepted for transportation in regular or special baggage car service, and applicants will be referred to the Freight Department or Express Company, except that when such form part of the equipment of circuses, carnival companies, street fairs, or similar organizations, or such conveyances or machines are used in performances of theatrical companies, they may be transported in special cars, subject to special baggage rules.

"Such articles will not be accepted for shipment unless the gasolene is drained from the tanks of these machines.

"Racing motor-boats and racing automobiles will not be accepted for transportation in regular or special baggage service."

Subsection (*f*) of rule 13 to be struck out and the following substituted therefor:—

"(*f*) Domestic and trained animals weighing not more than two hundred and fifty (250) pounds each, used in producing a theatrical performance or other public entertainment, will be checked and transported in baggage cars in regular baggage service, or in special cars, subject to special baggage car rules, at the convenience of the carrier, under the following conditions:—

"(1) They must be accompanied by owners or caretakers who have purchased proper transportation, and who will provide proper facilities for loading and unloading wherever necessary.

"(2) They must be properly presented for shipment, which shall be made at convenience of the carrier.

"(3) If animals are crated, charge shall be based on the actual weight with baggage allowance, as shown in rule 17.

"(4) If not crated, the animals, except dogs on chain or leash, must either be weighed or a careful estimate made of the weight, and charges made accordingly, minimum charge for uncrated animals to be two dollars ($2). Dogs on chain or leash will be handled in accordance with rule 8.

"(5) Animals which may be dangerous, inconvenient, or undesirable to transport in baggage cars in regular service, such as elephants, lions, etc., and those weighing more than two hundred and fifty (250) pounds, will be handled only in special cars, subject to special baggage car rules.

"(6) The animals which may be accepted for transportation in baggage service are only those which are used exclusively and regularly in professional theatrical performances, or other public entertainments, in-doors or out of doors, *Not Including* those used in such exhibitions as horse or stock shows, round-ups, stampedes, or rodeos. Nor does this rule apply to race-horses, polo ponies, circuses, or animals owned by individuals for their private business or pleasure or for exhibition. Shippers of animals not acceptable for transportation in baggage service, or not otherwise provided for, should be referred to the Express or Freight Department."

Subsection (*g*) of the said rule 13 to be struck out and the following substituted therefor:—

"(*g*) In the case of baggage and other property carried in regular baggage service under this rule, the carrier shall not be liable for any claim in respect of or consequent upon the loss of or damage to such baggage or property except in the case of negligence of the carrier, its servants, or agents, and in the case of such negligence, such liability shall not exceed the sum of twenty-five dollars ($25) (which shall be deemed to be its value), for any one animal, or crate of animals, or musical instruments, and the sum of $100 for each adult passenger and $50 for each child travelling on a half-fare ticket (which shall be deemed to be its value), for all the baggage and property of any one passenger, whether charged for as excess size or excess weight baggage, or carried as free allowance, unless a greater value is declared and charges paid at time of checking, in accordance with the carrier's current tariff."

Subsection (*i*) of the said rule 13 to be struck out and the following substituted therefor:—

"(*i*) In the case of baggage and other property carried in special baggage cars under this rule, the carrier shall not be liable for any claim in respect of or consequent upon loss of or damage to such baggage or property, except in the case of negligence of the carrier, its servants, or agents, and in the case of such negligence such liability shall not exceed the sum of one hundred dollars ($100) for each adult passenger and fifty dollars ($50) for each child travelling on a half-fare ticket, in respect of the baggage and property of each passenger whose baggage and property is being transported in such car or cars; and when cars are unaccompanied

by passengers, the total liability on contents of each car shall not exceed one hundred dollars ($100), which sum shall be deemed to be the value of such baggage and property, whether charged for as excess size or excess weight baggage, or carried as free allowance, unless a greater value is declared and charges paid at time of checking, as hereinafter provided."

Rule 18 to be struck out and the following substituted therefor:—

"Rule 18. (*a*) Subject to limitations as shown in Rules 19 and 20, three hundred (300) pounds of sample and personal baggage will be checked free between points in Canada only, and then only on presentation of current year's Canadian commercial travellers' transportation privilege certificate (on which baggage privileges must be endorsed), together with commercial travellers' passage ticket, which must bear corresponding number. Unless otherwise specifically authorized by tariff, no special allowance beyond one hundred and fifty (150) pounds per ticket will be made commercial travellers presenting excursion, summer tourist, convention, or second-class tickets issued to the public, even though commercial travellers' certificate is presented with such ticket. A free allowance of not more than one hundred and fifty (150) pounds of sample and personal baggage will be granted any commercial traveller who is not a member of a recognized Canadian Commercial Travellers' Association. Baggage may be checked to destination of ticket, or to an intermediate point, provided such point is on direct route of ticket, and must be weighed each time checked. Only one ticket will be honoured in checking any one lot of sample baggage, except that when a commercial traveller is accompanied by an assistant who is solely in his employ or that of the firm he represents, the authorized free allowance may be granted on each ticket.

"(*b*) In consideration of special concessions granted to commercial travellers, the carriers will not be liable for any claim in respect of or consequent upon any loss of or damage or delay to any sample or personal baggage transported for a commercial traveller as such, whether the same is charged for as excess baggage or carried as free allowance."

Subsection (*c*) or rule 20 is struck out and the following substituted therefor:—

"(*c*) *Exceptions:* This rule will not apply to the following:—

(1) Baby carriages.
(2) Bicycles not in trunks.
(3) Toboggans and skis.
(4) Canoes.
(5) Steamer and invalids' chairs.
(6) Guns.
(7) Surveyors' tripods.
(8) Club Paraphernalia.
(9) Tent poles.
(10) Transpacific and around-the-world baggage, when checked between points in Canada.
(11) Immigrant baggage checked at port of landing.
(12) Public entertainment paraphernalia, except trunks containing wearing apparel for use on or off the stage.
(13) Fishing rods, properly encased."

Subsection (*a*) of rule 26 to be struck out and the following substituted therefor:—

(2) Any articles not specified in the foregoing rules shall not be carried in regular baggage service. When passengers fail to disclose nature of articles offered for checking, and it develops en route or at destination that the transportation of such articles as baggage is not authorized herein, collection will be made in accordance with current tariff."

And it is further Ordered: That the said Regulations Governing Baggage Car Traffic in Canada, as amended, be made effective September 1, 1927; this order to be published in at least three consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39256

In the matter of the application of the Sydney and Louisburg Railway Company, hereinafter called the "Applicant Company," under the provisions of the Maritime Freight Rates Act, 1927, for approval of its Standard Freight Tariff C.R.C. No. 19, on file with the Board under file No. 34822.8:

Monday, the 27th day of June, A.D. 1927.

S. J. McLean, *Asst. Chief Commissioner.*

A. C. Boyce, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's said Standard Freight Tariff C.R.C. No. 19, on file with the Board under file No. 34822.8, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39259

In the matter of the application of the Swift Canadian Company, Limited, of Toronto, Ontario, for an Order suspending the cancellation of rates in Western Canada on hardwood sawdust.

File No. 31108.1

Monday, the 27th day of June, A.D. 1927.

S. J. McLean, *Asst. Chief Commissioner.*

Thomas Vien, K.C., *Deputy Chief Commissioner.*

Upon reading what has been filed by the applicant company, and the Canadian Freight Association on behalf of the railway companies,—

The Board orders: That the proposed cancellation of rates on hardwood sawdust, published in item 130-A of the Canadian Pacific Railway Company's

Supplement No. 36 to tariff C.R.C. No. W-2793, and page 5 of the Canadian National Railways' Supplement No. 5 to Tariff C.R.C. No. W-445, be, and it is hereby, suspended, pending negotiations between the parties for a reasonable rate, or a hearing by the Board, if necessary.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39260

In the matter of the application of McColl Bros., Ltd., of Toronto, Ontario, for an Order requiring the cancellation of Item 674-D in Supplement 59 to the Canadian National Railways' Tariff C.R.C. No. E-875, covering switching services at stations on the said railway:

File No. 19475.96

WEDNESDAY, the 29th day of June, A.D. 1927.

S. J. McLEAN, *Asst. Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said item No. 674-D in Supplement 59 to the Canadian National Railways' Tariff C.R.C. No. E-875, covering switching services at stations on the said railway, be, and it is hereby, suspended, pending a hearing by the Board.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39269

In the matter of the application of the Alberta Railway and Irrigation Company, hereinafter called the "Applicant Company", under Section 261 of the Railway Act, 1919, for authority to open for the carriage of traffic its Cardston Northwesterly Branch from Cardston, mileage 0, to Glenwoodville, at mileage 28.2.

File No. 34004.10

WEDNESDAY, the 29th day of June, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Cardston Northwesterly Branch from Cardston, mileage 0, to Glenwoodville, at mileage 28.2.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39271

In the matter of the application of the Canadian National Railways Express Department, hereinafter called the "Applicants", for permission to file, on less than statutory notice, Supplement No. 13 to Tariff C.R.C. No. 95, to correct clerical error.

File No. 27612.31

THURSDAY, the 30th day of June, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the applicants, in reissuing rates on fish in Supplement No. 10 to Tariff C.R.C. No. 95 from Supplement No. 4, did, through clerical error, show the rate as $1.15 instead of $1.50, as published in Supplement No. 4, and desire to correct the error on short notice,—

The Board orders: That the applicants be, and they are hereby, permitted to make effective, on July 2, 1927, Supplement No. 13 to Tariff C.R.C. No. 95, for the purpose of re-establishing a rate of $1.50 on fish from Faust to Edmonton, Alberta.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39316

In the matter of tariffs and supplements to tariffs filed under the provisions of The Maritime Freight Rates Act, 1927

File No. 34822.12

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. MCKEOWN, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 22 E-3941	E-3941
Supplement 46 to E-4118	E-4118
Supplement 5 to E-4198	E-4198
Supplement 3 to E-4219	E-4219
Supplement 13 to E-4220	E-4220

SCHEDULE—*Concluded*

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 6 to E-4263	E-4263
E-4303	E-4145
E-4304	E-4175
E-4306	E-3876
E-4307	E-4087
E-4308	E-3219
E-4309	E-3927
E-4310	E-4221
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E-4319, G. C. Ransom's	111, 337
E-4320, G. C. Ransom's	256, 287

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39320

In the matter of tariffs and supplements to tariffs filed under the provisions of The Maritime Freight Rates Act, 1927

File No. 34822.9

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Quebec Oriental Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
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200	197
201	192

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39321

In the matter of tariffs and supplements to tariffs filed under the provisions of The Maritime Freight Rates Act, 1927

File No. 34822.9

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Atlantic, Quebec and Western Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
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194	162
195	192
196	188

H. A. McKEOWN,
Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the City of Sherbrooke, P.Q., for an Order directing the Canadian Pacific Railway Company to open and maintain a crossing at the junction of Fabre, Short and St. Martin streets in the said city.

File No. 33695

JUDGMENT

THOMAS VIEN, K.C., DEPUTY CHIEF COMMISSIONER:

This matter was heard at Montreal on the 10th of May, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence and myself.

There appeared before us: on behalf of the city of Sherbrooke, Messrs. Edouard Boisvert, solicitor, and Thomas Tremblay, engineer; and on behalf of the Canadian Pacific Railway, MM. L. G. Prevost, solicitor, and A. C. McKenzie, engineer of maintenance of way and structures.

There is no railway crossing legally provided at the junction of Fabre, Short and St. Martin streets, in the city of Sherbrooke, but for thirty years pedestrians have passed there. The railway company had its line fenced, but the public broke the fence down. (Record, Vol. 512, p. 8427). "As soon as we notice the fence has been pulled down, we send workmen there to repair the fence and probably it is broken again the next day." (Mr. Prevost, Ibid. p. 8428.)

In his letter to the Secretary of the Board, on February 14, 1925, referring to this application, Mr. Flintoft says: "Our records show that when the A. and N.W. Railway Company constructed that part of its line in 1899 Short and Fabre streets were not yet in existence, and St. Martin street was not opened through our right of way. The crossing asked for by the city of Sherbrooke has never been used as a street, either before or since our tracks were laid. There has not even been a farm crossing at this point, although for some years pedestrians have been trespassing across the tracks. Our right of way has always been fenced and no opening or gates were ever left at this point, but it is very difficult to maintain the fence because it is broken down periodically by trespassers. It is submitted that there is no necessity for a crossing at this point, because the Galt street subway which is only 690 feet west of the point where a crossing is now applied for, can be used to communicate with the south and west wards of the city."

Our Chief Engineer made an inspection on March 24 and reported that, on account of the danger to vehicular traffic and the close proximity to Galt street subway, he was of the opinion that the application for a vehicular cross-

ing should not be granted; that, however, while he was on the ground the question of pedestrian crossing was discussed; that, according to a count taken on March 20 between 6 a.m. and 10 p.m., 666 pedestrians passed over the tracks at this point, half of whom were school children from a ward on the west side attending a school on the east side, on Short street; that the crossing was also very largely used by people going to or coming from the church; that the refusal of the application would create a serious inconvenience to a great number of people.

The Chief Engineer was of the opinion that: "The city of Sherbrooke should be granted leave to open up and construct at their own expense, a four-foot plank walk with a three and a half-foot railing fence to within six feet of the gauge side of track, the fence to connect up with the right of way fence; the crossing to be put in at the intersection of Short, Fabre and St. Martin streets, as shown in red on the attached blue print; the railway to plank and keep in good order the crossing over the tracks proper and for a distance of six feet on each side from gauge side of rail. I would also recommend that the city be asked to erect on each side of the plank walk at the edge of the right of way a warning containing the words 'DANGER, STOP, LOOK, LISTEN' and the signs to be lit by an incandescent light hung over the word 'DANGER'"

At the hearing, Mr. McKenzie, in charge of maintenance of way and structures, stated:—

> "The question of protection came up, I think, at the last hearing, and a wigwag signal was suggested. We could put in a wigwag signal there for about $1,400 and it would cost about $350 a year to maintain it. That is really a capital investment of about $8,500. You can build a subway there for $10,000. So that the subway would be very much the better way of handling the situation, because the wigwag signal will not give you nearly as good protection as the subway would. Mr. Prevost referred to the Galt street crossing, which is just 690 feet away. We spent a considerable amount of money quite recently in widening that subway and making it better for the handling of the traffic from one side of the railway to the other, as it is getting very heavy.
>
> "The Deputy Chief: It is a great inconvenience to have to walk 1,200 feet; 600 feet each way, or 690 feet. It is over 1,300 feet, nearly a quarter of a mile.
>
> "Mr. McKenzie: I quite agree that it is a considerable inconvenience, but if you put a pedestrian crossing near a rock cut, where you have no view, it is absolutely dangerous. You have either to separate the grades or to have some form of protection."

The application was for a vehicular and pedestrian crossing, but, after a discussion of the matter with our Chief Engineer, the applicants declared themselves quite satisfied with the establishment of a pedestrian crossing and put themselves on record as limiting their application to that. (Ibid. p. 8423); and our Chief Engineer now reports as follows:—

> "A short time ago I inspected the site of the proposed crossing for pedestrians at the junction of Short, Fabre and Martin streets in the city of Sherbrooke. Approaching the track from the north side of the track, when one is sixty feet from the track, there is no good view of trains from the west 800 feet away. From the same point trains from the east are visible 800 or 900 feet away. Approaching the track from the south when one is 50 feet from the track, trains from the west are visible 800 or more feet away. From the same point trains from the east are visible 600 feet away. Beyond 600 feet the view is obstructed owing to a point of rock jutting out, and the curvature of the railway to the south. It is evident that this is the most dangerous feature of the

proposed crossing. However, it is to be observed that trains from the east are working up a one per cent grade, and will, consequently, be making considerable noise. From the crossing west the grade is level for about 1,000 feet, and then ascends on an easy grade to the yard. I am of opinion that a crossing for pedestrians at this point will not have more than the usual danger attendant on highway crossings, and recommend that the application for a pedestrian crossing be granted, cost of construction and maintenance to be on the applicant."

I have felt a great deal of hesitancy in this matter. The Railway Act imposes upon the Board the duty of protecting the public as well as that of providing for its convenience, at level crossings. (Rail Act, section 257.)

If the application were still for a vehicular crossing, I think it should be denied, but the application is reduced to asking that the pedestrians be allowed to continue to pass where they have passed for the last thirty years, without any accident being reported.

The city council of Sherbrooke is probably the most interested in the protection of its own citizens. It is thoroughly familiar with the circumstances of the crossing and it persists in its request that leave be granted to its people to continue to do what they have done without injury for a great many years. It undertakes to close the crossing if, in its opinion, it becomes dangerous. (Record, Vol. 512, p. 8431). It is willing further to assume a certain responsibility:—

"We would have come to an understanding with the Canadian Pacific Railway. The company wanted us to take the whole responsibility of whatever may happen at that crossing. Now we stand ready to take the responsibility for our own citizens, and what would happen as to anything we may do or not do; but we do not want to take the whole responsibility of the matter. We are willing to stand responsible for our own citizens, but we do not want to go any further."

The nearest way of getting across the railway is Galt street subway, 690 feet west of the point where a crossing is now applied for. It means that pedestrians desirous of going across the railway have to go a distance of 690 feet and come back over a similar distance, namely, 1,380 feet or approximately a quarter of a mile

Taking into account the convenience of the public, the urgent requests of the city council, its undertaking to close the crossing if, in its opinion, it becomes dangerous, and to assume responsibility for the acts or negligence of its own citizens, and the report of our Chief Engineer, I am of the opinion that the application for a pedestrian crossing be granted, the construction to be under the supervision of our Chief Engineer, to whom the plans and specifications should be submitted for approval; the cost of construction and maintenance to be on the applicant.

Ottawa, June 27, 1927.

Commissioners Lawrence and Boyce concurred.

Consideration of the question of protection and distribution of cost thereof at Bouthillier St., St-Jean, P.Q., Canadian National Railways

File 26782.59

JUDGMENT

Thomas Vien, K.C., Deputy Chief Commissioner:

This matter was heard at Montreal on May 10, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence and myself.

There appeared before us: on behalf of the Canadian National Railways, Alistair Fraser, Esq., K.C., commission counsel, and, on behalf of the city of St-Jean, S. Poulin, Esq.

In 1909, a complaint was made to this Board by the town of St-Jean, P.Q., respecting the dangerous condition of several highway crossings within the city limits. The matter was set down for hearing, and was heard at Montreal on April 28, 1910 (Record, Vol. 104, p. 5059, Judgment, p. 5082). Thereupon, the Board issued its Order No. 10506.

The municipality was authorized to open the highway at Queen street across the railway upon condition that it do the necessary grading for the approaches at each side of the railway lands, the railway company to do all the work, including planking, upon its lands necessary to put the said crossing in the condition required by the General Regulations of the Board affecting Highway Crossings; the town to reimburse the railway company to the extent of one-half of the expense in connection with the said work upon the railway lands.

The railway company was directed to install within sixty days from the date of this order, a white signal bell; the cost of installing the same to be borne and paid twenty per cent out of the Railway Grade Crossing Fund, and the remainder to be paid by the railway company; the cost of the maintenance to be borne by the railway company.

Queen street is now Bouthillier street.

This crossing was brought to the attention of the Board in 1912, when the town claimed that the bell was very often out of order. Our Chief Engineer examined it, and found it in working order.

On June 24, 1925, our inspector reported the results of his investigation into an accident at this crossing, which had occurred on June 2, 1925, when two persons were injured. At the request of our Chief Operating Officer, on July 31, 1925, the Canadian National Railways filed a report of the travel on the railway and on the highway kept from 6 p.m. July 15 to 6 p.m. July 17, revealing the following traffic:—

Pedestrians, 2,028; bicycles and motorcycles, 552; horse vehicles, 536; automobiles, 826; trains eastbound, 27; trains westbound, 29; switching movements, 25.

The railway company also submitted the following:—

> "It was considered that the present protection at this crossing was adequate, but we realize that when automobilists and others approach railway crossings and give very little or practically no attention to their movements, a railway crossing bell, especially to occupants of a closed car, is not complete protection, *and we are agreeable to the installation of a wigwag, if the Board consider it necessary.*
>
> If the wigwag is installed, *I presume that 25 per cent will be paid out of the Grade Crossing Fund,* as was done when the bell was installed, and further, in our opinion, consideration should be given to having *the town contribute as the additional protection is necessary on account of increased highway traffic.*"

On December 12, 1925, the municipality filed objections to the installation of a bell and wigwag, but gave no reason in support thereof.

The matter was still being considered, when, on July 9, 1926, another accident occurred wherein three persons were seriously injured. On September 16, 1926, our Chief Operating Officer recommended that the question of additional protection be set down for hearing at Montreal, and that the slow order, which automatically comes into effect after an accident, be not lifted pending the decision of the Board.

At Montreal on May 10, 1927 (Record Vol. 512, p. 8442 *et s.*) in view of the slow order still in force, Mr. Fraser expressed his anxiety to have this matter disposed of by correspondence, at the earliest possible convenience of the Board.

On May 23, 1927, Mr. Fraser stated that the Canadian National Railways had no objection to the installation of a bell and wigwag, and suggested that, after a grant from the Grade Crossing Fund, the cost should be equally divided between the municipality and the railway company.

The city of St-Jean was written to, and replied on June 28 strongly objecting, but giving no specific reasons. Its attitude evidently was prompted by the suggestion made that part of the cost should be borne by the city.

Under section 257 of the Railway Act the duty is imposed upon this Board to provide for the protection, safety and convenience of the public at highway crossings.

It is obvious that this crossing is dangerous and inadequately protected.

It is also apparent, and the railway company admits, that conditions would be substantially improved if a modern bell and wigwag were installed. I am of the opinion that they should be ordered.

On the question of the apportionment of the cost, the railway company suggests that inasmuch as the traffic on the highway was considerably increased, a part of the cost should be borne by the city. It would be interesting to know which of the highway or the railway traffic has increased most since the creation of this crossing. We have no traffic statistics of 1909 with which to compare traffic statistics of to-day. On that point therefore, the evidence is neither satisfactory nor conclusive. We only know that the traffic is considerable both on the railway and on the highway.

By its Order No. 10506 of April 28, 1910, the Board authorized a contribution from the Grade Crossing Fund and directed that the balance of the cost of the construction and maintenance of the protection ordered should be paid by the railway company. Cause was not shewn why such arrangement should be disturbed.

In my opinion, 40 per cent of the cost of construction should be paid out of the Grade Crossing Fund, and the balance by the railway company; the cost of maintenance should also be borne by the railway company.

Ottawa, July 21, 1927.

Commissioners Boyce and Lawrence concurred.

ORDER No. 39311

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.17

Friday, the 1st day of July, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Cumberland Railway and Coal Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
24	23
25	18, 21

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39312

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.5

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Inverness Railway and Coal Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
19	4
20	6, 18
21	2, 3, 11
22	17
Supplement 1 to 22	17

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39314

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.16

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the New Brunswick Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and

they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 5 to		
108		108
121		115
122		100
123		120
124		116
125		88
127	G. C. Ransom's	107
128	G. C. Ransom's	110
129	G. C. Ransom's	111
130	G. C. Ransom's	256

H. A. McKEOWN, *Chief Commissioner.*

ORDER No. 39315

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.15

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 5 to		
145		145
157		152
158		136
159		153
160		122
162	G. C. Ransom's	107
163	G. C. Ransom's	110
164	G. C. Ransom's	111
165	G. C. Ransom's	256

H. A. McKEOWN, *Chief Commissioner.*

ORDER No. 39317

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.13

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE.

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 5 to	
764	764
783	738
789	688
790	689
791	690
792	698
794	725
795	786
796	787
797	788
798	763
799	702
800	742
801	766
802	774
803	732
804	759
805	691
806	744
807	757
808	378
809	670
810	696
811	733
812	779
814	708
815	745
816	750
817	737
818	773

SCHEDULE—*Concluded*

Column 1 C.R.C. No.		Column 2 C.R.C. No.
819		752
820		777
821	G. C. Ransom's	107
822	G. C. Ransom's	256
823	G. C. Ransom's	111
824	G. C. Ransom's	110

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39318

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.11

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Sydney and Louisburg Railway, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
19	13
20	14, 16

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39319

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.10

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariff of tolls filed by the Maritime Coal, Railway and Power Company, Limited, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
3	2

H. A. McKEOWN, *Chief Commissioner.*

ORDER No. 39322

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs of tolls filed by the Temiscouata Railway, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 5 to		
568		568
594		580
595		540
596		433
597		448
598		586
599		557
600		446, 513
601		433
Supplement 1 to		
601		433
602		514
603		467
604		565
605	G. C. Ransom's	107
606		462, 593
607	G. C. Ransom's	110
608	G. C. Ransom's	256
609	G. C. Ransom's	111
610		515
611	G. C. Ransom's	256
612	G. C. Ransom's	111
613	G. C. Ransom's	107
614	G. C. Ransom's	110

H. A. McKEOWN, *Chief Commissioner.*

ORDER No. 39339

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
615	263, 264, 522
Supplement 1 to 605 G. C. Ransom's	107
607 G. C. Ransom's	110
608 G. C. Ransom's	256
609 G. C. Ransom's	111
616	531

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39341

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.12

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 2 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
E-4322	E-4184, E-4203
E-4324	E-3219, E-3221, E-3224, E-3990
Supplement 1 to	
E-4317 G. C. Ransom's	107
E-4318 G. C. Ransom's	110, 340
E-4319 G. C. Ransom's	111, 340
E-4320 G. C. Ransom's	256, 287

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39342

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.16

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the New Brunswick Coal and Railway, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
132	109, 112
133	29, 30, 85
Supplement 1 to	
127 G. C. Ransom's	107
128 G. C. Ransom's	110
129 G. C. Ransom's	111
130 G. C. Ransom's	256

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39343

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.15

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Fredericton and Grand Lake Coal and Railway, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
167	147, 149
168	42, 43, 119
Supplement 1 to	
162 G. C. Ransom's	107
163 G. C. Ransom's	110
164 G. C. Ransom's	111
165 G. C. Ransom's	256

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39346

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.13

FRIDAY, the 1st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 1 to		
783		738
791		690
805		691
810		696
812		779
821	G. C. Ransom's	107
822	G. C. Ransom's	256
823	G. C. Ransom's	111
824	G. C. Ransom's	110
825		490, 491, 780

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39348

In the matter of the tariffs filed by the Canadian National Railways, as required by an Act respecting the Canadian National Railways, and the tariffs of tolls to be charged on certain Eastern Lines: 17-18 Geo. V, 1926-27, Cap. 44.

File 34822.2

THURSDAY, the 14th day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading and considering the tariffs filed under the Act, cited in the title and pursuant to the powers of the Board under the said Act, and it appearing to the Board that the said tariffs, being Canadian National Tariffs C.R.C. Nos. E-1256; E-1257; E-1258; E-1259; E-1260; E-1261; Agent G. C. Ransom's Supplement 42 to C.R.C. No. 107; Supplement 58 to C.R.C. No. 110; Supplement 24 to C.R.C. No. 111; Supplement 15 to C.R.C. No. 256, are not in accordance with, nor consistent with the said statute, nor do they comply therewith,—

The Board orders: That the Canadian National Railways do forthwith publish tariffs of through rates via St. John and Ste. Rosalie, from points in the Maritime Provinces to stations in Canada beyond eastern lines. Said through rates to be the rates in existence between such points on June 30, 1927, less approximately 20 per cent, as provided in section 3 of chapter 44, 17 George V.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39349

In the matter of the complaint of the Boards of Trade of Halifax, Saint John, and Sackville, in the province of New Brunswick, and the Canadian Lumbermen's Association, et al, *against the proposal of the Canadian National Railways to eliminate alternative routing via Saint John and Ste. Rosalie Junction, on westbound traffic destined to stations on the Canadian Pacific Railway.*

File 34285

THURSDAY, the 14th day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon consideration of all matters involved in, and resulting from Order No. 38275, made by this Board on the 19th day of October, A.D. 1926,—

The Board orders: That the Canadian Pacific Railway Company and the Canadian National Railways be, and they are hereby, directed to publish forthwith, joint tariffs, naming through rates from points in the Maritime Provinces to stations west thereof, in Canada, via St. John and Ste. Rosalie Junction, which will be the same as published between the same points via the Canadian National Railways direct; such tariffs to cover all traffic and the same territorial application as existing June 30, 1927.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 445

In the matter of the General Order of the Board No. 78, dated July 14, 1911; as amended by General Orders Nos. 389 and 428, dated respectively January 21, 1924, and February 1, 1926; and the application of the Canadian Pacific Railway Company for an Order extending the time within which it may equip locomotives with water glass guards, as required under the said General Orders Nos. 389 and 428.

File No. 6948.5

MONDAY, the 18th day of July, A.D. 1927.

Hon H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed in support of the application, and upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the time within which the railway companies subject to the jurisdiction of the Board may equip their locomotives with water glass guards, of aluminium or brass metal, as required by the said General Order No. 389, be, and it is hereby, extended until the 1st day of January, 1928.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 446

In the matter of the General Order of the Board No. 3, dated July 3, 1907, as amended by General Order No. 10, dated May 5, 1908, requiring railway companies within the legislative authority of the Parliament of Canada operating railways by steam power to equip passenger coaches with fire extinguishers, to be approved by the Board.

File No. 4739.20

THURSDAY, the 21st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said General Order No. 3, dated July 3, 1907, as amended by General Order No. 10, dated May 5, 1908, be, and it is hereby, further amended by striking out clause 2 thereof and substituting in lieu thereof the following, namely:—

"2. That every railway company have the said fire extinguishers inspected and recharged once in every three months, except in the case of fire extinguishers having the valve and handle sealed, which shall be inspected to see that the seals are intact and that there is no sign of leakage or other defect, after each trip. In the event of a broken seal, a leakage, or other defect being found, the extinguisher must be withdrawn from service, thoroughly tested, repaired if necessary, and recharged before being returned to service; cause records of such inspections to be kept by the foreman in charge of the passenger coaches at the different terminals where inspections are made; such records to be open for examination by the Board's Inspector when required."

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39375

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

THURSDAY, the 21st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
617	584
618	517
620	531
Supplement 1 to 620	531

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39376

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.13

THURSDAY, the 21st day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to 794	725
Supplement 1 to 799	702
Supplement 1 to 806	744
Supplement 2 to 810	696
Supplement 2 to 812	779
813	776
Supplement 1 to 817	737
Supplement 2 to 817	737
Supplement 1 to 819	752

H. A. McKEOWN,
Chief Commissioner.

The Board of
Railway Commissioners for Canada.

Judgments, Orders, Regulations, and Rulings

Vol. XVII | Ottawa, August 12, 1927 | No. 10

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

GENERAL ORDER No. 447

In the matter of the operation by railway companies subject to the jurisdiction of the Board of bridges over navigable waters and canals; and the question of regulations for the navigation through or under and the lighting of such bridges.

File No. 10291.

WEDNESDAY, the 20th day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading the regulations covering the navigation through or under, or the lighting of, bridges over navigable waters and canals of Canada approved by Order in Council P.C. 2060, dated October 12, 1923, the submissions on behalf of the Departments of Railways and Canals and of Marine and Fisheries, and the report and recommendation of its Chief Engineer; and in pursuance of the powers conferred upon the Board under section 247 of The Railway Act, 1919, and of all other powers possessed by it in that behalf,—

It is ordered: That the regulations covering the navigation through or under or the lighting of bridges over navigable waters and canals of railway companies subject to the jurisdiction of the Board, be, and they are hereby, approved, namely:—

1. Without restricting the generality of the expression, "movable span" includes lift, draw, swing, jack-knife, etc.

2. No bridge shall be constructed hereafter over navigable waters or canals except in accordance with the requirements of these regulations, and no plan and/or description of a bridge proposed to be constructed over navigable water or a canal required by The Railway Act, 1919, to be submitted to the Board shall be approved unless and until such plan and description show and indicate that lights conforming to these regulations are to be exhibited.

3. These regulations shall apply to all bridges hereafter constructed, provided that it shall be competent to the Board to suspend the application of these regulations in the case of any bridge, either temporarily or otherwise, when in

the judgment of the Board such action is warranted by local conditions, and provided further that the Board may extend these regulations to any existing bridge when in its opinion it is desirable to do so.

4. The owner of any bridge required under these regulations to exhibit lights shall provide, maintain, and operate such lights of such a nature and intensity as may be prescribed by the Board, and shall cause them to be exhibited every night from sundown to sunrise during the season of navigation.

5. In the case of bridges with a single fixed span, a white light on each side of the passage under the span shall be exhibited, which lights shall be visible to boats approaching from either direction.

6. In the case of bridges with a single movable span, there shall be exhibited, in addition to the lights required under paragraph 5, a fixed white light on each end of the centre pier protection, as well as a red light on each side of the movable arm or arms, located in mid-span and at the lowest level of steel, which red lights shall change to green when the bridge is fully open to navigation.

7. If, in its opinion, it is desirable to approve passages for navigation through or under more than one span of a bridge with more than one fixed or movable span, the Board shall indicate the spans under or through which passages for navigation have been approved, and such passages shall be lighted,—

(*a*) In the case of a fixed span, by a white light on each side of the passage, which shall show and be visible only to vessels approaching from the direction which brings the approved passage on their own starboard hand; and

(*b*) In the case of a movable span, in addition to the above, the lights required under paragraph 6.

All as shown on diagrams numbered 1, 2, 3, and 4, dated June 14, 1927.

8. (*a*) Vessels going through or under a bridge where two passages have been approved for navigation shall keep to the passage on their own starboard hand.

(*b*) When more than two such passages have been approved, special rules governing navigation through or under the bridge shall be made by the Board.

9. The signal to be given by vessels requiring a movable span to be opened shall be three long blasts of a whistle or horn.

10. Every movable span shall be in charge of some competent person present thereat, who shall open the movable span as promptly as possible upon being signalled as required by paragraph 9 that a vessel desires to pass through, and no vessel shall attempt to pass through until such movable span is fully opened.

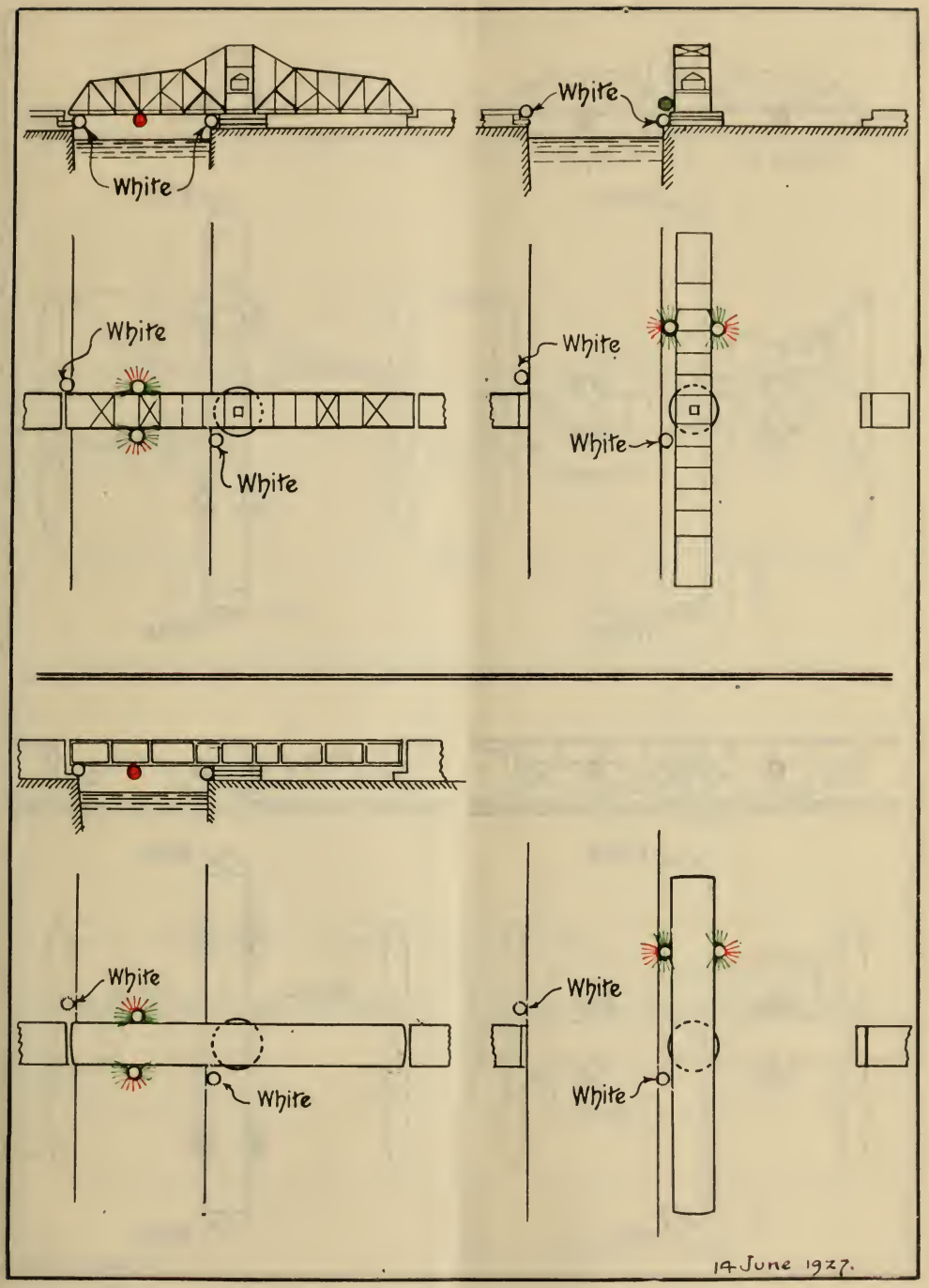
11. Such lights and other aids to navigation as may be needed to suit the requirements of navigation, and as specified by the Board, shall be provided and maintained on all bridges under construction.

12. It shall be competent to the Board to suspend the application of these regulations in the case of any bridge, either temporarily or otherwise, when in the opinion of the Board such action is warranted by local conditions.

13. Every person who violates any of these regulations shall be liable upon summary conviction to the penalty fixed and determined by law.

And it is further ordered: That the General Order of the Board No. 124, dated April 30, 1914, as amended by Order No. 22428, dated August 24, 1914, and General Order No. 383, dated June 12, 1923, be, and they are hereby, rescinded.

H. A. McKEOWN,
Chief Commissioner.



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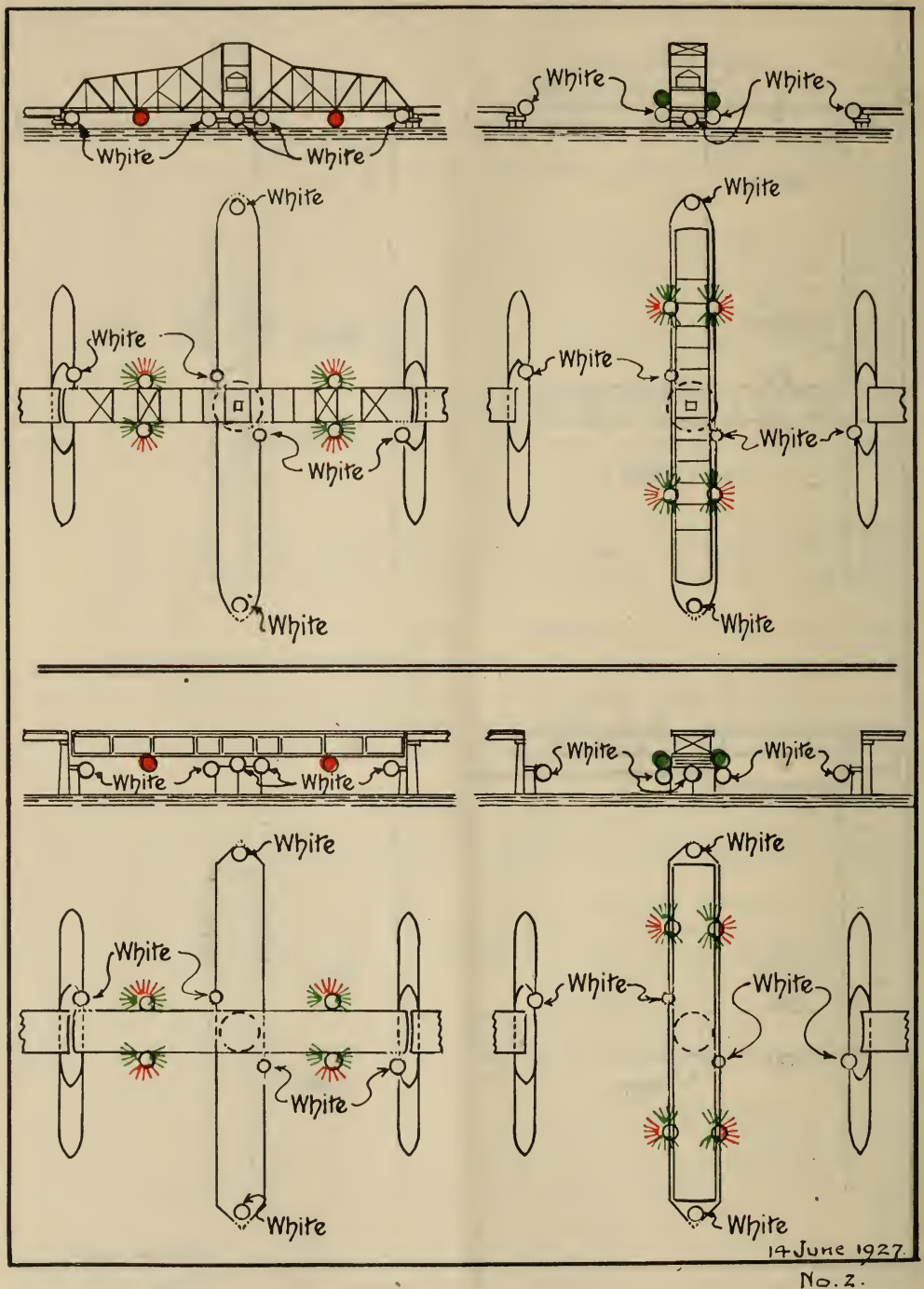
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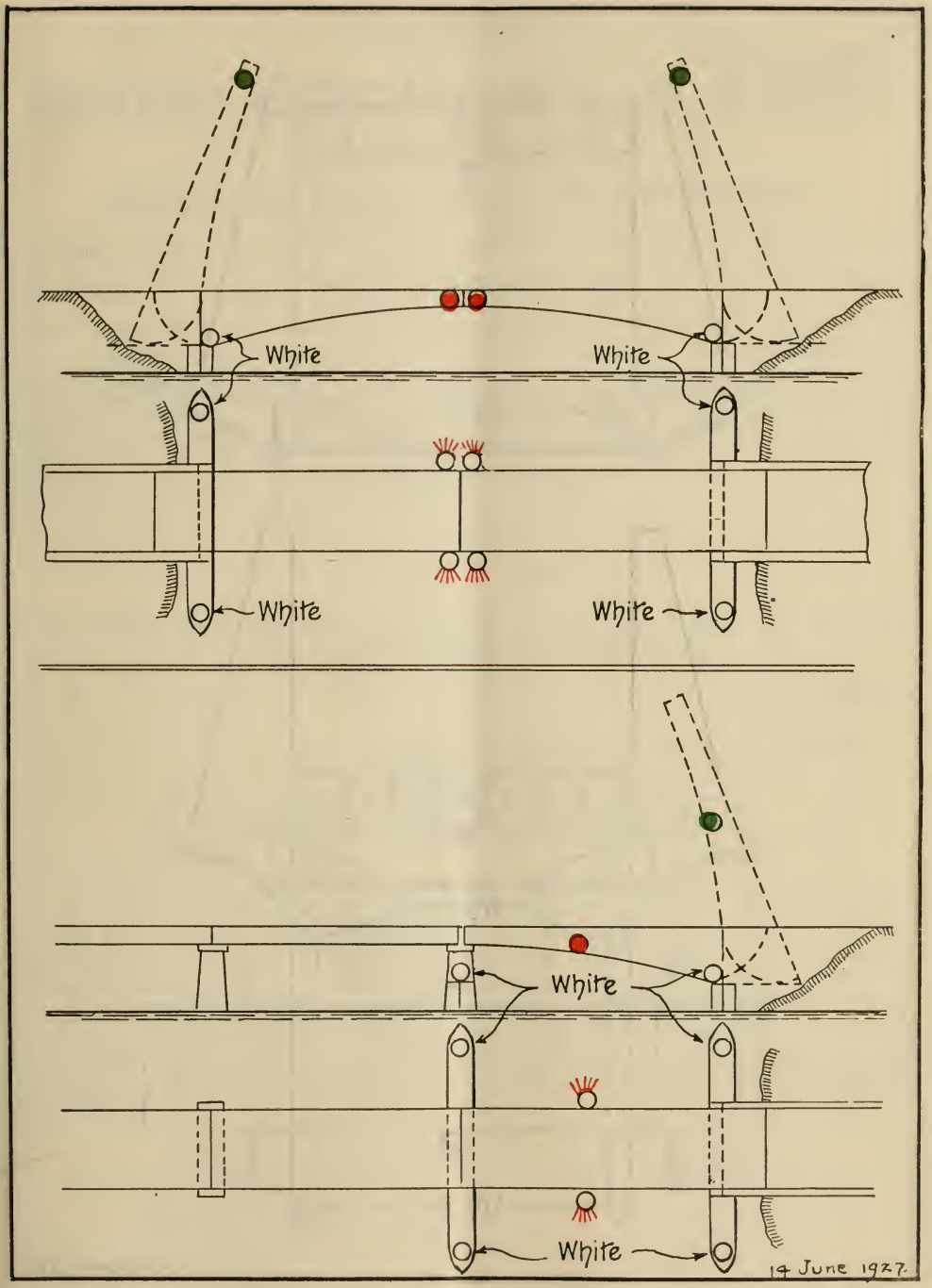

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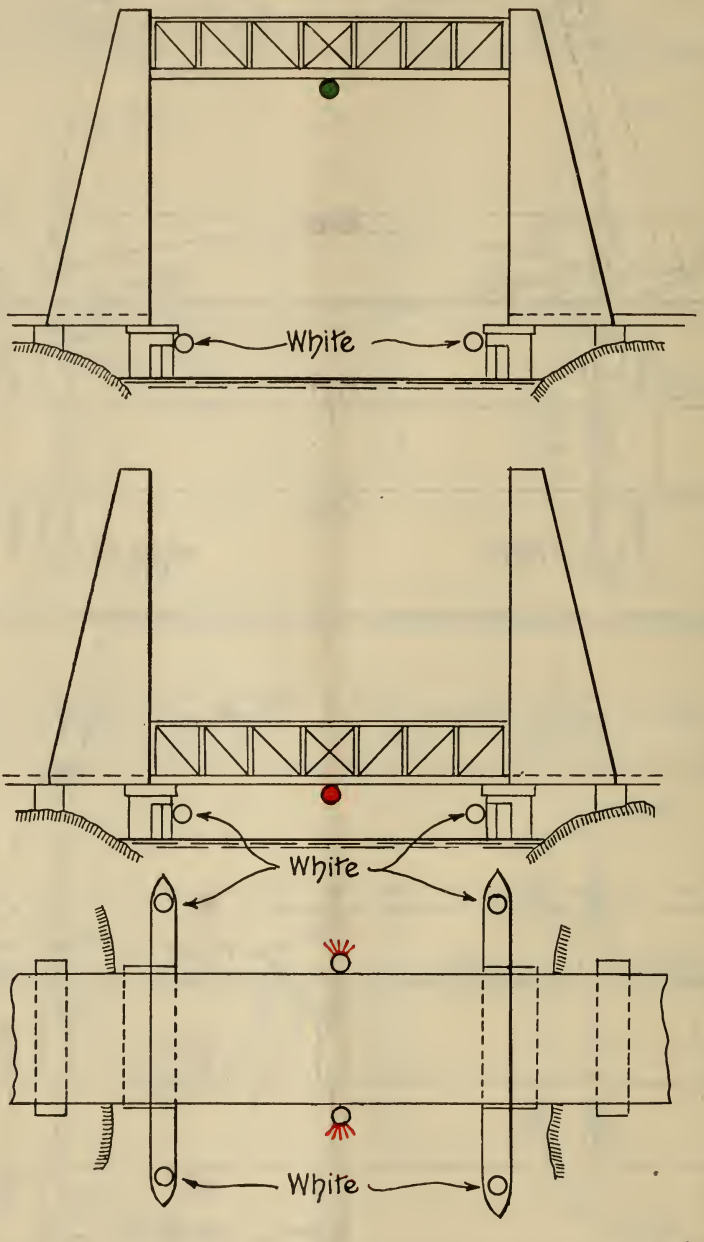

14 June 1927.
No. 4

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, August 15, 1927 No. 11

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 39392

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.13

TUESDAY, the 26th day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board Orders:

1. That the tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 806	744
Supplement 3 to 810	696

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39393

In the matter of the application of the Canadian Pacific Express Company, hereinafter called the "Applicant Company", under Sections 323 and 360 of the Railway Act, 1919, for approval of Bylaw No. 14, dated June 28, 1927, authorizing the Traffic Manager of the Applicant Company to prepare and issue tariffs of the express tolls to be charged in respect of all goods sent, carried, or transported by the Applicant Company.

Case No. 473

TUESDAY, the 26th day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,---

The Board orders: That the said Bylaw No. 14, dated June 28, 1927, authorizing the traffic manager of the applicant company to prepare and issue tariffs of the express tolls to be charged in respect of all goods sent, carried, or transported by the applicant company, on file with the Board under Case No. 473, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39394

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

TUESDAY, the 26th day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board Orders:

1. That the tariffs filed by the Temiscouta Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to 594	580
Supplement 1 to 612 G. C. Ransom's	111
621	531
Supplement 1 to 621	531

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39408

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927.

File No. 34822.14

SATURDAY, the 30th day of July, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 596	433
622	531
Supplement 1 to 622	531
Supplement 2 to 594	580

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39410

In the matter of the Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.5

MONDAY, the 1st day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, K.C., *Assistant Chief Commissioner.*

The Board orders:

1. That the tariff filed by the Inverness Railway and Coal Company, under section 9 of the Martime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff

approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 22	17

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39419

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic a portion of its Moose Jaw Southwesterly Branch (Assiniboia to Consul) from mileage 67.46 to 80.93.

File No. 16480.47

WEDNESDAY, the 3rd day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its Moose Jaw Southwesterly Branch (Assiniboia to Consul) from mileage 67.46 to 80.93.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39427

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Fife Lake Branch from mileage 0 to 46:

File No. 34145.19

THURSDAY, the 4th day of August, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit—

The Board orders: That the Applicant Company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Fife Lake Branch from mileage 0 to 46.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39428

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927:

File No. 34822.9

THURSDAY, the 4th day of August, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

1. *The Board orders:* That the tariffs filed by the Quebec Oriental Railway Company, under Section 9 of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44), and set out in Column 1 of the Schedule to this Order, be, and they are hereby, approved, subject to the provisions of subsection 2 of Section 3 of the said Act.

2. And the board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in Column 2 of the said Schedule, opposite the corresponding tariffs mentioned in Column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to	
198	181
203	190
204	202

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, September 1, 1927 No. 12

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ORDER No. 39445

In the matter of the application of the Associated Shippers of New Brunswick for an Order requiring railway companies to provide a better class of equipment for the handling of potatoes.

File No. 18855.12

FRIDAY, the 5th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Canadian Pacific Railway Company, the Canadian National Railways, and the Department of Agriculture; and upon the report and recommendation of its Chief Operating Officer,—

The Board orders:

1. That the Canadian National Railways equip fifty (50) refrigerator cars, and that the Canadian Pacific Railway Company equip fifty (50) refrigerator cars, with an additional side wall extending from the floor rack to an elevation of thirty-six (36) inches, with a one-inch air space between it and the wall of the car, the same to extend lengthwise from the end of the bulkhead to within two inches of the post of the side door; the top of the air space to be covered with netting or screen, to prevent refuse falling behind the supplementary wall; a one-inch cleat to be provided at the door post from the floor rack to the height of six feet, as a support for planking, forming a bulkhead; and a shovelling board twenty-four inches wide, one-half or five-eighths inch thick, to be provided at each side of the car, on top of the floor rack, when potatoes are shipped in bulk.

2. That the railway companies furnish the said fifty cars above mentioned, equipped as aforesaid, for the movement of potato shipments from Prince Edward Island, Nova Scotia, and New Brunswick shipping points to Canadian seaports during the coming winter, commencing December 1, for the purpose of trial.

3. That such records as may be necessary be kept for reference and consideration at the close of the shipping season; and that the said railway companies report to the Board an estimate of the cost of furnishing such equipment, and name the amount of toll per trip they suggest would be a reasonable charge for the use of the same, for the consideration of the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39477

In the matter of the Order of the Board No. 39260, dated June 29, 1927, suspending Item No. 674-D in Supplement 59 to the Canadian National Railways' Tariff C.R.C. No. E-875, covering switching services at stations on the said railway; and the application of McColl Bros. Limited, of Toronto, Ontario, for an Order cancelling the said Order No. 39260.

File No. 19475.96

THURSDAY, the 11th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed on behalf of the said McColl Bros. Limited,—

The Board orders: That the said Order No. 39260, dated June 29, 1927, made herein, be, and it is hereby, rescinded.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39458

In the matter of the Order of the Board No. 39259, dated June 27, 1927, suspending the proposed cancellation of rates on hardwood sawdust, published in Item 130-A, of the Canadian Pacific Railway Company's Supplement No. 36 to Tariff C.R.C. No. W-2793, and page 5 of the Canadian National Railways' Supplement No. 5 to Tariff C.R.C. No. W-445.

File No. 31108.1

TUESDAY, the 16th day of August, A.D. 1927.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that the Swift Canadian Company, Limited, and the said railway companies have reached an agreement whereby, from Pacific coast

points, a rate of 33 cents per 100 pounds will be published to Edmonton and 40 cents per 100 pounds to Moose Jaw, with a minimum carload weight of 35,000 pounds; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said Order No. 39259, dated June 27, 1927, be, and it is hereby, rescinded.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39485

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Bromhead Westerly Branch from mileage 0 to 26.31.

File No. 34159.8

TUESDAY, the 16th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Bromhead Westerly Branch from mileage 0 to 26.31, including the west leg of the wye, 1,296 feet long at mileage 0.0.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 448

In the matter of the Order in Council, P.C. No. 886, of June 5, 1925, requiring the Board of Railway Commissioners for Canada to make a full and complete investigation into the whole subject of railway freight rates in the Dominion of Canada.

File No. 34123.

FRIDAY, the 26th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Whereas by Order in Council, P.C. No. 886, dated the 5th day of June, 1925, this Board was directed to make a thorough investigation into the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure

which will in substantially similar circumstances and conditions be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade, both foreign and domestic, having due regard to,—

(*a*) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(*b*) the encouragement of the movement of traffic through Canadian ports;

(*c*) the increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal.

And whereas by Order in Council, P.C. 24, dated the 7th day of January, 1926, the Board was directed, as a part of the general rate investigation above referred to, especially to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports, and to take such effective action under the Railway Act, 1919, as the Board may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports.

Upon hearing the matter at the sittings of the Board held in Ottawa, Montreal, Windsor, Toronto, Moncton, St. John, Winnipeg, Regina, Saskatoon, Edmonton, Calgary, Kelowna, Vernon, Kamloops, Vancouver, New Westminster, Chilliwack, Victoria, and Prince Rupert, in the presence of counsel and representatives of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and the Maritime Provinces, and the Canadian Pacific and Canadian National Railway Companies, the following among other associations and Boards of Trade were represented at various sittings of the Board or submitted their representations in writing, namely: The Boards of Trade of New Westminster, Prince Rupert, Chilliwack and district, Kamloops, Calgary, Moosejaw, Saskatoon, Prince Albert, Estevan, Regina, Brandon, Yorkton, Winnipeg, Toronto; Ontario Associated Boards of Trade, Cochrane, Montreal, St. John, Halifax, Charlottetown, Moncton and Sydney; the Victoria Chamber of Commerce, Western Canada Fruit & Produce Exchange, Canadian Council of Agriculture, Retail Merchants' Association, Canadian Manufacturers Association, Hamilton Chamber of Commerce, Canadian National Millers' Association, Canadian Lumbermens' Association, National Dairy Council of Canada, Fruit Branch, Department of Agriculture of Canada, Livestock Producers of Canada, Live Stock Exchange of Toronto, Quebec Harbour Commissioners, Chamber of Commerce, Joliette, Quebec, Canadian Pulp and Paper Association and Canadian Freight Association.

The Board Orders as follows, namely:—

1. That the rates on grain and flour from all points on Canadian Pacific branch lines west of Fort William to Fort William, Port Arthur and Westfort be equalized to the present Canadian Pacific main line basis of rates of equivalent mileage groupings (the rates governed by the Crow's Nest Pass agreement not to be exceeded): that the Canadian Pacific Railway Company publish rates in accordance with the above direction, and that all other railway companies adjust their rates on grain and flour to Fort William, Port Arthur, Westfort and Armstrong to the rates so put into effect by the Canadian Pacific Railway Company, such changes to become effective on the twelfth day of September, 1927.

2. That the rates on grain and flour from prairie points to Vancouver and Prince Rupert for export shall be on the same basis as the rates to Fort William, but in computing such rates, the distance from Calgary to Vancouver via

the Canadian Pacific Railway shall be assumed to be the same as from Edmonton to Vancouver via the Canadian National Railway, namely 766 miles.

3. That the provisions as to distributing tariffs, set out in section XVII of the judgment in the Western Rates Case, shall, instead of being limited to the Canadian Pacific Railway, as provided therein, be extended so as to apply to the Canadian National Railway as well; the necessary amending tariffs to be effective on the twelfth day of September, 1927.

4. That the rate of 34½ cents per 100 pounds on wheat and 33 cents per 100 pounds on other grain for export from Port Arthur, Fort William, Westfort and Armstrong, Ont., to Quebec as shown in supplement No. 32 to Canadian National Railway Tariff C.R.C. No. E447 be, and they are hereby disallowed; and the Canadian National Railway Company is hereby directed to publish and file in substitution thereof a tariff showing a rate of 18.34 cents per 100 pounds on all grain for export from Port Arthur, Fort William, Westfort and Armstrong, Ont., to Quebec. Such changes to become effective on or before, but not later than, the 12th day of September, 1927.

5. The Board further orders that all railway companies subject to its jurisdiction be, and they are hereby required to publish and file tariffs showing the same rate to Quebec as to Montreal on,—

(*a*) Grain from bay ports for export;

(*b*) All traffic from Toronto and points west thereof for export.

Such changes to become effective on or before, but not later than the twelfth day of September, 1927.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of Order in Council, P.C. No. 886, of June 5, 1925, requiring the Board of Railway Commissioners for Canada to make a full and complete investigation into the Rate Structure of Railways and Railway Companies subject to the jurisdiction of Parliament.

(File No. 34123).

BEFORE:

Hon. H. A. McKEOWN, K.C., *Chief Commissioner;*
S. J. McLEAN, *Assistant Chief Commissioner;*
THOMAS VIEN, K.C., *Deputy Chief Commissioner;*
A. C. BOYCE, K.C.,
CALVIN LAWRENCE,
Hon. FRANK OLIVER,
} *Commissioners.*

W. E. CAMPBELL, *Chief Traffic Officer.*

G. G. McGEER, K.C., for the province of British Columbia.
S. B. WOODS, K.C., for the province of Alberta.
W. H. McEWEN, for the province of Saskatchewan.
H. J. SYMINGTON, K.C., for the province of Manitoba.
J. R. L. STARR, K.C., A. W. ROGERS, } for the province of Ontario.
L. A. CANNON, K.C., for the province of Quebec.
Hon. J. L. RALSTON, K.C., H. P. DUCHEMIN, K.C., } for the Maritime Provinces.
E. P. FLINTOFT, for the Canadian Pacific Railway Company.
ALISTAIR FRASER, K.C., Hon. I. C. RAND, K.C., } for the Canadian National Railways.

The following among other Associations and Boards of Trade were represented at various sittings of the Board or submitted their representations in writing:—

New Westminster Board of Trade.
Prince Rupert Board of Trade.
Victoria Chamber of Commerce.
Chilliwack & District Board of Trade.
Kamloops Board of Trade.
Western Canada Fruit and Produce Exchange.
Calgary Board of Trade.
Moose Jaw Board of Trade.
Saskatoon Board of Trade.
Prince Albert Board of Trade.
Estevan Board of Trade.
Regina Board of Trade.

Brandon Board of Trade.
Yorkton Board of Trade.
Winnipeg Board of Trade.
Canadian Council of Agriculture.
Retail Merchants' Association.
Canadian Manufacturers' Association.
Toronto Board of Trade.
Ontario Associated Boards of Trade.
Hamilton Chamber of Commerce.
Canadian National Millers' Association.
Canadian Lumbermen's Association.
National Dairy Council of Canada.
Fruit Branch, Department of Agriculture of Canada.
Cochrane, Ont., Board of Trade.
Live Stock Producers of Canada.
Live Stock Exchange of Toronto.
Quebec Harbour Commissioners.
Montreal Board of Trade.
Chamber of Commerce, Joliette, Que.
Canadian Pulp and Paper Association.
Canadian Freight Association.
St. John Board of Trade.
Halifax Board of Trade.
Charlottetown Board of Trade.
Moncton Board of Trade.
Sydney Board of Trade.

JUDGMENT

The Chief Commissioner:

The primary object of this inquiry is to carry out the directions to this Board contained in an Order in Council, P.C. 886, which was approved by His Excellency the Governor in Council on the 5th day of June, 1925, following consideration of the final disposition of a petition to the Governor in Council of the governments of the provinces of Alberta, Saskatchewan and Manitoba, by way of appeal from General Order of the Board No. 408 of date 14th October, 1924, under which certain tariffs of the Canadian Pacific Railway Company and the Canadian National Railways were disallowed and required to be withdrawn from operation. The petitioners sought a rescission of said Order and disallowance of discriminations which would be reinstated by the tariffs which were disallowed. It being essential that certain questions of law and jurisdiction arising in connection with the Board's General Order No. 408, should be disposed of prior to the outcome of said appeal to the Privy Council, such issues were submitted to the Supreme Court of Canada and determined in a considered judgment of the said Court, and thereafter Order in Council, P.C. 886, was approved.

The Order in Council P.C. 886, reads in part as follows:

> "The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade.
>
> "The Committee are further of the opinion that to give effect to this policy, and considering the submissions made by counsel and important trade organizations representing different provinces and localities in the Dominion as to the disadvantages that would be suffered by such provinces and localities by any partial or incomplete consideration of the freight rate structure, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners, the body constituted by parliament with full powers under statute to fix and control railway rates.

"The Committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain growing provinces of the west, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crow's Nest Pass Agreement, should not be exceeded.

"The Committee are further of the opinion that, before such investigation is undertaken it is essential to ensure that the provisions of the Railway Act in reference to tariffs and tolls, and the jurisdiction of the Board thereunder, be unfettered by any limitations other than the provisions as to grain and flour hereinbefore mentioned.

"The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:

"(*a*) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

"(*b*) The encouragement of the movement of traffic through Canadian ports;

"(*c*) The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal."

"The Committee further advise that legislation be introduced at the present Session of Parliament, making it clear that the provisions of the Railway Act of 1919 in respect of tariffs and tolls shall, save in the particular above mentioned, be operative notwithstanding any special Acts or Agreements and removing all doubts as to the validity of tariffs heretofore filed.

"The Committee submit the same for Your Excellency's approval."

Upon receipt of the Order in Council, notice thereof was given by the Board to the various provinces of the Dominion, Boards of Trade, Chambers of Commerce and industrial organizations throughout the Dominion, as well as to the railway companies and to all interested parties. Following such notice, the first sitting of the Board to carry on such investigation was held at Ottawa on the 5th day of January, 1926, and continued from Moncton, N.B., throughout Canada, ending at Prince Rupert, B.C., on the 5th day of July, 1926.

Prior to opening the investigation, and during the hearings at various places, many statistical details were asked from the railway companies, and directions that such be furnished were given in many instances. Exhibits were also required to be filed in support of certain of the applications.

On the 4th of October, 1926, the Board summoned representatives of the railways for discussion and to receive directions, and to fix a date for final hearing, and thereupon instructions from the Board were issued to all parties ordering that all exhibits to be used in the final argument should be filed by the 25th day of October, then instant. After the filing of such exhibits, thirty days'

notice of the final argument was given for the 30th of November, 1926, and on the date last aforesaid the Board commenced the final hearing and, with recess from the 17th of December until the 11th day of January, the Board sat continually during the intervening months until the 30th day of April, 1927, during which time counsel from all of the provinces and from many Boards of Trade and industrial organizations submitted evidence and argument bearing upon the questions at issue, dealing with the freight rate structure from many standpoints, and its incidence upon the country. In addition to such discussion and investigation, some eighty individual submissions were presented to the Board, many of which involved evidence and argument from the standpoint presented. The record of such hearings comprises some 13,000 pages of evidence, and hundreds of exhibits which amount to some thousands of pages more.

Under the provisions and authority of the Railway Act, the Order in Council has imposed upon this Board the duty of investigating not particularly the rates themselves, but the whole subject of railway freight rates in the Dominion involving the theory and system upon which they are put together.

The rapidly expanding interprovincial and foreign trade of the country, the steadily increasing exportable surplus of manufacturing and agricultural output, these as well as many other causes make it necessary to examine whether a scheme of rates calculated upon, and reflecting conditions of fifteen or twenty years ago, is sufficient for the present day.

It must be said that it is difficult to find instances in the existing rate schedules wherein individual rates compared with each other can be said to be tainted with undue preference or unjust discrimination. But notwithstanding that, it may be equally true that features of a rate system which some time ago presented no objectionable features, may now require revision. The competitive conditions arising because of the growth of new centres of population and distribution, the increasing force of business competition from without, the steady pressure encountered in world-wide markets to which Canadian products now penetrate—all of these may have so altered the situation as a whole, that certain features of the rate structure have ceased to be efficient, and in themselves may require alteration in some particulars. Our primary duty is to maintain rates which are just and reasonable. No such terms can properly be applied to schedules which are the outcome of a scheme faulty or defective.

In this investigation the outstanding characteristics of the Canadian rate system were passed under review, not so much with the object of revising classifications or individual rates thereunder, as with the idea of determining whether the altered conditions of the years necessitate a change in any of the various features of the system.

In some quarters it has been suggested that the various applications made to the Board under this investigation have given it the character of being simply an effort to reduce rates in different localities. Such applications are numerous and insistent, but we are acting under an Order in Council which has in view the establishment of a rate structure fair and reasonable and equal in its application throughout the country, where circumstances and conditions permit, and consequently it is the principal object of the Board in this inquiry to give attention to the broad outlines of our whole rate system to determine their reaction upon the commerce of the country; to assure ourselves that justice is being done between different parts of the Dominion; to see that as far as possible interprovincial trade is fostered and made easy of accomplishment, and that the way be smoothed for outgoing traffic which in its character as export business is always of the utmost importance, and in all this to have in mind the needs of agriculture and other basic industries and to regard with special attention the subject matters enumerated under (a) (b) and (c) in the extract from the Order in Council above quoted.

Incidental to some of these considerations there may be, here and there, reductions in rates; but such is not the primary object of the inquiry now entrusted to us by His Excellency the Governor General in Council. It is altogether too narrow a view to take, that the Board in this investigation is confined to an effort to bring down rates to, or below, any particular level which may be demanded by shippers in different localities. Undoubtedly, anything in such complaints partaking of the nature of unjust discrimination or undue preference should be given immediate attention, or, if the rates in any of the instances complained of be excessive, they should be modified so as to remove the defect. But it must be borne in mind that increasing expenses in every direction have operated against the railways, fully as much as against every other line of business, and seriously augmented their burdens. The labour necessary for operating, the supplies required to be purchased in such operation, the increased cost of additions to the service necessary to be furnished periodically,—all of these must be taken care of by revenue, and it is the duty of the Board to see that the railways are not hampered in their activities.

Exhibits have been presented to the Board on the part of the railway companies, prepared with most elaborate care and almost overwhelming in detail, setting forth their financial condition, and it is doubtful if any feature has been omitted which would impress upon the Board the increased requirements of the railway systems at the present time.

There is no occasion to labour the question that the railways must receive sufficient revenue to efficiently operate, to provide for all legitimate needs, and to make fair return to those whose money is invested in such business undertaking. The duty of the Board in this regard is recognized and was openly expressed even by those who, in individual instances, have asked for decreases in tolls levied upon themselves, or their business. We are all agreed that rates cannot be reduced to a level which would cripple the operation of the roads, or would make it impossible for them to effect such yearly increases in mileage and equipment which the growing necessities of the country demand.

It would consequently seem expedient to consider certain of the principal features involved in the present freight rate system, which require separate treatment and explanation.

The list immediately hereunder may not comprise all that could be enumerated but it contains those which were discussed and to some degree challenged during the investigation. They may be classified as follows:—

(1) Transcontinental Rate Scale;
(2) Town and Terminal Tariffs;
(3) Different Standard Mileages; east and west;
(4) Grain Rates over the National Transcontinental to eastern Canadian seaports;
(5) Mountain Differential against the Pacific District;
(6) Domestic Grain Rate from Alberta to British Columbia;
(7) Equalization of the Western Grain Rates to the proper Canadian Pacific main line basis.

As far as concerns three of the above enumerated features of our present rate system—namely, Transcontinental Rate Scale, Terminal Tariffs, and the different Standard Mileages, east and west, I am of opinion that no reasons have been urged sufficient to make it advisable that the same should be eliminated or altered, as asked by various petitioners. They have been discussed individually in different rate judgments. Their origin and the reasons for their establishment and maintenance have been frequently explained and in my view such reasons stand as a justification for the continuance of these existing features of our rate system substantially unimpaired. It is, I think,

unnecessary to bring into this discussion a reiteration of what has been previously decided concerning them. The Transcontinental Rate Scale has a very definite purpose, and one which should be commended rather than criticised. While it gives rise to some anomalies, nevertheless such are not by any means to prevail against the benefit of the system as a whole. It is true that some localities east of Vancouver are compelled to pay on certain commodities transportation rates greater than those charged for the long haul; but the real issue in that regard is whether the charge for the short haul is reasonable and fair. The two sets of rates are based on different principles, as is well recognized, and are not to be judged by the same standard.

Transcontinental carriage of freight has been much affected by reason of the cheaper, although much more lengthy and circuitous water route furnished by the Panama Canal. In instances wherein rapid delivery is not essential, the competition of the latter route is most formidable. The establishment of this route has deprived railways of much traffic, and wherever they can meet such competition by making low transcontinental rates, they should be encouraged to do so, and schedules framed for that purpose should not be disturbed.

A criticism of some force, however, developed through the complaint that by reason of the transcontinental rate to Vancouver and the rate eastward therefrom, certain distributors in Alberta find themselves at a disadvantage as compared with distributors in Vancouver. The instances of such were not impressive and are not to be met by alteration or elimination of the transcontinental rate. They do not touch the principle of transcontinental rates, which under present conditions needs no justification.

As regards an alteration in Terminal Tariffs, urged by counsel for Saskatchewan and Alberta, there is involved in the latter the elimination of an assumed mileage between Port Arthur and Winnipeg, whereby the distance between those cities is for rate making purposes diminished by 130 miles. While it may be admitted that the longer distances to cities further west than Winnipeg lessen the percentage of the benefit of such elimination, yet the general advantage of the latter feature is, in my view, of much value taken as a whole. It seems hardly possible to elaborate a rate system wherein no inequalities occur. The primary inquiry here as elsewhere involves consideration as to the fairness of the rates challenged. By virtue of its relatively eastern position, Winnipeg admittedly gets a larger percentage of benefit than cities further to the west, but throughout the rate structure there are fully compensating advantages which accrue to the latter. The elimination of 130 miles, both on the westward haul from the head of the Lakes and on the eastward haul from Vancouver, is a concession of importance and should not be lightly discarded. I think no change should be made in this respect.

The question of Town Tariff rates, or distributing rates, is raised both by the province of Alberta and the province of Saskatchewan, and it is urged that the maximum Town Tariff basis which was made effective against the Canadian Pacific Railway, together with any modifications thereof, be now extended to all lines of all railways, in their operation throughout the prairie territory.

I agree with the views expressed by the learned Assistant Chief Commissioner in this matter.

The third above enumerated feature, namely, the difference in standard mileage between eastern and western Canada, has been so often thoroughly explained, and reasons therefor developed that it is sufficient to say that under conditions as they exist, no other course seems possible to follow. One cannot ignore the existence of water and other competition which lies at the foundation of this distinction and which has been completely developed in many judgments of the Board.

MOUNTAIN DIFFERENTIAL

Preliminary to the discussion of what is termed the mountain differential, it may be said that prior to the revision consequent upon the judgment of the Board in the Western Rates Case, a disparity existed between the freight rates charged in the Pacific district in comparison with those which prevailed in the prairie district.

The reason for such differential is indicated in the following extract from the judgment of 1914: "beyond all question both the initial construction and railway operation through the mountains are much more expensive than operation on the prairies. Some difference in rates are not only justifiable but necessary." As is well known, this treatment has always met with remonstrance on the part of British Columbia based upon various reasons. The argument put forward to the effect that these higher operating costs should be absorbed by the whole system, has not met with the Board's favour.

As a result of altered conditions in 1914, by the judgment referred to the inequality in freight rates theretofore existing between Pacific territory and prairie territory, in favour of the latter, was reduced from a rate basis where one mile in Pacific territory was counted as two miles under the prairie tariff of 1894, unto a rate basis of one to one and a half. It remained at that figure until the judgment in the 1922 Reduction Case, when the basis was reduced from one and a half miles to one, to one and a quarter to one.

It prevails now at, as near as may be, 15 per cent over the prairie scale. And this in itself does not tell the whole story. There are many articles being carried within the mountain district, and to and from that district, from and to eastern Canada, wholly free from this lessened differential. The freight now moving within mountain territory which has a rate scale to which this mountain differential does not apply, amounts to approximately 85 per cent of the British Columbia traffic. We are concerned in this inquiry to make, as far as possible, an equalization of rates, and it is incumbent that our efforts in that regard should be kept within the provisions of the Railway Act, which provisions are, in substance, that just and reasonable rates should be imposed. It is not denied that such expression means just and reasonable from the standpoint of the producer as well as from that of the carrier. It is further urged that such rates, to be just and reasonable, should not penalize one section of the country for reasons which are not considered, when fixing rates in other sections.

Argument was addressed to the Board dealing with the primary purpose of the construction of the Canadian Pacific Railway to British Columbia, and complaining that the existing difference in rate scale is at variance with such purpose. This complaint on the whole, spoke much more loudly prior to 1914 than at the present day, for, from reductions voluntarily made, and others arising from judgments of the Board, the source of such complaint has been to a very large degree removed.

It is contended that, if, during the last dozen years or so, no injustice has been done to anyone by reducing the amount of mountain differential to 15 per cent, little weight can be attached to the contention that the disappearance of the present rudimentary distinction will effect much trouble. At this, and at previous hearings, many arguments against its continuance have been pressed upon the Board by business and public men of British Columbia—

some of whom have gone to the length of saying that British Columbia never would have entered into Confederation had it been known that unequal treatment was to be given to its inhabitants in regard to the carriage of freight over the railway which was insisted upon by that province as a condition to entering into alliance with eastern Canada. But the reductions made in the mountain differential have ostensibly not been made from the standpoint of that complaint. While appreciating the position so set forth, nevertheless it does not seem necessary at the present time, that any considerations need be urged other than those which are in harmony with the wording and directions of the Railway Act with reference to the imposition of rates which must be just and reasonable. It is one thing, however, to maintain rates so in compliance with the Act, while it may be another to determine exactly the incidence of such rates as regards localities.

The judgment of 1914 affirms that it was improper to absorb the then higher operating costs of British Columbia throughout the whole system. If, however, it should appear that the reason for such difference has disappeared, or diminished to such a degree, that the operating costs within the Pacific district present no greater increase, when compared with the operating costs of the system as a whole, than is shown with regard to other districts against which no distinction is made from a rate standpoint, then it will be apparent, I think, that the discrimination against British Columbia has ceased to be reasonable and just, if put upon the basis of increased cost of operation.

To understand somewhat the relative positions of British Columbia and the prairie districts as regards prevailing rates, and the incidence and effect of the present mountain differential, attention is directed, in the first place, to the standard mileage tariffs in use in British Columbia district and in the prairie district, and comparison may be made between a haul of fifty miles in British Columbia and a haul of fifty miles on the prairie. An addition of the rates upon the first five classes of freight (which are the important ones) brings up a total of 183 for the mountain division, in cents per 100 pounds. The prairie basis for the same haul is 157, a difference of 26 cents, which is 16.5 per cent higher in the Pacific region for movements in these classes and for this mileage, than is the prairie rate. This distinction works out, on an average, between 15 and 16 per cent. The differential in terminal class rates averages only about 10 per cent. The Western Rates Judgment is the foundation for these latter rates; and as between eastern and western haul, the following comparisons are instructive:—to ALDERSON, Alberta from Fort William, a distance of 1109 miles, in comparison with rates from Vancouver to Regina, carrying the same distance, namely 1109 miles, the rates are figured, as regards the first five classes, at 8 per cent higher from Vancouver eastward than from Fort William westward for these equal distances. The same classes on a distance of 735 miles, namely from Fort William to Indian Head, as compared with Vancouver to Red Deer, show a difference of 13 per cent higher from Vancouver than from Fort William; whereas a distance of about 600 miles, as illustrated by a rate from Vancouver to Calgary, compared with Fort William to Red Jacket, carries a difference of 15 per cent against the western haul, and these terminal class rates, which are actively in discussion, average as a whole, as near as may be, 10 per cent higher eastward from Vancouver than westward from Fort William. It will be remembered that in the comparison of these terminal tariff rates, advantage is given to Vancouver, as well as to Fort William, of the constructive mileage from the latter city to Winnipeg of 130 miles less than the actual mileage. A distinction is pointed out between terminal tariff rates and distributing rates. From Vancouver to a point in Alberta, the terminal tariff applies; but from Vancouver to Kam-

loops, goods are carried under a distributing tariff. The scope and operation of the distributing tariff from Vancouver is up to the point where the rates for the assumed mileage of 290 instead of 420 become the maximum, and thence the rate is built up eastward, and it may be said that the Pacific distributing rates are approximately 16 per cent higher than the Prairie distributing rates. In these latter, having regard to the first five classes on a fifty mile haul, there is a difference of 12.1 per cent, the rates in Pacific territory being that much higher than on the Prairie. For a haul of 150 miles, the Pacific distributing rates are 14.6 per cent higher than the prairie distributing rates, and for a distance of 250 miles, the differential is 15.7 per cent above the prairie scale of distributing rates. It is figured that the general average of these groups under the Pacific distributing tariff is higher than that of the Prairie distributing tariff in the amount of 16 per cent.

Turning now to the traffic conditions under which the goods are carried, and viewing the freight movements from the standpoint of both terminal and distributing rates, an analysis may be made, based upon the movement itself as follows:—

Three subdivisions are noted: First, traffic which moves exclusively within the Pacific territory, originating and terminating within that district. The tonnage involved in such movement, which is carried on class rates, and bearing the mountain differential, amounts to 10.8 per cent of the total of such traffic. Also, certain movements of freight within such district under commodity rates, reflect the mountain differential to an extent shown to be 3.4 per cent of the total traffic thus moved. From the above, it is apparent that of the traffic which originates and terminates within the Pacific territory, a total percentage of 14.2 thereof reflects the mountain differential, and, saying the same thing from the other standpoint, 85.8 per cent is free from such burden.

Second: As to the traffic between Pacific territory and prairie territory, all that now reflects the mountain differential is 6.2 per cent of the volume of traffic which now moves under commodity rates and 5 per cent of that moving under class rates, making a total of 11.2 per cent of the whole of such traffic; leaving 88.8 per cent of the movement in freight between Pacific territory and prairie territory unencumbered by the mountain differential.

Third: Of the freight movement between Pacific territory and eastern Canada, in both directions, none of the commodity rates comprised in such movement involve the mountain differential. But of class rates 13.3 per cent carry this difference, leaving 86.7 per cent free from such burden. Mr. Stephen, for the Canadian Pacific Railway Company, in his evidence summarized the entire situation by stating that of all the traffic to and from all points in British Columbia, 8.3 per cent of the class rates and 6.4 per cent of the commodity rates, reflect the mountain differential.

From this it will be noted, that of the total traffic over and within the mountain region, not quite 15 per cent is subject to the mountain differential, and a little more than 85 per cent is subject to no such handicap.

As to the amount of money represented by such differential, Mr. Stephen estimated that the application of the mountain scale to the traffic moving within the Pacific territory, involves a difference of from $250,000 to $300,000 over the revenue that would accrue from such traffic handled on the prairie scale of rates.

With respect to the traffic between Pacific Territory and prairie territory, in both directions, 11.2 per cent of the tonnage reflecting the mountain scale, was estimated by the same witness to represent between $350,000 and $500,000 in excess of the revenue that would be earned by the same traffic, if carried at the prairie scale of rates.

And as to the traffic between Pacific territory on the one hand, and eastern Canada on the other, Mr. Stephen testified that the 13.3 per cent which moves on class rates involving the mountain scale for that portion within Pacific territory, would represent a difference in revenue of approximately $300,000, if the mountain scale be eliminated.

The testimony as to percentage of traffic, as compared with that which deals with the amount of revenue involved, though given by the same witness, is not of the same evidential value. The former computation was the result of an actual check of the traffic for a period in order to prepare the percentage estimates, but the calculation of the amount of revenue involved was not the result of figures so taken, but, as stated by Mr. Stephen, they were pure guesses on his part. It may be said, however, and seemed to be taken for granted during the discussion, that the elimination of the mountain scale of rates and its reduction to that of the prairie district, would involve an impairment of approximately one million dollars in the company's receipts, if the volume of traffic remains the same, which latter assumption is sharply challenged.

It was seen as the investigation progressed that very many computations were set up, and it is difficult to ascribe to each its exact value. Perhaps none of them should be completely lost sight of, but with reference to some at least, their evidential value is far below that which attaches to others.

Numerous exhibits have been placed before the Board and costs and comparisons made from all angles. Studies were presented comparing operating costs in the British Columbia district with those of the prairie district from the standpoint of average mileage operated, of freight operating expenses, gross ton miles, net ton mileage, freight train miles, loaded car miles, empty car miles, per mile of road, as well as from the standpoint of net tons per train, gross tons per train, net tons per car, loaded cars per train, empty cars per train, ratio of empty to loaded car mileage, net tons per mile of road, and freight trains per mile of road and from all these computations and standpoints ratios and averages were worked out involving extremely complicated and exhaustive calculations, all of which are to some degree inter-related, and no one of which, perhaps, by itself leads to any absolutely certain and definite conclusion.

I think we may fairly begin with an examination touching operating costs on the one hand, and revenue upon the other.

Statements of net operating results during various years were also presented showing almost the same amount of detail as that involved in the calculations concerning the operating costs mentioned above. It is not feasible, nor profitable, to attempt a complete discussion of the subject throughout all the avenues of investigation involved in the above enumeration and detailed at length in the exhibits filed, illustrative of such various lines of inquiry.

There are two considerations which seem to lead to the safest conclusions. The first has to do with the operating costs necessarily incurred in maintaining and operating the railroad throughout the territory in question. And the second concerns itself with the amount of revenue derivable therein.

Pursuant to request, a segregation of revenue and expenses as between eastern and western lines was set out by the Canadian Pacific Railway Company, but it was emphasized that other factors must be given consideration from the standpoint of different sections of the road included in such statement.

The Canadian Pacific Railway Company submitted a statement for the year 1925, setting out the operating cost per gross ton mile throughout its system by districts.

As between lines east and west, it shows average expenses for all eastern lines, per gross ton mile, to be .00401, and for western lines .00276.

Of the eastern districts the operating cost per gross ton mile is:—

New Brunswick	.00553	Quebec	.00504
Ontario	.00367	Algoma	.00293

The western lines show much lower operating expenses, calculated on the same basis, viz:—

Manitoba	.00232	Saskatchewan	.00281
Alberta	.00299	British Columbia	.00376

Of the lines west, British Columbia is seen to have much the higher gross ton mile expense, being .00376, as compared with Manitoba .00232, the latter being the least expensive of the western provinces from that standpoint. British Columbia's figure .00376 is lower than the average of lines east, which, as above remarked, stood at .00401 for that year.

For the year 1924 the same comparison shows operating expenses per gross ton mile:—

Lines east	.00421	Lines west	.00307

British Columbia continues to show the highest western figures, namely, .00358, as against Manitoba, the lowest westerly figure, of .00268.

It is again to be noted that British Columbia's per gross ton mile operating expenses are lower than the average of the lines east.

In 1923 the figures are, lines east .00427; lines west .00290. British Columbia being .00403, again below the average of the lines east for that year.

In 1922 lines east show operating expenses of .00442 per gross ton mile, lines west .00315. British Columbia's operating expenses were greater than the average of lines east during this year, standing at .00461, but are lower than those of New Brunswick and Quebec, the latter being .00534; and New Brunswick .00541.

And lastly, for the year 1921, the average for the eastern lines is .00532; for the western lines .00388; British Columbia being .00552, again slightly in advance of the eastern average but less than those of the two eastern provinces last above named, which for that year were, New Brunswick .00659, Quebec .00662.

It is instructive to note that there has been a steady decrease in British Columbia's operating costs per gross ton mile from 1921 to 1925 inclusive, represented as follows:—

1921	.00552
1922	.00461
1923	.00403
1924	.00358
1925	.00376

These figures show a relative decrease in operating expenses in British Columbia much more substantial than that in any of the other western provinces.

A statement of expenses in the British Columbia district from the years 1921 to 1925 gives the following:—

1921	$14,010,609 91
1922	13,420,133 75
1923	13,577,728 92
1924	13,255,154 67
1925	12,943,228 41

It may be here noted that this condition does not arise from a decrease in business, for the record of loaded freight car miles for the province of British Columbia for the year 1925 shows an increase of more than ten millions over 1921.

In British Columbia in 1925 the operating expenses per mile of line were $9,663, which is the largest for any of the western provinces with the exception of Manitoba, the latter being given as $10,598, while the average expense per mile of all lines west is $7,908, by which it is seen that the expense in British Columbia and Manitoba is higher per mile of line than either Saskatchewan or Alberta, the former being $5,412, and the latter $6,764. These figures for the western lines, however, seem moderate as compared with the expense per mile of line in the east, which averages $12,499 for the same year. The same relative standing is shown during the years 1921, 1922, 1923 and 1924. That is to say, that in each of these years the expenses per mile of line in British Columbia are, with the exception of Manitoba, the highest in the west, but uniformly lower than the average of lines east throughout that period of time.

As regards the Canadian National Railways, full operating results by regions were submitted for the years 1923, 1924 and 1925, such regions being divided into Atlantic, Central, G.T. Western, and Western.

Details are carried through many pages but do not furnish the same grounds of comparison, as are supplied by the answer of the Canadian Pacific Railway Company and above detailed from the record submitted by the latter company.

But it is shown that the operating net for the western region is uniformly higher than that of the other regions, and a further exhibit shows a comparison of operating costs between the British Columbia district and Manitoba, Saskatchewan and Alberta, for the years 1924 and 1925, from which, having regard to the year 1924, it appears that the operating expense per mile of road in British Columbia is $3,825.50; and in the prairie districts is $4,761.51.

And for 1923, British Columbia's expense is $3,536.36 per mile, and the prairie districts $4,707.34 per mile.

The loaded cars per train in 1924 in British Columbia were 21.31, and in the prairie districts 23.21. And in the year 1925, the figures show British Columbia 21.18, and the prairie districts 23.63.

The gross tons daily per mile of road for 1924 are 4,438 for the prairie districts, as against British Columbia 3,034.

And in 1925, prairie districts 4,913, as against British Columbia, 2,862.

As regards net tons, and gross tons per train, the former, namely net tons in British Columbia is shown to be 600, and in the prairie districts 668, for the year 1924.

And for the following year, 587 in British Columbia, and 700 in the prairie districts.

For gross tons per train for British Columbia, in 1924 the figure stands at 1,251, as against that for the prairie districts of 1,363.

And for the year 1925, British Columbia stands 1,241, and the prairie districts 1,442.

The disparity shown by the above comparisons reflects itself in the operating expenses per train mile as follows:—

For British Columbia for 1924, $4.31, as against $4.04 for the prairie districts,
And in 1925, $4.21 for British Columbia, as against $3.82 for the prairie districts.

The expense under the head of empty cars per train shows 10.82 for British Columbia, in the year 1924, as against 12.47 for the prairie districts.

And for the year 1925, British Columbia is shown at 10.01, as against 14.33 for the prairie districts during the latter year.

There is also shown in the same exhibit, a statement of the freight trains daily per mile of road, which is given for the year 1924 for British Columbia as 2.42, and prairie districts, the same year, 3.22.

And for the following year, British Columbia 2.30, as compared with the prairie districts 3.37.

A comparison of density of traffic is reflected in the item of "Net tons daily per mile of road", which is shown for the year 1924, in British Columbia as 1,454; and for the prairie districts 2,173.

And in the following year, British Columbia 1.353, and the prairie districts 2.383.

It is not sought to attach undue importance to any individual calculation, because as often stated, many factors must be given consideration. But for what it is worth, it will be noted that the operating expenses per gross ton mile upon lines east, are substantially higher than those upon the lines west. While British Columbia stands out as a more expensive district than either of the other three western provinces, yet it is found to be about the same as Ontario and less than either Quebec or New Brunswick. And as between Ontario and New Brunswick, in the eastern district, there is no greater inequality than is shown between British Columbia and Manitoba, which stand at the extremes on the lines west.

Turning now to the revenue derived by the railways from the British Columbia district, as appears from the statements put before the Board, it may be noted that while the Canadian Pacific Railway Company was asked to submit a compilation showing the total revenue segregated by districts, no complete answer to this request was made. It is alleged that such information cannot be given separately by districts, but it was supplied for lines east and lines west. Such a statement lacks definiteness in regard to its comparative value as between British Columbia and other districts, but the figures furnished must be given consideration, and for lack of more exact information, in justification to the position of British Columbia, reliance is placed upon what they disclose.

The information supplied by districts as above indicated, shows that the freight operating revenue on lines east, for the year 1921, amounted to $54,855,611.95, and lines west for the same year, $72,325,834.19; 1922—lines east $54,735,222.17; lines west $72,567,429.99; 1923—lines east $56,329,554.80; lines west $76,312,258.12; 1924—lines east $52,774,607.57; lines west $69,125,765.64.

And in the year 1925, total freight revenue for lines east is shown at $51,820,208.73, and lines west $74,932,232.82.

A comparison is set out between the eastern and western districts on the basis of revenue ton mile receipts carried through from 1921 to 1925. The trend is substantially even and shows favourably to the eastern lines throughout that period. The exhibit shows in 1921, a total revenue freight ton mile receipt of 1.196 cents, and separable as follows:—

Lines west .. .. 1.158 Lines east 1.249

In the year 1925, the freight ton mile revenue for lines east and west appears at 0.970, which in its turn is separable into the figures:—

Lines west .. .. .857 Lines east 1.200

which it will be observed is about 50 per cent better showing for the east than for the west.

As remarked before, it is difficult to ascribe proper weight to each of these calculations, but there are so many others to be considered along with ton mile statistics, that in themselves the latter cannot be regarded as infallible guides in fixing freight rates. Neither do they constitute a generally accepted basis for the same. They reflect neither car loadings, train tonnage, car mileage nor

train mileage, all of which are factors of some value. Without any reduction in charge for service, a reduction in revenue per ton mile may be brought about by a relative increase in the length of haul or in the volume of traffic taking low rates. This is recognized in what is known as the Five Per Cent Case, 31, I.C.C., 351, and is specially applicable to conditions in this country, wherein length of haul is so characteristic a feature on the western lines; and volume of traffic bulks so largely in the period during which grain is moved.

While such comparisons, *i.e.*, ton mile statistics are not without usefulness, their acceptance as a sole test would deny consideration to many other potent and frequently controlling forces. Muskogee Traffic Bureau v. A.T. & S.F. Ry. Co., 17 I.C.C. 169.

Statements to the same effect are found in many other judgments of the Interstate Commerce Commission, and while willing to concede to ton mile revenue calculations whatever value is rightly attached to them, yet it is a test to which the previous remark is specially applicable, namely that no one can be, by itself, regarded as conclusive.

Page 18 of Exhibit 98 of the Canadian Pacific Railway Company, sets out the net earnings per mile of line and per total train mile from 1921 to 1925 inclusive, on lines east and west, segregating the same. It shows that the net earnings have increased from something less than 12 millions to over 16 millions, on the lines east, while on the lines west it stands in 1925 at $30,833,574.30, an increase of a little over $800,000.00 since 1921.

And a per total train mile earnings on lines east for the year 1925 of 0.77, and on lines west of 1.33.

In answer to the question as to what he considered to be the final test of the success or otherwise of the company's operations in regard to expense, at p. 2729, Vol. 498, Mr. Stephen said, that after considering every factor, the *net revenue per mile of line* is his final test.

Turning from net earnings to operating revenue, no details are available by which to test British Columbia with the other provinces in the west, or with the eastern districts. Operating revenues, lines east and west, are furnished, and confining the comparison to freight carriage, the revenue per mile of line for the year 1921 on lines east is given as $11,364, and lines west $8,857.

For the year 1922,	Lines east	$11,339
	Lines west	8,779
1923,	Lines east	11,664
	Lines west	9,201
1924,	Lines east	10,791
	Lines west	8,166
1925,	Lines east	10,584
	Lines west	8,532

This does not include passenger traffic which, if included, increases the disparity of revenue between the east and the west in greater favour of the east.

For want of more definite information concerning operating revenues by districts, it is necessary to confine our observations to the sums detailed between lines east and lines west as above.

Comparisons are given in detail as to per mile of line, per freight train mile, per loaded car mile, and per revenue ton mile.

With the exception of that which has regard to per freight train mile, the calculation on the other heads favours the east as against the west, for reasons which are obvious, having regard to the shorter mileage, greater density of traffic and interurban carriage.

The item of revenue per freight train mile is distinctly in favour of lines west, being as follows:—

1921	Lines east	$5 58	Lines west	$6 79
1922	"	5 08	"	5 65
1923	"	4 89	"	5 14
1924	"	4 83	"	5 47
1925	"	4 78	"	5 37

In an exhibit (No. 218) filed on behalf of the Province of Ontario, table 2 thereof sets out the net freight earnings of the Canadian Pacific Railway Company calculated on exhibits submitted in response to a question by British Columbia and Alberta, which show the earnings of the last named company during the years 1923, 1924 and 1925, segregated between lines east and lines west as follows:—

1923	C.P.R. net earnings,	Lines east	$17,089,708
		Lines west	28,749,104
1924	"	Lines east	16,819,059
		Lines west	27,312,822
1925	"	Lines east	16,419,102
		Lines west	30,833,574

These figures are open to the obvious comment that it is the easy conditions of the prairie provinces which enhance the value of that region from a railway standpoint, and they have no direct bearing upon the difficulties of transport throughout British Columbia; but the figures must be dealt with as represented and for what they show.

Exhibits were also filed giving the total revenue of the Canadian National Railways by regions, as well as net freight earnings by this company by regions also.

For the purpose of the comparison now being made, these compilations carry us no further than those of the Canadian Pacific Railway Company which are detailed above, and I think no good purpose would be served by enlarging upon them.

Helper Mileage

Helper mileage is recognized as a necessary additional expense for the movement of traffic, and to the extent that it is requisite, must be a burden upon traffic moving in localities in which such assistance is necessary.

Canadian National Railways

It is to be noted that in answer to question 20 of Exhibit No. 97, the number of helper miles necessary for the transport of British Columbia freight is given, and compared for the years 1923 and 1924 with those necessary for other regions.

British Columbia shows the number of helper miles at 1,328 for the year 1923. There are, however, in Alberta 27,601 helper miles, a portion of which undoubtedly would be within the Pacific territory. Just how much is attributable to Pacific territory alone is not given, but the whole figure is moderate when compared with the Atlantic district, over 47,000; the Quebec district, over 154,000; Montreal, 143,000; southwestern Ontario, 270,000; and Grand Trunk Western, 111,000.

For the year 1924, the figures are relatively unchanged, although by no means identical.

Canadian Pacific Railway

Helper mileage on the Canadian Pacific Railway line shows more marked disadvantage as regards British Columbia. In response to a question submitted by counsel, the latter company has detailed the number of engine helper miles by districts, 1921 to 1924 inclusive. It shows that British Columbia has the highest number, yet as compared with Quebec district, the disparity is not so great as to justify any different treatment. During the four years in question the number of helper miles necessary in the British Columbia district totalled 887,713; while those in the Quebec district aggregated 769,924.

The conclusion to be drawn from the above figures is, in my opinion, that the mountain differential is not justified for the purpose of equalizing any disparity arising from the necessity of helper mileage in British Columbia.

In coming to a conclusion as to whether a given rate is just and fair, one cannot disregard the course of dealing between other parts of the same system. If, for instance, it be shown that from all standpoints by which results are tested, a disparity exists between two sections maintained as separate districts, involving a comparison of revenue ton miles, density of traffic, gross ton miles, and all the other factors which may be enumerated, and yet notwithstanding all this no difference in the scale of rates has been set up between them, it is difficult to see how the same distinctions, when operating between other sections of the road, can be relied upon in support of a differential which the former disparity does not give rise to. It needs no elaborate presentation of statistics to establish the fact that operating costs are and must be greater in British Columbia than in other sections of the road included among the western lines, and the chances are that this will always be so. There are the mountains to climb, and tunnels which require expensive oversight, dangers to be provided against with reference to the roadbed and right-of-way, all of which must be reflected in increased costs. But if these things occasion no greater relative inequality as compared to that which runs between other sections of the road, they cannot justify a heavier load in the one section only. If the figures now before us, all of which have been furnished by the railways, truly reflect the expenses of operation, and are of value in our calculation, it may well be argued that British Columbia's present higher figures are assisting to carry the increased expense which other portions of the line in the eastern districts occasion.

There are other features of the exhibits which show the cost of operation in British Columbia at a figure greater than that of the western provinces, and of some of the eastern districts as well, but they are not of such a nature as to carry the argument in favour of the mountain differential any further than it is carried by the figures and calculations submitted on behalf of the Canadian Pacific Railway Company, nor, in my opinion, do they add to its force.

While each railway must be operated as an individual system, not as lines east and west, yet for the purpose of comparison, as before noticed, statements of revenues and expenses have been submitted in which such distinction is shown. They show that as regards the eastern regions, operating expenses are much greater in New Brunswick and, to some degree, in Quebec, than in other portions of the eastern territory. This disparity, however, is no greater than that which is disclosed as between British Columbia and the other western sections.

There has been no complaint heard, or contention made, that a differential should be imposed upon the more difficult railroad portions of the eastern territory, but the more favoured part of this section of the road has acquiesced in the present position.

There is no reason to believe that the favoured section of the western territory takes any different attitude towards British Columbia which, despite its mountain difficulties, is making an increasingly better showing from a railway standpoint year by year.

It will also be noted that the observation from the judgment in the Western Rates Case assigned initial construction, as well as operation, as justification for a difference in rates.

The case of the province of British Columbia in this respect was strongly urged upon the Board by the Honourable John Oliver, Prime Minister, who asserted that:—

> "The Statutes in force at the time of Union would not permit of unjust discriminations which have since been imposed by the railway company.

"At the time of Union, the people of British Columbia, protected by the statutes as then in force, had no reason to think and as a fact did not anticipate that they would be required to pay higher rates for service from the railway than were imposed in other parts of Canada on the same railway.

"Had the terms of Union stipulated that higher rates might be charged in British Columbia for railway service than were charged by the same railway in other parts of Canada, the people of British Columbia would not have entered the Union on such terms."

He called the attention of the Board to the contract between the Canadian Pacific Railway Company and the Dominion Government, wherein the railway company contracted to construct the railway by way of the Yellowhead Pass, and submitted that the company having voluntarily abandoned that route, over which they had contracted to build, and over which no mountain grades existed, it was manifestly unfair that the railway company should be allowed to impose upon British Columbia for all time an increased cost of service, because of the change. He claimed that the Canadian Pacific was amply compensated for the obligations assumed, and stated that:—

"From various sources of information I have compiled a statement of the subsidies in lands, moneys, and constructed railway, including costs of service, which the railway company received from the Dominion in respect to its main line of railway as follows:—

"Cash subsidy	$ 25,000,000
Constructed railway including service	38,000,000
Cash in exchange for subsidy lands	10,000,000
18,206,985 acres selected lands valued at the time of earning at	27,310,000
Making a total value of subsidies as at the time of earning of over	$100,000,000"

Objection was urged by counsel for the Canadian Pacific Railway Company against the Board entering into an examination and discussion of the proceeds of subsidies granted in aid of the road, and while not denying its power, the Board did not think it necessary at the present to embark upon such inquiry, although strongly urged to do so as regards the feature of land subsidy. It was emphasized that the subsidies were received as well for operation as for construction, and the statutes bear this interpretation. And the contention put forward that the Canadian Pacific Railway Company has received extra compensation for the increased cost of construction through the mountainous territory of British Columbia, has been well sustained. It is contended that such compensation offsets in full the increased expenses of such construction. Whether that be so or not, I do not think that there is any such margin left as would justify the continuance of the differential complained of.

Having received large subventions for the express purpose of overcoming the physical difficulties throughout its system, which have been enlarged upon and which admittedly exist, the company cannot now in justice be heard to urge these difficulties to uphold a discriminatory scale which such subventions were given to overcome.

The figures detailed above show, I think, with sufficient clearness, that there is no more justification for a continuation of the mountain differential against British Columbia, than there is to establish it on other parts of the system. From the standpoint of operating expenses and revenues collected throughout that district, it should not be further discriminated against.

III.

BRANCH AND MAIN LINE RATES

Bearing upon the application to equalize throughout the west the mileage rates on grain and grain products as between the Canadian Pacific Railway main line and its branches, and to apply such rates to the Canadian National Railways and branches thereof, consideration of the scope and effect of the statute of 1925, amending the Railway Act 1919, is pertinent and necessary.

The Board has had the advantage of a most complete discussion of the amendment in question, on the part of those supporting the motion, as well as by counsel representing the Canadian National Railways and the Canadian Pacific Railway Company.

Mr. McEwen, speaking on this subject for both Alberta and Saskatchewan, pointed out that at the time of the Crowsnest Agreement there were in these two provinces only two branch lines upon which grain was carried, namely: the Prince Albert Branch—Regina to Prince Albert; and the connecting line between Edmonton and Calgary, and as concerns the former, he showed that from Regina to Aylesbury, a distance of approximately 65 miles, the grain rates charged thereon were as a matter of fact on the main line basis; but from Aylesbury north to Prince Albert, the rates were on a higher level than those prevailing on the main line.

As regards the Edmonton-Calgary Branch, he drew attention to the fact that the Calgary grain rate on 1,267 miles was 26 cents, it being the most westerly point on the main line from which grain and flour for Fort William were carried. Admitting that in going north on the Edmonton Branch, the first station, at a distance of 1,275 miles from Fort William, took a rate of 27 cents, being one cent higher than the Calgary rate, he submitted that as there were no mileage comparisons available from any point west of Calgary, it did not follow that the 27 cent rate on the Calgary-Edmonton Branch station would be higher than the rate from a presumed point on the main line west of Calgary, carrying a distance equal to that of the first station on the Edmonton Branch.

These being the only branches in these two provinces at the time of the Crowsnest Agreement, from which any deductions can be drawn, it was further pointed out that in the province of Manitoba two branch lines, namely: the Manitoba Southwestern and the Manitoba Northwestern, were then in existence and took the Crowsnest rates. Both of these, at that time, were branches from the Canadian Pacific Railway and one at least, the Manitoba Southwestern, was operated as part of the Canadian Pacific Railway System. He was, therefore, able to show that, starting at the time of, or immediately after, the Crowsnest Agreement, the Manitoba branch line rates were not in excess of the Canadian Pacific main line rates; that upon the Prince Albert Branch, for a portion thereof, the same measure of rates was followed, and that for the succeeding and larger portion a higher scale prevailed; and finally, that upon the Edmonton-Calgary Branch no conclusion was drawn because the raise of one cent from Calgary to the first station northward was not shown to be out of line with the C.P. main line rate, if a station at that distance westward had been in existence.

He argued with force that a proper starting point of the discussion would be to give attention to the rates which prevailed on these branch lines in question, at the time of the Crowsnest Pass Agreement, and draw therefrom inferences as to what was the prevailing branch line rate for application to branches subsequently constructed.

With this as a basis of his argument, Mr. McEwen proceeded to develop the present rates on all other branches, submitting the same to a comparison which, while it did not show such uniformity as to be conclusive, cannot be said

to be without some effect upon the general discussion, for the reason that a large number of stations on the branch lines constructed after the agreement had apparently put in rates no higher than those prevailing on the main line, and his contention was and is, that a comparison of the number of such latter points with the number of points on such branches carrying higher rates leads to the conclusion that, generally, branch line rates were based upon similar mileages on the main line, although as before remarked, a considerable number of stations on such lines contravened his argument in that regard. It is not necessary to follow in detail, from station to station, the presentation made by Mr. McEwen in his argument, for in my view the matter need not be decided upon this basis, but his exhaustive comparison stands upon the record in support of the contention that taking the rates throughout both main and branch lines, a fair amount of consistency is shown.

Mr. Woods, in support, contended that carrying a difference in rates on a given mileage as between main lines and branch lines, casts upon the railways the burden of making reply to the prima facie case of unjust discrimination and undue preference, that the main line rate being a statutory rate, it follows that in doing away with discriminations the branch line rates must come down to those of the main line. He agreed that as far as conditions in 1897 were concerned, no mileage basis was shown either in the statutes or in the agreement, but contended that an analysis of the tariff shows that within certain mileages, certain rates prevailed. That when it is found that by virtue of the agreement between certain mileages certain rates are carried, it follows that when the statute says that the rates on grain and flour from the west are to be governed by the agreement, they must put in rates within those mileages at the main line figures. Dealing with section 325 and amendments, he argued that it was the culmination of an approach to equalization in grain rates as well as in other rates throughout the prairie territory, supporting this argument by a resume of the rates cases from 1914 onward to the issue of the present Order in Council. He urged that it was the manifest intention of the different Orders that a parity of rates should be established as conditions became more and more similar throughout the country, and that approach to such parity is not only apparent from the Orders in Council, but is reflected by the judgments thereunder in 1914, 1918, 1920 and 1922.

Following these judgments, as well as instructions to the Board by different Orders in Council, he summarized the position which had been reached prior to P.C. No. 886, and from that standpoint, argued that the effect of the 1925 amendment by subsections 5 and 6, taken together, forces the conclusion that the rates on grain and flour should be equalized on the basis of the Canadian Pacific Railway main line rate. As far as concerns subsection 6, he agreed that its effect is to make it clear that the discriminatory provisions of the Railway Act apply.

The viewpoint of the Canadian National Railways is not wholly identical with that of the Canadian Pacific Railway Company. Different lines of argument tending, however, in the same direction, were submitted by counsel representing the railways.

Looking first at the position taken by the Canadian Pacific Railway Company, which in a sense is the most informative, it is contended briefly on the part of that company, that there are not, and never were, mileage rates under the Crowsnest Agreement. It is pointed out that there is no actual unit of measurement contained in the agreement or in the legislation which gave rise thereto, but that the rates taken as they actually existed were subject to a three cent reduction; that there never had been a mileage scale or anything approaching it, but on the contrary, the rates were made on a zoning principle which is inconsistent with a rigid mileage rate. Having ascertained in 1897 the

proper rate, after subtracting three cents from the then existing rates, the argument of counsel for the Canadian Pacific Railway Company was, and is, that such rates so found stand as actual, proper, Crowsnest rates. It was pointed out that the application of the Crowsnest Pass legislation and agreement created no uniformity of rates, that the disparity previously existing was by no means lessened, and consequently, that it could not be argued that by virtue of the Crowsnest Pass Agreement any similarity in rates was predicated upon the main line, and certainly none upon the branches then in existence or which thereafter were put in operation.

Mr. Flintoft contended that this was a condition thoroughly well known and recognized; that in 1922, after the statutory suspension of the rates was lifted, the same rates as previously prevailed were put into effect by Act of Parliament, and were then regarded and recognized as Crowsnest rates. That the rates so re-established in 1922 were in accordance with the judgment of the Board in the 1918 case, and that such judgment really operated as a finding of fact as to what were the proper rates under the 1897 agreement.

He consequently maintained that the present rates, although exhibiting the disparities complained of, are nevertheless in accordance with the judgment of 1918, and with the Crowsnest Act and Agreement; that the rates established in 1922, as far as Saskatchewan and Alberta are concerned, are the rates put into effect under the judgment of 1918, subject to variation in the case of Manitoba, being one cent below the agreement, and pointed out that when parliament extended the Crowsnest rates to all lines, the main line rates were not applied to the branch lines.

Approaching the 1925 legislation, it was argued by him and Mr. Tilley, K.C., that the amendment to the statute does not determine the rates; that to get the rates for any given territory recourse must be had to the conditions existing in 1897; that when parliament legislated in 1925, it was well known what the Crowsnest rates actually were, because they had been dealt with by legislation in 1922 as above explained.

From this historical standpoint, counsel approached their explanation of the 1925 statute, contending that by the expression in subsection 5, " That such rates shall apply to," etc., is meant that specific rates from specific stations existing in 1897 are indicated as applying to other stations subsequently established; that if there were, say one hundred stations existing in 1897 and a thousand to-day, and the hundred stations in 1897 carried various rates bearing no mileage proportion and exhibiting discrepancy as between branches and main line, it is incumbent to deduce from known facts the scale of rates which applied on different mileages, in order to get a proper schedule; that such scale must be determined by an investigation of the rates actually in effect at that time, and having reasonably determined the same, a complete scale in harmony with the rates then in effect can be evolved applicable to all other stations whereby compliance with the Act can be secured.

It was submitted that the language used in the section includes every feature of the rates as they existed in 1897, both main line and branch lines north and south, and that having such data, a scale must be evolved of rates applicable to stations on other lines now constructed—not that rates on the main line or on favourable southern lines should be made standard, but that all rates plotted as on a map should be found and extended and enlarged and properly related to other stations brought into existence since 1897. Therefore, it is argued in brief, that section 5 of the new Act determines a scale and imposes that scale.

As to subsection 6, it was further contended by the same counsel that it is not a provision to rearrange and adjust what is put into effect by subsection 5, neither does it in any way modify what may be objected to in subsection 5, but under it (subsection 6) regard may be had as to whether rates not controlled by

the Crowsnest Pass Agreement are out of keeping with the rates that are so controlled, that when the proper scale having been found under clause five, recourse cannot be had to clause six to see whether such scale may be altered.

Mr. Fraser contended that prior to the amendment of 1925, there were no statutory rates upon grain and flour applicable to the Canadian National Railways. He pointed out that at the time of the Crowsnest Agreement there were no less than seventy-seven points then on the Canadian Pacific Railway, now on the Canadian National, which took rates thereunder. For such stations specific rates in cents per hundred pounds were allocated, and he claimed that whatever rates could be found, which were put in pursuant to the provisions of the agreement, they must now apply on grain and flour pursuant to the legislation, and such rates so put in should be, he argued, considered conclusive. Having therefore as a starting point these seventy-seven points on the Canadian National Railways, all the rates should be lined up therefrom.

He further argued that they are entitled to view the situation as it was in 1897, and see what rates they would reasonably have had in effect at that time, or in 1899. That, considering the conditions, they would have been then entitled to a higher basis than the Canadian Pacific Railway, as they were in a newer territory, and it would be reasonable and fair to approximate the rates which would have been in existence on the assumed new lines in 1897, and calculate what they would be after a three cent reduction. He maintained there was no mileage basis then in existence, nor at the present time, so that it is impossible to say what rate per mile would have been represented in the schedule at that time.

He also pointed out that while the Canadian Pacific Railway had always been under the terms of the 1897 agreement, except when suspended by Act of Parliament, such agreement never affected the Canadian National Railways until 1925, and as far as the main and branch line rates are concerned on grain and flour, noting the fixed points on the main line and the Prince Albert branch, rates have been built up around them and a uniformity has resulted, so that it is contended that on the Canadian National main line and branch lines the rates are relatively on the same basis.

He distinguished between the status of the Canadian Pacific Railway under the 1925 legislation and that of the Canadian National Railways, and argued that if the latter's rates are fairly conformable to others called for by the 1897 agreement, and fairly applied in conformity with the 1925 amendment, they cannot be changed or fixed by the Board, and as far as subsection 6 is concerned, while undoubtedly the intention was to relieve all discrimination against both railways, yet the section as a matter of fact does not do it.

It need hardly be said that it is the object of counsel for both railways to demonstrate that the amending legislation of 1925 does not empower, nor indeed permit, the Board to lay its hand upon existing disparities, and remove them. Whatever the intention of parliament may have been, it is argued on the part of the railways that no effective instrument has been handed to the Board which it can use against such discrimination as may exist.

I do not think it is necessary for the Board to concern itself with the fine distinctions which were drawn by counsel concerning the scope and intent of the amending legislation of 1925. Under the facts disclosed by the investigation now concluded, it seems to me that this case can be decided upon the grounds which are clear and obvious.

Attention, however, must be given to the distinction suggested and contended for by Mr. Tilley, wherein he argued that subsection 6 can have no operation as between Crowsnest rates themselves, but are simply effective when Crowsnest rates are compared with others which have not that origin.

With great respect for the views of the learned counsel, I am unable to follow this reasoning, in the face of the wording of the section. I can find no such distinction set out therein, nor any such suggestion. I am rather inclined to place upon this section the interpretation expressed by the learned Assistant Chief Commissioner in his discussion with Mr. Flintoft, as set out in Vol. 452, p. 1800, as follows:—

> "In the absence of subsection 6, if there was a complaint that a grain rate at a particular point was in a condition of comparative unreasonableness, in other words, unjust as compared with a grain rate from another rate, the railway in the absence of that subsection could say: Yes, we have a more favourable rate at point A as compared with point B, but that rate at point A is in accordance with the terms of the statute, therefore, it is reasonable even from the standpoint of reasonableness per se, or comparative reasonableness. But with the subsection as it stands, as I said before, on the interpretation of the Railway Act, those sections of the Act in respect of undue preference and unjust discrimination apply".

From the view I take of the problem, it does not seem to me necessary to agitate that question further. I am not prepared to dissent from the view that another interpretation is competent, but considering it upon the basis above ascribed to it by the learned Assistant Chief Commissioner, it answers the purpose, I think, of the present application; and I am further of the opinion that the subsection is applicable to both the Canadian Pacific Railway Company and to the Canadian National Railways.

Dealing now with the disparity between rates on branch lines as compared with those of the main line, the Board has not infrequently ruled that rates upon the former lines are properly maintainable at a rate higher than those which prevail upon the main line. Instances of such rulings have been found in many cases decided by the Board, but an examination of these cases does not, I think, show any principle whereby the mere fact of an individual rate being a branch line rate, ipso facto entitles it to a higher scale than prevails elsewhere, but it seems that specific and special reasons must exist in every instance to justify a higher rate on the branch line. I consequently think, in harmony with the Board's judgments, we must look for the existence of some good reason for greater rates being imposed on this branch line traffic than upon that of the main line, and if it can be found, and be satisfactory to the Board, no disturbance should be made. It can be gathered from previous cases that such reasons may be sought in connection with the commodities which are carried and the conditions which apply to their transportation, as well as to the condition of the line.

The learned counsel for the railways have not given any satisfactory information to the Board assisting to the conclusion which they seek to maintain, and the evidence in this particular is wholly inadequate to discharge the onus which admittedly is upon the railway companies in this branch of the inquiry. And a most suggestive circumstance bearing upon the merit of this application is that in the transportation of all other classes of goods over these main and branch lines, no distinction is made between the rates from that standpoint. If it be right, as we must assume it is, that in all the movements of all other classes of freight over the main line and branches of these railways throughout the territory involved, the distinction sought to be maintained here against grain is absolutely ignored with reference to all other classes of traffic, it is difficult to see why the same rule should not apply to the carriage of grain and grain products, which are admittedly the most important of all classes of traffic carried over such lines. I think the applicants are entitled to succeed in their application to equalize the grain rates on branch and main lines. In view of the

equality of rates as regards other traffic, it is, in my opinion, an unjust discrimination against grain growers to continue the existing disparity between branch and main lines.

Assuming then, that the Board has reached the conclusion that an equality should prevail in main line and branch line rates, the question presents itself as to what such scale should be. It is at this juncture that the amending Act of 1925 comes authoritatively into the discussion. It says, in the latter part of subsection 5, as follows:—

> "Provided that notwithstanding anything in this subsection contained, rates on grain and flour shall, on and from the date of the passing of the Act, be governed by the provisions of the agreement made pursuant to chapter 5 of the Statutes of Canada, 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament".

Let it be admitted that, pursuant to the agreement of 1897, the Canadian Pacific Railway Company inaugurated and maintained schedules under the Crowsnest Pass Agreement, manifesting a disparity in rates between the main line and a portion of the branch line service. We are now concerned to establish throughout equalized rates in keeping with those made pursuant to such agreement. It is argued by applicants that such rates must be in accord with those prevailing upon the Canadian Pacific main line. It is shown that there were in Saskatchewan and Alberta two branch lines, namely: the Prince Albert Branch and the branch from Calgary to Edmonton; and in Manitoba there were also two.

Mr. McEwen's discussion of the rates put in and maintained on these branch lines is not without pertinence here. It is apparent that as far as the Prince Albert line is concerned, the main line rates are partially followed, and that a main line rate calculated upon the increased distance from Calgary westward would show a rate apparently not inconsistent with that upon the branch line from Calgary northward; that the two Manitoba branches carried rates in accordance with the agreement, and he concludes from all this that the main line rates are, and must of necessity be, the proper basis when seeking to comply with that part of the provision of subsection 5 which directs that rates under the agreement must be set up, because no other rational basis can be found.

The least critical comparison between the two methods of arriving at the proper rates under the agreement, whether the branch line rates or the main line rates should be taken, can hardly lead to the conclusion that a series of rates so comprehensive as those of the main line, and in accordance with the Crowsnest Agreement and followed by the two Manitoba branch lines and a part of the Prince Albert branch, must be set aside for those which prevailed on a portion of the Prince Albert Branch. The argument that the latter, carrying branch line rates should as such apply to all branch lines now in existence, has no foundation in the statute. It is the rates under the agreement that are to count. If the phrasing of the amendment made any such distinction, one could very well conclude that to branch lines subsequently constructed, there should be applied rates prevailing on branch lines at the time of the agreement. No such limitation, however, is made. But even then, the question would remain, why the rates on a portion of one of these branch lines should be taken as against those prevailing throughout over two other branches, and over a part of the third. Even without the provisions of subsection 6, and apart from all other considerations, it would be with the greatest difficulty that I could

entertain the suggestion that the few irregular branch line rates then existing on the northern part of the Prince Albert Branch are now to govern the movement, and that such would be in compliance with the provisions of subsection 5, confronted as we are with the comprehensive rate system then prevailing on the main line, and on the greater part of the branch line mileage as well, as compared with the meagre, unsatisfactory and irregular figures attaching to a portion of one of the then existing branch lines. But followed as it is by subsection 6, which need not be repeated here, I can come to no other conclusion than that the main line rates must apply throughout.

But there remains another consideration which leads to the same conclusion, and which to my mind renders it impossible to set up any other basis, and that is the fact that unquestionably these main line rates are statutory. They cannot be exceeded. Consequently any equalization must be upon their level. I do not see any escape from this conclusion, once the idea of equalization has been admitted.

From all of the above, I am of opinion that main line rates must be the standard, and I also think that the equality between the branch and main lines should be based upon the approximate mileages disclosed.

BOARD'S ORDER NO. 36769

Involved in the present application is the disposition of a motion to rescind the Board's Order No. 36769, which directed a reduction of rates on grain and flour moving westward for export to the same rates proportionate to distance as the same would carry if moving eastward for export.

This Order was issued on the 2nd of September, 1925, after a complete consideration of everything involved in an application to that end, made by the Province of British Columbia.

The subject matter of the Order now engages attention from two standpoints:

First: an application on the part of the railways to rescind the same.

Second: an application by the Provinces of Saskatchewan and Alberta to compel the railway companies to obey such order.

The contention of the provinces above named is that the railway companies have not set a proper westbound mileage rate in accordance with the Board's Order No. 36769.

This latter application came before the Board in February, 1926, whereupon it was argued by the railway companies that as such rates westbound must be measured by eastbound rates, and eastbound rates being in dispute, nothing can be conclusively affirmed with reference to the accuracy of the rates to the west. This is the substance of the dispute, as far as concerns the complaint against the course pursued by the Canadian National Railways. Admittedly when an order directs that the same rates shall be charged westbound as eastbound on a given commodity, it must be clearly determined what the eastbound rates are. Pronouncement as to the proper eastbound schedule will definitely determine whether the Canadian National Railways have complied with the Order or not.

The course pursued by the Canadian Pacific Railway Company which has given rise to objection is, that it has calculated its mileage to Vancouver from the longer haul of the Canadian National Railway on the line from Edmonton to Vancouver.

From Calgary to Vancouver is a distance of 642 miles. From Edmonton to the same point of export is 766 miles, and the Canadian Pacific Railway

Company in detailing its schedules in affected compliance with the order, has named its rate upon a basis of 766 miles, the distance from Edmonton to Vancouver, instead of calculating the same upon its own distance of 642 miles.

I do not think this action on the part of the Canadian Pacific Railway Company can be justified. The Order does not bear any such construction. It is incumbent upon the railway company to calculate the correct mileage and adjust its rates thereto.

The rates set up by the Canadian National Railways will be adjusted to the eastbound schedules determined by this judgment.

The application to rescind or vary Order No. 36769 will be dismissed.

DOMESTIC GRAIN RATES TO BRITISH COLUMBIA

Application was made on behalf of British Columbia that the domestic grain rate to Vancouver be lowered to an export basis. This was urged partly on the ground that it costs no more to move the one class of grain than the other, and an improper discrimination is set up by reason of such difference, and by a comparison of grain rates elsewhere.

The first contention altogether disregards the reasons lying at the basis of export rates, and ignores also the primary test of domestic rates; which is, whether the rate be reasonable and fair. It is not intended to repeat any more fully the arguments justifying an export basis lower than that accorded to domestic traffic further than to say that the former is simply part of a through rate, and it is thoroughly justifiable from that standpoint. It does not compete with grain transported for domestic purposes and consequently no comparison between the two rates is properly drawn. Much discussion took place as to what might be the effect upon the milling industry of Canada in case this application were granted. It is unnecessary to have recourse to these considerations in deciding the point here at issue.

The removal of the mountain differential as against British Columbia will have the effect of granting substantial reduction in the rate accruing to grain for the domestic market. A typical rate from prairie producing points to the west may be taken to be 41½ cents, and a reduction to the prairie mileage brings that figure down to 36½ cents which, I think, is not unreasonable. In this connection it may be noted that the rates on wheat in carloads from Fort William to Saint John and Halifax exhibit a like disparity as between export and domestic rates, as follows:—

To	*Export.*	*Domestic.*
	In cents per 100 lbs.	
Saint John	35½	55½
Halifax	35½	57

The application to reduce the domestic grain rate to the export rate should, I think, be dismissed.

VI

RAILWAY REVENUES

Attention must be given to the claim, strenuously presented by both railways, to the effect that decreases in revenue involved in the elimination of the mountain differential, and in the equalization of main line and branch line rates for the carriage of grain, as well as by the transportation of grain and grain products over the National Transcontinental Railway at rates in compliance with the application of the Quebec Harbour Commissioners and others, would

entail a most serious shrinkage in revenue, which would impair their efficiency and render it impossible to maintain the standard of service now enjoyed, to say nothing of extensions urgently required at the present time.

The possibility of such result has been a matter of earnest and serious consideration on the part of the Board, especially in view of the figures presented both at, and subsequent to, the hearing, showing an estimate of loss which would be suffered if these applications be given effect. As previously remarked, it is the duty of the Board to protect and preserve the railways in their financial operations by allowing rates reasonable and fair to them. We are also directed to thoroughly examine the rate structure with a view of removing the features which constitute an injustice to localities, and considering the representations made and the evidence given, it seems clear to me that the maintenance of the existing schedules of rates, as regards two of the three features above enumerated, constitutes an injustice to the localities concerned and is unjustly discriminatory. In respect to the mountain differential, counsel in support of such applications was able to show that accompanying the lowering of such differential to 15 per cent, there was interposed the claim on the part of the railways that financial impairment must necessarily follow. As a matter of fact, it has not accompanied any of the various reductions which were made. On the other hand, the relief afforded to traffic thereby has invariably resulted in increased business and larger revenue to the railways. Judging from the past, there is no assurance that any financial loss will accrue to the railways by the elimination of the small differential now existing. An equally probable conclusion, I think, is that such revenues would be augmented by the quickening of commercial effort and the carriage of other goods which the increased purchasing power of the people would make it within their ability to buy. It may be remembered that the same argument was forcibly expressed when the Board's Order No. 36769 was made, and that such prediction has proved wholly groundless. It is not to be contended that every decrease in freight rates will bring about an increase in revenue, but I am not convinced that any impairment whatever of the income of the railways will follow the course suggested by this judgment. If it does, the situation will have to be taken care of, and rates adjusted to give satisfaction. But these discriminatory features of our rate system must disappear, and if it be necessary that a general increase in rates be made, such course is open, but they must be levied, equally upon all parts of the country. If, as is sometimes argued, it is impossible that any increase whatever can be made in the eastern districts, in such case the Board may have reached the position of difficulty indicated in the judgment quoted from below (Vol. 15, Board's Orders and Judgments, p. 277):—

> "By a series of decisions of this Board it has been held that just and reasonable tolls mean tolls reasonable and just from the standpoint not only of the producer, but also from the point of view of the railways —having regard to the revenue necessary to enable them to operate successfully and including a fair return on the investment made.
>
> "It is not open to anyone to criticise or find fault with the principle involved in such decisions and, under the conditions which prevailed fifteen or twenty years ago, these two considerations then marched fairly well abreast, but in the dislocation consequent upon the events of years which have intervened, this alignment, if not altogether lost, is not by any means so apparent.
>
> "The Board is now upon the eve of a general investigation and inquiry concerning freight rates with certain well defined objects in view. If during this work the Board is confronted by the fact that sufficient income for the preservation and maintenance of railway property necessitates freight charges under which business may not be successfully carried

on, the Board cannot content itself by ending its journey in an impasse, but rather in my opinion, by uncovering all the facts and conditions involved in this reference it may assist, to that extent, in finding a way out; and while the ultimate steps necessary to such an end may be outside the powers of this Board, yet the consideration of what is involved in this reference should, and I think will, help to show some of the things essential to that purpose. If the amount of railway revenue necessary to be raised in order to be fair and just to the railways from their standpoint, imposes upon business generally a burden which stifles industry and makes work unprofitable, an adjustment is necessary somewhere. The different sections of the country must be enabled to trade, to ship, to carry on business, and a series of schedules must be elaborated which will not fetter the country's industrial activity, but under which it can breathe and flourish. But if in order to deal with the railways in a just and reasonable way and to put them in possession of sufficient revenue to carry on business, having regard to all their obligations, it be shown that extraneous aid should be afforded, the decisive question will be whether such aid should be so provided, or the business of the country be injured and retarded. In the investigation now about to be carried on by the Board, many of the necessary facts will, I think, be disclosed with sufficient clearness to assist in a decision upon this matter. In the presumption that the two considerations above mentioned as being at the bottom of our rate structure are not now in line, it would seem that any relief to business conditions in the form of reduced railway rates must be accompanied by some provision for supplementing railway revenue or by some other action, for the loss of revenue involved in granting applications of this nature, is substantial. It is open to the Board to grant rates which will produce sufficient revenue for transportation companies, and subject to legislation it is to be presumed that the Board will be expected to continue such course unless their revenues are supplemented in some other way if that be necessary."

The Maritime Rates Bill (C. 44, 17 George V), enacted since the above in part recited judgment was delivered, to a very considerable degree illustrates and exemplifies the view above expressed.

What may be the result of the reduction in the rates on grain eastward over the National Transcontinental Railway to Canadian ports, remains to be seen after such rate has been put in and the traffic moved thereunder. In considering any loss in revenue thus occasioned, it must be remembered that such rates are being put in following the agreement made between the Government of Canada and the Grand Trunk Pacific Railway Company embodied in Chapter 71, 3 Edward VII, section 42, which provides that "the through rate on export traffic from the point of origin to the point of destination, shall at no time be greater via Canadian ports than via United States ports," etc.

VII

The investigation directed under the Order in Council instructs the Board to give particular attention to:—

(*a*) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(*b*) The encouragement of the movement of traffic through Canadian Ports;

(*c*) The increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal.

A

As to the claim of the Maritime Provinces: In view of the passage of the Maritime Freight Rates Act, 1927, and its bearing upon that branch of the application dealing with the provinces of Nova Scotia, New Brunswick and Prince Edward Island, Mr. Duchemin, counsel for these provinces, on the 8th of April, 1927, made request to the Board that he be allowed to withdraw the Maritime case from the General Freight Rates Investigation, stating that to what extent his submission is affected by the legislation then pending would take some time, study and thought to ascertain. He further asked to be allowed to deal with what might remain of the Maritime case after the rates provided for in the Maritime Freight Rates Act should be published and in force, saying that such legislation would dispose of the major items in the submission.

This request was acceded to by the Board, and in consequence nothing remains to be said at present with reference to this branch of the investigation.

B

THE ENCOURAGEMENT OF THE MOVEMENT OF TRAFFIC THROUGH CANADIAN PORTS

The outstanding features of the discussion upon this subject is the diversion of a very large proportion of Canadian grown grain destined to European countries, from Canadian seaports to those within the United States. The attention of the Board has not been directed to any statistics showing such diversion as regards other traffic. The facts complained of with reference to grain are well known and have been many times established. The geographical position of that portion of Canada which produces the largest amount of grain is such that rival routes are presented. In harmony with the undeviating rules of trade, this product as well as others will seek its market by way of the easiest and cheapest route. It is not to be expected that the producers of grain or other articles will forego the largest return they can get by reason of the desire on the part of other sections of the country to handle their business. In consequence, the problem takes on the aspect of bringing about conditions under which Canadian seaports can secure and hold such business, and at the same time assure to those originating such traffic a return not less than can be secured by transit otherwise.

In order to bring about this result which is of highest importance to the nation, Canada has not scrupled to expend a very large amount of money in constructing a railway straight from the wheat fields of the west to Atlantic ports.

The Transcontinental Railway from Winnipeg to Quebec, Saint John and Halifax, was built at a cost, the justification for which rests upon the fact that it would secure to Canadian railways, Canadian ports, and ships sailing therefrom, both in summer and in winter, the carriage of millions of bushels available yearly for export. The expenditure of nearly $200,000,000 for such purpose was entered upon after mature consideration and pursuant to a mandate from the people whose assent to such proposition involved consideration of the large benefits which it was hoped would enure to the nation at large, by reason of its being self sustained in this respect, and providing for the carriage of grain to the sea, both in summer and winter, a route which, as against all others, presents national advantages without in any way impairing the income of the western grain producer.

Chapter 71 of the Act, 3 Edward VII, respecting the construction of this railway, recited an agreement between His Majesty the King, of the First

Part, and Sir Charles Rivers Wilson and others representing therein and acting on behalf of the Grand Trunk Pacific Railway Company, section 42 of which declared as follows:—

> "It is hereby declared and agreed between the parties to this agreement that the aid herein provided for is granted by the Government of Canada for the express purpose of encouraging the development of Canadian trade and the transportation of goods through Canadian channels. The company accepts the aid on these conditions, and agrees that all freight originating on the line of the railway, or its branches, not specifically routed otherwise by the shipper, shall, when destined for points in Canada, be carried entirely on Canadian territory, or between Canadian inland ports, and that the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports, and that all such traffic not specifically routed otherwise by the shipper, shall be carried to Canadian ocean ports".

The character of the road so constructed at a cost of nearly $200,000,000 is such as to furnish the least resistance to traffic, and in point of gradient and location is at no disadvantage in comparison with any other grain route.

From Winnipeg to Quebec, in almost a straight line, it covers a distance of 1,349 miles, which, it will be noticed, is shorter than from Winnipeg to Montreal, all rail.

Continuing to the eastern ports of Canada which are never closed, being open during the months when, unfortunately, Quebec and Montreal are closed by ice, it shows a distance of 1,826·5 miles from Winnipeg to Saint John, N.B., via Edmundston and McGivney Junction, and to Saint John, 1,895.1 miles via Edmundston and Moncton, and 1,994·6 miles from Winnipeg to Halifax via the latter route.

Of a total export of Canadian grain for the crop year 1925-1926, over 250,000,000 bushels went through eastern seaports, Canadian and United States. Of this amount considerably over half left Canada before it reached the ocean, over foreign railways and through foreign harbours. Now, it is to be noted with satisfaction that the port of Montreal stands up well in its efforts to handle the grain export trade. Last year's figures show that of Canadian grain shipped through Atlantic ports, Montreal handled 90,639,515 bushels and New York 97,605,100 bushels. To Quebec there fell a portion of about four millions of bushels.

To enable any seaport to handle traffic of this nature, much outlay must be made, peculiarly and solely adapted to such business. And unless a harbour is equipped for such purpose, it is futile to expect the trade to flow that way. The Harbour Commissioners of the city of Quebec have for years been agitating for a compliance with the conditions embodied in clause 42 of the agreement above referred to, and that a rate for the carriage of grain should be put in which would bear favourable comparison with that of any other seaport.

Quebec has an elevator capacity of two millions of bushels, while Montreal shows 13,560,000 bushels. It is thus seen that Montreal handled during last season over five times its elevator capacity, and it is therefore open to the Quebec Harbour Commissioners to argue that Quebec was in a position to handle some ten or twelve millions of bushels with its present capacity, which is being enlarged.

West Saint John with an elevator capacity of 1,700,000 bushels handled between fourteen and fifteen millions of bushels during the same period.

The port of Montreal is well served by rail and water, and nothing has been spared to equip it for the purposes which, through its Commission, are so well carried out. Both the Canadian National Railways and the Canadian Pacific Railway Company assist this port in its work.

For its advancement in the way of grain export, Quebec must look to the National Transcontinental Railway and to the fulfilment of the objects for which it was constructed. The argument it puts forward is that it has no desire to withdraw from Montreal any portion of the business which is handled by the latter port, but the enormous excess which never reaches Montreal, but seeks exit through United States ports should be diverted via the National Transcontinental to Quebec, and handled there, and that rates put in under the agreement which formed a condition for the aid given by the Canadian people to the railway, would effect such purpose.

It is claimed in opposition, that the channels of the grain trade are so well defined and protected that any such effort will not bring about the result aimed at by the Quebec Harbour Commission. That lowering transportation rates for the purpose indicated would immediately be met by a corresponding lowering on the part of those who now enjoy the trade sought to be diverted, and the result would be a reversion to the status quo as far as concerns any division of the traffic. In view of the circumstances under which it is not only advisable but proper to put in rates in compliance with the construction agreement, no attention should, I think, be paid to a reply of this kind. It is the duty of those responsible for rate making to meet such rates at whatever figure they may be put, as long as the statutory conditions operate.

The reasons which are relied upon to bring about a compliance with the submissions of the Harbour Commissioners of Quebec, once their validity be admitted, seem to me to inevitably force the conclusion that such rates must continue to that portion of the Atlantic seaboard which is accessible to vessels during the entire year. Under present conditions, perhaps little grain can be expected to find its way to either Halifax or Saint John for shipment during the summer months, but after the close of navigation in the St. Lawrence the position is quite the reverse. These last named ports properly equipped can handle all the grain that shipping seeking such ports can carry. There can be no doubt that wherever, under reasonable circumstances, cargoes can be found, vessels will push their way. The theory that traffic must go only to those ports which ships frequent, and a diversion elsewhere will leave it without bottoms does not hold. The development of the port of Vancouver is a striking instance to the contrary.

That there are circumstances attaching to the use of Canadian Atlantic ports which, from the standpoint of Insurance, place them at a disadvantage with American ports, is a matter which should present only a temporary difficulty. More thorough investigation of the facts concerning such disparity of rates can be relied upon to reduce them to a minimum, if not to extinguish them altogether. It is not necessary to repeat the examination and analysis of this matter contained in the reasons for judgment of the Deputy Chief Commissioner. I am in accord with the views presented by him on this subject. The fact is that vessels seek many northern European ports carrying much greater risk than Saint John, Halifax, Quebec or Montreal present, and no disadvantage is attached to the latter voyages by those who control marine insurance.

While there is a grain elevator with a capacity of 500,000 bushels connected with the Canadian National Railways at Saint John, less than two millions went through it during the crop year 1925-1926. Something less than fifteen millions passed through the Canadian Pacific Railway Company's elevators, that year, at West Saint John, which have a total capacity of 1,700,000 bushels.

In addition to the Canadian grain finding its export at Saint John, United States grain passed through the Saint John elevators to the amount of 3,425,966 bushels. There was also an export of Canadian wheat flour through Saint John totalling 662,440 barrels.

Saint John is the winter port of the Canadian Pacific Railway Company and by its initiative and enterprise, the import and export business of that port has been much assisted. In addition to the Canadian Pacific Steamship Lines which ply to this port, that are also regular sailings therefrom by:—

The Anchor Donaldson Line;
The Furness Withy Line;
The New Zealand Shipping Company's Line;
The Elder Dempster Line;
The Head Line;
The Inter-Continental Transports Limited;
The Thomson Line;
The Scandinavian American Line;
The Lloyd Mediterraneo Italian Service;
The Canadian Government Merchant Marine; and
The Royal Mail Steam Packet Company's Line to the West Indies.

It will be noted that with the exception of the Canadian Pacific Steamship Lines, the vessels of the other companies are mainly freight carriers. From a consideration of what these latter can profitably do, there comes a conviction that the carriage of grain from Saint John can be profitably carried on.

In its willingness and desire to serve such port, as well as in its own interest, the Canadian Pacific Railway Company has put a very low rate of transport on grain from the Georgian Bay ports to Saint John, namely 15.17 cents per 100 pounds, as against a rate of 14.34 cents per 100 pounds from the same ports to Montreal. That is to say, it carries this grain for export, a further distance of nearly 500 miles, namely from Montreal to Saint John, for a rate of a little less than one half cent per bushel. This, of course, must be regarded as a portion of a through rate. By doing this it maintains a grain rate to Saint John on the Buffalo-New York basis.

As far as the eastern cities of the Maritime Provinces are concerned, the Canadian Pacific Railway ends at Saint John. Its running rights to Halifax over the Canadian National were terminated some years ago.

In carrying out the desires expressed by the Quebec Harbour Commissioners, the Canadian National Railways are asked to follow the policy which has been for years carried on by the Canadian Pacific Railway Company with reference to Saint John, N.B.

From Winnipeg to Saint John, as above pointed out, the all-rail route carries a distance of 1,826 miles. The Canadian Pacific Railway Company's line carries a distance from Winnipeg to Saint John of 1,892 miles.

The determining factor of the grain rates called for in the agreement with the National Transcontinental Railway is, that such rates shall at no time be greater via Canadian ports than via United States ports. Consequently, it is unnecessary to analyze such rates on a per mile basis in the calculation. It would be difficult to justify them on any ground other than that of the agreement, unless it should enunciate and follow up a thoroughly Canadian policy involving the use of Canadian seaports by the carriage of grain products, as well as other traffic, thereto.

I am of opinion that in compliance with the Orders in Council, P.C. 886 and 24, the rates provided for in the agreement alluded to, should be put in at once over the Transcontinental Railway not only to Quebec, but to Saint John and Halifax as well.

It must be noted in connection with this discussion that a substantial portion of the United States grain finds its way to European markets via Canadian ports. The statistics filed during the investigation show exports of Canadian

grain via United States ports, and exports of United States grain via Canadian ports for the calendar years 1923, 1924, 1925, and 1926, as follows:—

Canadian Grain via United States Ports

	Bushels.
1923	144,595,138
1924	117,695,462
1925	137,111,835
1926	121,619,456

United States Grain via Canadian Ports

1923	36,050,243
1924	71,800,065
1925	56,986,806
1926	39,063,410

In view of the passage of the Maritime Freight Rates Act, those representing the Maritime Provinces at the investigation withdrew the submissions which had been filed, in order to study the effect of such legislation. It is, therefore, still open to them to give consideration to the special features touched upon above, as well as to any others they may present.

C

"The increased traffic westward and eastward through Pacific coast ports owing to the expansion of trade with the Orient, and with the transportation of products through the Panama Canal".

Traffic Through Pacific Coast Ports

The rapid expansion of Canadian trade with China, Japan and Hong Kong has raised the Pacific Coast ports, especially that of Vancouver, to prominence.

Several exhibits disclosing instructive statements regarding traffic through Pacific ports were filed, the principal one being the Annual Statistical Report for 1926 of the Vancouver Merchants' Exchange. It is confined to shipments to and from the port of Vancouver, and consequently does not contain all the information as to western Canadian shipments. Statistics are exhibited therein for the years 1922 to 1926, inclusive, wherein is compiled a statement of the trade to the Orient in the most important commodities shipped in that direction.

There is shown a steady increase in lumber, from 84,610,015 ft. board measurement, in 1922, to 263,920,000 ft. in the year 1926.

The export of flour to the Orient increased from 315,480 barrels in 1922, to 795,831 barrels in 1926.

The export of wheat to the Orient also increased from 3,681,150 bushels in 1922, to 14,164,848 bushels in 1926.

Other substantial articles of export, such as canned fish, fish frozen, salted and cured, lead spelter, and apples, show a very valuable trade, although they exhibit no increase. But the comparison in each of the last named items of export show that, although there is a decrease for the Orient in these articles, a very substantial expansion, owing to the demand from other countries, has taken place.

The number of vessels and the tonnage in and out of Vancouver Harbour, during the years 1924, 1925 and 1926, has steadily grown and while the record of port tonnage is much in favour of Montreal and San Francisco, typical ports on the Atlantic and Pacific, yet the number of individual vessels entering at Vancouver in the year 1926 was more than double the aggregate of those entering at the two ports just mentioned.

In 1925 and 1926, the value of Canadian exports to China, Hong Kong and Japan was as follows:—

	To China.	To Hong Kong.	To Japan.
1925..	$ 7,838,187	$1,709,739	$22,046,486
1926..	24,473,446	1,885,838	34,694,862

The value of the export trade from the same countries to Canada for the same years was as follows:—

	From China.	From Hong Kong.	From Japan.
1925..	$2,529,880	$1,829,869	$6,985,056
1926..	2,547,995	1,546,166	9,564,074

The list of Canadian commodities exported to the countries above named, indicates a wide demand for almost every variety of articles manufactured in Canada, but the most important are wheat and wheat products, figures concerning which have been given above. The favourable situation of the western Canadian ports with reference to the Oriental countries, gives Canada great advantage in this trade. If, as it is hoped and expected, consumption of wheat and flour can be increased among the population of these countries, an immense stimulus to wheat growing in the Canadian west will result. The already enlarging demand indicates steady progress in that direction, and the geographical position of the Canadian Northwest gives to Canada manifest advantage in this line.

The result of the preparation which has already taken place for handling and shipping these products, as well as other cargoes to the east, and the rapidly expanding volume of trade from the east through British Columbia ports, show the necessity of making the way easy for such traffic from the interior of Canada to the coast. The carriage of grain to Vancouver and Prince Rupert, and their equipment for its reception and rapid handling to ships, in alignment with our effective transportation system, promise an expansion of this business even greater than the last half dozen years reveal. During that period the export trade of Prince Rupert has more than doubled in value, for the year ending March 31, 1926, having reached the figures $15,411,161. Later in the same year between five and six millions of bushels of wheat were shipped from that port.

Taking the record of the last five years' trade in wheat and flour between Canada and China and Japan, the statistics show:—

EXPORTS OF GRAIN

	Wheat (bushels).		*Flour (barrels).*	
	China.	Japan.	China.	Japan.
1922..	.....	3,516,401	34,935	65,948
1926..	7,689,834	12,927,933	1,182,054	99,164

TOTAL TONNAGE	China.	Japan.
1922..	3,494	112,086
1926..	348,900	397,754

It is unnecessary to dwell upon the significance of the above figures.

TRAFFIC VIA PANAMA CANAL

The Panama canal was opened to commercial traffic in August, 1914, but in consequence of disturbed national conditions, and scarcity of shipping, it was of little importance to Canada until 1921, from which year a steadily increasing volume of traffic has served western Canadian ports through this waterway.

Full figures from each of these Canadian ports were not presented to the Board, but those from Vancouver were carefully compiled in an exhibit filed

by the Canadian National Railways and the Canadian Pacific Railway Company, and the cargo statistics in tons, from the calendar year 1921 to 1926, inclusive, show a steady expanding business being done at Vancouver via the Panama canal. The figures submitted are as follows:—

	Tons.
1921	43,666
1922	64,455
1923	123,905
1924	150,317
1925	178,547
1926	216,800

There will be observed an increase of over 21 per cent for the year 1926 over the preceding year.

As affecting trade from eastern to western Canada, the figures for 1924, 1925 and 1926 show traffic carried via the Panama canal in tons, as follows:—

	Tons.
1924	25,637
1925	28,583
1926	35,925

From the eastern coast of the United States via the same route to Vancouver, the figures in tons are as follows:—

	Tons.
1924	39,360
1925	38,344
1926	43,614

The same exhibit shows cargo statistics for the years above mentioned from the east coast of the United States to the west coast of Canada, and vice versa, via the Panama canal, as follows:—

Atlantic to Pacific, westbound

	Tons.
1922	88,408
1923	168,140
1924	130,364
1925	178,110
1926	199,175

while from western Canada to the Atlantic, eastbound, the figures are:—

	Tons.
1922	159,921
1923	347,407
1924	356,223
1925	501,623
1926	651,969

The total of these figures for each year indicates the traffic passing from the eastern coast of the United States to the western coast of Canada, and vice versa, and it shows the very substantial growth in five years, from 248,329 tons to 851,144 tons. This latter figure, representing traffic both ways is, nevertheless, less than 50 per cent of the European traffic via the same route, to and from western Canada which, during the year 1926, totalled over two millions of tons, as against 1,771,069 in 1925.

For comparative purposes, these figures of traffic via Panama canal are so instructive that it is well that they should be detailed.

In the year 1922, from Europe to the west coast of Canada, there were carried via Panama canal, 149,553 tons, and by the same route eastward from the west coast of Canada to European countries, 420,272 tons were carried.

In the year 1923, there were 230,331 tons carried to the west coast of Canada from the same sources, and 885,670 tons returned therefrom to European destination.

In the year 1924, there were 242,279 tons carried westbound, and 1,211,535 eastbound to European countries.

In the year 1925, there were 361,792 tons carried westbound, and 1,409,277 eastbound.

While last year, 1926, there were 377,446 tons carried westbound through the canal to western Canadian ports, and 1,681,663 tons made the journey in the opposite direction.

All these figures of tonnage carried via the Panama canal, both from eastern Canada, eastern United States and Europe, to western Canada, and the other way from western Canada to the countries immediately above mentioned, exhibit an impressive and significant gain. They also demonstrate that a substantial amount of traffic that undoubtedly would have been carried by rail across Canada and across the United States has been diverted to the water route, indicating a changing condition of commerce, to which attention must be given.

A further statement submitted shows the sailings of Canadian Government Marine steamships from Montreal and Halifax to Vancouver via Panama canal since the inauguration of such service and the opening of navigation in the year 1924, thus:—

8 sailings in 1924
11 sailings in 1925
9 sailings in 1926

The tonnage of such vessels aggregated for the respective years above mentioned, 19,032, 30,337, and 26,537 tons. Commodities carried therein were gathered from cities as far separated as Windsor, Ontario, and Marysville, New Brunswick. Steel and iron articles, canned goods, electrical fittings, beds and bedding, carbide, starch, alabastine, lawnmowers, seeds, glucose, paint, ammonia, white lead, wire rope, wallboards, and plumbing materials bulked largely in the several shiploads.

It is also to be noted that the figures exhibited by the canal authorities are not to be regarded as completely showing the Canadian proportion of the canal traffic. Boats passing through, westbound, destined to the Pacific Coast United States ports, and containing freight for British Columbia ports, would be shown, not to the west coast of Canada, but to the west coast of United States. Also boats passing through, eastbound, starting from Vancouver and filling out cargoes at Portland or San Francisco would be shown by the canal authorities as from the last port from which the boat cleared.

VIII

From a consideration of all that is involved in the above discussion, I have arrived at the conclusion that the following features of the present freight rate system necessitate alteration in order to effect the establishment of a fair and reasonable rate structure which will in substantially similar circumstances and conditions be equal in its application to all persons and localities, and permit of the freest possible exchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade both foreign and domestic, namely:—

1. The export grain rates over the National Transcontinental to eastern Canadian seaports, from the point of origin to the point of destination. should not be greater via Canadian ports than via United States ports.
2. The mountain differential against the Pacific district should be abolished.

3. The western grain and flour rates to Fort William and Port Arthur should be equalized to the present Canadian Pacific main line basis of rates, which should be extended to all Canadian Pacific branch lines from points of equivalent mileage routings; and all other railway companies should be directed to adjust their grain and flour rates to Fort William and Port Arthur to the rates so put into effect by the Canadian Pacific Railway Company.
4. The town tariff rates directed in the judgment of the Western Rates Case as regards the Canadian Pacific Railway, should be made applicable to the Canadian National Railways.

. . . . .

As to the various individual applications submitted, the issues of which are not involved in the conclusions above expressed, the same will be disposed of in a schedule to be filed subsequently.

Ottawa, August 4, 1927.

McLean, Assistant Chief Commissioner:

I

BRITISH COLUMBIA DIFFERENTIAL

In the decision in the *Western Rates Case*, the Mountain differential was reduced to basis of one and one-half to one. In the Board's decision of June 30, 1922, the mountain differential was reduced so that the rates of the new "Pacific" standard mileage tariff were to be constructed by applying to the prairie standard tariff, for distances up to and including 750 miles (the approximate maximum haul in British Columbia), a factor of one and one-quarter for one mile. *Board's Judgments & Orders, Vol. XII, pp. 71, 72.*

It was pointed out that the effect of the revision in the Western Rates Case had been to make a difference on the average of 30 per cent. This is brought about through the effect of the tapering on mileage groups. The differential under the decision of 1922 is computed as averaging about 16 per cent. This decision followed the principle laid down in the *Western Rates Case*. Application is now before the Board for the removal of the Mountain differential.

In considering this application, it is necessary to direct attention to what is set out in the *Western Rates Case*. In that case, reference was made to the initial cost of construction on the Canadian Pacific lines in British Columbia being higher than existed on the prairies. It was also claimed that railway operation through the mountains was more expensive than operation through the prairies. The contention was before the Board that the "higher operating costs" of British Columbia should be "smeared" over the system so that British Columbia would have the same rates as those applying in the Prairie Provinces. *Western Rates Case Decision, p. 51.* The Board held that effect could not be given to this contention.

Reference was made to the higher operating expenses per mile of line on the British Columbia Division. In the section dealing with British Columbia passenger rates, the Report of the Board's Chief Traffic Officer pointed out the higher operating expenses per train mile on the British Columbia Division as compared with the Prairie Divisions. He stated that every class of expenditure was higher. The maintenance of way and structures was stated to cost practically double what the same class called for on the Prairie Division, either on the basis of the mile, the road, or of train mile; and that transportation expenses were much higher.

In dealing with this phase of the matter, the following language was used by the Chief Commissioner:—

> "While a parity of fares throughout the whole country is desirable, the exercise of the Board's jurisdiction in reducing rates cannot proceed on the isolated question of what would or would not be an advantageous rate for the public, apart from all reference to the necessary expenses incurred in the service." *pp. 90-91 of Judgment.*

This was with reference to passenger fares, but the reasoning is equally applicable to freight rates.

While reference was made throughout the Western Rates Case to the cost of construction per mile, the fundamental matter considered by the Board was the operating cost.

As pointed out, the differential has been the subject of revision by the Board. The decision of the Board in the *Western Rates Case,* namely, that the excess in cost of operation on the British Columbia Division cannot be smeared over the other parts of the system, is fundamental; and what has to be faced in the present application is the question whether there has been such a change of conditions since 1922 as would justify a further reduction. If differences in cost of operation still continue; if the operating costs of the British Columbia Division still continue to be higher, then I regard the finding in the *Western Rates Case,* that this difference cannot be smeared over the whole system, as still controlling.

It is argued that the increased traffic of export grain by way of Vancouver and more recently Prince Rupert, is a factor of difference to be considered. In view of the fact that this grain is not subject to the mountain differential, it is not apparent just how this movement affords a conclusive argument in regard to the treatment which should be given over the mountains.

It was pointed out very strongly by counsel for Alberta that the mountain differential affected not only British Columbia but Alberta, and he urged that the justification, if any, of the continuance of the mountain differential was based on cost of operation, not on cost of construction.

In exhibit F.H. 190 filed by the Canadian Pacific Railway, an estimate is given of Canadian Pacific traffic moving during 1925 within (*a*) Pacific territory; (*b*) between Pacific territory and the Prairie territory; and (*c*) between Pacific territory and Eastern territory. The summary given is to the effect that there was moving on class rates 8.3 per cent; on commodity rates reflecting the mountain differential, 6.4 per cent; and on commodity rates which do not reflect the mountain differential, 85.3 per cent. That is to say, 14.7 per cent of the traffic was affected by the mountain differential. On the class rates, the full effect of the differential is felt; and in so far as commodity rates are built on a percentage of the class rates the effect of the differentials is carried down into the rate.

It is contended that the differential applies practically exclusively in the case of higher classed goods which are of higher value and, therefore, in better position to stand the rate. It is further contended that the reduction which the abolition of the mountain differential would bring about would mean a reduction in its entirety from the net revenue.

The analysis above set out is, as to the proportion effected by the mountain differential, in substantial agreement with the computation used by the Board when the reduction in the differential was made in 1922.

A computation submitted in evidence by Mr. Neal, for the Canadian Pacific Railway, showed that the wage cost of hauling a train 100 miles, paying for engine, train crews, etc., on the Mountain rate was $31.60 as compared with the Prairie rate of $27. *Evid. Vol. 496, p. 2140.* The difference is approximately 17 per cent. There are employed 3.3 men per mile of line in the mountains as compared with 2.7 in the prairies. *Neal, Evid. Vol. 496, p. 1988.* This figures out at a difference of approximately 22 per cent. The cost of maintenance per mile of line in British Columbia on the Canadian Pacific is submitted at $118.37, while the figure for the prairies is $37.33.

The evidence submitted by Mr. Lloyd, for the Canadian Pacific Railway, as summarized, shows that on a five-year weighted average of costs directly allocated to districts, the British Columbia costs were higher than those of the prairies per mile of line by 19.28 per cent; that on the train mile, the costs were 23.18 per cent higher; on car miles, 54.62 per cent higher; and on gross ton miles, 43.69 per cent higher.

In the analyses submitted by the Canadian National, it is set out that in 1924 it cost on the prairies 5.99 mills to move a net ton one mile, while in British Columbia, in the same year, it cost 7.19 mills, or 20 per cent higher. In

1925, the Mountain cost was given as being 33 1/3 per cent higher than the Prairie Provinces. On the basis of the gross ton mile rate, British Columbia cost is shown in 1924 as being 17.6 per cent higher and in 1925 29.4 per cent higher. *Evid. Vol. 510, p. 7788.*

It was stated that on the prairies in 1924 the Canadian National handled 668 net tons in a train a distance of one mile at a cost of $4.04, while in British Columbia it hauled 600 net tons in a train at a cost for one mile of $4.31. In 1925, they hauled in the prairies 700 net tons per train, one mile, at $3.82, while in British Columbia they hauled 587 net tons per train, one mile, at $4.21. *Evid. Vol. 510, p. 7787.*

In summarizing the position of the Canadian National, counsel, at *Evid. Vol. 510, pp. 7822, 7823,* submitted that maintenance of way and structures costs were heavier in British Columbia than on the prairies; that operating costs were also heavier; that the cost of moving grain westbound to Vancouver over the Canadian National is as much heavier as the total operating costs of two and one-half trains; and that in respect of the grain movement the empty haul was practically 100 per cent.

Reference in this connection was made to exhibit F.H. 221 setting out that for the years 1923 to 1926, inclusive, it cost 35.6 per cent more in British Columbia to maintain the railway's ways and structures, in so far as fixed maintenance was concerned, than on the prairies. This is a computation based on a per mile of line basis.

As measuring conditions of operating cost, counsel for the Canadian National submitted exhibit F.H. 222. This is an exhibit which dealt with the question of the movement of grain both east and west. There was a given volume of tonnage, 1,000 cars; this tonnage to be handled in trains of same size and weight. Taking a 50 per cent engine from Biggar to Fort William, 1,000 cars of grain would be carried in 16.7 trains. For the Biggar-Vancouver distance, 19.6 trains would be required. This is approximately 18 per cent more. Taking the locomotives actually in service, it is computed that it would take 15.2 trains to handle traffic to Fort William and 25.6 trains to carry the traffic to Vancouver. Biggar is taken as being nearest to the point where the rates east and west meet. The mileage to Vancouver is approximately 75 miles greater.

In referring to the changed conditions which it was contended existed, reference was made to the factor of the grain trade. The effect of changed conditions, if any, in freight traffic may be measured to some extent by the relation between passenger gross ton miles and freight gross ton miles. *Exhibit F.H. 121 filed by Counsel for the Province of British Columbia and based on material supplied by the Canadian Pacific Railway.* See also in this connection *Vol. 489, p. 18226.*

In 1921, the passenger gross ton mileage in British Columbia was 29.67 per cent as compared with the freight gross ton miles of 70.33 per cent. In 1925, the passenger gross ton miles had fallen to 25.45 per cent, while the freight had risen to 74.55 per cent. There was an actual increase in passenger gross ton mileage. On these figures, however, it would appear that a change in percentage of 4.2 per cent has taken place.

Another factor which is stressed as important is the question of empty car movement. It is contended that the development of the grain movement for export via Western ports has to a great degree adjusted the discrepancies existing between the loaded and empty movements. The evidence of Mr. Neal is, in substance, that the large movement of grain to the Pacific does not coincide with the heavy eastbound movement. There is a certain amount of overlapping in the autumn and spring, when the lumber in the autumn is falling off and the grain starting; and similarly when the grain is falling off and the lumber is starting. Normally, the grain movement falls off very considerably from the month of March.

Exhibit F.H. 225 filed by the Canadian National Railways is relied upon by Counsel for the railway to show that " on the whole we practically haul east empty all the cars we haul westbound loaded with grain." *Evid., Vol. 510, p. 7822.*

The Canadian Pacific, in exhibit F.H. 99, relies upon the analysis therein set out as showing that the percentage of empty loaded movement in the British Columbia district has actually increased since 1922. Exhibit 75 segregates the empty movement eastbound and westbound in British Columbia. While the westbound decreased 12 per cent, the loads increased 15 per cent; and while the loads westbound increased 170 per cent, the empties increased westbound 249 per cent. It was stated there was a slight improvement in the empty movement westbound. *Evid. Vol. 509, p. 7536.*

The Board's Chief Operating Officer, on direction, made a study of cost detail presented, and the following report sets this out:—

> " *Comparative Illustration for the Movement of Freight over the Mountain Subdivision, Revelstoke and Field, and the Prairie Subdivision, Alyth Yard, Calgary Terminal, to Medicine Hat, Eastbound.*
>
> " A 210 per cent engine eastbound will handle 1,050 tons, Revelstoke to Golden, with the assistance of a pusher engine from Albert Canyon to Glacier, and, from Golden to Field, 1,108 tons with the assistance of a pusher engine from Golden to Leanchoil. On this subdivision, there are two controlling grades, one Albert Canyon to Glacier; the other, Golden to Leanchoil; and the tonnage chart shows an increase in tonnage from Beavermouth to Golden, and from Leanchoil to Field, but the trainload in actual operation is from Revelstoke to Golden without change of tonnage, and at Golden 58 tons can be added to each engine load. The mileage of the subdivision, Revelstoke to Field, is 125.7 miles. To haul the train through, the pusher engine has to make 38.8 miles Albert Canyon to Glacier and return, and 35.8 miles, Golden to Leanchoil and return, making the engine mileage in connection with getting this train over the subdivision 200.3 miles as against time-table distance of 125.7—excess engine mileage 74.6 miles.
>
> " A 210 per cent engine eastbound will handle from Alyth yard, Calgary Terminal, to Medicine Hat 2,709 tons, which can be handled with the assistance of a pusher engine from Suffield to Bowell, a distance of 11.3 miles, making the return journey of the pusher engine 22.6 miles; time-table mileage being 177.8 miles and pusher engine mileage 22.6 miles makes the total mileage 200.4, or an excess engine mileage of 22.6 miles.
>
> " In regard to supervision in mountain territory as compared with prairie, I might point out that the Revelstoke Division totals 332.9 miles, being main line 254.5 and branch lines 78.4, being in charge of one superintendent, two train masters, one chief despatcher and two sets of despatchers of three each, the Mountain Subdivision being a portion of the Revelstoke Division. The Medicine Hat Division has a total of 949 miles, being 326 main line and 623 branch mileage, with one superintendent, two train masters, one chief despatcher, and two sets of despatchers of three each.
>
> " The above illustration figures out Revelstoke to Field gross ton mileage 134,330 per train, 672 tons per engine mile, and 1,066 tons per train mile. Alyth Yard to Medicine Hat gross ton mileage 481,660, 2,408 tons per engine mile and 2,705 tons per train mile, or an increased tonnage per engine mile Alyth Yard to Medicine Hat of 258.31 per cent, and per train mile of 153.75 per cent.

"In regard to supervision, the Medicine Hat Division has 54 per cent more mileage than the Revelstoke Division, or comparing the main line, exclusive of the branches in either case, the Medicine Hat Division has an increase of 28 per cent."

Following the position laid down in the *Western Rates Judgment*, the matter of excess, if any, of operating cost is a criterion to be relied upon in connection with the mountain differential. The importance of the grain traffic and the readjustment it is claimed to have brought about in the matter of equalizing traffic movements so as to give a larger percentage of loads in both directions has been very strongly urged. The question here is what has been the effect of this movement upon the operating costs? Have the operating costs so changed as to justify the elimination of the mountain differential?

Under the decision in the *Western Rates Judgment*, the disparity in point of operating cost still existing is such as does not justify the Board in granting the application for the removal of the differential.

II

MAIN VS. BRANCH LINES

In his evidence, Vol. 498, p. 2819, Mr. Stephen, the traffic representative of the Canadian Pacific, said:—

"I submit that it is not unjust discrimination to carry a higher basis of specific rates from branch lines than from main line points, and this is the normal basis of rate structure, except where freight traffic is carried under a distance tariff, or under a tariff constructed with a distinct relationship to distance rates."

It was set out in evidence that all branch lines in Manitoba and Eastern Saskatchewan carry specific grain rates, and that this makes a mileage basis impracticable.

In another connection Mr. Stephen used the following language:—

"In the older province of Manitoba the grain rates to Fort William from practically all main line and branch line stations on the Canadian Pacific Railway are on the same basis. This is also true with respect to shipping points on the main line and branch lines of the Canadian Pacific Railway in the eastern or earlier settled sections of Saskatchewan, but here the grain rates to the head of the lakes are not based on distance but are "specific", and are strictly subject to competitive conditions, so much so that at the present time it would be impossible . . . ."

In exhibit F.H. 197, filed by the same witness, reference was made to the competitive conditions in Manitoba and eastern Saskatchewan, it being stated that the Canadian Pacific main line between Winnipeg and Moose Jaw is closely related to the Canadian Pacific branch lines and lines of other railways, running not only from the east to the west but from the south to the north.

As pointed out in the reasons for judgment of the Chief Commissioner, emphasis was laid by Messrs. McEwen and Woods on the main line of the Canadian Pacific as a measure of the rates which it is contended should be charged. The matter was dealt with in the presentation of Mr. McEwen, for the Province of Saskatchewan (*Evid. Vol. 506, pp. 6277-6281, inclusive*). He stated that the discrimination alleged to exist in the grain rates eastbound had already been raised in the application which was originally filed by the Attorney General of the province of Saskatchewan, and was also referred to in the supplementary submission which Mr. McEwen had caused to be filed on behalf of that province. Reference was made to the joint telegram of Messrs. McEwen

and Woods sent under date of September 23, 1925, in which the words " mileage scale " were used. In this connection the following language was used by Mr. McEwen at *pp. 6277-6278:*—

> " It was apparently understood by our friends representing the railway companies that there was involved in this application the breaking up of all the present rates and an attempt to obtain a new scale of rates based on regular groups of mileage such as prevail in regular mileage scales. It is no doubt true that the telegram which Mr. Woods sent might have been open to that interpretation, but I do not think it was the intention of Mr. Woods that such a tariff should be constructed, and certainly no argument was ever advanced along those lines either by Mr. Woods or myself at the hearing in February, 1926, or any evidence adduced at any time from which it could be inferred that that is what the provinces were desiring.
>
> " All that we are seeking in this application is that whatever mileage groups may prevail on the main line of the Canadian Pacific Railway Company, whether regular or irregular, whether covering a blanket of 15 miles, or 20 miles or more, that the rates which are charged for the movement of grain or flour for any particular mileage on the C.P.R. be applied generally throughout the provinces of Saskatchewan and Alberta as they are to-day applied in the province of Manitoba."

As bearing upon the question of the mileage groups, Mr. Woods for the province of Alberta (*Evid. Vol. 453, p. 2089*) pointed out that the rates were quoted by mileage groups; and in this connection said:—

> " Well, gentlemen, I would like my friend Mr. Flintoft or my friend Mr. Fraser, or any one, to suggest to me any other way in which you can follow out that Act of Parliament when it comes to other railway lines than by saying, when it says ' governed by ' the conditions of that agreement, and that such rates, namely, the rates that are governed by the conditions, shall apply to all other lines, how can you apply them otherwise than by taking these same mileage groups on the other railways and saying, the same rate carries? If there is another kind of construction that may be suggested whereby this tribunal can administer that Act than by way of mileage groups on those railways, I would like to hear it, and would like it to be suggested to me now, because I have not been able even to imagine it."

In general, the position taken by the Canadian Pacific was that the Crowsnest rates on grain to Fort William were put in on an arbitrary basis, there being no uniformity in point of distance; and it was also contended that in Manitoba and eastern Saskatchewan competitive conditions arising from railways paralleling and questions relating to wagon hauls from points located between different lines of railway had a bearing upon the rates charged.

Mr. Neal, for the Canadian Pacific, pointed out extra factors of cost, which he claimed attached to the branch line movements. In answer to Mr. McEwen (*Vol. 498, p. 2583*) he said, repeating the evidence given in his direct examination, that the branch line was more of a pick-up or peddler car service than was the case on the main line. In summarizing the factors which he said caused greater expense on branch lines, he set out his position in *Vol. 496, p. 2018:*—

> " Branch lines are said to be more expensive because there is more picking up or peddler service as compared with the main line. The trains stop at every station and switch off or take on cars. The density of traffic is less on branch lines, and they are not maintained to main line standards either as to bridges, or rails, or ballast. Therefore they cannot operate heavy loads. This means more enginemen, conductors, and trainmen and more wages and coal."

In comparing traffic as between the north and the south, Mr. Stephen, for the Canadian Pacific, while emphasizing the greater ton mileage in the south, recognized, in *Vol. 498, p. 2855*, that in respect of originating business the north had a better average. It was contended that there were longer hauls on the northern branches in order to connect with the main line than was the case in the south, and that there were factors of extra cost as a result of this.

While Mr. Neil, of the Canadian Pacific, emphasizes, as has been indicated, the extra factors of cost in connection with branch lines as compared with main line traffic, some other features of his evidence are of value in this connection. In cross-examination by Mr. McEwen *(Vol. 498, pp. 2583-2590)*, the following question was directed to him:—

> "Q. You really cannot differentiate between main lines and branch lines, because your main line is the main artery of traffic, but the main line must be nourished by the branch lines, and you must regard your system as a whole?—A. The system is built up as a whole, and co-ordinated as a whole. Q. And you must so regard it?—A. Yes."

Again *(Vol. 498, p. 2590)*, Mr. Neal was being cross-examined by Mr. McEwen. Mr. McEwen pointed out that in Vol. 496, p. 2150, the witness had said:—

> "I do not see how you can separate a system like the Canadian Pacific Railway into parts and say that this or that must stand by itself, because the thing is so co-ordinated in the transportation machinery that it is not possible to take it to pieces."

This question arose out of the question of Commissioner Oliver as to the expense of operating branch lines as part of the system, and Mr. Neal, in response to Mr. McEwen, said the portion quoted above was a fair statement.

It is true that part of the evidence herein referred to has a bearing on the question of accounting, but it is of value as showing the necessary inter-relation between main and branch lines, and pointing out that the value of a particular line from the standpoint of traffic must be considered not only in terms of what it contributes to the main line, but also in terms of what it originates.

Exhibit F. H. 180, filed by Mr. McEwen, covering the elevator receipts of grain from 1920 to 1925, shows that in Saskatchewan, during the period in question, the receipts of grain on the Canadian Pacific main line were 89,972,620 bushels. On branches south of the main line 207,756,374. On branches north of the main line, 267,392,769 bushels.

Exhibit 12 and also exhibit F.H. 198 set out detail concerning the bushels of wheat and coarse grains, as shown by elevator returns, per mile of line on the Canadian Pacific in Alberta for the crop years 1920 and 1923. This is differentiated as between the main line, and north and south of the main line. The detail as set out in analysis is as follows:—

Main line— 1920	Bushels
Wheat per mile of line	17,331
Other grain mile of line	9,545
North of main line—	
Wheat per mile of line	20,030
Other grain mile of line	19,545
South of main line—	
Wheat per mile of line	21,335
Other grain mile of line	6,027

Main line— 1923	Bushels
Wheat per mile of line	50,709
Other grain mile of line	11,749
North of main line—	
Wheat per mile of line	50,976
Other grain mile of line	20,477
South of main line—	
Wheat per mile of line	40,790
Other grain mile of line	4,972

Mr. Stephen, in his evidence, *Vol. 498, p. 2841,* made a comparison between Manitoba, Saskatchewan, and Alberta north of the main line as compared with south of the main line. He set out that there were 3,409 miles north of the main line and 2,989 miles south of the main line. That is to say, about 17 per cent more mileage north of the main line. It is claimed that this greater mileage north results on an average in a lesser traffic density as compared with the main line and south branches.

In his evidence, Mr. Stephen, *Vol. 498, pp. 2840-2841,* shows for the year 1926, 1,787 miles of branches north of the main line in Saskatchewan, and 1,336.8 south of the main line, or approximately 33 per cent more branch line mileage north of the main line than south.

In general, at least in the territory east of Moose Jaw, the rates on southern branch lines are tied up to the main line rates, while on northern branch lines there is a spread. In referring to differences in conditions north and south. it is pointed out, in exhibit F.H. 250, that wheat preponderates in the south and oats in the north. Exhibit F.H. 250 is an analysis filed by Mr. Fraser of exhibit 12, which in turn was filed by the province of Alberta. This shows 74 per cent of wheat in the south as against 47 per cent in the north. The oats are 19 per cent in the south and 47 per cent in the north.

Reference is made to the grains being coarser, and the lighter loading, with corresponding increase of cost. In 1926, the wheat loaded about 75,000 pounds to the car; the oats loaded 68,000, or approximately 10 per cent lighter loading. Barley is shown with a somewhat lighter load, but the amount involved is not large. As bearing upon the question of cost alleged to be tied up to this lighter loading, it is to be borne in mind that rates as between wheat and oats, for example, are not built up on a basis that the oat rate shall be higher because the loading is lighter.

Reference is made to the fact that the Board has in various decisions recognized a distinction between main line and branch line rates. In the course of the hearing, decisions bearing on this were referred to. The *British Columbia Coast Cities Case, 7 Can. Ry. Cas., 125,* which was referred to, does not appear to be in point, because what really was involved was the principle that comparisons of distances are not in themselves conclusive. Reference was also made to *Canadian Oil Co. vs. Grand Trunk Ry. Co., 12 Can. Ry. Cas., 356;* and *14 Can. Ry. Cas., 201.* What was involved here was, so far as mileage is concerned, the same position as in the *Coast Cities Case.*

In the *Almonte Knitting Co. Case, 3 Can. Ry. Cas., 441,* a distinction between main and branch line rates was involved. In *Malkin & Sons vs. Grand Trunk, 8 Can. Ry. Cas., 183,* the traffic concerned originated on the branch line; and it was held that there was an initial dissimilarity of circumstances until the junction point was reached.

Fredericton Board of Trade vs. Can. Pac. Ry. Co., 17 Can. Ry. Cas., 439, is a long and short haul case; and what is involved is not on all fours with freight.

In *Hunting-Merritt Co. vs. Can. Pac. Ry. Co. and British Columbia Electric Co., 20 Can. Ry. Cas., 181,* there was reference to the *Almonte Knitting Case.* The matter, however, really turned on a comparison with the way in which the Board had directed orders in British Columbia by building up arbitraries over the basing rates.

In *Two Creeks Grain Growers' Ass'n vs. Canadian Pacific Ry. Co., 18 Can. Ry. Cas., 403,* it was held that points in the same mileage group, whether on main or on branch lines, should be treated in the same way. The points compared were Elkhorn and Two Creeks. On a movement west from Winnipeg to the two points, the distance is common to Virden. Elkhorn is 16.8 miles west of Virden on the main line. Two Creeks is 13.4 miles in a northwesterly

direction from Virden, on the line extending from Virden to McAuley. This case was decided in 1915. Both these points fall within the mileage grouping from 190 to 200 miles, inclusive, of the Standard Freight Mileage Tariff.

In this case, the railway set out the following positions: The difference in rate was not discriminatory, the two points having nothing in common. The tonnage in and out of Two Creeks was insignificant. Two Creeks is on a branch line, while on the other hand Elkhorn is on the main line, where the cost of operating is lower and the density of tonnage and population much greater.

In the course of the recent hearings, Counsel for the Canadian Pacific, in referring to this decision, said *(Vol. 510, p. 7602)*: "That the Board had held that such a difference was justified in the case of specific rates as distinguished from mileage rates." All that was said in the Judgment on this point, at *p. 405*, was: "While reference has been made to the difference in the density of traffic as between the main line and the branch line, the pertinency of this is not apparent when it is considered that what was involved was the general mileage scale."

Under the decisions, the question of main vs. branch line rates on grain and grain products may justifiably be looked at from the standpoint of common competition in a common market. In *Dominion Millers' Assn.* re *Eastern Ontario Milling in Transit Charge*, judgment rendered October 3rd, 1917, the following language was used:—

> "Where the product of identical raw material—although the manufacturing is at different points—moves in the same general direction to competition in a common market, the onus in connection with a complaint of undue preference is especially on the railway."

continuing, at p. 9 of the judgment, the following language was used:—

> "The justifiability for difference in treatment in a common market of the flour from western grain moved by Bay and Lake ports, and thereafter milled in transit, as compared with flour milled from western grain and moved all rail, or by lake and rail, has not been established. There is discrimination, and Order should go against the Canadian Pacific for the establishment of the one-cent milling-in-transit charge on western grain ex-lake."

Mr. Stephen, for the Canadian Pacific, referred to Exhibit F.H. 167 as showing, from the standpoint of density of traffic, conditions which were less favourable on branch lines than on main lines, and also as showing conditions less favourable on northern branches than on southern branches. At first, he spoke of the density of traffic on the lines north and south, but he corrected this by saying that it was not density of traffic but density of tonnage which he was referring to. Exhibit F.H. 167 is a subdivision of gross ton miles as between the main line and the branch lines.

As already indicated, the northern lines are in a stronger position from the standpoint of originating traffic than the southern lines.

In the Western Rates Case, at p. 51, it is pointed out that density of tonnage shows all traffic, irrespective of origin, while density of traffic deals with freight originating or delivered in a given territory. Further, in dealing with the question of density of tonnage, the following language is used:—

> "To treat the case, therefore, merely on the question of density of tonnage would be simply to use traffic derived in part from Saskatchewan itself as a reason for denying Saskatchewan the removal of a discrimination existing in the territory subject entirely to like operating conditions."

Here, what was involved was a reference to the effect on operating conditions in Manitoba of the traffic moving east from Saskatchewan and Alberta.

The traffic from the branch lines to the north, for example, moves on to main lines, and to disregard the effect of this on the density of tonnage would be to take the position which was negatived in the Western Rates Case.

Putting in summary form the position which has been developed—First: The railways pointed out that competitive conditions are active in the territory which may roughly be defined as being east of Moose Jaw. It is set out that here paralleling of railways and possibilities of wagon hauls necessitate the main line rates being extended to the branches. Second: Reference is made to the decisions of the Board with regard to branch line vs. main line rates. It seems to me that where a commodity of general demand produced in different sections is being shipped to a common competitive market, there is not the same justification for difference between main and branch line rates. It may be noted in this connection that, while the decision in the Two Creeks Case went on the matter of mileage grouping, the railway took the same position in regard to main vs. branch line rates which it has raised in connection with specific rates. Third: In respect of grain tonnage, the north shows up very favourably with the south, and both of these are in excess of the main line, showing the importance of the branch line traffic as feeder traffic to the main line, this in turn raising the question of the bearing this might be expected to have upon the rates of lines furnishing the feeder traffic.

While a statute should carry its own code of interpretation, there is authority for the position that where a statute is the outcome of the deliberation of a special committee, recourse may be had to the report of findings of the said committee in order to ascertain more clearly the significance of what is incorporated in the legislation.

The amending legislation of 1925, in regard to Crowsnest rates and their scope was preceded by P.C. 886, of June 5th, 1925, which used the following language:—

> "The Committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the grain-growing provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum costs of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour as at present fixed under the Crowsnest Agreement should not be exceeded."

It is the intention of Parliament, as embodied in the amending legislation of 1925, that the Crowsnest rates on grain and flour should be applied within defined territory. The fact that Parliament made these rates of general applicability not only to the lines now in existence but also to those hereafter constructed, points out that Parliament hereby made a significant change in regard to one phase of rate regulation. For example, as to a railway hereafter constructed, it is not open to plead that the statutory rates are unreasonable, and such a railway is referred for its statutory maxima to rates applicable on another line built under different conditions of cost.

If subsection 6 of section 325 had not been passed, it would have been possible to say that two different sets of rates for comparable mileage groups, one being on a branch line and the other on a main line, were both Crowsnest rates and therefore undiscriminatory. Under such a condition a plea of discrimination as between the higher and the lower would have no standing, for both rates being brought about by the action of Parliament it could not be assumed that Parliament had created discriminatory rates. *Re Crowsnest Pass Rates, 30 Can. Ry. Cas. 27, at p. 47.*

Having knowledge, however, of the decision of the Supreme Court, above referred to, Parliament indicated, in section 6, that the Crowsnest Pass legislation, or the agreement made and entered into pursuant thereto, could not excuse a charge of unjust discrimination. The Crowsnest rates now in force are therefore subject to the inhibitions as to unjust discrimination.

Counsel for the Canadian National Railways points out that the rates operative on one line were not the necessary measure of the reasonableness of rates on another line. While authority in regard to the general position that one railway is not compelled to meet the rates of another is abundant, the amending legislation of 1925 brings a new factor into the situation.

The record of the way in which the present legislation has been arrived at compels me to conclude that it was the intention of Parliament to put into force within a defined territory a uniform basis of rates, the basis being as low as possible. This was to be applicable except in so far as difference in condition justified a difference in treatment, which should be neither an unreasonable preference nor an unjust discrimination.

On the record, I am of opinion that railways have not justified the difference in treatment existing between main lines and branch lines.

In the case of a higher rate for a given Canadian National main line mileage group, in comparison with the comparable mileage group on the Canadian Pacific, I am of opinion that the Canadian Pacific main line mileage rate group is controlling, unless a discrimination is shown not to be unjust. When the same question arises between the Canadian National main line and the branch lines thereof, the comparable main line mileage grouping of the Canadian Pacific is also controlling. I am of opinion that the onus as to disproof of unjust discrimination has not been successfully borne by the Canadian National.

The Crowsnest rates have not been built up on mileage, but on mileage groupings; and, therefore, in removing discrimination it should be by the installation of non-discrimnatory rates in comparable mileage groupings, the groupings and rates existing in the Canadian Pacific main line being the measure.

III

DISTRIBUTING TARIFFS

Section 17 of the Board's decision in the *Western Rates Case* used the following language, *p. 61:*—

> "While it is beyond all question that, speaking generally, the rates ordered on one line control to a large extent the rates on other lines, and that it serves no useful purpose to prescribe rates only as against one carrier with the idea of assisting another; yet in so far as these distributing tariffs are concerned, in some instances the mileages of the Grand Trunk Pacific and the Canadian Northern are shorter than those of the Canadian Pacific; to the extent that these shorter mileages would enable either company to charge a lesser rate than that fixed for the Canadian Pacific, I am of the opinion that both companies should have the opportunity of doing business, if they so desire, at the longer mileage rates, and without regard to the competitive advantage which their shorter mileage would give them. These distributing rates, therefore, are made effective by this judgment only as against the Canadian Pacific."

In 1924, Mr. Chard, for the province of Alberta, raised the point of applying the order against the Canadian National as well. He contended that the Canadian National had adopted the basis of the order, using their correct mileage to exclusive points but basing their rates on Canadian Pacific longer mileages in the case of points which are reached by the Canadian Pacific. It

was alleged that discrimination had existed in that districts other than those complaining in the application had enjoyed their actual mileage while the longer Canadian Pacific mileage had been imposed to competitive points.

In the submission at that time made on behalf of the railway, it was contended that conditions had not so changed since the decision of the Board in the Western Rates Case, as to justify making an order against the Canadian National. It was decided to let the matter stand over, to be considered with the General Rates Investigation.

At the General Rates Investigation, the province of Saskatchewan brought the matter forward through the application of the Board of Trade of Prince Albert and also through the supplemental submission of the province of Saskatchewan which asked that the order made against the Canadian Pacific in the Western Rates Case, requiring them to put in a distributing tariff based on 85 per cent of the standard mileage, should be extended to the Canadian National as well.

The province of Alberta, in paragraph 6 of its submission, contended that unjust discrimination existed in respect of the town tariffs, the grounds advanced being on all fours with those already referred to in the 1924 application.

In the matter of *International Rates* Order issued July 6, 1907, which dealt with town tariffs, provision was made that the rates in all cases were to be based on the shortest workable mileage. The direction given in the Western Rates Case appears to me to have been a provisional one, dealing with railway conditions which were then in a state of readjustment.

On consideration, it seems to be justifiable that the order should go against the Canadian National as well as against the Canadian Pacific.

IV

NATIONAL TRANSCONTINENTAL

The Quebec Harbour Commissioners, in their application of August 12, 1925, used the following language:—

> "1. That the intention of parliament, as expressed in the Statute of 1904, in virtue of which $180,000,000 of public money has been expended in building the Transcontinental Railway and the Quebec Bridge, namely, to reduce the cost of carrying the products of the Prairie Provinces to Montreal, Quebec and Halifax and St. John for export, shall no longer be ignored, and that the rate upon export wheat and flour over the Transcontinental Railway, from Fort William or Armstrong to Montreal or Quebec, shall be reduced to 11 cents per bushel, which is the equivalent of 15$\frac{9}{10}$ cents per bushel, the rate (Crowsnest basis) at which it is now being carried 1,300 miles from Calgary to Fort William, and that the additional rate for winter export shipment, passing over the Quebec Bridge, to Halifax and St. John, shall not exceed the additional rate now charged for such service."

That is to say, the Board is asked to make applicable from Fort William or Armstrong east to Montreal or Quebec a rate on the Crowsnest basis. While reference was made to Montreal, that city did not join in the application.

The Quebec Harbour Commissioners, in a communication on file dated January 22, 1926, in reply to a letter from the Chairman of the Canadian Freight Association dated December 31, 1925, said: "We ask that the Crowsnest

rates shall be applied between Fort William and Montreal." In a statement made by Mr. Cannon of Counsel for the Harbour Commissioners the following is set out at *Evid. Vol. 462, p. 6520:*—

> "All that we ask is that we should be treated all the way from Edmonton to Quebec as the railways are treating from Edmonton to Fort William."

Mr. St. Laurent, of Counsel for the Quebec Harbour Commissioners, stated that the 11-cent rate would be a fair equivalent to the Crowsnest rate. Mr. Cannon stated as follows, *Evid. Vol. 511, pp. 8142, 8143:*—

> "The Board has to endeavour, under the Order in Council, to equalize rates on a fair and reasonable basis which will be equal in its application to all persons and localities. Our contention is that the rates on grain under the Crowsnest Pass Agreement are *prima facie* fair and reasonable. They have been declared to be so by Act of Parliament and are to be kept in force under the law of 1925, and we submit to the Board that just on this matter of rates we feel that the conditions existing from the West to Fort William and Port Arthur and to Armstrong ought to be continued as a fair and reasonable rate down to Quebec and to the ocean ports in New Brunswick and Nova Scotia.
>
> "Commissioner LAWRENCE: That is, the Crowsnest rate from Armstrong down to Quebec.
>
> "Mr. CANNON: That *prima facie* these rates must be considered as fair and reasonable as they have been in force under the statute for years past, and that unless it is fairly shown that they are not fair and reasonable the inference is in our favour that they are fair and reasonable, because they are actually in force."

In substance, his argument was that whatever the Crowsnest rates might be, operating under the jurisdiction granted them by Parliament, they afforded a general measure of reasonableness.

The method by which the 11-cent rate is computed was stated by Mr. St. Laurent to be as follows:—

> "The Edmonton-Armstrong rate is 26 cents for the distance, and by multiplying 26 by 960 (that is the Armstrong distance) and dividing by the distance between Edmonton and Armstrong, you get nineteen and something as the proper rate per 100 pounds; that gives 11.7 cents per bushel, and I suggest that the decimal be dropped." *Evid. Vol. 506, p. 6120.*

It is stated that the decimal is dropped because of the longer haul. It is further stated by counsel that the rate is not being asked for from Fort William or Port Arthur. The application as launched had included Fort William.

While application is thus made for an extension of the Crowsnest basis to the Armstrong-Quebec mileage, it is not contended that this rate as applied to this movement will of necessity yield any profit.

In the course of his argument, Mr. St. Laurent set out various comments on the testimony given by Mr. Mallory (*Evid. Vol. 506, pp. 6091-6100, inclusive*). He contended that cost of maintenance of way and structures would be very slightly, if at all, increased by the additional grain traffic. General expenses should, he stated, be omitted. The summary of his position in this regard will be found on *p. 6100.* He there set out that the amount which he thought properly chargeable was $2.934 per train mile as against $6.28 set out in Mr. Mallory's evidence. In quoting this figure of $2.934, Mr. St. Laurent, at *p. 6100,* says: "I submit that this is a fair calculation of the actual expenses following a train."

At *p. 6230, Evid. Vol. 461*, he also stated in summary that if in order to start a movement over the National Transcontinental it was necessary " to take a pioneer rate which shall not apply elsewhere " this should be done.

The Board is asked to act not under the Special Act but under the Railway Act. If what is invoked is the exercise of the Board's powers under the Railway Act in regard to applying the Crowsnest basis to the mileage involved, the question arises what powers are possessed by the Board?

Section 325 of the Railway Act, as amended in 1925 by 15-16 George V, chap. 52, provides that,—

> " Notwithstanding anything in this subsection contained, rates on grain and flour shall, on and from the date of the passing of this Act, be governed by the provisions of the agreement made pursuant to chapter five of the statutes of Canada, 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of the Board."

The territory in which the Crowsnest rates are to be operative is specifically defined. It is concerned with grain and flour " moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur . . ." Fort William and Port Arthur are on the eastern boundary of the special rate territory concerned. For tariff purposes, Armstrong has been given the same treatment.

The Board has no power to extend these statutory rates to points outside of the territory so specifically defined.

Another phase of the matter is the intimation of counsel that the rates asked for may be regarded as " pioneer," that is, presumably, development rates. The Board is not empowered to put in " pioneer " rates which have in mind equalizing business costs of production, stimulating traffic in one section as compared with another, etc., etc. This is a phase of management which has not been given to the Board. *Canadian China Clay Co. vs. G.T.R., C.P.R., and C.N.R., 18 Can. Ry. Cas., 347, at p. 348; Dominion Millers' Assn., Toronto Board of Trade and Montreal Corn Exchange vs. Canadian Freight Assn., 21 Can. Ry. Cas., 83, at p. 87.*

The other phase of the matter referred to is the question of out-of-pocket costs. If rates are fixed on an out-of-pocket costs basis, other charges appertaining to railway operation must be borne by other commodities. There may be conditions under which a railway exercising its discretion carries goods that pay only out-of-pocket costs. It does this subject to such attack, if any, as may arise. It may do this with a view to develop business or on account of meeting competition; but for whatever reason it may so act it does so subject to such complaint as may arise under the Railway Act. The Board, in the absence of specific sanction or direction as embodied in law, is not empowered to make rates on the basis of out-of-pocket costs.

V

QUEBEC EXPORT RATES

In the application of the Quebec Harbour Commissioners dated August 12th, 1925, paragraph 3 of the formal application reads "that the rates from Georgian Bay and other Ontario points and from Chicago, upon grain, flour and other goods billed for export by ocean steamers at Quebec shall be the same as those upon similar goods sent for export to Montreal."

In the course of presentation, *Vol. 461, p. 6013*, the following amendment was made by Mr. Cannon: After the words "Georgian Bay" as set out in the first line, he added the word "Toronto," and he stated it was desired to limit this application to Toronto and other Ontario points west of Toronto and from Chicago so that rates "upon grain, flour and other goods, including cattle billed for export by ocean steamers at Quebec shall be made the same as upon similar goods sent for export to Montreal."

The argument related almost exclusively to the question of grain. It was pointed out that from Goderich, Kingston and Port McNicoll the rate to Montreal was 8.60 cents per bushel, while from the same points to Quebec, St. John, Halifax or Boston the rate was 9.10 cents, or a spread of one-half of 1 cent per bushel.

In *Evid. Vol. 461, p. 6244*, Mr. St. Laurent, on behalf of the applicants, contended that under P.C. Order No. 24, of January 7, 1926, the Board was requested to adopt such action as it may deem fit in order to ensure, as far as possible, a rate that will place the Canadian ports on the same footing as the American ports. While I am not pressing the point, it may be noted in passing that the application here is in reality to place Quebec on the same footing as Montreal. Continuing, Counsel said the only effective means of applying this ruling was to give Quebec, as a summer port for grain moving from the lakes, the same rates as apply from Montreal. He said ".....if there is any possibility of carrying out these instructions, it can only be done by flattening out the difference, not considerable.....one-half cent a bushel."

Reference was made to the decision of the Board in 1921—*Complaint of the Harbour Commissioners of Quebec that export rates on grain from Georgian Bay ports to Quebec are on a higher basis than to the port of Montreal—Board's Judgments and Orders, Vol. XI, p. 185.* In the judgment in question, it was stated that the distance from the bay ports to Montreal is 371 miles and to Quebec 532 miles, or 161 miles greater distance to Quebec than to Montreal. Reference was made in the decision to the argument that the Board would have the power to direct the railway companies to grant the same rates to both Montreal and Quebec. This was recognized; but it was also stated that the Board was directed by the Railway Act to grant to the railway companies just and reasonable rates; and Chief Commissioner Carvell, who gave the judgment, stated that he was at a loss to see how the Board could contend it was carrying out the law if the same rate were given to Quebec as to Montreal, notwithstanding the mileage spread.

Reference was made to the fact that Canadian railways carried grain to St. John at 1c. over the Montreal rate, a distance of 500 miles beyond Montreal, and that the same rate situation existed on the haul to Portland, 297 miles beyond Montreal. It was pointed out in the judgment that these rates were necessary in order to get the business for Canadian channels, and that if in the winter season the same rates were not given to St. John and Halifax as were granted to the ports of Portland, Boston and New York the traffic would not move to the Canadian ports. Concluding, it was said that the conditions above set out do not exist as between the ports of Montreal and Quebec. The Board, therefore, failed to see how it "would be justified in enforcing the railway companies to carry this grain 161 miles beyond Montreal absolutely free."

Mr. Flintoft, for the Canadian Pacific Railway Company, in the present application, pointed out that the distance Port McNicoll to Montreal was 371 miles and Quebec 532 miles; that is to say, the Port McNicoll to Quebec distance was 43 per cent greater; and it was contended that it would be unfair to disregard this in making the rate.

In *Evid. Vol. 461, p. 6250,* Mr. St. Laurent said that the contention brought in in 1921 was brought when the Board did not have the powers it now has. It

was pointed out that the Board then felt "that under the express direction of the Statute the rates were to be fair and reasonable to the railway companies, the railway companies could not be compelled to carry the additional 161 miles for nothing." It is claimed by counsel that the present Railway Act has been amended to provide for the routing of Canadian trade through Canadian ports, and that the Orders in Council asking the Board to adopt such means as would increase the volume of Canadian trade going through the Canadian ports and instructing the Board to investigate for the purpose of putting in force a new rate structure have done away with the binding force "of these previous decisions."

It is understood that it is the decision of 1921 which is especially referred to. Counsel continues that the previous decisions, while they may be cited as authorities of reasons, were no longer binding authorities. There follows then the words: "We, therefore, say that this decision which was rendered in 1921 and which we are not disputing as authority at that time, must be distinguished from the situation which is before you at the present time." *P. 6250.*

In presenting the case, counsel stated that ocean rates from Montreal and Quebec were the same; that rates on imports are the same; that if one imports through Quebec for Toronto or west of Toronto there is the same rate. It was contended, further, that P.C. 24, above referred to, must have especially in contemplation the port of Quebec as a summer port. The spread of one-half cent per bushel between the grain rates of Montreal and Quebec was also referred to.

It is a fair summary of Mr. St. Laurent's presentation that exception is not taken to the decision of 1921, as the law was then admitted to stand. It is contended that there is a distinction because of change of law and because of the Order in Council. No reference is given to the change in the Railway Act upon which reliance is placed, nor am I able to find any. I take it what must be meant is the effect, if any, of the Order in Council in this respect.

Order in Council P.C. 24 which is relied upon in directing the Board to especially inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports sets out that the Board is "to take such effective action under the Railway Act, 1919, as the Board of Railway Commissioners for Canada may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports." The powers to be exercised are specifically limited so as not to go beyond the scope of the legislation of 1919. In construing that legislation in so far as pertinent to the application dealt with in 1921, the Board held it was not justified in granting the application. The applicants recognize the binding force of the law as it then stood. The Order in Council is subject to the powers of the Board under the Railway Act of 1919; and I am, therefore, unable to see any difference which distinguishes the present case from that which was before the Board in 1921, or which justifies any different conclusion from that rendered in 1921.

VI

BOARD'S ORDER NO. 36769

In the reasons for judgment of the Chief Commissioner, the situation in respect of Order No. 36769 is developed. It is, therefore, not necessary for me to make any extended comment.

In my judgment of December 17, 1925, the position was taken that Order No. 36769, of September 2, 1925, should be rescinded and that the subject matter involved might be dealt with as part of the General Rate Investigation. I was unable to agree that conditions had so changed as to justify the rescission of General Order No. 384, of October 10, 1923. With great respect to the Chief

Commissioner, I was compelled to take the position that no such change in facts had been established as to justify the action taken; and I was, further, of the opinion that section 325 of the Railway Act, as amended in 1925, did not afford a justification for the amendment of the export rates west bound. As I then and now read the statute, it is exceedingly clear that subsection 5 of section 325 is limited in its scope to the movement eastbound to Fort William and Port Arthur, and that it does not apply to or govern the rates westbound to Vancouver. The wording is so clear that it would not seem necessary to emphasize this. It has been suggested that by implication the establishment of the reduced rates eastbound to the Head of the Lakes of necessity carries with it the application of these rates from the same or similar points of origin moving westbound to the Pacific. I think it is fair comment to say that the legislation was enacted by Parliament with a full knowledge of the situation; that it saw fit to limit the scope of the Crowsnest rates to the movement eastbound to the Head of the lakes; and that the silence of Parliament in respect of the rates westbound to the Pacific Coast affords no valid reason for assuming that it was the intention of Parliament that they should apply westbound on the same basis as eastbound.

There being an even division of opinion as between the members of the Board, Order No. 36769 was not rescinded. In connection with the application for the rescission of this order, and, also, in connection with a dispute over the interpretation of the Order in respect of the basis of rates on which the railways had filed their tariffs, the matters were gone into very carefully in the decision of the Deputy Chief Commissioner of December 19, 1925. This decision, which was concurred in by the Chief Commissioner and Mr. Commissioner Oliver in ruling against the rescission of Order No. 36769, at the same time set out that, pending a final investigation of all the matters involved, the existing rates should be continued in force until such time as the Board, as a result of further investigation, should otherwise order. This recommended action was concurred in in the judgment of Mr. Commissioner Boyce, dated December 30, 1925, which, in turn, was concurred in by Mr. Commissioner Lawrence.

The matter has been considered. I have given the matter the most careful consideration I am capable of; but I am forced to the conclusion that General Order No. 384 was a reasonable disposition on the facts and a justifiable one on the law. However, there is an even division of opinion in regard to the justifiability of Order No. 36769. The Order therefore stands; and it does not seem necessary to make any further comments on this phase of the matter.

The principle of the order having been adopted, it is, therefore, necessary to make clear that it is the readjusted basis eastbound to the Head of the Lakes which is now to be applicable westbound, and this is so provided for in General Order No. 448. The judgment of the Deputy Chief Commissioner sets out the reasons for the proviso in the Order as to the Edmonton mileage basis applying. I agree in the disposition so recommended.

VII

I agree in the rulings set out in the judgment of the Chief Commissioner in respect of the following matters:—

(*a*) Transcontinental rate scale;

(*b*) Terminal Tariffs;

(*c*) Different standard mileages, east and west;

(*d*) Domestic Grain rates to British Columbia.

August 29, 1927.

THOMAS VIEN, K.C., *Deputy Chief Commissioner:*

RATES ON GRAIN AND FLOUR ON THE NATIONAL TRANSCONTINENTAL RAILWAY FROM ARMSTRONG, ETC.

I

The Quebec Harbour Commissioners (file 34123.13) submitted that the trade of the port of Quebec was suffering from unjust, unfair and discriminatory rates, by rail and by water, which prevented it from enjoying its fair share of the traffic of the Country; that although Quebec was 160 miles closer to the Atlantic and to Europe than Montreal, and although steamers running to Montreal incur a loss of two days time, wages of crew, fuel, pilotage, extra marine insurance, etc., as compared with Quebec, ocean steamers charge to and from Quebec the same rates of freight and passage as they do to or from Montreal. On the other hand, the railways ignoring the custom under which they gave blanket rates to points differing in mileage, charge a higher rate from Ontario points to Quebec than to Montreal, upon goods shipped for export by steamers sailing from Quebec, though the extra charge upon western export goods from Montreal to Quebec, 160 miles, was often the same as from Montreal to Halifax, 840 miles.

They submitted further that by the construction of the Transcontinental Railway, the distance between Quebec and Winnipeg was reduced to 1,349 miles as compared with the distance of 1,417 miles between Winnipeg and Montreal via Canadian Pacific Railway.

They also alleged that the all-rail rate on flour and wheat for export is the same from Winnipeg and Fort William to Quebec and to Montreal, but it is fixed at such a high figure that it is prohibitive and it forces traffic into the lake route, at Fort William, and thence to Buffalo or the bay ports. A comparison of all-rail or lake and rail rates shows, at a glance, that the rates have been so framed as to prevent Quebec from getting its fair share of export trade.

They further alleged that in 1903, Parliament and the Country had undertaken the construction of a National Transcontinental Railway as a common railway highway across the Dominion of Canada, from ocean to ocean, wholly within the Canadian territory, to afford transportation facilities to help in the rapid development of the productiveness and trade of Canada, and to afford the carriage of Canadian traffic entirely on Canadian territory, at rates on export traffic from the point of origin to the point of destination at no time greater via Canadian ports than via United States ports.

They submit that the present rates instead of favouring the routing of traffic through Canadian channels do the very reverse and give an advantage of 9 cents per bushel to the New York route, the result being the diversion of a considerable amount of traffic originating in Canada to United States Atlantic sea ports.

Therefore they request:—

1. That the intention of Parliament, as expressed in 3 Edward VII, chapter 71, and the schedule thereto, for which millions of dollars of public money have been expended in building the National Transcontinental Railway and the

Quebec Bridge, be no longer disregarded, and that the rate on export wheat and flour on the National Transcontinental Railway from Fort William or Armstrong to Quebec be reduced to 11 cents per bushel, namely approximately the equivalent of the present lake and rail rate from Fort William to New York, and that the through rate on export traffic from the point of origin to the point of destination be at no time greater via Canadian ports than via United States ports, and that such traffic not specifically routed otherwise by the shipper be carried by the National Transcontinental Railways to Canadian ocean ports;

2. That the rates from Georgian bay, Toronto and points west of Toronto, on traffic shipped to Quebec for export, be the same as on traffic shipped from the same points to Montreal for export.

II

The Quebec Harbour Commissioners' submission was supported by the city of Quebec, the provinces of Nova Scotia, New Brunswick, and Prince Edward Island, the province of Manitoba, the Cochrane Board of Trade, the Live Stock Producers of Canada, the Live Stock Exchange of Toronto, the provinces of Saskatchewan and Alberta and British Columbia. (Vol. 461, p. 6008 *et s*). And at Vol. 461, p. 6021, Mr. Cannon, on behalf of the applicants, said:—

> "We feel that we are presenting a case which is not of interest only to Quebec city, but one that concerns the whole of Canada; and we have already found that there seems to be a general consensus of opinion, not only in Quebec city, but all over Canada, in favour of the utilization of the Transcontinental railway for the purposes for which it was built; that is to say, the golden crop of wheat from the West should flow through Canadian channels, Canadian railways and Canadian ports."

III

Prior to the 20th of January, 1923, the Board of Railway Commissioners for Canada had no jurisdiction on the Canadian Government railways. Under 9 and 10, George V, chapter 13, (1919), section 13, the provisions of the Railway Act (except those inconsistent with this Act, and those relating to the location of lines of railway, the making and filing of plans and profiles, other than highway or railway crossings plans, and the taking or using of lands) were made applicable to the Canadian National Railways and its undertaking; and by section 14, it was provided that the provisions of the Railway Act respecting the operation of a railway (as distinguished from the provisions of such Act respecting the construction or maintenance of a railway) would apply to such of the Canadian Government railways as would but for the passing of such Act be subject to the Government Railways Act, during such time as the operation and management thereof is entrusted to the Canadian National Railway Company under the provisions of the said Act. And by section 11, it was provided that the Governor in Council could, by Order in Council, entrust the Canadian National Railway Company with the management and operation of any railway, property or works vested in His Majesty.

On the 20th of January, 1923, by Order in Council P.C. 115, the above quoted provisions of the Act of 1919 were made operative, and the management and operation of the Intercolonial Railway, the National Transcontinental Railway, the Lake Superior Branch, leased from the Grand Trunk Pacific Railway Company, and other lines were entrusted to the Canadian National Railway

Company. Since then, but since then only, this Board has full jurisdiction to determine the rates and tolls to be collected on the National Transcontinental Railway and on any other Canadian Government Railway lines.

This matter came up incidentally before the Board in 1921, at a hearing at Quebec (Record, Vol. 354, pp. 2656 *et s.* and particularly at page 2761). The then Chief Commissioner, the late Hon. Frank Carvel, sympathised with the views urged by the applicants, and regretted his lack of jurisdiction in the matter.

IV

The request of the Quebec Harbour Commissioners is complex, of far-reaching effect, and of nation wide importance. Fully to appreciate what is involved, it will be necessary briefly to summarize the genesis and the history of the National Transcontinental Railway.

V

Its construction was authorized by 3 Edward VII, chapter 71 (1903). At the same session, by 3 Edward VII, chapter 122, the Grand Trunk Pacific Railway Company was incorporated. An agreement had been entered into between the promoters of the Grand Trunk Pacific Railway Company and the Canadian Government. By 3 Edward VII, chapter 71, section 2, the agreement was ratified, and confirmed, and declared legally binding upon His Majesty and the company who were authorized and empowered to do whatever was necessary in order to give full effect to the agreement and to the provisions of the Act.

The preamble read as follows:—

> " Whereas, having regard to the growth of population and the rapid development of the production and trade of Manitoba and the Northwest Territories, and to the great area of fertile and productive land in all the provinces and territories as yet without railway facilities, and to the rapidly expanding trade and commerce of the Dominion, it is in the interest of Canada that a line of railway, designed to *secure the most* direct and *economical interchange of traffic* between Eastern Canada and *the provinces and territories west of the* great lakes, to open up and develop the northern zone of the Dominion, to promote the *internal and foreign trade of Canada,* and to develop commerce through Canadian ports, should be constructed and operated as a common railway highway across the Dominion, from ocean to ocean, and wholly within Canadian territory."
>
> Therefore this agreement witnesseth, etc.....

Then, followed provisions for the construction of the Eastern Division from Moncton to Winnipeg by the National Transcontinental Railway Commission, and of the Western Division, from Winnipeg to the Pacific coast, by the Grand Trunk Pacific Railway Company, and for the lease of the Eastern division to the company, and the operation of the whole system as a unit.

It was also provided that the Government would guarantee bond issues of the Grand Trunk Pacific Railway Company secured by mortgages, as therein defined.

Sections 42 and 43 of the agreement read as follows:—

Conditions of aid by Government.

42. It is hereby declared and agreed between the parties to this agreement that the aid therein provided for is granted by the Government of Canada for the *express purpose of encouraging* the development of *Canadian trade and the transportation* of goods *through Canadian channels.* The Company accepts the aid on these conditions, and agrees that all freight originating on the line of the railway, or its branches, not specifically routed otherwise by the shipper, shall, when destined for points in Canada, be carried entirely on Canadian territory, or between Canadian inland ports, and *that the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports, and that all such traffic, not specifically routed otherwise* by the shipper, shall be carried to *Canadian ocean ports.*

Preference to Canadian ports.

Company to develop trade through Canadian channels.

Shipping facilities on Atlantic and Pacific.

43. The company further agrees that it shall not, in any matter within its power, directly or indirectly advise or encourage the transportation of such freight by routes other than those above provided, but shall, *in all respects, in good faith,* use its utmost endeavours to fulfil the conditions upon which public *aid is granted,* namely—the *development of trade* through Canadian *channels and Canadian ocean ports.*

Section 45 also provided as follows:—

Traffic not to be diverted out of Canada.

45. The company shall arrange for and provide, either by purchase, charter or otherwise, shipping connections *upon both* the Atlantic *and Pacific oceans sufficient* in tonnage and in number of sailings to *take care of and transport all its traffic,* both *inward and outward,* at such *ocean ports within* Canada, upon the *said line of railway,* or upon the line of the Intercolonial Railway, as *may be agreed upon from time to time,* and the Company *shall not* divert, or, so far as *it can* lawfully prevent, *permit* to be divertd to ports *outside of Canada* any traffic *which it can lawfully influence or control, upon the ground* that there is *not a sufficient amount of shipping* to transport *such traffic from or to such Canadian ocean ports.*

This language already very clear, became superabundantly so by the discussion which followed in the House of Commons, as it appears at Hansard of 1903, more specially at pages 7658 to 7699, and 8806 and 8807.

VI

The Eastern division from Moncton to Winnipeg was constructed, and until completed, operated by the Transcontinental Railway Commission. The maximum virtual gradients between Quebec and Winnipeg, on eastbound traffic, does not exceed four-tenths of one per cent, as compared with maximum virtual gradients of one per cent on other lines between Winnipeg and Montreal, and particularly in the Lake Superior division. Curvatures were also avoided as much as possible, and modern freight engines can haul eastbound, from Winnipeg to Quebec, about 2,052 tons of freight.

The construction was commenced in 1904-05. The operation of the railway from Moncton to Edmundston began on or about January 13, 1913. The following year operation was extended to what is now known as Diamond Junction (Levis, P.Q.)

C. 43 of the Statutes of 1914 provided that, "notwithstanding anything in the Transcontinental Act, the Minister of Railways and Canals be eligible to be appointed, and to exercise the powers, and discharge the duties of the Transcontinental Commissioners; and that, after the Eastern Division was completed, *and until it was leased to the company, the said Eastern Division should be under the control and management of the Minister of Railways and Canals, who should have power to operate the whole, or any part, of the said Division as a Government railway, under the provisions of the* Government Railways' Act, 1906, chapter 36." This Act is still in force. After 1914, the operation of the National Transcontinental Railway was entrusted to the managers of the Canadian Government Railways, who are, since the 20th of January, 1923, the directors of the Canadian National Railway Company.

The Grand Trunk Pacific Railway Company was requested by letter from the then Minister of Railways (Hon. Mr. Cochrane), dated January 13, 1913, to enter into the necessary conferences with a view to the taking over of the railway as provided in the agreement. This, the company refused to do, broadly upon the ground that the line had not been completed in accordance with the provisions of the agreement.

The National Transcontinental Act was amended by chapter 18 of the Statutes of 1915, giving power to the Minister of Railways to lease or otherwise acquire portion of the Grand Trunk Pacific Railway known as the Lake Superior Branch, from Lake Superior Junction to the city of Fort William, Ont., including terminal facilities and accommodation works, and making the Government Railways Act applicable to any line of railway, leased or acquired under that Act.

The Grand Trunk Pacific railway system went into the hands of a Receiver, and by Order in Council P.C. 517, of the 7th of March, 1919, and Order P.C. 447, of the 13th of March, 1919, ratified and confirmed by 9-10 George V, chapter 22, the Minister of Railways and Canals was appointed government Receiver, and acted in that capacity until the 27th of May, 1927, when, by Order in Council P.C. 1011, the receivership was ended and the Grand Trunk Pacific Railway Company resumed its normal legal existence.

Since the 12th of July, 1920, by virtue of Order in Council, P.C. 1595, the management of the Grand Trunk Pacific Railway Company has been entrusted to the directors of the C.N.R.

VII

To March 31, 1926, Canada had spent for the National Transcontinental Railway $169,294,876.56, and for the Quebec Bridge, a necessary incident of the system, $21,706,664.49. (Annual report, Department of Railways and Canals for the year ending March 31, 1926, p. 82.) There had also been advanced, in assistance to the Grand Trunk Pacific Railway Company, the sum of $129,972,139.79, made up as follows:—

Loans prior to receivership	$ 25,591,237 10
Bonds purchased	33,093,333 23
Loans during receivership (to 31/3/27)	51,981,541 99
Guarantee and coupon interest	19,306,027 47
Total	$129,972,139 79

The country has therefore invested the sum of $310,974,680.84 for the purposes of the Acts of Parliament above mentioned and the agreements made pursuant thereto, namely: "for the express purpose of encouraging the development of Canadian trade and the transportation of goods through Canadian channels, and to secure a through rate on export traffic from the point of origin to the point of destination, at no time greater via Canadian ports than via United States ports." (3 Edward VII, chapter 71, schedule section 42).

VIII

The object of the National Transcontinental Railway and its physical conditions being as stated, and compensation having been paid in advance with a view to securing low rates, it was neither unfair nor unreasonable to expect that such rates would be published as would encourage the transportation of Canadian trade through Canadian channels.

Yet the present rates on wheat on the Transcontinental Railway from Armstrong to Quebec, are as follows:—

In cts. per 100 lbs.	In cts. per bushel
.34½	.207

As compared with rates from Fort William to Buffalo and New York, as follows:—

	In cts. per 100 lbs.	In cts. per bushel
Fort William to Buffalo (lake)	.0461	.0276
Buffalo to New York (rail)	.1517	.0910
Total	$0.1978	$0.1186

This comparison shows at a glance that the present rate structure gives an advantage of nine cents per bushel to the New York route.

Rates on wheat on the National Transcontinental from Armstrong to Quebec were also compared with rates for similar mileage west of Armstrong, as follows:—

	Miles	In cts. per 100 lbs.	In cts. per bushel
Calgary to Fort William	1,242	.26	.156
Saskatoon to Fort William	900	.24	.144
Armstrong to Quebec	957	.34½	.207

The rates on grain and flour to Fort William are governed by the provisions of the Crowsnest Pass Agreement Act, as amended by 15-16 George V, chapter 52, section 3 (1925). These provisions do not apply east of Fort William, but the figures quoted show that, on the National Transcontinental Railway, the rates on grain are raised abruptly at Armstrong and act as a barrier to prevent traffic from moving east thereof.

IX.

The results are reflected in the following figures from the Dominion Bureau of Statistics, giving the movement of wheat from Canada for export, via United States and via Canadian channels:—

CANADIAN WHEAT exported from Canada to Overseas Countries during the Calendar Years 1924, 1925 and 1926, showing portions exported (a) Via United States Channels, and (b) Via Canadian Sea and River Ports:—

Calendar Years	(a) Via United States Channels		(b) Via Canadian Sea and River Ports	
	Bushels	% of Total	Bushels	% of Total
1924	92,340,767	44·1	116,620,795	55·9
1925	129,688,215	60·8	83,695,777	39·2
1926	127,354,641	52·6	114,578,214	47·4

NOTE.—During these three calendar years a large amount of Canadian wheat exported from Fort William and Port Arthur to overseas countries via the United States, has been re-routed from United States lake ports via the St. Lawrence canals for shipment at Montreal, as follows:—

	Bushels
1924	16,645,000
1925	17,779,000
1926	15,794,000

Adjustment should be made, in order to find the quantity of Canadian wheat shipped during that period (*a*) via United States channels, and (*b*) via Canadian sea and river ports, as follows:—

Calendar Years	(*a*) Via United States Channels		(*b*) Via Canadian Sea and River Ports	
	Bushels	% of Total	Bushels	% of Total
1924	75,695,767	36·2	133,265,795	63·8
1925	111,909,215	52·4	101,474,777	47·6
1926	111,560,641	46·1	131,372,214	53·9

Statistics of former years are less favourable.

X

It is therefore obvious that these rates shut off Canadian rail competition at Fort William, and force the traffic into lake vessels, which largely favour Buffalo and New York because of the return cargo (coal, iron ores, etc.) available for them at Buffalo but not at Canadian bay ports.

Canadian ports, elevators, railways, terminals and shipping interests lost millions of dollars annually to their American competitors who thus secured a considerable amount of our Canadian trade.

No reasonable surprise can be entertained at the keen disappointment of the Prairies, Quebec and the Maritime Provinces, when they saw their most legitimate and sanguine expectations unfulfilled, and the aims and purposes of Parliament, twice endorsed by the people of Canada in general elections (1904-1908), nullified.

XI

Various interests injuriously affected repeated their efforts to secure redress. In 1913, the Boards of Trade of Quebec, St. John and Halifax urged the government to equip their harbours with proper terminal facilities, and to publish on the Transcontinental railway a rate on grain and flour for export that would enable the traffic to move thereon. The Hon. Mr. Cochrane, then Minister of Railways and Canals, went to Quebec, and was so much impressed that he promised the necessary financial assistance to equip the harbour with an elevator of a capacity of 10,000,000 bushels. He partly redeemed his promise with an elevator of a capacity of 2,000,000 bushels, and later Parliament voted large sums of money for extensive harbour improvements at Quebec, St. John and Halifax.

In 1921, the Quebec Harbour Commissioners appeared before this Board. and requested the lowering of the rate on grain and flour on the Transcontinental Railway. The Board, then, had no jurisdiction on the Canadian Government or the Canadian National Railways.

In 1922, a special committee of the Senate was selected to inquire into the causes of the diversion to the United States sea ports of the Canadian western grain for export. The conclusions arrived at were as follows:—

> "Your committee feel that it is their duty to report that they recommend that the petition of the Quebec Board of Trade, as stated in the Memorial of that Board to the Railway Commission, dated February 3, 1921, hereto attached, be granted, and that the Government be advised:—

"(1) To cause rates to be granted upon export grain over the Canadian National Railways to Quebec, Montreal, Halifax, St. John and Vancouver, such as would develop trade through the above ports.

"(2) As a corollary to the recommendation in paragraph 1 that necessary elevator accommodation should be provided by the Dominion at Canadian ports.

"(3) To arrange with the Marine underwriters or others in such a way that the marine insurance rates from Canadian seaports be as cheap as from United States seaports."

In 1923, the Government appointed a Royal Commission to inquire into and report upon the subject of the handling and marketing of grain in Canada, and other questions incidental to buying, selling, and transporting grain. The Royal Commission made its report on the 7th of January, 1925, and attached thereto a special report made at the request of the Royal Commissioners, by one of their members Mr. James Guthrie Scott, of Quebec. The findings of the Commission are at page 148 of their report, and read in part as follows:—

"The Board of Railway Commissioners for Canada is the permanent competent tribunal to which all demands for specific increases and decreases of freight rates may be made, and from which definite rulings may be obtained. In addition to this, we are aware of the fact that the whole structure of freight rates in Canada will probably be examined in the near future by the authority of Parliament, with a view to effecting a readjustment more satisfactory to Canadians of the different parts of Canada than the situation which now exists. We venture to state that in the course of our investigation we have heard enough to convince us of the urgent necessity of such a step being taken.

"In making these last remarks, however, we do so subject to this important qualification. Mr. J. G. Scott of Quebec, one of the members of this Commission, is himself a railway expert of long experience, both as a railway builder and railway manager; and among other things he has the experience of having handled export grain from Parry Sound to Quebec. Mr. Scott gave evidence before the Senate Committee of 1922, above referred to. Mr. Scott, as a result of his own experience and expert knowledge, disagrees with the views expressed by Mr. Dalrymple. Moreover he has certain specific recommendations to make concerning the transportation of the western grain crop at a much lower rate than now prevails. While the other members of the Commission feel themselves bound by the limitation above referred to, they have requested Mr. Scott to state his own views in the form of a memorandum to be submitted to the Government with this report. Mr. Scott has prepared his memorandum, and we have pleasure in handling it in, in order that it may receive the attention of the Government and of Parliament."

XII

It is in these circumstances that, on the 5th of June, 1925, Order in Council P.C. 886 issued, directing this Board to make a thorough investigation of the rate structure of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and

domestic, having due regard to the needs of its agricultural and other basic industries, and particularly to the encouragement of the movement of traffic through Canadian ports.

On the 7th of January, 1926, by Order in Council P. C. 24, this Board was further directed, as a part of the general rate investigation above referred to, especially to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports, and to take such effective action, under the Railway Act 1919, as the Board may deem necessary to insure, as far as possible, the routing of Canadian grain and other products through Canadian ports.

The Board complied with these directions and, after due notice, during 113 sitting days, held preliminary hearings throughout Canada, and a final hearing at Ottawa, during which all interested parties had a full opportunity of putting on record evidence and argument pertinent to the issue.

XIII

The submission of the Quebec Harbour Commissioners has already been outlined. In opposition thereto, the Canadian National and the Canadian Pacific railways submitted that the suggested reduction in rates on the National Transcontinental Railway is impracticable because,—

1. Such a reduction would be met by equivalent reductions on American lines and on other lines from the bay ports to the seaboard, leaving Quebec, for instance, in the same relative position;

2. The diversion of Canadian grain and other products to American Atlantic ports was not due to Canadian Railway rates, but to a combination of factors, the most important of which was perhaps the supply of ocean tonnage;

3. Large wheat exporters favoured Fort William and Buffalo because of their strategical position—wheat stored there being available to supply the demand either from inland flour mills or from various European points of destination, for which sailings are available on the American Atlantic seaboard, but not on the St. Lawrence;

4. American Atlantic seaports possess three general advantages:

(*a*) Vessels come to them from all ports of Europe, and there are frequent sailings to these ports. Grain is an excellent basic cargo for which liners will quote a favourable ocean rate;

(*b*) Tramp vessels seeking charters lie off Norfolk, within convenient call of any American Atlantic ports;

(*c*) Insurance rate is higher on hulls and cargoes out of Montreal than New York.

5. Outside of the Canadian wheat pool, the majority of exporters are located in New York where they are in close touch with the steamships and at a better advantage for financial arrangements.

XIV

The testimonial and documentary evidence adduced by the railways can be summarized as follows:—

Since 1914 a considerable growth in liner and decline in tramp transportation have taken place, mainly due to an increasing tendency towards the consolidation of transportation facilities and their financial control. Formerly tramp vessels were effective competitors, particularly in the carriage of seasonable or bulk commodities. Liner companies have much more rapidly

adapted themselves to the present day requirements of the trade in increasing the size and speed of their ships, adopting motor ships and substituting oil for coal as fuel. Tramps, with less capital, were unable to keep abreast with these improvements, and lost much of their former power in the regulation of ocean rates, whilst steamship conferences of liner organizations acquired greater authority.

In 1925, sailings of liners carrying grain from United States Atlantic ports to European points of destination numbered 3,826, including 1,515 sailings to United Kingdom ports, and 1,071 to Antwerp, Amsterdam, Rotterdam, Bremen and Hamburg, namely 2,586 sailings in all requiring annually approximately 117,000,000 bushels of grain. The grain requirements of the 1,240 other sailings of liners to France, Baltic ports, Norway and Sweden could not be ascertained accurately, but it is safe to assume, it is submitted, that they took in the neighbourhood of 60,000,000 bushels. In other words, the regular steamship lines trading from the United States ports required 175,000,000 bushels of grain in that year.

During the same period liners sailing from Montreal, Quebec and St. John were as follows:—

To United Kingdom and Irish ports	496
To Northern Continental ports	185
To Southern Continental ports	10
Total	691

This immensely greater amount of ocean liner tonnage operating out of American ports would necessarily make rates to attract grain through Buffalo to meet their requirements. The United States railway lines would co-operate and maintain rates that would insure the movement over their lines of sufficient grain to meet the requirements of the ports which they serve. It is therefore manifest that a rail rate reduction on grain to Canadian ports would not attract the traffic to them nor change the relative situation. It would simply reduce the earnings of the Canadian rail carriers who are compelled to move a large volume of grain to St. John and Halifax during the winter months.

XV

These arguments are not new. They were strongly urged, with many others, in 1903 when 3 Edward VII, chapter 71 was enacted, and they were repeated at every rate inquiry held since: before this Board at Quebec in 1921, before the Railway Transportation Costs Committee of the House of Commons, in 1922, before the Special Committee of the Senate, also in 1922, before the Royal Grain Commission, in 1924, and before this Board in Vancouver and Victoria in the fall of 1924.

Parliament, however, was not disturbed, and it is with a full knowledge of all these facts that a provision was included as section 45 of the agreement attached as a schedule to the National Transcontinental Railway Act, providing that the railway company should not divert the traffic or, so far as it may legally prevent it, permit the traffic to be diverted to ports outside of Canada, upon the ground that there is not a sufficient amount of shipping to transport such traffic from or to such Canadian ocean ports.

It is quite obvious that grain, as other traffic, will follow the line of least resistance, and will take the cheapest possible route to its point of destination. The rail rate is not the only factor which acts as a deterrent to the grain being routed through Canadian channels, but if all the other factors were favourable, a differential of nine cents per bushel in the rail rate would certainly be, and is a barrier preventing the grain from moving to the Canadain seaboard.

Other factors have gradually disappeared. For instance, the lack of terminal equipment at the seaboard and of storage, grading and cleaning elevators in the interior, west of Wninipeg. Harbour facilities at Quebec, St. John and Halifax have been greatly increased and further improvements are presently under way.

The grain statistics published by the Department of Trade and Commerce give us a list of licensed elevators and warehouses in the interior for the year 1924-25. At page 34, the elevator capacity for Manitoba is given as 20,340,000 bushels; at page 94, that of Saskatchewan as 91,022,020 bushels; at page 124, that of Alberta as 36,840,000 bushels, a total of 138,202,620. Most of these country elevators are fitted with cleaning apparatus. In addition to that, there are interior terminal elevators with the most up to date equipment. In the same report, p. 72, we read the following: " the terminal elevators at Fort William, Port Arthur and Vancouver, and those in the interior at Saskatoon, Moose Jaw and Calgary are equipped with cleaners of the most modern design, and are able not only to clean grain, but to make practically every separation that is required. They can operate twenty-four hours a day if necessary. They have men specially qualified for operating the cleaners in order that the greatest efficiency may be secured." The total drying capacity of all our western elevators is 400,000 bushels per day, of which 270,000 is at Fort William and Port Arthur, and 130,000 at the interior terminal elevators.

The construction of the Longlac cut-off also permits to take advantage of the terminal facilities at Fort William for the traffic requirements of the National Transcontinental Railway.

XVI

It was submitted that the exporter controls the destination of the wheat and that his interests were better served in locating his wheat at Port Arthur or Fort William, so as to be able to ship it at any time by the cheapest and shortest possible route. The creation of the wheat pool, which handles a large proportion of the crop, and which can afford to store great quantities at various points of shipment, where there will be sufficient call, in the course of the year, has largely altered this situation, and at Vol. 462, pp. 6467 and 6468 Mr. Kirkpatrick admitted that such a change had taken place.

If an advantageous rate were given on the Transcontinental Railway, grain exporters other than wheat pool could also make a greater use of the storage facilities of the interior, and would have the opportunity of shipping to Quebec, as well as to any other ports.

XVII

The shortage of tonnage on the St. Lawrence was also alleged to be another serious obstacle. The same argument was used in 1924 against any rate reduction on grain for export via the Pacific coast ports. Yet, not very long after the publication of a favourable rail rate, grain began to move westward in large volume, and bottoms became available to carry it to Europe and the Orient. It will be interesting to note that during the calendar year 1926, there were from Vancouver 256 sailings to Europe alone, via the Panama canal, as against 51 to all ports in 1921, namely an increase of five hundred per cent in five years. This year, up to the 6th of July, 35,000,000 bushels of wheat were shipped from Vancouver, and 5,800,000 bushels from Prince Rupert. The wheat pool has now its own elevator at Vancouver and Prince Rupert, and expects to ship a much larger quantity during the coming grain season, and from year

to year thereafter. This would be at all times a striking record, but it is a particularly remarkable one in 1926 and 1927. Last year shipping was much disturbed by the British coal strike, ships being used to carry coal, and this year the unsettled conditions in China have greatly reduced our exports to the Orient.

It is not unreasonable to expect that similar results will obtain in the east. The preponderance of the world's tonnage is on the Atlantic, and European purchasers are not very anxious to buy wheat in Vancouver to be delivered in six weeks, when they can obtain delivery within two weeks from the Atlantic seaboard. The movement of wheat is an economic question; it will move to the world's markets by the cheapest possible route.

XVIII

Insurance rates are no doubt higher on hulls and cargoes to and from British North American ports than to and from United States Atlantic ports. They do a certain amount of harm to Canadian trade and the St. Lawrence route, inasmuch as they restrict somewhat the outside shipping which would otherwise be desirous of trading through Canadian Atlantic ports. This discrimination has already engaged the attention of the Canadian Government, the Imperial Economic Conference, and the Imperial Shipping Committee. Before the Royal Grain Inquiry Commission, on the 7th of March, 1924, Mr. Dalrymple, vice-president in charge of traffic of the Canadian National Railways, at p. 10808, said the following:—

> "In the foregoing paragraph you will notice I have said 'regular services,' but in addition of course there is also the tramp service, and on account of the insurance in the St. Lawrence, the tramp invariably charters his grain at one of these American ports, unless the inducement is sufficient at the Canadian ports to enable him to offset his insurance disability; this of course is simply a question of supply and demand for tonnage, and is regulated according to circumstances."

Marine underwriters insert in their marine insurance policies a provision which is known as the British North American Warranty Clause, whereby the ship is insured under the condition that she will not ply to British North American ports, or if she does, will be charged an additional premium, which varies with the season.

At the instances of the Canadian Government, this matter was discussed at the Imperial Economic Conference of 1923, and was referred for investigation and report to the Imperial Shipping Committee. A sub-committee was appointed which proceeded to Canada, and held sittings at Halifax, St. John, Montreal, Toronto, and Winnipeg. The committee then published an interim report as a result of which Halifax was eliminated from the application of the warranty clause on hulls, but not on cargoes. Some relief was also given to the St. Lawrence by the extension of the summer season of navigation from the 15th of May to the 31st of October, instead of from the 1st of May to the 31st of September, as formerly. The month of October is a very important month, having regard to grain shipments via the St. Lawrence. St. John, N.B., also obtained a reduction of 50 per cent on the additional premium on hulls, but not on cargoes.

The British North American Warranty Clause still obtains as regards cargoes throughout Canadian ports and also as regards hulls, except in the port of Halifax. In their reports, the Imperial Shipping Committee pointed out the difficulties experienced in obtaining information concerning the amounts of premiums collected, losses incurred on casualties in the river St. Lawrence or

eastern Canadian ports, as compared with the same in United States Atlantic ports. This Board had the privilege, at a sitting held in Ottawa on the 25th of March, 1926, of hearing Mr. Alexander Johnston, Deputy Minister of Marine and Fisheries, called at the request of the Quebec Harbour Commissioners. Mr. Johnston's statement is contained at Vol. 461 of our Record, pp. 6366 *et s.* At page 6374, he said:—

> "As illustrating the difference between United States and Canadian ports, the rates on two standard commodities may be cited. Canadian flour shipped from New York is charged at the rate of 45 cents per $100. The same flour shipped through the port of Montreal is charged at the rate of $1 per $100, an increase of 105 per cent. Parcels of lumber shipped from St. Lawrence ports in November pay a premium of 55 cents per $100. The same shipment through United States ports will be charged a premium of 12½ cents per $100, an increase of over 400 per cent. In mid-summer the rate from St. Lawrence ports is 27½ cents per $100, an increase over United States ports of 120 per cent."

And at page 6375:—

> "The differential cargo insurance rate as between New York and the St. Lawrence is usually in the neighbourhood of 12½ cents per $100 of insured value. Taking wheat as a standard cargo, and assuming a value of $1.50 per bushel, the extra insurance works out at 12½ cents per 66 bushels, or roughly one-fifth of a cent per bushel." To this must be added the additional premium on hulls.

The discrimination in marine insurance rates affects particularly the tramp vessels inasmuch as the additional premium charged to a tramp vessel for one trip amounts to approximately two-thirds of the additional premium charged to liners for the whole season. The premium spread over the whole season represents only an infinitesimal fraction of one cent per bushel of wheat carried by the liners, but it represents a few cents per bushel of wheat carried by the tramp vessels. The liners therefore receive a certain compensation inasmuch as this discrimination acts as a deterrent to tramp vessels plying to B.N.A. ports, and competition is thereby somewhat eliminated.

Directed as we are by Order in Council P.C. 24 to inquire into the causes of Canadian grain and other products being routed to other than Canadian ports, I cannot but submit that the marine insurance rates unjustly discriminate against British North American ports, and are one of the causes of the diversion of our Canadian trade to other channels.

It is not open to this Board to take any effective action under the Railway Act, 1919, to remove such unjust discrimination. I would recommend however, that renewed and emphatic representations should be made to the Imperial Government, the Imperial Shipping Committee, Lloyds' Insurance Underwriters, the London Institute of Underwriters and such other English shipping and insurance interests as may be involved, for the immediate deletion of the British North American warranty clauses from marine insurance policies, and the removal of all restrictions on hulls and cargoes failing which, the Canadian Government should consider the advisability of assuming all insurance risks in Canadian waters, and perhaps, as a corollary, the necessity of inaugurating a scheme embracing shipping on all waters, foreign or Canadian.

But this discrimination in the marine insurance rates is only one factor, and it is much less important than the differential in the rail rate from Armstrong to Quebec. Even if the marine insurance rates were readjusted as desired, the rail rate differential of nine cents a bushel would in itself and alone be enough to prevent traffic from moving on the National Transcontinental.

XIX

The railways submitted that if rail rates to Quebec were reduced, ocean liner tonnage operating out of American ports would also reduce ocean rates to attract grain through Buffalo, and that the United States rail carriers would co-operate to insure the movement over their lines of sufficient grain to meet the requirements of the ports which they serve; the situation would not be changed, except that the earnings of the Canadian rail carriers would be considerably reduced.

The present lake and rail rate from Fort William to New York is 11.86 cents per bushel. The applicants request a rate of eleven cents per bushel on the National Transcontinental Railway from Armstrong to Quebec. It is highly improbable that the American carriers would find it worth while to disturb their rate structure just because the rate to Canadian ports has been brought down to the level of the rates to the American ports.

The same argument was strongly urged against the issuance of Order 36769 on rates on grain and flour to the Pacific coast for export; it was then alleged that such an order would have the effect of diverting traffic from Fort William and Buffalo to the Pacific coast and that American carriers would reduce their rates to the Atlantic seaboard so as to retain it. Though a considerable amount of grain and flour moved to Vancouver, American carriers did not disturb their rates.

In the present instance, it would moreover be abundantly clear to all concerned that these rates are ordered in compliance with the provisions of the Statute of Parliament 3 Edward VII, chapter 71, and of the agreement entered into pursuant thereto, particularly ss. 42 to 45 thereof; and also in compliance with the directions of Orders in Council P.C. 886, of the 5th of June, 1925, and P.C. 24 of the 7th of January, 1926; that the purport of this rate adjustment is to provide, as far as possible, the routing of grain and other products through Canadian ports; that if this rate were ineffective, or if other competitive rates were reduced, this Board would have to consider the advisibility of ordering further reductions with a view of obtaining the desired results.

XX

The probable effect of the proposed rates on the finances of the Canadian National Railways was discussed at great length. Mr. E. P. Mallory, Director of the Bureau of Statistics, Canadian National Railways, was heard and he filed (exhibits 36-36A-36B-36C) estimates of the cost of hauling grain from Fort William to Quebec, via Longlac Cut-off, showing an operating expense per bushel of 19.93 cents, and including interest and depreciation on equipment, an expense of 24.85 cents per bushel.

Mr. St-Laurent, K.C., on behalf of the Harbour Commissioners of Quebec, criticised these estimates (Records, vol. 506, pp. 6090 *et s.*) which had evidently been prepared on the assumption that this was new traffic, which would have to be solicited, loaded, carried and unloaded, as any other traffic, and therefore they included items which should have been excluded. He submitted (p. 6100) that the out of pocket expenses following the train, incurred for moving grain from Armstrong to Quebec, over the Transcontinental, did not exceed 8.02 cents per bushel.

In this connection, it will be important to remember Mr. Lloyd's evidence (Record, vol. 494, p. 1102 *et s.*). Mr. Lloyd is the Assistant Controller and in charge of the Statistical Department of the Canadian Pacific Railway.

"Mr. FLINTOFT: What would you say as to the possibility of getting the cost of any particular commodity?

"A. Well, we do not know; there has never been any system devised yet by which you can get the cost of carrying any one commodity.

"Q. Mr. Lloyd, I want to know whether it is in your opinion possible to work out the cost of carrying any particular commodity?

"A. It certainly is not possible to arrive at the cost of transporting any individual commodity."

And, at vol. 495, pp. 1527 and 1528:—

"Q. Would you say that that 'average cost per gross ton mile' would be a fair figure to apply to the cost of moving grain in train load lots?

"A. I do not know what the cost of handling grain is.

"Q. Is there any information in your statistical department that will give you that?

"A. We have nothing to tell us the cost of handling any commodity."

Mr. Mallory, himself, stated (vol. 501, pp. 4324-25): "You asked me, and I gave you an estimate to the best of my ability. It is an estimate based upon our best experience."

And at vol. 502, pp. 4355-56: "You cannot find the cost of moving a commodity exactly, but if 60 per cent of your business is one thing, you are in a fair way of arriving at a reasonable estimate."

The estimates filed by Mr. Mallory do not show the point beyond which the traffic could not be increased without increasing the maintenance of way and structure expenses, and it seems impossible to decide this important point without additional information. The costs in connection with yard locomotive maintenance, yard expenses and yard locomotive interest and sinking fund, as submitted in Mr. Mallory's figures, were made on a train mile basis, using the western region ratio; they are not as conclusive as if the actual costs of a yard such as Redditt, which handles practically nothing but grain, had been used. There is also an apparent inconsistency in taking the full train mile ratio in computing maintenance, interest and sinking fund, while only one-half of the train mile ratio is used in computing yard expenses. Further, the number of grain cars required should be more accurately estimated by using the average running time between Winnipeg and Fort William, excluding delays at both these points.

Mr. Mallory did not take much into account the inevitable charges carried to-day by the National Transcontinental Railway, for maintenance and operating costs, nor the volume of higher rated traffic which a better utilization of the line would necessarily bring to it, viz: cattle, packing house products, eggs, butter, cheese, etc., shipped from the prairies; and package freight, general merchandise, machines and tools, furniture and other goods shipped to the prairies. Canadian Pacific Railway officials told us that rates on grain to St. John for export were not in themselves profitable. Yet, they continue to carry grain to St John because of the remuneration they get indirectly.

In my opinion, no accurate and definite conclusion can be drawn from the information on the record as to the actual cost of moving grain in train load lots from Armstrong to Quebec.

XXI

But even if a rate of eleven cents per bushel from Armstrong to Quebec were not in itself a profitable rate, I am of the opinion that the Board, in determining a just and reasonable rate, must take into account the circumstances which accompanied the creation of the National Transcontinental and the Grand Trunk Pacific railways, and the compensation in money already received by these railways for the avowed purpose, if possible, of routing grain and other Canadian products through Canadian channels.

It is true that the lease contemplated by the legislation of 1903 between the Government of Canada and the Grand Trunk Pacific Railway was never executed. This lease was only for the purpose of uniting under one management the two trunks of this new Transcontinental Railway. To-day these two railways are the property of the Government of Canada, and, under the authority of 9 and 10 George V, chapter 13, they have been placed under the management of the directors of the Canadian National Railways, appointed by the Canadian Government. But section 2 of 3 Edward VII, chapter 71 is still in full force and effect, and provides that the agreement entered into in 1903 is binding on His Majesty as well as on the railway company.

By Order in Council P.C. 1011, of the 27th of May, 1927, the receivership of the Grand Trunk Pacific Railway Company was ended, and the company resumed its normal and legal existence. The shares are in the hands of the Government of Canada. Therefore, the unification of these two railway lines has been performed, not through the instrumentality of a lease, but through the instrumentality of an Act of Parliament, enabling the Government of Canada to acquire the Grand Trunk and the Grand Trunk Pacific Railway Companies.

XXII

I am quoting the following from the judgment of the Board in the Western rates case, official edition, p. 36:

> "As pointed out by Mr. Lafleur, the Grand Trunk Pacific undertaking is in no sense that of an ordinary company. It is in every sense a national work of great magnitude, the building of which to a very large extent is controlled by Parliament itself. A large part of the line forming part of the system—the National Transcontinental—is owned and built by the country, and so far as the Grand Trunk Pacific itself is concerned, 75 per cent of its cost is in turn guaranteed by the Dominion, and the expenditure and work are subject to governmental supervision. The building of the line and the whole enterprise not only received the assent of Parliament, but the endorsation of the people of the country.
>
> "It is absurd to argue that such a company created under such conditions is to be looked upon, as suggested in an argument addressed to the Board, in the same light as any ordinary charter under which a railway could or might be built, apart from all governmental recognition or support, and which could be incorporated merely to prevent a reduction in rates."

Are the Canadian people, the Parliament and Government of Canada to-day less desirous of utilizing this railway system for the purpose for which it was created?

The Act of 1903 was never repealed; the Canadian Government, authorized by Parliament, carried out its undertaking in constructing the National Transcontinental Railway and in subsidizing the construction of the Grand

Trunk Pacific Railway; when the Grand Trunk and the Grand Trunk Pacific Railway Companies became unable to meet their obligations, Parliament authorized the Government to acquire them for the purpose of carrying out their undertaking; by Order in Council P.C. No. 24, of the 7th of January, 1926, issued under the authority of the Railway Act, we are directed to inquire into the causes of the Canadian grain and other products being routed or diverted to other than Canadian ports, and to take such effective action, under the Railway Act, as the Board of Railway Commissioners for Canada may deem necessary to insure, as far as possible, the routing of Canadian grain and other products through Canadian channels.

We have before us submissions from every section of the country in support of the application of the Quebec Harbour Commissioners.

Is it not manifest that the people, Parliament and the Government are still of the opinion that the National Transcontinental Railway should be utilized for the purpose for which it was built.

XXIII

It is abundantly clear to me that grain will never move on the National Transcontinental Railway so long as a prohibitive rate is allowed to continue. A rate of 18.34 cents per hundred pounds, from Armstrong and Fort William to Quebec, is not out of line with the rate on grain from Calgary to Fort William; it is also approximately on the level of the lake and rail rate from Fort William to Buffalo and New York. Such a rate would enable a shipper to route his grain via the National Transcontinental Railway to Quebec without any additional expense.

In my opinion the Canadian National Railways should be directed forthwith to publish a rate of 18.34 cents per hundred pounds on all grain for export from Port Arthur, Fort William, Westfort and Armstrong to Quebec, and to comply with the provisions of 3 Edward VII, chapter 71 and the agreement attached as a schedule thereto, particularly the provisions of sections 42, 43, 44 and 45 of the said agreement.

XXIV

Involved in the submission of the Maritime Provinces was an application for an export rate on grain and flour to St. John and Halifax via the National Transcontinental Railway consisting of a differential of one cent over the rate to Quebec on the same railway.

On the 8th of April, 1927, Mr. Duchemin, counsel for the Maritime Provinces, instructed by his principals, requested to be allowed to withdraw the Maritimes case from the General Rates inquiry until such time as they were able to ascertain the effect of the rates to be published under the provisions of 17 George V, chapter 44. (Record Vol. 507, pp. 6701 *et s.*)

Mr. Duchemin's request was granted (ib. p. 6705). Therefore there is no application before us on behalf of the Maritime Provinces.

EXPORT RATES ON GRAIN FROM GEORGIAN BAY PORTS TO QUEBEC; AND EXPORT RATES ON PACKAGE FREIGHT AND GENERAL COMMODITIES FROM TORONTO AND POINTS WEST OF TORONTO TO QUEBEC

The Quebec Harbour Commissioners submitted that the export rate on grain from bay ports to Montreal is 8.6 cents a bushel, and the rate on same to Quebec is 9.1 cents a bushel; viz: ½ cent higher; that the export rate on general commodities from Toronto and points west of Toronto is two cents per 100 lbs. higher to Quebec than to Montreal.

In winter, the ports of St. John and Halifax are put on the same basis as the ports of Portland and New York. They request that Quebec and Montreal, two summer ports, be put on the same rate basis.

In the construction of freight rates, there exists a practice, to some extent, of disregarding actual distances, and enclosing numerous points within the same group or blanket. This simplifies the publication of tariffs, to the convenience of the carriers and shippers, and effects an equality of opportunity usually most desirable; this is particularly true when the points in question produce or ship the same commodity or derive their materials from the same sources.

Blanket or group rates were in effect long before the establishment of the Board. The Board has frequently had occasion to consider established blanket or group rates and has recognized repeatedly and approved the blanketing of points, within reasonable limits, for the purpose of making rates.

The determination of the territory to be grouped together varies according to the circumstances in each individual case. In the International Rates case, by its Order No. 3251 dated July 2, 1907, the Board directed that the territory be divided into groups.

In the Board's Judgment in the Western Rates Case, page 14, it is stated:—

> "Group or blanket rates are in many instances necessary in the public interest."

In the same judgment, at page 73, dealing with lumber rates, it is stated:—

> "That the grouping of a number of stations at the one rate, particularly as the hauls lengthen, is necessary, as must be obvious, since the stepping up of the rates from station to station would produce rates which, for the longer hauls, would be prohibitive and useless. Such grouping is a recognized principle in tariff construction everywhere."

Again at page 82 of the same judgment dealing with coal rates, reference is made to an arrangement in connection with mines on the Canadian Pacific Railway along the Crowsnest line where the collieries are more or less bunched into well defined groups and the group principle of ratemaking followed.

In the Eastern Rates Case Judgment, Volume VI, Board's Judgments, Orders, Regulations and Rulings, reference is made at page 160 to territorial grouping in connection with class rates. Again at page 178, in connection with the movement of coal from the Niagara frontier, it is stated:—

> "The per ton mile measure would also seem to be inappropriate, so far as the country east and west of Toronto is concerned, owing to the ramification of lines, the diversity of routes and the competition between carriers both rail and water. The companies have subordinated mileage to a system of geographical blocking of the territory, with an effort to produce equality of rates to the fairly definable manufacturing groups, and at the same time to provide for competitive conditions."

In Volume XII, Board's Judgments, Orders, Regulations and Rulings, page 69, the situation with regard to the grouping existing in connection with the rates between Eastern Canada and points west of Fort William is dealt with. The largest grouping arrangement existing in the freight rate structure and its justification is there clearly set out.

The underlying principle, therefore, governing the blanket rate is to treat all stations within a certain area or zone as in one group at a common rate.

In my opinion, the rate on grain and flour for export from Georgian bay ports, and the rate on package freight and general merchandise from Toronto and points west of Toronto to Quebec for export, should be made the same as to Montreal for export.

THE MOUNTAIN DIFFERENTIAL

Fully to appreciate what is involved in the question submitted in respect of the mountain differential, it will be necessary to summarize the previous applications and judgments of the Board in relation thereto.

The railway development in the United States, both east and west, preceded that in Canada. As the conditions were very similar in both countries, the Canadian rates followed the lead given us by the neighbours to the South. In the United States, generally speaking, there always have been three or more sets of rates. In the East owing to a greater density of population and traffic, the rates were lower.

On the Pacific coast and through the mountains, with a lower density of population and traffic, the rates were higher. An additional reason was the higher cost of construction and operation.

The same custom was followed in Canada.

When the Canadian Pacific Railway Company built through to the coast, rates were built, generally, on three different bases:—

1. The Eastern rates from the head of the lakes to the Atlantic ocean;
2. The Prairie rates from Fort William to the Rocky mountains;
3. The so-called, Mountain rates through to the Pacific coast; and in the early days, both Prairie and Mountain rates were much higher in proportion to the Eastern rates than they are at the present time.

The first material change in this condition of affairs was the so-called, Crowsnest Agreement of 1897, which, we are all aware, materially reduced the rates on grain and flour going East, and on various commodities therein mentioned going West; but this did not affect the general rate structure, and while there was some modification downward, as a result of the Manitoba agreement, in 1903, yet the first general reduction of the Prairie and Mountain scales, as compared with the Eastern scale, was by the decision in the Western Rates Case, in 1914, when the spread was very materially lessened, and the mountain differential which was then on the basis of two miles in the prairies to one in the mountain, was reduced to a mile and one-half in the Prairies to one in the Mountains. Things remained practically the same until 1916, when by the decision in the Eastern Rates Case, so-called, an increase was made, generally, in the rates East of Fort William, but not in the West, which had the effect of again lessening the spread between the two.

In March, 1918, by General Order of this Board No. 212, known as the Fifteen Per Cent Rate Increase, rates all over Canada were increased, generally, by fifteen per cent, and ten per cent in mountain territory, although in some cases where the increase brought the rates on Crowsnest commodities above that basis, the full fifteen per cent increase was not effective on certain commodities in Western Canada.

By Order in Council, P.C. 1863, in August, 1918, practically all rates in Canada were increased by twenty-five per cent; but in figuring out the rates, the fifteen per cent advance of March was disregarded West of Fort William, which meant that East of Fort William the two increases of March and August, put together, made forty-four per cent when the increase was only twenty-five per cent in Western Canada. This again very materially reduced the spread between the different sections.

The next change was by General Order of the Board No. 308, in September, 1920, known as the Forty Per Cent Rate Increase, when all rates in Canada were increased by forty per cent from Fort William, east, and by thirty-five per cent from Fort William, west. This, again, lessened the spread by five per cent.

Representatives of provincial Governments and business organizations, both in the prairies and Pacific territories, contended that discrimination existed against them as compared with Eastern Canada.

Shortly after the promulgation of General Order No. 308 of this Board, various bodies, and among them the province of Manitoba, appealed to the Privy Council asking that the said order be rescinded for various reasons set forth by the appellants. The matter was heard by the Privy Council, and was dealt with on the 6th day of October, 1920, by P.C. No. 2434.

The Board thereupon started an investigation, primarily to ascertain whether or not the conditions had changed and whether the difference in rates, if any, existing in a general way between Eastern and Western Canada amounted to undue discrimination.

The province of British Columbia requested the elimination of the Mountain scale of rates, asking that the Prairie scale be extended through to the Pacific coast.

The matter was thoroughly discussed and evidence taken over the whole of Canada, in which it was found that while there was a difference in rates between eastern and prairie territories, the rates east of Fort William were held down to a large extent by water and other competition, and that the prairies enjoyed certain advantages therein mentioned, and it was held that no unjust discrimination existed which required correction.

In the case of the Mountain rates, however, a different view was taken. There the rates were based upon a mile of Mountain territory being equal to a mile and a half of Prairie territory, by which the actual rates were figured out at from thirty to thirty-two per cent greater in Mountain territory than on the prairies.

By General Order No. 366, effective August 1, 1922, this differential was cut in two, and the rates are now figured on the basis of one mile of mountain territory being equal to one and one-quarter of Prairie territory.

These figures, of course, only apply to class rates, and some commodity rates built upon a percentage of class rates which reflect the mountain differential upon which, it is stated, about fifteen per cent of the total business to and from British Columbia moves, the balance moving upon through Transcontinental or Commodity rates not affected by the mountain differential.

The Mountain scale, so-called, does not apply to grain and grain products going to the Pacific coast for export.

The situation remained unchanged to this day. Request is now made by the provinces of British Columbia and Alberta that the rates in the mountains should be reduced to the level of the rates in the prairies. The evidence on record clearly shows that the cost of operation in the mountains is higher than in the prairies. The applicants submitted that if any additional cost is incurred in carrying traffic through the mountains, it should be smeared over the whole railway system. In my opinion the time has not yet come when effect could be given to this contention.

The removal of the mountain differential would entail an estimated loss of revenue of a million dollars a year to the Canadian Pacific, and probably as much to the Canadian National.

In the language of Order in Council P.C. No. 886, the policy of equalization of freight rates should be recognized to the *fullest possible extent* as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the interchange of commodities between

the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade. But Railway Companies are also entitled to receive, in payment of the services they render, just and reasonable rates which will produce sufficient revenues to enable them properly to function and to secure the necessary capital to extend their railway facilities to meet the requirements of a growing country like Canada; and such revenues must be collected from those to whom services are rendered.

I am therefore of the opinion that the removal of the mountain differential cannot be considered at present.

BOARD'S ORDER No. 36769 OF THE 2nd SEPTEMBER, 1925

On the 2nd of September, 1925, under direction from the Chief Commissioner and Mr. Commissioner Oliver, the Board issued its Order No. 36769 (file No. 30686.2) which read as follows: "that the Canadian Pacific and the Canadian National Railway file tariffs, effective not later than the 15th of September 1925, reducing the rates on grain and flour to Pacific ports within Canada for export to the same rates, proportioned to distance, as such grain and flour would carry if moving eastward for export."

An appeal to the full Board was taken by the Montreal Board of Trade, and others, applying for the rescission of the Order and the reconsideration of the case as part of the General Freight Rates Investigation.

A complaint was also received from the provinces of British Columbia, Alberta and Saskatchewan to the effect that Order 36769 had not been complied with by the railways, inasmuch as the Canadian Pacific Railway in computing its rates on grain and flour from Calgary to Vancouver had assumed 124 miles more than its actual mileage, having adopted the Canadian National Railway mileage from Edmonton to Vancouver. The complainants submitted that the railways should be directed immediately to file tariffs showing the proper rates ordered by the Board.

Judgment issued on the 19th of December 1925 (Board's Judgments, vol. 15, pp. 333 *et s.*) At page 363 the matters involved were dealt with as follows:—

> "1. That the motion to rescind or vary the Order be dismissed.
>
> "2. That, inasmuch as many interests which were not represented before the Board when the case was heard have now been brought to our attention, a further consideration of the whole matter should be had, as part of the general freight rate inquiry.
>
> "3. That, if the railways so desire, they be at liberty, at any time, on proper notice, to move the Board to vary, or rescind, or modify the Order, upon the ground that it is unduly burdensome to them, or for any other reason they may desire to put forward, and be able to establish.
>
> "4. That pending the final disposition of all the matters involved, the existing rates should continue in force, until such time as the Board, as a result of further investigation, orders otherwise."

In their submissions in the present inquiry, the railways urged that the Order 36769 should be rescinded, and that the rate basis ordered by the Board in its judgment of the 9th of October 1923 (Board's Judgments and Orders, vol. 13, p. 173 et s.) should be restored.

The provinces of British Columbia, Alberta and Saskatchewan submitted that the order should be upheld and that the Canadian Pacific Railway should be directed to compute its rates on its own actual mileage.

After hearing the evidence adduced and what was alleged by counsel on behalf of interested parties, I am of the opinion that it would be unadvisable to rescind Order No. 36769.

We are directed by Order in Council P.C. 886 to establish a fair and reasonable rate structure which would, under substantially similar circumstances and conditions be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the different provinces and territories of the Dominion in the expansion of its trade both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and particularly to the increased traffic eastward and westward through Pacific Coast ports, owing to the expansion of trade with the Orient, and to the transportation of products through the Panama canal. Order 36769 was a step in the right direction, and it should be upheld.

The Canadian Pacific Railway in computing their rates under such Order have adopted the Canadian National Railway mileage from Edmonton to Vancouver, viz: 766 miles instead of their actual mileage from Calgary to Vancouver, viz: 642 miles. Should they be allowed to continue to collect tolls on the basis of this assumed mileage?

In looking at the map of British Columbia and the Prairie Provinces, it can be seen at a glance that Edmonton and Calgary are the two gateways through which the traffic moving from the Prairie Provinces to Vancouver must pass. Heretofore, the rates from Edmonton to Vancouver were the same as the rates from Calgary to Vancouver. On that basis, our two great railway systems extended their lines into the prairies, built railway facilities, grain elevators, etc.

If the rates were lowered from Calgary to Vancouver, the Canadian National Railway would lose a considerable amount of its traffic to its competitor, and so railway and grain loading facilities would be rendered useless; or else, the Canadian National Railway, with a view to retaining its traffic, would be obliged to reduce its rates to the basis of the rates charged by the Canadian Pacific Railway. Then, instead of the Canadian Pacific Railway assuming the mileage of the Canadian National Railway, the Canadian National Railway would assume the mileage of the Canadian Pacific Railway shorter line, entailing a considerable loss of revenue to both railway systems.

Another anomaly would also be created. A shipment of grain via Canadian National Railway to Vancouver, from a point at a given distance east thereof, on account of this reduced mileage, would be carried at a lower cost than a similar shipment to Fort William, from a point the same distance west thereof, thus defeating the avowed purpose of Order 36769 which was to equalize the rate to Fort William and Vancouver on grain and flour for export.

In computing rates on grain and flour to Vancouver for export, the Canadian Pacific Railway should be allowed to continue to assume a mileage of 766 miles, namely, the same as the C.N.R. from Edmonton to Vancouver.

I entirely adopt the reasoning of my learned Chief Commissioner as to the extension to Canadian Pacific Railway branch lines of the present Canadian Pacific Railway main line basis of rates on grain and flour to Fort William, and to Vancouver for export, and as to the directions given to other railways to adjust their rates accordingly, and also as to the extension to the C.N.R. of the provisions of s. XVII of the judgment in the Western rates case in respect of distributing tariffs, as well as to the disposition made in respect of Transcontinental rates and terminal rates from Fort William and Vancouver.

I am also of the opinion that the application to reduce rates on grain westbound for domestic consumption to the level of rates on grain westbound for export should be dismissed.

Ottawa, September 1, 1927.

COMMISSIONER BOYCE:

I

By Order in Council, P.C. 886, dated June 5, 1925, the Government of Canada directed this Board to make a thorough investigation of the rate structure of railway companies, subject to the jurisdiction of Parliament. There is coupled with that direction an intimation that such rate structure should be investigated, not only for the purpose of satisfying the Board and the Government of Canada, that it is a just and reasonable structure of itself, but that it shall be so examined, in relation to the conditions of Canadian foreign and domestic trade, the expansion thereof, and other general subjects of national economic importance, specified in the Order. It constitutes a spirited, courageous, and comprehensive effort, on the part of the Canadian Government to meet problems of Canadian transportation generally, as related to further development of Canadian trade, and the conservation of that trade, as far as possible, through Canadian channels.

The inquiry, directed as to the rate structure, and with regard to the other and broader subjects of economic importance, opened up the widest possible field for investigation, and carried the Board into some regions beyond its ordinary statutory power, and in deciding upon what action the Board should take, upon the mass of evidence and argument before it in the inquiry, it will be appropriate to analyze the Order in Council, to ascertain just what powers, if any, the Board is asked to exercise beyond those with which it is invested under the Railway Act.

This Board was constituted, under the Railway Act, 1903, and amending Acts. Its functions are defined and circumscribed by, and are to be exercised within the provisions of that Act, and not otherwise. Its jurisdiction within that Act is of the widest possible nature; its discretionary powers almost absolute in their breadth and freedom.

(C.P.R. Co. v. City of Toronto and G.T.R. Co. (1911), A.C. 461, C.R.C. 12, p. 378).

II

Order in Council, P.C. 886, directing the inquiry, is expressly restrictive in this respect. An analysis of its terms emphasizes and makes it clear that it intends and desires that the Board shall, in respect of all its investigations under its terms, do so in virtue of its powers as, (in the language of the Order of Reference (P.C. 886)) "the body constituted by Parliament with full powers under the statute (Railway Act) *to fix and control railway rates.*

It is to be borne in mind that P.C. 886 is, as its first paragraph states, the judgment of the Committee of the Privy Council upon the appeal of the provinces of Alberta, Saskatchewan, and Manitoba, by way of appeal from a General Order (No. 408) of the Board of Railway Commissioners for Canada, dated October 14, 1924, under which certain tariffs of the Canadian Pacific Railway Company and the Canadian National Railways were disallowed and required to be withdrawn from operation. The appeal involved the question of the validity of the Board's ruling in said Order appealed against as to the non-application of the Crowsnest Pass Act and agreement of 1897, as affecting the Board's jurisdiction under the Railway Act to fix just and reasonable rates.

The order further recites:—

(*a*) The pending appeal to the Privy Council of Canada from the Board's Order No. 408, dated October 14, 1924, upon the application with respect to and which involved the decision of the Board in respect of the application of the Crowsnest Act and of the agreement thereunder;

(*b*) The necessity for the advice of the Supreme Court of Canada on questions of law arising in the said judgment, in order to enable the Committee of Council to be advised as to the exact situation with reference to this question of law and jurisdiction before finally disposing of this matter;

(*c*) The restoration of the Crowsnest Pass Rates, pending decision of the Privy Council, referring to Order in Council, P.C. 2220, dated December 25, 1924;

(*d*) The recital of questions submitted by the Board to, and answered by, the Supreme Court of Canada, on appeal to that Court from the Board's before mentioned decision;

(*e*) That considerable variations in the rates applicable between the points specified in the Crowsnest Pass Agreement has been brought about by the re-establishment of Crowsnest Pass rates applicable thereto, prior to July 7, 1924, and that it was urged " that the establishment of these rates would disrupt the *rate structure built up under the control of the Board since its creation,*" with consequent serious injury to trade relationship.

(*f*) That sources of supply have changed since the agreement (Crowsnest) was made, and that certain commodities which were formerly shipped in large quantities from Eastern Canada to the Prairie Provinces are now largely supplied either by local industries or from British Columbia, to the detriment of the latter province, if, as alleged, it was cut off from a large part of its natural market by the permanent restoration of the Crowsnest rates;

(*g*) That it was urged that the continuance of the Crowsnest rates (so-called) would compel the Canadian National Railways to make similar reductions from all competitive points, and thus involve a serious loss in revenue to them, which would have to be made up from other Government sources, and further postpone the time when it would be possible to make any general rate readjustment, or to solve satisfactorily the problem of the National Railways.

(*h*) After observing that the Crowsnest Agreement was made at a time when the Canadian Pacific Railway was the only company having a through line of railway extending through the Prairie Provinces and British Columbia, and before the creation of the Board for the control of railways and railway rates under the provisions of the Railway Act of 1903, and subsequent Acts, the Committee observes that the underlying purposes of rate control, inaugurated by the Railway Act of 1903, was to do away, as far as possible, with all unjust discrimination and undue preference, and *to secure a fair and reasonable rate structure, which under similar circumstances and conditions would be equal in its application to all persons and localities.*

The Committee then expresses the following opinions:—

(1) That the policy of equalization of freight rates should be recognized to the fullest possible extent, as being the only means of dealing, equitably, with all parts of Canada, etc.

(2) That to give effect to this policy, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners for Canada—*the body constituted by Parliament with full powers, under statute, to fix and control railway rates.*

(3) As to grain and flour, it is desirable that the maximum cost of transportation of these products should be determined and known, and that the maximum established for rates thereon, as at present under the Crowsnest Pass Agreement, should not be exceeded.

(4) That before such investigation is undertaken, it is essential to insure that the provisions of the Railway Act, in reference to tariffs and tolls, and the jurisdiction of the Board thereunder, *be unfettered by any limitations*, other than the provisions as to grain and flour hereinbefore mentioned.

Upon the above basis, the Committee of the Privy Council proceeds to advise as follows:—

> "That the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a *fair and reasonable rate structure*, which will under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:—
>
> (*a*) "The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;
>
> (*b*) "The encouragement of the movement of traffic through Canadian ports;
>
> (*c*) "The increased traffic westward and eastward through Pacific coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama canal.
>
> "The Committee further advise that legislation be introduced at the present session of Parliament, making it clear that the provisions of the Railway Act of 1919 in respect of tariffs and tolls shall, save in the particular above mentioned, be operative notwithstanding any Special Acts or Agreements and removing all doubts as to the validity of tariffs heretofore filed."

III

The Order in Council (P.C. 886) is directly concerned with and results from the disturbed rate conditions arising out of the judgment of the Board with respect to the Crowsnest Act (1897) and agreement as varied by the Supreme Court judgment, both above referred to, and with the recommendations and directions as to certain avenues of investigation which the Board should, in the opinion of the Privy Council pursue, but always in the exercise of what jurisdiction the Board has, as regards all matters referred, under the Railway Act as "the body constituted by Parliament with full powers, under statute, to fix and control railway rates". It is evident that the matters are confined to the review of the Canadian railway freight structure, with a view to making such changes, or variations therein as the Board in the exercise of such powers, as it has under the Railway Act, may think necessary, having due regard and paying due respect to the consequential effect upon economic conditions aimed at, of a rate structure so built up. The rate structure is that referred to in paragraph (*e*) of the quotations from the Order of Reference, "the rate structure built up under the control of the Board since its creation" and, as to which, in the section referred to, reference is made to some apprehensions that such rate structure might be disrupted by the continuance of the Crowsnest Pass Rates. The Committee further declares that it is essential that the Railway Act and the powers committed to the Board thereunder, should, before this investigation is undertaken be "unfettered by any limitations other than the provisions as to grain and flour", and provides (last clause) for legislation *making it clear* that the provisions of the

Railway Act of 1919, in respect of tariffs and tolls shall, save in the particular above mentioned (grain and flour) be operative *notwithstanding* any Special *Acts or Agreements*, and removing all doubts as to the validity of the tariffs heretofore filed. The Committee's advice in this respect was acted upon by Parliament, at the then pending session, by the passage of chapter 52 (1925) amending section 325 of the Railway Act.

With the changes made by this legislation, the powers of the Board, under the Railway Act, "to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require" the Board's jurisdiction became, as was intended, unfettered, and it proceeded after the passing of the amending legislation, with the task of review of the rate structure, under the direction of the Order in Council, but governed only as to its powers by the Railway Act. It was made clear both by the Order in Council and the amending Statute, and is too much of a truism to admit of any controversy whatever, that, in the circumstances while the Committee of the Privy Council had jurisdiction to direct an inquiry, the Board becomes seized of the inquiry and proceeds with it to its conclusion, under the powers of the Railway Act. Where there is any conflict, of course the Railway Act governs. There is no suggestion in the Order in Council of any different intention; on the contrary, that axiomatic proposition is in the order itself.

IV

The present rate structure, has been the subject of investigation protracted over a period of 113 days session. That structure has been built up under the control of the Board, and under the Railway Act since the formation of the Board in 1904. As changes in transportation conditions have occurred and costs of transportation have been varied, rates have, from time to time, been varied to meet such changes and variations in costs, in all of which the Board's functions, under the Act, to fix, determine and enforce just and reasonable rates, and prevent unjust discrimination, have been exercised. As I view it the Board can, in this investigation, broad, searching, and thorough though it has been, perform no other functions than those I have mentioned and which are recognized in the Order in Council. A review of the effect of the changes in the rate structure by the changes in Crowsnest Pass legislation, as has been mentioned, necessitated the review, and the filing of some 80 odd complaints, mostly of local importance, has enabled the Board to make its review in the light of present prevailing transportation conditions. The investigation made by the Board has been in the public interest, and the evidence accumulated will be of great utility to the Board and to the public.

V

One of the outstanding difficulties with which the Board is confronted in its efforts, since its organization, to regulate and control Canadian freight rates, and build up a system or a rate structure, which will, in all respects, under similar circumstances and traffic conditions, be just and reasonable to all persons and localities, has been, and is, the question of geographic disadvantage, or disability of some localities. It has been laid down as a principle that the Board's functions do not extend to the removal, by adjustment of freight rates, of these natural geographical disadvantages, which, in a country of such enormous extent and widely covered area, must naturally exist. This condition is specially emphasized in the rate situation of the Maritime Provinces, and during the whole course of the Board's existence, from time to time, the question of railway rates

between the Maritime Provinces and the large market areas and distributing centres of Canada has been a vexed question, which the Board was powerless to remedy, because under its administration of the Railway Act it was not possible to fix just and reasonable rates, fair to the railways, in providing rates sufficient to give a fair return, and at the same time remove the geographical disadvantages, under which the people of that important section of Canada are suffering from. That question had to be dealt with by legislation, passed at last session of Parliament—chapter 44 17-18 George V, 1926-7, following the Report of the Royal Commission (issued since P.C. 886, and therefore removing that subject from the consideration of this Board), dated September 23, 1926. The recital, or preamble of that Act is worthy of study in this respect. It recites, *inter alia,* the following:—

> "And whereas the commission has, in such report, made certain recommendations respecting transportation and freight rates, for the purpose of removing a burden imposed upon the trade and commerce of such provinces since 1912, which, the commission finds, in view of the pronouncements and obligations undertaken at Confederation, it was never intended such commerce should bear: And whereas it is expedient that effect should be given to such recommendations, *in so far as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada:*

The last lines, in italics, are important, showing that while the Parliament of Canada felt that relief should be given against the burden imposed upon the trade and commerce of such provinces, since 1912, which the Royal Commission found, in view of the pronouncements and obligations undertaken at Confederation, it was never intended such commerce should bear, Parliament recognized that, (*a*) the relief was not within the powers of the Board under the Railway Act, and (*b*) that while it was expedient that effect should be given to the recommendations and report of the Royal Commission, such recommendations should be carried out, with due regard to the existing Canadian rate structure and without disturbing such unduly. The legislation speaks for itself. It provides a reduction, in all tariffs, as from July 1 last, of approximately 20 per cent, in the territory specied in section 2 of the Act. It also provides for compensation out of the public treasury, for all railways who participate in and contribute to such tariff reductions, so that Parliament in removing the geographical disadvantages, to the extent of approximately 20 per cent of tariff rates, provides, by special legislation, for compensation to the railways for the loss, which those railways must bear, in the carriage of goods, under the statutory rates provided by the Act, to the extent of 20 per cent of the tariffs in force before the first day of July last under the Railway Act and built up by this Board as just and reasonable rates for the railway service involved.

VI

Another problem involving study of geographical and economic conditions is involved in the legislation passed by Parliament, with respect to rates on the important commodities of grain and flour.

The wheat fields of Canada are far removed from the seaboard, east and west, and the policy of Parliament, as expressed in its legislation of 1925, in dealing with the Crowsnest Pass statutory rates, imposed by the legislation of 1897, and while removing from this Board, the binding conditions and recommendations of that statute, and leaving this Board unfettered, not only as regards Crowsnest Pass rates, provided by the original legislation and agreement thereunder, but as regards any other Statutes and any other agreement, pur-

porting to impose any such fetters upon the Board's jurisdiction to fix just and reasonable rates on all traffic, it provided by the legislation of 1925, that the rates fixed by Statute and agreement, as far back as 1897, when there was practically only one railway—the Canadian Pacific—operating in that territory, should remain as special statutory rates as the only fetter to the jurisdiction of this Board; and the justification for such legislation lies in the fact that as a matter of public policy, in the wisdom of Parliament, it was considered essential "in order to encourage the further development of the great grain growing provinces of the West, on which development the future of Canada in a large measure depends, that the maximum cost of transportation of these products should be determined and known, and that therefore, the rates imposed in 1897, as maximum rates on these commodities, within the territory limited by the Act should not be exceeded." Again, it is to be observed that a territorial limitation is imposed by the statute of 1925, so that outside of that territorial limitation the Board's jurisdiction to fix, determine, and enforce just and reasonable rates, and to change and alter rates, as changing conditions, or cost of transportation may from time to time require, shall not be limited, or in any manner affected by the provisions of—

(*a*) Any Act of the Parliament of Canada; or

(*b*) Any agreement made, or entered into pursuant thereto; whether general in application, or special, and relating only to any specific railway, or railways; and further providing, that this Board should not have the jurisdiction, or power, to excuse any charge of unjust discrimination, or of undue, or unreasonable preference, on the ground that such discrimination, or preference, is justified, or required by any agreement made or entered into by the company.

This important legislation deals with both geographical conditions, as to location of the great grain-growing provinces in their relation to tide-water, and also to the importance justifying Parliamentary interference, of fixing a standard of rates, applicable to those important commodities, produced to a large extent in those provinces.

VII

Another instance of geographical disadvantage, against which the Board has, in the past, found itself without power to remove, is in British Columbia; and lies in the necessarily increased operating costs to both railways, in transporting freight and passengers in that mountainous territory. The facts are set out so fully in the judgment of the Assistant Chief Commissioner that I need not refer to them in detail. Effort has been made, on several occasions, to obtain relief from what is called the "Mountain differential", which now consists of increase in rates through that section. The basis has been reduced until the differential now is upon the basis of one mile in the mountain section being counted as a mile and a quarter under the prairie tariff. But, this differential exists by reason of different conditions existing in that territory involving higher operating costs than those which obtain in the prairie section, and therefore, following the fundamental principles of rate making and rate control, the increased rate forming the differential against the mountain section, and which averages from 15 to 17 per cent, has been maintained by the Board, as a just and reasonable rate, and, no change in conditions having been shown in all that has been submitted in the mass of evidence and protracted argument, upon this subject, in this investigation, must, in my opinion, be maintained. It was contended, exhaustively, during the hearing, both in

evidence and argument, that by the terms of Confederation there was an implied contract that the railway company should charge no higher tolls in one section of territory than another through which the railway runs, and the Board was strongly urged on that ground to remove the mountain differential and apply the prairie basis of rates to the mountain section.

VIII

The subject of this mountain differential has been many times the subject of very strong pressure upon the Board by counsel for the province of British Columbia, and counsel for the province of Alberta in previous applications.

I need add very little to what I have already said in this connection, as regards the natural geographical disadvantages of British Columbia as regards increased cost of railway operation, resulting in slightly increased freight rates, especially as the subject has been very fully and very ably dealt with in the judgment of the Assistant Chief Commissioner. The greater portion of the traffic of that province, some 85 per cent, moves under commodity rates, and, as has been shown, only a small percentage is affected by it. The difference in operating costs on both systems of railway operating through the mountains is shown by the evidence, and cannot be controverted. The comparisons of such costs of the two railways, as between themselves and between them, respectively, and the Prairie sections, are set forth in the judgment of the Assistant Chief Commissioner.

The costs of the Canadian National which has the easier grades and longer mileage, are not so large as those of the Canadian Pacific. In his judgment, *re* Province of British Columbia vs. Canadian Freight Association, 30 C.R.C. p. 393 at p. 298 the learned Chief Commissioner of this Board, said as follows:—

> "From the above it is evident that the tolls now in force were considered by the Board as just and fair, having regard to the conditions prevailing, and recognizing what is known as the 'mountain scale', for which a figure greater than the prairie rate is charged, and there the matter rests at the present time. Speaking generally, it is correct to say that differences upon the lines of the Canadian Pacific Railway as between grain rates east and west may be accounted for by this increased mountain scale of one and a quarter to one, as against the prairie rate. The easier gradients of the Canadian National Railway seem to afford no reason for such difference upon the last-mentioned line."

From the above it would seem that the learned Chief Commissioner was of opinion that while, in the circumstances shown, and which are clearly shown by the evidence now before us in this investigation, higher costs of the Canadian Pacific Railway operation of the mountain section appear to justify the differential in rates, that factor does not apply to the Canadian National for the reasons given.

I am of opinion, in agreement with the judgment of the Assistant Chief Commissioner, that the circumstances which have justified the mountain differential in the past decisions of the Board are still present, and that the Board is not justified in making the change asked for in this feature of the Canadian rate structure. It affects but a small portion of the traffic, and can be little burden upon the traffic moving under it, but, on the other hand, its removal would result in a serious financial loss to the railways which they are unable to bear. The rate is as low as conditions will permit of. The conditions of carriage are not "substantially similar", and equality is nevertheless maintained in the basis of these rates, to the greatest extent possible, having regard to those dissimilar conditions which necessitate and justify the differential.

All that was covered by the argument, and in evidence, has been before the Board for many years, on several occasions, in the same, or different form. I refer to the case of Attorney General for British Columbia v. Canadian Pacific Railway Company, 8 C.R.C. p. 346, which deals fully with this feature. Also to the Western Rates decision, where it is also dealt with. It has also been the subject of argument before His Majesty's Privy Council for Canada without change.

There being no change of conditions, the rates built up and maintained, upon the principle of fair return, and upon the consideration of increased cost of operation, cannot be interfered with, unless the loss thereby entailed upon the railways, which is estimated, in Mr. Stephen's evidence at $1,000,000 per annum, is to be borne elsewhere. Such loss of revenue, as found in the Western Rates Case cannot be "smeared" over the whole system, or part thereof. The principle upon which the whole rate structure, reviewed by us, has been built up since the Board's organization must be adhered to, and I agree that it will not be possible on what is before us, to find any change of conditions which would justify the Board in removing this differential.

IX

The rates on grain from the prairie westward to the Pacific ports are open for review in this investigation. They were the subject of a judgment of the Board dated September 2, 1925, reported above (30 C.R.C. 393). That judgment was sharply contested by the Montreal Board of Trade, the railways and others, and, after lengthy hearing before the Board, the decision was as set forth in the report of that case:—

31 C.R.C. p. 61.

That application is still open in this investigation, in all the features presented in it, for consideration. By the Order therein (Order 36769, dated September 2, 1925) rates on grain and flour moving westward to the Pacific coast for export, were put upon the same basis as though moving eastward for export, which means that the Crowsnest rates, on grain and flour, fixed in 1925 as applied to such commodities "moving from all points on all lines of railway *West of Fort William, to Fort William or Port Arthur* over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament", in the expressed language of the Act of 1925, amending section 325 of the Railway Act, were applied also to grain and flour moving westward to the Pacific for export.

The judgment of the Assistant Chief Commissioner upon that question (31 C.R.C. pp. 97, 98 and 99), deals with the situation fully and, in my opinion, conclusively, and I adopt his reasoning and conclusions.

There clearly was no power in this Board to extend the provisions of a statute, expressly limited in its application, beyond the boundaries of that limitation. The rates in question had been fixed by this Board as just and reasonable rates by the judgment of the Board (XII Judgments, Orders, etc., p. 173) upon the very logical basis described at pp. 180-182 of that judgment; the facts and reasons forming such basis being affirmed and present with us to-day. If Parliament, in the exercise of its paramount authority, had willed to extend the rates beyond the territory it expressly limited as to the territory in which they should be applicable, Parliament in its supremacy, would have so expressed itself, and then, and then only, would the Board's findings in the judgment of 1923, of such rates as just and reasonable rates, have been over-ridden, but Parliament made no such provision. The learned Chief Commissioner, in his judgment herein referred to and quoted (30 C.R.C. p. 393 at p. 398) states that

"it is evident that the tolls now in force were considered by the Board as just and fair having regard to the conditions prevailing etc." Those conditions still prevail; no statute affects them; no ground existed for changing them, and I am strongly of the opinion that the change sought to be made in their structure was not justified, and was beyond the power of the Board to make under the circumstances.

I think, therefore, that these rates, as built up logically, as just and reasonable rates, by the judgment of 1923, above cited, should now be restored.

No question of unjust discrimination can anywhere be applied as regards the effect of these statutory rates upon rates in other localities. They stand by themselves. The decision in B.C. Coast Cities v. C.P.R. 7 C.R.C. p. 125 is not now in point. The Supreme Court of Canada (1925, S.C.R. 155) expressly held that discrimination in rates authorized by Parliament cannot be regarded as unjust or discriminatory and that it was quite within the power of Parliament to provide that, on certain traffic on certain lines of railway, rates shall not exceed stated amounts regardless of any discriminatory effect which the making of such rates may produce. Being outside statutory territory this decision is not affected by the legislation of 1925.

X

I am of opinion that the application of British Columbia for reduction of domestic rates on grain should be dismissed. No case was made out to justify the granting of the application.

XI

Another outstanding and much disputed feature of the inquiry was the application by the provinces of Saskatchewan and Alberta, joined in by counsel for the province of British Columbia, to equalize throughout the west the rates on grain and grain products, as between the main line of the Canadian Pacific Railway and its branches, and to make applicable the rates so equalized to the Canadian National Railways and branches thereof. Branch line commodity rates have been permitted to be maintained at a figure slightly in advance of main line rates on the same commodities. The reason for this principle is set forth in the Western Rates Case 17 C.R.C. at p. 153 and in cases there referred to.

In Mr. Neal's evidence (Vol. 496, p. 2018 to 2026; 2063 to 2064; Vol. p. 2414 and 2461; Vol. 498, p. 2647 to 2660) he outlines with particularity, the distinctive operating conditions on branch lines, as compared with the main lines, and shows the difficulties and increased cost of operation and distinctive features as to revenue between the two. This principle, however, has not been uniformly acted upon by the railways, inasmuch as in the filing of tariffs of class rates there appears to be very little, if any, difference between rates from branch line points as compared with main line points.

Grain rates in force for some branch line points on both Canadian Pacific and Canadian National lines to Fort William, show increases over Canadian Pacific Railway main line rates varying from 1 to 3 cents per 100 pounds, upon approximately the same mileage. Again rates as between those two railways from points equi-distant from the common point of Fort William vary, but it is contended that such variation is in itself, and in the absence of any express legislation, no evidence of unjust discrimination, although for the same distance and to a common market, because one railway has no control over neither does it participate in the lower rate published by the other railway.

Ashland Fire Brick Co. v. Southern Ry. Co. 22 I.C.C. p. 118 at p. 120 (Case No. 3831).

But our own decision in Dominion Millers' Association in Eastern Ontario milling in transit charge—Board's Judgments, etc., Vol. VII, p. 290 is not of the same definiteness, although milling in transit charge and not the through rate, was involved.

I think, however, that regard must be paid to the legislation following the appeal to the Supreme Court as to Crowsnest rates.

The Parliament of Canada has legislated with respect to rates on grain and grain products, and the rates therefore on these products, applicable to the railways within the territory, and under the conditions in the statute mentioned, viz., the amendment of 1925, are binding upon this Board, and I feel that while not expressly stated in the statute, the Board should give, under the circumstances, the widest and most generous interpretation to the legislation, according to the true intent, spirit, and meaning thereof, and, I think, that it is within the intent, spirit, and meaning of the legislation, especially having reference to the interpretation to be given subsection 6 of what is now subsection 6 of section 325 of the Railway Act, that the statutory rates should be preserved within the territory, by the railways, subject to them, with uniformity and equality, and that, therefore, I would feel that the Board should endeavour to conform to it according to its conception of its spirit and meaning.

I think that the intention of subsection 6 was to overcome the holding of the Supreme Court, Crowsnest Appeal (1925) that rates put in under the Crowsnest legislation stood as statutory rates and were not subject to the charge of unjust discrimination. Within comparable mileage groups, in the territory subject to the 1925 legislation, branch line rates are slightly higher than main line rates—which, but for the legislation, I think is justified by traffic conditions on branch lines. This is alleged to be, under the interpretation of subsection 6 of the 1925 amendment, unjust discrimination, which the statute intends should be removed. I think that effect might be given to this construction of the statute, as regards these rates within statute covered territory. The details, or basis, upon which this can be worked out, may present some difficulty. It is desirable that there should be a scheme provided, which would do the most complete justice, along the lines of uniformity and equality in these rates.

The Board's judgment in the 1922 general rates case, (Vol. 12, pp. 67 and 68) referred to the restoration of the Crowsnest rates on grain and grain products. These rates, applicable to Canadian Pacific mileage groupings remain as the standard of Crowsnest Pass rates, subject to the contention that there should be no variation as between main and branch line rates in the groupings, and that Canadian Pacific Railway Main line rates since the legislation of 1925, should govern those groupings. The meaning of subsection 6 of that legislation is perhaps capable of more than one construction, but bearing in mind that by P.C. 886, it is a direction to this Board that Crowsnest maxima are not to be exceeded in fixing rates on these basic products, and that any other adjustment as between north and south branch line rates would be difficult, if not impossible to make having regard to that direction, a basis is to be found by adopting Canadian Pacific Railway main line rates within the statutory territory and directing that branch line rates be placed on the basis of main line rates from points of equivalent mileage. Other railways in the territory should be ordered to so adjust their grain rates as to meet the rate basis applicable to the Canadian Pacific Railway as the measure of such rates on grain and flour. The Board is applying statutory rates, seeking equality of treatment in such application, and I think that the rates so built up would be just and reasonable in their application under these circumstances in a situation not free from difficulty and danger of injustice. I can foresee that there may be differences and perhaps difficulties in the working out of an exact basis, which will preserve exact equality and uniformity with respect to these rates. If such arise, they must be adjusted, if necessary, by separate application, to meet particular cases of difficulty and confusion.

XII

The city of Quebec and the Harbour Commissioners of Quebec presented, and strongly urged upon the Board, that the rates on grain and grain products, from Armstrong and Port Arthur to Quebec, all rail should be reduced. The proposal, presented to the Board, was that a rate of a fraction over 11 cents from Fort William to Quebec, should be declared by the Board to be a just and reasonable rate on those products. The matter was strongly and exhaustively argued, and in its presentation a great deal of ground was covered.

So far as Crowsnest rates are concerned, as fixed by the amending statute in 1925, a reading of the plain wording of that amendment shows that the rates on grain and grain products, fixed by statute, ceases at Port Arthur, and therefore cannot be applied east of there.

The language of the statute is:—

> "But such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur, over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament."

Then it is urged that the Board should look at the National Trancontinental Railway Agreement with the Government of Canada, chapter 71 (1903), and the statute of 1903, as a traffic circumstance and be governed thereby. By reference to the agreement it will be seen that in consideration of certain concessions, involving large expenditures by the Government of Canada, the railway company entered into the agreement; and section 42 of the Act is referred to by counsel as supporting their argument in favour of the establishment of these rates. Sections 42 and 43 of the agreement read as follows:—

> 42. "It is hereby declared and agreed between the parties to this agreement that the aid herein provided for is granted by the Government of Canada for the *express purpose of encouraging the development of Canadian trade and the transportation of goods* through Canadian channels. The company accepts the aid on these conditions, and agrees that all freight originating on the line of the railway, or its branches, not specifically routed otherwise by the shipper, shall, when destined for points in Canada, be carried entirely on Canadian territory, or between Canadian inland ports, and that the *through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports, and that all such not specifically routed otherwise* by the shipper, shall be carried *to Canadian ocean ports.*
>
> 43. "The company further agrees that it shall not, in any matter within its power, directly or indirectly advise or encourage the transportation of such freight by routes other than those above provided but shall, in *all respects, in good* faith, use its utmost *endeavours to fulfil the conditions* upon which *public aid is granted, namely,*—the development of trade through *Canadian channels and Canadian* ocean ports."

The statute, except as to ratification of the agreement, does not specify any rates, or tolls; but, in section 42 of the agreement, it does specify "that the through rate on export traffic from the point of origin to the point of destination shall, at no time, be greater via Canadian than via United States ports, and that all such traffic not specifically routed otherwise by the shipper shall be carried to Canadian ocean ports."

By clause 45 of the agreement of 1903 the Grand Trunk Pacific Railway Company covenanted with the Government to arrange to provide upon both Pacific and Atlantic oceans, adequate ocean tonnage for the traffic on the rail-

way, or the Intercolonial Railway, "as may be agreed from time to time." This covenant, incident to the leasing and operating of the Eastern Division, was never performed in whole or in part.

The Crown in 1919 and prior thereto had been making advances or loans to enable the Grand Trunk Pacific Company to carry on and to meet its interest payments. Its operations had been confined to the Western Division. The Crown gave notice to the company that it proposed to cease further advances, whereupon the company gave notice that it would cease to operate the railway. The Minister of Railways was appointed receiver of the company by Order in Council (P.C. 517) dated March 13, 1919, ratified and confirmed by chapter 22 of statutes for 1919. The Minister, as receiver, operated the Western Division, until turned over to the Canadian National Railways for operation. That railway, however, assumed none of the obligations of the Grand Trunk Pacific, and is in no way concerned with, or liable to perform, any portion of the agreement of 1903. The receivership was terminated by Order in Council (P.C. 1101), dated May 27, 1927, which recited the circumstances, and evidences the fact that the Grand Trunk Pacific Railway is defunct. The Government could not therefore enforce any of the covenants or in any agreement it had made.

XIII

By chapter 52, 15-16 George V (assented to June 27, 1925) the powers of the Board "under this (the railway) Act to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions, or cost of transportation may from time to time require, *shall not be limited or in any manner affected* by the provisions of *any* Act of Parliament of Canada, or by *any* agreement made or entered into pursuant thereto, whether general in application or special and relating only to any specific railway, or railways, and the Board shall not excuse any charge of unjust discrimination whether practiced against shippers, consignees, or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by *any* agreement made or entered into by the company, etc." Rates on grain and flour, however, are left under Act of 1897.

The wording of the section is plain and emphatic and incapable of any misunderstanding as to its wide and general meaning and application. "Any Act of the Parliament of Canada"—or, "any agreement made or entered into pursuant thereto" must necessarily include, just what the word "*any*" means, viz., Crow's Nest Pass Act and Agreement; The Manitoba Canadian Northern Agreement; The National Transcontinental Act and Agreement; and *any* other Act of the Parliament of Canada, or *any* other agreement made pursuant thereto, of the same or similar, rate fixing character. In the sense in which the word "*any*" is used it includes, with one exception "all" agreements or statutes.

I do not think therefore that the provisions of the Act of 1903 referred to, are now binding upon this Board so as to limit its jurisdiction, under the Railway Act, to fix, determine and enforce just and reasonable rates, and to change such rates as changing traffic conditions or costs of transportation may require.

I realize, however, that there is much force in what is set out in the judgment of the Deputy Chief Commissioner, in support of the export rate asked for. The Order in Council under which we are directed to examine the present rate structure, in effect by emphasizing the policy of equalization, and the encouragement of the carriage of Canadian products to and through Canadian ports, I think lays upon the Board a duty to examine all features at present prevailing under the present rate structure, and, if possible in the exercise of

the Board's jurisdiction under the Railway Act, to mould rates in accordance with the policy referred to. I am much impressed, having this in view, with the view of the Deputy Chief Commissioner—and would agree in his conclusion that the present through export rate on grain to Quebec may be varied as to the portion Armstrong to Quebec. The reduction proposed is a drastic one, but it has in view a particular object of great national importance which it is our duty to consider as a desirable change in the rate structure committed for our examination. If any less reduction of the export rate referred to would meet the conditions and provide the remedy I would prefer it having regard to the financial position of the railways, but I realize that anything more than the rate proposed would not meet the foreign rate. It is an export rate pure and simple and as such is on a different plane than domestic rates. After very anxious consideration of all that has been submitted, and of the broad sphere of national conservation of such traffic referred for our consideration, I am constrained to accept the conclusions of the Deputy Chief Commissioner. The rates to Maritime ports are quite in a different position and the reasoning as to Quebec is confined to that outlet.

The rate may prove unproductive of the benefits expected to result from it. I have some doubt about that, but I would prefer having regard to all the important factors involved and as an export rate, to broaden rather than contract the manner of dealing with it.

Grain finds its way into the elevators at Quebec from the West by rail and lake in increasing quantities as is shown by the following figures:—

Year	Up to July 9	Total for the year
1923	923,804	3,733,936
1924	843,151	2,505,631
1925	326,241	2,441,288
1926	1,133,394	5,918,016
1927	3,389,060	8,000,000 (estimated)

It will be seen by the above table that there is a substantial increase in the last four years, in the movement of this grain via the natural water channel, and that this substantial improvement through such natural channels, available for such traffic, has been effected, so far without any change in the general rate structure as is involved in this application. It is to be hoped that the reduction will stimulate further the export of Canadian grain through Canadian channels, and divert such traffic from foreign channels.

XIV

The application on behalf of the Quebec Harbour Commissioners also asked that the export rate on grain from Bay ports to Quebec and the rate on package freight and general merchandise from Toronto and points west of Toronto to Quebec for export should be placed on the same basis as the rates to Montreal. This, in effect, it seems to me, links up Quebec and Montreal by the same rates for export as is the case of St. John and Halifax. The rate on export grain Bay ports to Montreal is 8.6 cents a bushel; to Quebec, Halifax and St. John, 9.1 cents per bushel. Quebec now takes the rate of the far distant maritime ports, instead of the nearer port of Montreal.

The export rate on general commodities from Toronto and points west thereof in the same grouping, is 2 cents per 100 pounds higher to Quebec and Montreal. I think that these might be equalized as above. In that respect I concur in the view of the Deputy Chief Commissioner.

XV

Grain rates, Fort William to Montreal and Quebec, during the season of navigation, are low and conducive to substantial movement. The outlet from St. Lawrence ports is, of course, useless after navigation closes. The lake rate since 1st June last has declined from 7½ cents per bushel down to 6 cents per bushel. Up to a period between the 15th July and the 1st August between forty and fifty lake steamers have discharged grain cargoes at Quebec.

The rates on export wheat, Bay ports to Halifax, St. John and Montreal, respectively, with distance of haul, as compared with similar factors of haul from Buffalo to New York, are as follows:—

	Miles	Per Bushel
C.N.R. Midland to Montreal	383	8.60
C.N.R. Midland to Halifax	1.183	9.10
C.P.R Pt. McNicol to St. John	836	9.10
Erie R. R. Buffalo to New York	425	9.10

The rates include elevator charges.

The export rate on wheat, Midland to Montreal, is practically the same as the Buffalo-New York rate, viz., 8.60 for 383 miles, as against 9.10 for 425 miles.

To ship grain in winter from Canadian bay ports to Halifax and St. John for export as ballast in Canadian passenger ships via Canadian railways involves a haul of 1,183 miles to Halifax, and 836 miles to St. John, as against 425 miles Buffalo to New York, at the same export rate, which means that the Canadian railways receive about three-tenths of a cent per ton mile, a losing rate, and the American railways about three-quarters of a cent per ton mile for the hauls or a 40 per cent advantage to the American railways in getting the wheat on an ocean vessel for export. To this 40 per cent disadvantage to Canadian railways by this route is to be added the advantage of New York, and American Atlantic ports offering similar export rates from Buffalo, in more readily securing ocean tonnage as required, a profitable rate, and for the quantities of the shipments desired to be made.

After the close of navigation grain in storage at Buffalo commands, on an average, a slightly higher price than at Bay ports, because of the facility with which it can go forward according to the exigencies of the export grain trade. The western farmer, patriotic though he is, can hardly be expected to pay for his patriotism by a reduced return from his shipment due to these natural conditions, and he is not unnaturally silent as regards any vigorous claim that his wheat shall follow Canadian channels to and through a Canadian seaport. His interest in obtaining the best price available for his wheat is the interest of this country at large and must be protected. To lower the Canadian rail rate to the seaboard at further loss to the Canadian railways, would not meet the difficulty of ocean tonnage. The loss to Canadian railways would be without compensatory features because of ocean shipping conditions; and it is manifest that a reduction in Canadian rail rates from bay ports to Canadian ocean ports can be readily met, under the figures above set forth, by American railways, who can easily reduce their rates on their shorter and more profitable haul to their Atlantic ports where ocean tonnage is plentiful and retain the business, the net result attained being added to Canadian carriers.

Halifax and St. John, as winter ports, handle the grain stored at bay ports, under competitive rates with American railways. I think it is reasonable to conjecture that any lowering of present rates, by any route, to those Canadian ports, would promptly be met by American competitive railways, who have the additional advantage of greater volume of ocean tonnage.

I do not agree that the suggestion of such possible action on behalf of United States competitors is entirely imaginary. United States lines and transportation systems are keenly alive to the situation and would naturally

endeavour to maintain the traffic they have and which flows to them through channels now open. Can it be said that the lowering of inland Canadian freight rates, upon grain and flour with a view of diverting the traffic to Canadian ports that American ports now enjoy, will induce American transportation lines to surrender that trade quietly and without opposition to Canadian transportation systems? If they do, they are departing from what is a very ordinary course as between highly competitive systems, for the securing and retention of traffic. That the competitive situation, as between the Port of New York and that of the ports of the St. Lawrence is not overlooked, but that on the contrary is being anxiously and critically scrutinized along the lines and with the objects indicated above, is apparent from the commercial publications of the day. The following quotation, from an article appearing in the New York *Journal of Commerce*, of July 6, 1927, evidences the activity and watchfulness of those interested in the port of New York:—

"Says Preferences Divert Canal Trade

"Barge operators ask inquiry into discriminations against new york

"An effort is to be made by members of the Barge Canal Operators' Association to induce the various commercial organizations of the port of New York to use their influence to bring about an investigation of discriminatory practices held to be responsible for the diversion of a large volume of traffic from the New York State Barge canal to both the St. Lawrence and Mississippi, it was learned yesterday.

"'The port of Montreal', J. H. Muller, manager of the Canal Division of the Transmarine Lines, said yesterday, 'is now handling much of the grain traffic which might be expected to come through the Barge canal to New York under ordinary circumstances. Last season Montreal handled some ninety million bushels as against New York's twenty million bushels. This diversion is due mainly to the special inducements offered at Montreal."

There is no threat in the above suggestion. It is merely what might naturally be expected from business interests, called upon to face a situation which threatens their interests. It would not be surprising, or unusual, from a business point of view if reductions of rates in Canada on that particular class of traffic were met by reductions in American inland rates of transportation. The shorter route to ports more easily available, and where ocean tonnage is more plentiful, would tend to retain the trade in the present channel, while inflicting loss of revenue to the Canadian railways engaged in the traffic, and which loss would be a burden upon those railways, and, possibly ultimately to the Canadian people. Such a result is to be carefully guarded against in deciding upon the most efficient methods to promote and conserve the carriage of our Canadian traffic through Canadian ports.

The exports of Canadian grains via United States ports, and of American grain via Canadian ports, are shewn by exhibit F.H. 213, and since 1923, may be summarized as follows:—

CANADIAN GRAIN VIA UNITED STATES PORTS

——	1926	1925	1924	1923
New York	79,324,913	92,307,498	67,651,332	75,123,035
Philadelphia	14,789,559	23,241,704	20,140,052	22,136,364
Baltimore	14,435,370	10,241,635	15,398,606	17,162,665
Boston	4,867,948	4,620,343	4,0 5,728	9,880,504
Norfolk	699,500	330,525	2,985,520	1,414,857
Portland	7,532,166	6,370,130	7,504,222	18,877,713
Total (bush.)	121,619,456	137,111,835	117,695,462	144,595,138

AMERICAN GRAIN VIA CANADIAN PORTS

Montreal	34,933,799	51,890,226	68,659,959	33,704,531
Quebec	195,603	198,333	1,385,675	741,017
W. St. John	2,958,088	4,184,979	1,239,786	1,491,007
St. John	975,920	713,268	514,645	113,688
Total (bush.)	39,063,410	56,986,806	71,800,065	36,050,243

The larger percentage of Canadian grain exported via American ports goes through New York, Philadelphia, and Baltimore, while most of the American grain for export through Canadian ports comes to Montreal.

The 1926 figures above quoted show, in the detail figures in the exhibit, that in the season of navigation at the port of Montreal (May-November) 37,216,414 bushels of Canadian grain found its way to New York, 3,057,484 to Philadelphia, 5,540,308 to Baltimore, 2,466,819 to Boston and 330,913 to Norfolk, a total of 48,611,938 bushels—while there were diverted to Montreal for export during the same season, 34,933,799 bushels, and Quebec 195,603 bushels, a total of 35,129,402 bushels of American grain, or 13,482,536 bushels in favour of American ports.

The figures (1926) for winter months (January to April and December)—when St. Lawrence ports were closed—show that 73,007,518 bushels of Canadian grain were exported through American ports while 3,934,008 bushels of American grain found its way through the ports of St. John and West St. John. This would be grain from contiguous North Western States of late shipment—or in storage at St. John for shipment on orders.

The conclusion is fairly obvious. The Canadian grain was shipped lake and rail, during lake navigation—to strategic bay ports, there to be ready to go forward for export, at any time, it was sold, and the facilities of getting ocean tonnage suitable for the carriage of the bulk sold at an American or winter port, as against those offering at our maritime ports, plus the shorter haul to the seaboard, and better ocean rates, would be the important factors causing the diversion to the nearest ocean port, for the quicker, more suitable and more economical ocean shipment there available. The farmers and exporters of wheat are concerned with the routing of shipments for export via the shortest and most feasible route, having regard to the requirements of market conditions—and geography and climate favour the American ports for this trade. Canadian railways have met a New York and Atlantic coast rate from Buffalo—by hauling wheat to St. John and Halifax, 836 and 1,183 miles respectively at the same rate as American railways receive for hauling it 425 miles, and yet the wheat goes to American ocean ports, because the methods of selling and conditions of the grain export business send it there, and I am not so conversant with the intricacies of the export grain business to be convinced that any change would result in those methods of carrying on that business, from making further cuts in freight rates—already unremunerative, or in attempting by low, unremunerative and experimental rates to endeavour to open up new channels, and inspire or induce new methods of marketing export grain through those channels. Upon what is before us I would not be inclined to take the risk involved in the hope of attaining the object desired.

The subject is of wide importance and presents many angles for deep consideration. While it may be found that a solution of all the problems involved is not to be found in drastic reductions of inland freight rates to the Canadian Seaboard, or in the enlargement of facilities for handling grain and flour at one or more Canadian ports, investigation into and comment upon the whole situation would not be out of place even though such may but serve to indicate the extent of the difficulties and complexities with which the grain movement is

surrounded as regards every effort to induce the transport of these commodities at least in larger volume than at present, to Canadian ocean ports, and reduce the passage of that traffic through American channels to American ports.

Those difficulties, in my opinion, are concerned more nearly with, amongst others,—

(*a*) The nature and complexity of the grain export business within itself, and the futility of attempting to alter, or vary, the basis upon which such business is carried on, without great danger of loss in the Canadian grain business, which would be visited upon the western farmer;

(*b*) The danger involved in providing measures tending to prevent the free shipment of Canadian grain and grain products through all normal and economic channels available to the Seaboard, having regard to the nature and intricate character of the grain business, and of hampering the free marketing of shipments to the markets of the world, in quantities, at times and seasons, and at the best prices obtainable therefor, without causing such a loss to the producing farmers and the Canadian trade generally;

(*c*) The uncertainty and unreliability, to the Canadian grain merchants, in finding suitable ocean tonnage available by liner or tramp steamer, for the shipments he sells overseas in the quantities and at the times, when, by the exigencies of the trade, such must be transported to the overseas buyer.

The increase of elevator capacity and facilities, at ocean ports, and the cutting down of inland freights to the Sea are not, of themselves, factors to aid in the solution of such a difficulty. There must be attracted, to our Canadian ports, ocean tonnage in sufficient quantities, and of a character suitable for the grain export business, and readily available thereto according to the character of that business. It is not unnatural that the United States of America, with a population of more than ten times that of Canada, and with a vastly larger import trade, should attract to its ports ten times more ocean vessels than from the ports of Canada. These vessels look for the return cargo. As regards grain, the "liner" would appear to be more suitable for ocean shipment than the "tramp", because, the former is looking for smaller consignments, of "parcels" of grain, while the "tramp" can only be utilized for full cargoes. If Canadian grain were to move in one stream; as it were, to one or more ocean ports in Canada, the "tramp" would probably serve the business, if sufficient "tramp" tonnage could be secured, but the grain business is not carried on in that way. The grain is sold, as it is required overseas, not in large shipments as a rule, but in "parcels," that induce a liner to accept, at a low rate, as "stiffening" cargo, for its return trip; but which a "tramp" steamer would not take, except at an excessive rate.

While Great Britain is the largest buyer of Canadian grain and flour, and there is necessarily a large cargo business handled by large exporters, by tramp steamers making full cargoes out of it, the Canadian grain and flour export business, as a rule, is not carried on, by large cargo shipments. There may be fifty different countries bidding for our grain and flour and there is keen competition for the business of the Canadian grain exporter. The shipments making up the large exportation, distributed as they are, to many countries, are not full cargo shipments; but are in quantities suitable to the requirements of the trade of the country of destination. They are not carried by tramps, but are largely "parcel" shipments carried by liners. As Canadian trade expands, more ocean tonnage will, in the natural course, be attracted to the Canadian ports, east and west; but unless, and until it is certain that

ocean tonnage is as readily available, at a Canadian port as at an American port and at rates, which would be as profitable to the Canadian farmer, I do not see that the lowering of inland freight rates to the Seaboard, or large expenditures at ocean terminals are of themselves of conducive benefit in deciding upon economic changes in channels of transportation to the Seaboard.

XVI

Some American grain finds its way through natural channels, rail, lake-and-rail, in open season, to the Port of Montreal. There is an outcry against it, as is indicated by the quotation from the "New York Journal of Commerce" which I have quoted. Therefore, what Canadians are complaining of, as regards Canadian grain finding its way to American ports, Americans are complaining of as regards their wheat finding its way to the St. Lawrence, though in lesser quantity, for shipment through a Canadian port. In both cases, in the dim light we have at present, upon the intricacies, complexities, and highly sensitive refinements of the export grain trade, the traffic would appear to follow natural and economic channels to the sea, and whether those channels can be closed by either country, and the traffic of each country diverted to its own channels involves broader and more extended and searching scrutiny of all factors and elements involved than is possible in this inquiry, under the limited powers of the Board.

XVII

Under the Railway Act, the duty of this Board is to determine what are fair and reasonable rates for transportation services performed. That duty is affirmed by the Order in Council now under consideration, and is more specifically made clear, if that were necessary, by Order in Council P.C. 2434, dated October 6, 1920, upon an appeal from an Order of the Board of September 6, 1920, and known as "The Forty Per Cent Increase Case." From that Order in Council I extract the following clause:—

> "In connection with this appeal it must be observed that one of the duties, if not indeed the principal task, of the Board of Railway Commissioners, is to determine upon application, what are fair and reasonable rates to be charged from time to time for the various services performed by public utilities under the jurisdiction of the Board. In such determination there must of course be taken into account, as has been done in the present case, all relevant circumstances such as changes in the scale of wages, and the cost of materials, the effect of competitive means of carriage, whether by lake route or by lines to the south, and such other facts as may be established and as are found pertinent to the issue by a lawfully constituted judicial tribunal. For the purposes of this work the Commission not only has the advantage of hearing the evidence and following the cross examination, but brings to bear the experience of its own members, extending in many cases over a considerable number of years, and the familiarity with railway problems thus acquired. It has, in addition, at its disposal a permanent staff of expert officials trained in the various branches of the work of the Board and able to advise the Commissioners in the many intricate and more or less technical subjects that are before the Board for adju-

dication. It follows that a decision of the Board so arrived at as to what may constitute under all the circumstances a fair and reasonable rate, could not, except for extraordinary cause, be usefully reviewed by Your Excellency's Advisers. Indeed, for Your Excellency's Advisers to take upon themselves to weigh the evidence adduced and substitute their own judgment for the judgment of the Board upon the question of fact arising on the issue and to be determined upon such evidence would defeat the purpose for which the Board of Railway Commissioners was created and would in the end be highly prejudicial to the public interest."

Under the Order in Council, from which I have quoted, the Board is directed, in arriving at what constitutes a fair and reasonable rate, to ignore the requirements of our great National Railway System, and therefore to base same upon the requirements of the Canadian Pacific Railway—a privately-owned railway corporation. I quote the following language:—

"What constitutes a fair and reasonable rate should now be arrived at without reference to the requirements of the Canadian National System and Your Committee recommends that the Order in this case be referred back to the Board to be corrected in its findings in such manner as to determine what are fair and reasonable rates without taking into account at all for the time the Order shall be in effect, the requirements of the Canadian National System."

It has been intimated by the learned Chief Commissioner, in the course of this inquiry, that this direction should continue to bind the Board. While I receive his ruling, with deference and respect, I cannot quite recognize the cogency of it, as it appears to me along the lines of the argument of Mr. Fraser, K.C., counsel for the Canadian National Railways, that the Order in Council from which I have quoted, is no longer directory of the functions of the Board as regards ignoring the requirements of the Canadian National, and that, in this inquiry, the Board should apply principles of fair returns to all railways concerned, without regard to the fact that one of them is nationally owned. I think the Canadian National Railway as a great national railway system in Canada, giving the most efficient and satisfactory service over a very large mileage in this country, is entitled to have conserved to it, just and reasonable rates, built upon the same principles as those which, under the Railway Act, the Board applies to privately owned railways.

However, for the purposes of this enquiry, I will deal shortly with the financial situation of the Canadian Pacific Railway, while reserving my views as above.

The surplus of the Canadian Pacific Railway Company as shown by Mr. Lloyd's evidence, is, for 1926, $7,462,825. The average net surpluses of that railway, during three quinquennial periods, as shown in Exhibit No. 155, in Mr. Lloyd's evidence, are as follows:—

AVERAGE NET SURPLUS

		Average
1911-1915	$10,035,801 on net earnings of	$38,349,937
1916-1920 (War years)	7,636,353 on net earnings of	40,364,573
1921-1925	1,377,635 on net earnings of	37,072,892

It is to be observed, that in round figures the average net surplus for the period of 1916 to 1920, being war years, was $2,500,000 less than the average net surplus for the preceding quinquennial period. In the period from 1921 to 1925, the average net surplus had dropped by over $6,000,000 in the average, so that during those latter years, upon average net earnings exceeding $37,000,000 there was but an average net surplus per year of $1,300,000, while in the quinquennial

periods 1911-15 there was an average net surplus of over $10,000,000 on average net earnings of $38,000,000, or about the same as for the last period quoted. And, during the war years, embraced in 1916 to 1920, the average surplus was in round figures $7,600,000 upon average net earnings of over $40,000,000.

While working expenses and taxes have grown from an average of $77,199,518 for the quinquennial period 1911-15 to an average of $151,205,536 in the quinquennial period of 1921-25 (reflecting the large increase in wages, material and all costs of operation resulting from the war) net earnings—$38,349,937 as average for the first quinquennial period while increased in the second to an average of $40,364,573, in the second, are reduced in the third period (1921-25) to $37,072,892, or over a million dollars less than the average of the first, and over three million dollars below the average of the second quinquennial period. Fixed charges have increased from an average of $10,533,236 in the first period, to $13,869,487 average in the last period shown.

The amount of property investment made by the Company in the railway and equipment must be considered and is a vital factor in determining the necessities of the railway upon which to base just and reasonable rates, having in view, in the making of rates the principle of fair return, upon such railway property, held and used for railway service. This is set forth also in quinquennial periods, in Exhibit 156, filed upon Mr. Lloyd's examination. That Exhibit shews the following figures relative to average percentage of surplus earned to the investment in such property held and used:—

EXHIBIT 156, AVERAGE PERCENTAGE OF SURPLUS TO INVESTMENT

		Average
1911-15	1.417 on property investment of	$708,293,054
1916-20	.910 on property investment of	839,122,140
1921-25	.149 on property investment of	921,814,800

During the first quinquennial period the average was 1.417 per cent upon a property investment for over $700,000,000 average. During the period 1916 to 1920, containing war years, that average percentage was reduced to .910 per cent on an average property investment of $830,000,000. Such a shrinkage might be anticipated as the result of war periods, but, for the quinquennial period of 1921 to 1925 the average surplus had again shrunk to .149 per cent on a property investment, average, of $920,000,000.

XVIII

The question of " fair return ", upon property value, held for and used in the service of transportation has been the subject of consideration and direction within its jurisdiction of the Interstate Commerce Commission, as outlined in Mr. Lloyd's evidence, volume 493, pages 1022, *et seq.*

Section 15 (*a*) of that Act passed in 1920, upon the advice of the Commission, provided as follows:—

> "In the exercises of its power to prescribe just and reasonable rates, the Commission shall initiate, modify, or adjust such rates so that carriers as a whole—or as a whole in each of such rate groups or territories as the Commission may from time to time, designate—will, under honest, efficient and economical management, and reasonable expenditures, for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income, equal, as nearly as may be to a 'fair return' upon the aggregate value of the railway property, of such carriers held for and used in the service of transportation."

For the two years beginning March 1, 1920, the Act fixed the "fair return" upon the property value at 5½ per cent. The Commission was allowed by the

Act to add an extra ½ of 1 per cent of the property value to make provision, in whole or in part for improvements or betterments chargeable against capital account. This was done and the percentage fixed at 6 per cent during this period. At the present time, the rate has been fixed at 5¾ per cent, which has been in force since 1922. I see no reason why Canadian railways should not be allowed to earn a similar rate upon the value of its property held and used in the service of the public. If transportation service is to be maintained in this country in a state of efficiency, suitable for the purposes of the traffic in all parts of the country which it has to carry, I think it is a reasonable business proposition, which will appeal to all classes using or being served by the railways, that such a percentage of fair return should be followed in this country.

It is axiomatic that no railway company, or public utility, can give efficient service to the public at a loss. This Board has always recognized the principle of fair return, and applied that principle, in a fair and just manner, as circumstances have permitted in fixing and enforcing just and reasonable rates. The present learned Chief Commissioner of this Board emphasized that principle in the following remarks quoted from a speech made by him before the Board of Trade in the city of Calgary, Alta., on November 17, 1924, shortly after he assumed office:—

> " One thing I would like to say to you, something which goes practically without saying, is that the transportation systems of our country require a certain amount of revenue to carry on their work, they require a certain amount of revenue to carry on that work successfully and in a way which will justify the activities in which they are engaged, and enable them also to branch out in the future, so that parts of the country which are as yet untouched by systems of transportation may be brought into the circle, thereby adding to the productive area of the country, and building our prosperity upon a broader and a firmer foundation.
>
> " It goes without saying, I remark, that the transportation interests of the country must be looked at, and we cannot by cutting off here and cutting off there, however much it may be desired, alleviate the burdens which may be placed upon individual localities; we cannot pursue that course beyond a certain point.
>
> " Let me stop at this point long enough to say that just where that point is, is a matter of inquiry. That inquiry is not an easy one to make; it is one which covers the whole transportation system, which is a varied system, which has many intricacies, which is made up of many component parts, which has lines of different kinds, all under its jurisdiction; all of these details are involved in coming to a conclusion as to what amount in the aggregate is a fair return for the railways to make in order that they may carry on honestly, fairly and prosperously. I leave that subject just with this remark, that I am thoroughly convinced that there is not one of you who will not see perhaps more easily and more quickly than I see it, that carrying relief beyond a certain point, where reduction in freight rates hinders the effective working of our transportation systems, would instantly reflect itself in a lowering of the business life of the country because of a lack of the facilities of which we would be thereby deprived.

And at Regina, Sask., on November 19, 1924, the learned Chief Commissioner further emphasized this fundamental principle of ratemaking in the following language:—

> " In the first place there is this phase of our national life, in connection with the commercial and transportation interests which must be ever borne in mind, and which I preface with this remark, with which

I think we will all agree, I have never yet been where the most violent attacker of our transportation systems has taken the ground that these systems should not be allowed to have rates sufficient to reimburse them for their running expenses and a fair return for the money invested.

"We must remember, gentlemen, that there must be levied upon the traffic of the country, the passenger and freight traffic of the country, a sum sufficient to pay for the service which is being rendered, to pay a fair return upon the money which has been invested in them, both by those who may hold stock in the privately owned company, and the rest of us who are all stockholders in the great Canadian National Railways."

I entirely commend and subscribe to the principle stated above, and I confidently present it, for practical application, especially, in the present inquiry where it is important that it should be recognized in dealing with the whole Canadian Railway Rate situation.

The Canadian Pacific Railway Company, in its average return for the quinquennial period of 1921-25, only obtained a "fair return" on its investment of $921,000,000 odd, during an average of 255 days in each year; so that, as Mr. Lloyd points out, on an average of 110 days a year, for five years, the public has practically the free use of the railway's transportation facilities below cost. The average return, upon the investment as is shown, has been steadily decreasing, and lately, as shown by results, for the month of May and June, the decrease has been marked.

For the month of May, 1926, the net revenue was $2,448,876. For May, 1927, the net revenue was decreased over the previous year, for that month by $417,245. There was a decrease in revenue of $278,397 in 1927 (May), and there was an increase in expenses of $138,848, resulting in the net decrease noted above. Then taking the six months 1927, to June 30, the figures are as follows:—

SIX MONTHS TO JUNE 30

	Revenue	Expenses	Net
1927	$88,842,564	$75,830,264	$13,012,300
1926	85,227,786	71,271,099	13,956,687
	Inc. $ 3,614,778	Inc. $ 4,559,165	Dec. $ 944,387

The revenue for six months to June 30, 1927, was the largest since 1920. The expenses for six months to June 30, 1927, were the heaviest since 1920. With a decrease in net revenue, in 1927, for six months, of nearly $1,000,000 over that of 1926, and with the uncontradicted evidence that no fair return has been realized by this railway company, upon the present basis of rates, the apt and emphatic warning of the learned Chief Commissioner in the quotations I have made are very pertinent, and a matter of practical application of the basic principle of rate control to existing conditions.

The gross earnings for the month of July, submitted to the Board, shew a reduction of $559,000 as compared with July, 1926. The gross earnings for July, 1926, were $16,049,000, as compared with $15,490,000 for July, 1927, leaving the difference stated, as decrease.

XIX

It is pointed out in Mr. Lloyd's evidence, and in statements furnished by the railway company at the request of the Board, that annual wage increases have had to be made, which will decrease the revenues of the company by $5,000,000 per annum. The effect of these, is already beginning to be felt, and is

reflected in the increase of expenses, in the month of June and more so, in July. Ordinary business management, honest and efficient as it must be, would require in the face of this statement, that drastic economies be practiced to meet falling revenues, and which economies must necessarily involve a curtailment of the transportation service available to the public, to meet the financial ability of the railway company to furnish it. The requirements of the trade of this country make imperative, as one of the inducements, for the free and satisfactory interchange of commerce, between all parts of this country, that transportation service should be kept and maintained in a highly efficient state, and therefore the aim and spirit of the Order in Council cannot, in my opinion, be obtained by fixing, under the disguise of just and reasonable rates, rates which are unproductive, unremunerative, and, which furnish so inadequate a return that railway companies must retrench instead of expand their service placed at the disposal of the public.

Having regard to above general financial conditions of this railway, as shown by its statements filed with the Board, and to the demands insistently made upon it, in this investigation, for extensive changes in the rate structure, under various headings, which would involve large rate reductions, the estimated figures, as closely as they can be obtained of losses in revenue, under the different heads, of the proposals made, for such changes, may well be referred to. With a falling revenue, the estimated situation of this railway, as from the end of the year 1926, to be faced is as follows:—

Surplus — 1926		$7,462,825
Deduct wage increase—annual—arranged since 1926, and not otherwise provided for	$5,000,000	
Deduct C.P.R. estimate of increase in fixed charges, over 1926	750,000	
Deduct estimate of loss in revenue of branch line grain rates reduced to main line basis, eastbound, based on year 1926	949,573	
Loss in revenue (est.) resulting from westbound export grain rates to Pacific being reduced to C.P.R. main line basis to Fort William, based on 1926	521,849	
Loss (est.) if mountain differential removed (Stephens' evidence)	1,000,000	
Est. loss consequent upon rates on grain, Fort William to Quebec, St. John and Halifax being reduced as suggested and Company were required to meet reduction of 1 cent only in Buffalo—New York rate	700,000	
Total loss of revenue (annual est.)	$8,921,422	
Deficit or shortage in amount required to pay fixed charges and dividends—annual		1,458,597
	$8,921,422	$8,921,422

It will be seen, that although the company's figures are estimated, and apprehensive only, and, it is to be hoped will, in the result, not prove so gloomy, the result of any such rate reductions as are sought and which were pressed upon this Board, as changes which ought to be made in the Canadian railway freight rate structure, can only be regarded with serious apprehension as regards the possibility of this railway company being able to furnish adequate railway service, such as would increase and not reduce the transportation facilities of this country, in terms of the spirit and meaning of the Order in Council. No business organization could contemplate such changes and drastic reductions in revenue, without measuring the time when it would have to cease to do business. For a rate controlling Body, as this Board is, created by Parliament, for the express purpose, as recited in the Order in Council, of fixing, determining, and enforcing, just and reasonable freight rates, based upon the principle of fair return, to make, or to recommend, reductions, or readjustments in freight rates, which would bring any one railway company, giving vast transportation service in this country

to a state of financial condition where it has to face the possibility of a deficit, or shortage, in amount required to pay fixed charges and dividends of nearly one and one-half million dollars annually, would be entirely subversive of the principles of its constitution, of the highest interests of this country and of the true spirit and meaning of the Committee of the Privy Council, which delegated to this Board the duty of investigating the whole freight rate structure.

XX

Now, what is to be the result, if any such changes, as those involving these large reductions in revenue are made? It may be said, as regards the estimate of loss in revenue of $949,573, resulting from the equalization of rates on grain and grain products to main line rates, that if the reason for so doing is an unjust discrimination, its effect upon the revenue is not a factor for consideration in removing the discrimination.

If that be the case, the result will be serious enough. It would practically leave the railway company without any reserves and consequently without any fair return upon the value of its property used in transportation service. Such a situation as that was emphatically dealt with by the Board, as recently as February this year, in the case of the Bell Telephone Company of Canada, reported volume XVI, Judgments, Orders, etc., of the Board, p. 230, where rates of public service were placed upon a basis of return, which would leave a surplus of 2 per cent over all charges and dividends. The whole loss of revenue involved must be made up somewhere, so that the railway company may be maintained and assured, in a position, in which it can give the transportation service expected of it, and to expand that service, as the trade of this country increases and its commercial conditions require. That is a vital necessity, as a consequence of the opinions of Council in submitting the matter of the whole freight rate structure for investigation, and I am sure, from a reading of the Order in Council that no such calamitous results as those indicated were for a moment contemplated, in referring such a matter to us for investigation. From what sources then is this deficit to be made up? It cannot be "smeared" over the whole freight rate structure. It is not practicable to do so. That was decided as far back as the Western Rates Case 1914 and is a sound proposition. It would mean that those not enjoying, and not served by the special features involved in the changes would have to pay their share in freight rates, now found to be just and reasonable, by increase thereof. If there is to be a general freight rate increase throughout this country, on a general percentage basis, that will be a result which I fancy was not in contemplation of the Privy Council in remitting the inquiry to this Board. Such would have the same results as above outlined. The rates must of themselves at the time of their creation, be found to be just and reasonable and on the basis of yielding a fair return. It is palpable, that this Board would be entirely forsaking its functions if it were to act upon any different principle. The Board cannot guess where loss of revenue such as this is to be made up neither would it avail, or would it be a proper, or reasonable exercise of its functions to build up and put into force rates involving such results of financial loss and put them into force with the pious hope, whether believed in or not, that the loss or revenue entailed would be made up somewhere, at some future time, and in the meantime cripple the transportation companies, prevent adequate and efficient railway service and inflict injury upon the shipping public and obstruct the free interchange of commerce to the detriment of the public. Such a result, disastrous, as it will undoubtedly prove to be to the interests of this country, cannot be contemplated, under the circumstances presented to us and plainly exhibited in this inquiry. We must start on a sound basis and then build on it.

XXI

The foregoing observations apply with equal force to the financial requirements of the Canadian National Railways. That National System is entitled, in common with all other railways, to have its rates maintained and assured to it, under the Railway Act, upon the same principle of fair return. The dicta of the Chief Commissioner, upon that principle, which I have quoted, is an affirmation of all the decisions of the Board upon the question, and forms a cardinal principle of rate building and rate control, and must be universally respected and applied. Because the National Railway is owned by the people of this country is no excuse, or justification, for relaxing that principle, to the detriment and loss of that railway system, which loss must be borne and paid in additional taxation by Canadian people, thus arrogating to this Board tax imposing functions in abuse of its powers.

XXII

There are many subjects involved in the inquiry to which I have not referred. They are referred to elsewhere in the judgments of the Board. I have endeavoured to express my opinion upon some of the outstanding ones, and my views, as regards those subjects, while general, are based upon what is before us in evidence and argument.

I am opposed to the removal of the mountain differential rates, and to the extension of Crowsnest rates, or any export rates built upon, or on a parity with those rates, from Armstrong, Fort William or Port Arthur to the Maritime ports and those applications fail, and should be dismissed.

As to export grain rates westward to Pacific ports, for the reasons stated I think that the logical basis of rates is that prescribed by the Board in its 1923 judgment I have referred to. If these rates were to be put upon the same basis as rates eastward to Fort William, Canadian National mileage, Edmonton to Vancouver, should govern the Canadian Pacific rate Calgary to Vancouver, viz., 766 miles.

I am willing, under the special circumstances shewn, though with some misgivings, that the Canadian National Railways be ordered to publish a tariff showing a rate of 18.34 per 100 pounds on export grain from Port Arthur, Fort William, Westfort and Armstrong, Ontario, to the city of Quebec, and that all railways file tariffs showing the same export rates to Quebec port as to Montreal on export grain from bay ports, and all export traffic from Toronto and points west thereof.

In making these observations I have endeavoured to keep in view that the investigation required to be made by the Order in Council of the Canadian freight structure calls only for the conclusions of the Board as the body constituted under the Railway Act "with full power to fix, determine and enforce just and reasonable rates". No question of public policy is within the scope of the investigation, as I read the Order in Council, because no such questions are within the Boards functions as defined by the Railway Act. If I am right in this view, this Board, within its jurisdiction, is asked to review the rate structure, and under the powers it possesses under the Railway Act, to make such changes in that structure as it considers will best fulfil the requirements of the Act. If involved therein, or arising thereout, questions of public policy present themselves, they are not for this Board to consider or pass upon; the duty of the Board is confined to its administrative functions under the Act as that Act is made binding upon it by the paramount power of Parliament. The Order in Council, as framed, invokes and requires the full performance of those duties.

August 12, 1927.

COMMISSIONER LAWRENCE:

I concur in the judgment of the majority of the Board in respect to the differential mileage allowed the Canadian Pacific Railway Company in the Mountain district.

In evidence at p. 2312, Vol. 497, Mr. Neal of the Canadian Pacific Railway states: "The actual total lift westbound from Medicine Hat to Calgary is 2,319.96 feet, and eastbound it is 937.87 feet." He also states at p. 2313 that "the actual fuel consumption on the British Columbia district for the year 1925 was $546,674. That is, the fuel consumption in pusher service, making total pusher expenses $672,133.63."

At pp. 1935-1955, Vol. 496, Mr. Neal outlined in detail the tonnage that could be handled over each subdivision Vancouver to Calgary. He also gave particulars of the tonnage that could be handled over each subdivision west from Calgary to Vancouver. At pp. 1932-1933, in answer to a question Mr. Neal stated that the average equivalent gross tonnage per train which a 210 per cent engine would handle from Calgary to Fort William is 2723 tons, while the same class engine between Calgary and the coast would pull 1,554 tons, making allowance in each case for the use of pusher engines in the territory where these engines were used.

At pp. 1970-71, Vol. 496, the following evidence in regard to expense is submitted by Mr. Neal:—

> "A further cause of expense in the mountains is the differential in rates of pay as compared with the prairie rates. In other words, it costs for wages for train and engine crews to haul a train 100 miles, based on the rate of pay at the mountain rate, $31.60 as compared with $27 for the same service on the prairie. Other classes of employees in British Columbia receive a premium over the Prairie rates, as has already been mentioned in the case of train crews. For example, agents are paid 6 per cent more, relief agents 4.4 per cent more, and despatchers and operators 8 per cent more.
>
> "The speed of trains is retarded by Mountain conditions as compared with the prairies. This is not due alone to grades, but to general operating difficulties which exist in the mountains, such as curvature, necessity for cautious running, and more frequent inspection of equipment en route. The results include increased fuel consumption, and in many cases extra wages in the shape of overtime.
>
> "The average speed of freight and passenger trains, according to working timetables is as follows.—
>
> "West of Calgary: Summer, 11.1 miles per hour—
>
> "Mr. PITBLADO: Is that freight?—A. This is freight trains. Summer 11.1 miles per hour. Winter 11.3 miles per hour.
>
> "East of Calgary, 17.8 miles per hour in summer; 13.6 miles per hour in winter.
>
> "Passenger trains, west of Calgary 23.9 miles per hour. East of Calgary 34.7 miles per hour.
>
> "Q. Is that both summer and winter?—A. Yes, sir.
>
> "Q. Besides the extra wage cost and the smaller average size of train in the British Columbia district, it is our experience that fuel consumption is proportionately higher than in the case of train movements in what we usually speak of as level country. To place comparison on a uniform

basis which can be used for measuring transportation and engine efficiency on all parts of the system, it is customary to compute the number of pounds of coal consumed per 1,000 equivalent gross ton miles. On the prairie districts in 1925 it was from 88 to 126, and in British Columbia 164. That is taking the maximum and minimum figures."

Many more figures might be quoted from the evidence in respect of the expensive operation in this district, but I think the above figures are sufficient to show that the cost of operation in the Mountain district is greater than that on the Prairies.

I think that, under the circumstances, the application to remove the mountain differential and apply the prairie basis of rates to the Mountain section should be dismissed.

BRANCH LINES

I quote the following excerpt from the evidence of Mr. Neal at pp. 2018-2019, Vol. 496:—

"Q. We have heard a good deal from time to time as to the movement from branch line points as compared with main line points. What would you say as to the different conditions that apply as between branch line points and the main line?—A. Well, relatively, a branch line movement, from my knowledge, I would say is more expensive, because there is more picking up, or peddler service, compared to the total traffic movement that there is on the main line. By that I mean, that if you have got one way freight train, and ten through freight trains, your average cost necessarily is lower than if you have got nothing but way freight trains, and on most branch lines you have got nothing but way freight or pick-up trains, or switch trains, whatever you want to call them. They are more expensive, because instead of getting out of their initial terminal and going right through to their objective terminal, they have to stop at every station and switch off or take on cars, so that branch line operation, necessarily, is more expensive, on a unit basis, than main line operation.

"Also there is this fact that by virtue of there not being such density of traffic on branch lines, they are not maintained at the high main line standard, either as to bridges, or rail, or ballast, because the traffic is not there, therefore, you cannot operate the heavy locomotives on those branch lines that you operate on the main line. And that means more trains, more engine men, conductors and trainmen, and more wages, and more coal, so that branch line operation, in this respect, is obviously higher than your main line operation is.

"Q. In comparison with the traffic?—A. Yes. And, at the same time, you must remember that on these branch lines there must be some train service maintained even when your traffic is light. You cannot close them up entirely, and, under winter operating conditions, it is necessary to keep the line open although you may only operate three trains a week. The line must be maintained, it must be kept open, and, therefore, that element in your tonnage cost of operating that branch line is a considerably larger factor than it is on your main line where you are operating a number of passenger trains, and perhaps a considerable number of freight trains."

From the above quotation, and the amount of revenue involved, namely $949,573, I think that there should be a higher rate on the branch lines than on the main line, particularly on the branches north of the main track, but will concur in the judgment of my colleagues that the rate on branch lines be reduced to that of the main line track for the reasons set out by them.

RATES—NATIONAL TRANSCONTINENTAL RAILWAY

I agree with the judgment of the Assistant Chief Commissioner in respect to extending the Crowsnest rate east from Fort William, Westfort and Armstrong, Ontario to Quebec.

However, owing to the special circumstances and conditions, I am disposed, though with a great deal of hesitation, to agree that the application of the Quebec Harbour Commission may be granted; provided however, that such reduction is confined entirely to grain for export, via the city of Quebec, and not further extended or taken as a fair and reasonable rate in any district. Also, that all railways file tariffs showing the same export rates to Quebec as to Montreal on export grain from Bay Ports, and on all export traffic from Toronto and points west thereof.

I concur in the judgment of the Chief Commissioner in regard to the following questions:—

(*a*) Transcontinental rate scale;

(*b*) Terminal Tariffs;

(*c*) Different standard mileages, east and west;

(*d*) Domestic grain rates to British Columbia.

Ottawa, September 10, 1927.

COMMISSIONER OLIVER:

Conclusions regarding certain matters which were considered by the Board during the General Freight Inquiry.

(1) Rates Eastbound on Grain and Flour from the Prairies to Lake Superior ports.
(2) Rates Westbound from the Prairies to Pacific ports.
    (*a*) Grain and Flour for Export.
    (*b*) Merchandise rates (both ways).
    (*c*) Grain and Flour for Domestic use.
(3) Rates from the Prairies to Atlantic ports on Grain for Export.

I

RATES EASTBOUND ON GRAIN AND FLOUR FROM THE PRAIRIES TO LAKE SUPERIOR PORTS

On July 8, 1925, the Board of Railway Commissioners made two Orders in pursuance of certain amendments to Section 325 of the Railway Act of 1919, which had been Assented to on June 27, 1925.

The most important of the amendments in question provided that rates on grain and flour moving from all points west of Fort William to Fort William or Port Arthur, over all lines of railway then or thereafter constructed by any company subject to the jurisdiction of Parliament, should be governed by the provisions of the agreement made pursuant to Chapter 5 of the Statutes of Canada, 1897, generally known as the Crow's Nest Act.

In respect of this provision, the Board ordered that the Railway Companies affected,—

> "File such tariffs effective within fifteen days from the date of this Order as may be necessary to implement the provisions of the said Section 325 of the Railway Act, 1919, as amended".

The second Order of the same date referred to a provision of the 1925 amendment to Section 325 of the Railway Act of 1919, which removed the rates on westbound traffic from eastern Canada to the prairie west on certain commodities, from control by the terms of the Crow's Nest Act to control by the Railway Board.

In respect of this provision of the Act the Board ordered that,—

> "On the commodities aforesaid, the Canadian Pacific and the Canadian National Railway Companies restore, effective within 15 days from the date of this Order, the rates which were in force on July 6, 1924".

The purport of the first-mentioned Order was to require that rates which were being charged on grain and flour eastbound to Fort William that were higher than those fixed by the Crow's Nest Pass Agreement, should be reduced to the level of the rates fixed by that Agreement, within fifteen days, that is by July 23, 1925.

The purport of the second Order was to permit the railways to increase their rates on certain commodities westbound from certain points in eastern Canada to western Canada to a level considerably above those provided by the terms of the Crow's Nest Agreement. This Order also became effective on July 23, 1925.

In the result, the Order permitting the railways to increase westbound commodity rates was promptly honoured, and the increases became effective on July 23, 1925. But there was no like action in respect of the Order for the equalization downward of eastbound rates on grain and flour; and, at this date, the rates on grain and flour eastbound to Fort William are exactly the same as on June 27, 1925, when the Act of Parliament was assented to, and as they were on July 8th of that year, when the Order of the Board in pursuance of the Act was made.

On July 31, 1925, the Attorney General for the Province of Saskatchewan wired the Board giving instances of rates on grain from points in that province then being charged, which were above the maximum permitted by the terms of the Board's Order of July 8, 1925, and asking that the Board take steps to secure the enforcement of its Order, by the reduction of these rates. Similar protests were received from time to time from other parties to the like effect. The province of Saskatchewan is the one most vitally interested in the compliance of the railways with the Order of the Board, both because it is the largest grain producer, and because it is in that province that inequalities of rates are chiefly complained of.

Not only have the railways not made any changes in their eastbound grain rates since the Order of July 8, 1925, was issued, but on the several occasions when the matter was being publicly considered by the Board, they have argued in defence of that position that the rates now existing do as a matter of fact, conform to the terms of the Crow's Nest Act.

If I have been able to understand their argument, it was—First, that the Crow's Nest rates as established by the Act, varied in their per mile charge from various shipping points to Fort William, therefore a standard mileage could not apply throughout the area affected by the Order, and that the varying rates then and now in force were in fact in compliance with the Board's Order of July 8, 1925; and—Second, that the railways were entitled to charge higher rates on branch lines and secondary trunk lines than were permitted by the Crow's Nest Agreement on the main line of the Canadian Pacific Railway.

Under Sections 314, 316, 317 and 319 of the Railway Act, the Board is empowered to require equality of tolls and facilities on the part of the railways. In these Sections it is provided that,—

(*a*) There shall be equal tolls for equal service;

(*b*) The Board is empowered to determine what constitutes equality of service;

(*c*) Wherever there is a difference between the tolls charged the people of different districts for similar services by any railway, the burden of proving that the lower tolls do not amount to an unjust discrimination,—" shall lie on the Company."

There can be no doubt that the Sections of the Railway Act above referred to make specific provision for equality of rates,—that is a standard mileage rate,—over each railway system; subject to such variations as in the opinion of the Board are justified by conditions; the burden of proof of justification for any such variations being specifically placed upon the railways.

Whatever may have been the facts as to variation of grain rates for equal service under the Crow's Nest Agreement,—which applied only to the Canadian Pacific Railway and was made before the Railway Board was constituted,—there is no room for difference of opinion as to the express terms of the Act of 1925 in its application to all railways west of Fort William, or of the duties and powers of the Board under its provisions. The amendment changes subsection (5) of Section 325 of the Railway Act of 1919, and adds the following proviso,—

" Rates on grain and flour shall, on and from the passing of this Act, be governed by the provisions of the Agreement made pursuant to Chapter

5 of the Statutes of Canada, 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur, over all lines now or hereafter constructed by any Company subject to the jurisdiction of Parliament."

This proviso of the new subsection (5) of Section 325 of the Railway Act places all lines of railway west of Fort William in the position of a single system, subject to the statutory grain rates of the Act of 1897.

The amendment of 1925 then adds subsection (6) to Section 325, as follows:—

"The Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference respecting rates on grain and flour governed by the provisions of Chapter 5 of the Statutes of Canada, 1897, and by the Agreement made or entered into pursuant thereto, within the territory in the immediately preceding subsection referred to, on the ground that such discrimination or preference is justified or required by the said Act or by the Agreement made or entered into pursuant thereto."

The obvious purpose of subsection (6) is to place all the railways included in the proviso of subsection (5) in exactly the same position as to control and adjustment of grain and flour rates by the Board; while the proviso itself expressly states the standard to which all the grain and flour rates affected by such subsection (6) shall be adjusted.

I can only understand this subsection to be a definite instruction to the Board to establish a single standard mileage rate on grain and flour from all prairie points to Fort William. Unless such equalization were intended, there would not seem to have been any purpose to be served by Parliament in passing the proviso of subsection (5), and still less in passing subsection (6), which applies only to it.

C.P.R. Main Line Rates the Standard

The amendment of 1925 having provided for uniformity of eastbound grain rates throughout the prairie west, the question remained, suggested by the contentions of the railways, as to whether the lower per mile rate on the Canadian Pacific Railway main line, as it was in 1897, or the higher per mile rate on certain of the branches of that date, should be taken as a rate basis under the Board's Order of July 8, 1925. So far as the Canadian Pacific branch lines in Manitoba and eastern Saskatchewan were concerned, the per mile rates on grain and flour were and still are no higher than those on the main line. But on the Prince Albert and Edmonton branches of the Canadian Pacific in 1897, the rates were somewhat higher. These two branches were leased lines. They were not the property of the Canadian Pacific Railway. Because they were under lease for a comparatively short term, the rates were temporary in their nature and were, during the period of lease, kept at a level above those on the main line and on other branches. The Prince Albert branch passed from the control of the Canadian Pacific Railway in 1908. The Edmonton branch has since been acquired by it. On both lines all rates except those on grain and flour are now on the same per mile basis as on the Canadian Pacific main line.

Under such circumstances, it does not appear to be arguable that the standard mileage rate for the whole west should be fixed on the bases of the temporary rates on two branch lines, instead of on the rates on the main line, which, with the exception of a short period under special legislation, have remained fixed at the same level ever since the Act of 1897 became effective.

Whether or not the proviso of subsection (5) and its supplementary subsection (6) are accepted as a definite instruction to the Board to establish a single mileage standard of grain and flour rates in the territory west of Fort

William, there can be no doubt that under the provisions of the sections of the Railway Act hereinbefore referred to, and the amendment of 1925, the Board has full power to establish such a standard. In my opinion the interests both of the grain producers and of the railways can best be served by its establishment.

The suggestion has been made that because the proviso of subsection 5 of the Act of 1925 states that rates on grain and flour shall "be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada, 1897," the Board has not the power to readjust the rate groupings on the C.P.R. main line. If the rates which were in existence and were recognized in the reductions made by the Crowsnest Act of 1897 are in fact beyond the Board's power of readjustment, then the abnormal rates on the Prince Albert and Edmonton branch lines prevailing in 1897, and long since abandoned, must be reinstated. Their alteration must also be beyond the power of the Board. This contention is in direct opposition to the expressed intent both of the proviso of subsection 5 and of subsection 6 of the Act of 1925. The proviso of subsection 5 declares that the Crowsnest rates shall prevail throughout the prairie region and subsection 6 specifically empowers the Board to adjust those rates so that they shall not be discriminatory. Under the provisions of subsection 2 of section 317 of the Railway Act the Board has always permitted the railways to group stations for rate making purposes, as an exception to the specific provisions against discrimination contained in section 314. It is not conceivable that the Board has the power to establish rate groups and has not the power to readjust them, so as to reduce their necessarily discriminatory features as much as possible.

Branch Line Rates

In regard to the second contention of the railways that they are entitled under the anti-discrimination provisions of the Railway Act to charge higher rates on branch lines and secondary trunk lines than those fixed by the Act on the main line of the Canadian Pacific Railway, they argued that as actual costs of haul were somewhat greater on branch lines and secondary trunk lines, because of these lines being of less perfect construction than the Canadian Pacific main line, they were entitled to charge higher rates for grain traffic moving over them.

The question of charge for railway service has two sides. The customer who creates the traffic must be considered in framing the railway rate structure as well as the railway that hauls it. Unless traffic is created, there can be no railway earnings in hauling it. So that in fixing railway rates, it frequently becomes necessary in the interests of railway customers, to make an equal charge for two similar services of quite unequal cost of haul. If there are two adjacent business centres served by separate railway systems or by different lines of the same system, the cost of railway operation to the one place being greater than to the other, if the charge for railway service were based on the respective costs, the centre paying the higher freight rates must lose business, while its competitor would gain. In such case, the railway serving the place of decreasing business, correspondingly must lose traffic. Therefore, in the interests of the railways as well as of their customers, the principle of equalization of rates on the basis of equality of service, instead of on equality of cost, and having regard only to difference in mileage, has been established and universally accepted. Further in regard to mileage, it is a definitely and universally established practice that where there are two or more railway lines giving service to a certain point, the mileage rate on the shortest line governs the rates over all the lines concerned

It is a fact that there are basic differences between the rates in central Canada and the prairie west; also between those of the prairie west and British Columbia. Recent legislation has established a basic difference between the rates in the Maritime Provinces and those in central Canada; but within those great divisions there are no differences of rates either passenger or freight, no matter what the difference in the cost of construction or operation of the various lines may be. Except in the case of the regional divisions above mentioned, the principle of equal charge for equal service, without regard to local differences in the cost of the service, is recognized throughout the railway rate structure of Canada. The sole exception is in the case of grain rates in the prairie west.

Owing to less substantial and therefore less costly construction on branch and secondary trunk lines than on the main lines of the two chief railway systems on the prairies, the powerful, and therefore heavy, locomotives used on the main lines cannot be used on these branch and secondary trunk lines. The Canadian Pacific Railway uses a locomotive of 210 per cent rating and upwards on the main line but on the other lines the maximum is 155 per cent. This of itself means higher cost of actual haul on the branches; and the higher cost of haul on lines of a lower standard of construction is the basis of the demand by the railways for higher rates on these lines than on the main line.

It is of course a fact that the haulage of a ton of freight over a cheaply built branch, upon which only locomotives of minimum power can be used, and where traffic is delivered or picked up from station to station, must be more costly per ton than the haulage of heavy through trains by powerful locomotives over well built main lines. Besides the volume of traffic on the main line cuts down the overhead as it is not cut down on the branch. Considered as a separate enterprise, there is probably not a branch line in the prairie west that would show a profit on operation at present, or even at much higher, rates. And yet both railway systems are increasing their branch mileage from year to year.

The fact is that a main line without banches would be as unprofitable as branches without main line connections. The long main line haul under highly favourable conditions is what gives the railroads their net returns. But a single main line in such a region as the Canadian west could not secure enough traffic along its location alone to profitably employ the costly facilities which it provides. In order that the main line may be profitable it must have traffic and it can only get sufficient volume of traffic by means of branches. The railway system is made up of its main line and branches, each playing an equally important part in the general scheme of producing profit by giving service. It is not possible to disassociate one from the other and produce the desired result.

Of necessity the branch line mileage on the prairies is immensely greater than that of the main lines. Between Lake Superior and the Rockies, the two great Canadian railway systems have 14,360 miles of branch and secondary trunk lines, as compared with 2,764 miles of main line. To penalize producers served by branch and secondary trunk lines, as compared with those served by main lines, to the extent of one to three cents per 100 pounds on their grain is to strike at the very root of production, when every interest of the nation demands its increase.

Class rates on merchandise, commodity rates generally and express and passenger rates, as well, recognize main line and branches of each railway system as a single unit for purposes of operation and rate making. In every case the per mile rate applies without regard to whether the traffic affected moves over main lines or branches. Coal, lumber and grain are commodities locally produced in the prairie provinces. The values are low compared with tonnage. The two former are carried at the same per mile rate over main and branch lines throughout the prairie west. No reason was given during the hearing why grain

should be treated differently. The standard, if not the only, reason given for branch line construction in the west is the grain traffic. It would seem to be an inequitable rate adjustment if the grain which was the occasion of the branch being built were to be the only traffic hauled over it at a per mile rate higher than that prevailing on the main line.

In my opinion no evidence was brought before the Board at any time during the lengthy and numerous hearings that were given, which showed any such difference betwen the actual cost of haul over branch and secondary trunk lines and over the main lines in the prairie west, as would justify the difference in grain rates which were the cause of complaint by the Provinces of Saskatchewan and Alberta.

On this statement of facts and in view of the further fact that the Canadian Pacific Railway was the contracting party in the agreement of 1897 and was then the only system having a line across the whole prairie region, in my opinion the Board, in giving effect to its Order of July 8, 1925, would not be justified in adopting any other rate basis than that which applied in 1897, and which now applies to the Canadian Pacific Railway main line between Fort William and Calgary; having regard however to the fact that the Board has full authority under sub-section (6) to adjust such existing inequalities in mileage rates as may be found to exist between points along that line; and to fix proportionate rates from points at greater distances from Fort William than were covered by the original Crowsnest Agreement.

Adjustment of Main Lines Rates

As already stated on July 31, 1925, the Attorney General of Saskatchewan filed with the Board by wire a protest against the rates on eastbound grain then being charged by the railways, which, he asserted, were in excess of the limitations imposed by the Act of 1925 and made effective by Order of the Board of July 8 of that year. This protest from the Government of the Province most affected by the eastbound rates on grain, definitely raised the question as to what these rates should be.

On the filing of the protest of the Province of Saskatchewan, in my opinion it became the duty of the Board to define the rates which, by the Order of July 8, it had declared to be in force after July 23, 1925.

As the rates in force on the date that the Order was issued have not been altered by the railways up to the present time, in my opinion it has now become the duty of the members of the Board to state as definitely as may be convenient what in their opinion, the rates should be.

The purpose of the Crowsnest Act of 1897 was to reduce rates and that having been done, the effect was to constitute these rates as reduced a fixed maximum. The question of the equalization of rates did not arise until the Railway Board was established and empowered by the Act of 1903. The primary reason for the existence of the Board, as defined in the Act, was that it should be the means of securing due and reasonable equalization of rates.

In accordance with accepted railway practice, the present adjustment of grain and flour rates on the Canadian Pacific Railway main line eastbound to Fort William gives or purports to give a proportionate reduction in the per mile rate as the mileage from Fort William increases. Following are the grain rates in cents per 100 pounds from points on the Canadian Pacific Railway main line, Winnipeg and west, with the intervening mileages. Each point given is the most westerly of the group taking the rate shown:—

From	Miles	To	Cents
Winnipeg	420	Fort William	14
Burnside	63	Winnipeg	15
Brandon	70	Burnside	16
Griswold	24	Brandon	17
Broadview	107	Griswold	18
Qu'Appelle	59	Broadview	19
Moose Jaw	75	Qu'Appelle	20
Parkbeg	34	Moose Jaw	21
Swift Current	76	Parkbeg	22
Maple Creek	84	Swift Current	23
Kininvie	108	Maple Creek	24
Gleichen	71	Kininvie	25
Calgary	52	Gleichen	26

Although the rates from the several stations in the same group are not in fact equal in regard to mileage, and therefore are in violation of the express terms of Section 314 of the Railway Act, under the provisions of Section 317 such grouping of several stations under the same rate may be permitted at the discretion of the Board. Sub-section (2) of Section 317 says,—

> "The Board may by regulation declare what shall constitute substantially similar circumstances and conditions or unjust or unreasonable preferences, advantages, prejudices or disadvantages, within the meaning of this Act".

These station groups vary on the main line from three in the 24 miles between Brandon and Griswold, to fourteen between Griswold and Broadview in 107 miles. While it is no doubt quite reasonable that several grain shipping stations should be grouped together under the same rate, it does not seem fair that one group should cover 24 miles, as in the case of Brandon to Griswold and the adjoining group 107 miles, as in the case of Griswold to Broadview. The material result of the smallness of the Brandon-Griswold group is that five or six important grain producing points located westward from Griswold are and have been paying one cent per 100 pounds over and above the rate their mileage from Fort William entitles them to. That is, they have been included in the next westerly group, which being further from Fort William, pays a cent per 100 pounds higher rate.

The present groups are no doubt as they were in 1897, and the Board has full power to maintain them. But, in my opinion, as already stated, the Board is instructed by the express terms of sub-section (6) of the amendment of 1925 to remove such extreme instances of discrimination as the one above noted.

In connection with the subject of the readjustment of existing groups, I desire to point out that a difference of one cent per 100 pounds in the price of grain delivered at two adjacent railway stations, means that business interests located at the station where the higher price is being paid, of necessity enjoy an important advantage over their rivals of the next station six to ten miles distant, at which, owing to the higher rail rate to Fort William, the lower price must be paid. This condition occurs in all cases as between the station at which one group ends and that at which the next group begins. It is a condition which cannot be avoided; but I desire to offer a suggestion by which it may be minimized. If the groups were cut in half as to size and doubled in number, the difference in rates from one group to another would be only half a cent. This would reduce the respective advantage and disadvantage of the rival towns at meeting points of the several groups to a point at which it would not be so seriously felt. I desire to point out that with the more intensive business methods of to-day, a difference in grain prices of a cent per 100 pounds, as between two adjacent railway stations (and towns) means a great deal more than it did twenty years ago. I do not see that the change to smaller groups

would make any serious difference to the railways, while I believe that it would be of very great advantage to the section of the public directly affected by the prsent sharp differences in rates.

I note that on the Edmonton, Dunvegan and British Columbia Railway, now operated by the Government of Alberta, there is in most cases a difference of only half a cent from group to group, instead of one cent as the length of haul increases.

Fully ninety per cent of the grain of the prairies west is produced in the area lying between Winnipeg on the east and the railway centres of Edmonton, Calgary, and Lethbridge in the west. This area is served by six railway lines over which traffic moves from the three western centres mentioned to converge at Winnipeg on the way to Fort William. From Moose Jaw on the Canadian Pacific main line, the Outlook branch extends northwesterly to Lacombe which is on the most direct rail line connecting Calgary and Edmonton. This constitutes a seventh line over which grain moves eastward as far as Moose Jaw under the same conditions as on the six through lines. As the Canadian Pacific main line is one of the six through lines and as the comparative distances and traffic conditions generally are similar on all, the rates on that line constitute a standard by which the rates on the parallel lines may conveniently be measured.

The existing and accepted Crow's Nest rate from Calgary to Fort William is 26 cents per 100 pounds. The rate from Winnipeg to Fort William on all lines is 14 cents. That is, there is a difference of 12 cents between the rate from Winnipeg and the rate from Calgary to pay for the longer haul of 832 miles. This main line haul from Winnipeg to Calgary is divided into 12 sections or groups which would average between nine and ten stations to a group, but actually vary from three to fourteen stations to a group.

The rate steps up one cent per group as distance from Fort William increases, until the rate of 26 cents is reached at Namaka, fifty miles east of Calgary. The 26 cent rate applies to all stations beyond Namaka, as far west and including Calgary.

There is a secondary through line of the Canadian National Railways paralleling the Canadian Pacific main line from Winnipeg to Calgary, which crosses from south to north of the Canadian Pacific at Regina, crosses the South Saskatchewan at Dunblane, and reaches Calgary by way of Drumheller. This line is of considerably longer gross mileage than the Canadian Pacific main line, but its rates must be governed by the competitive conditions on that line. Therefore, the length of line between Winnipeg and Calgary, if cut into twelve groups corresponding to the twelve groups on the Canadian Pacific main line, with the difference in rate of one cent per group, would effectively equalize rates on that line of the Canadian National system with those on the Canadian Pacific Railway main line.

Three of the through lines which diverge from Winnipeg converge again at Edmonton. They are the Canadian National main line, 792 miles; the Dauphin-Warman-Battleford line of the Canadian National system, 826 miles and the Canadian Pacific Winnipeg-Edmonton line, 848 miles. These three lines have an average length of 822 miles from Winnipeg or ten miles less than the Canadian Pacific main line, Winnipeg to Calgary. The rate from Edmonton to Fort William is 26 cents per 100 pounds, the same as from Calgary by all three lines. The length of haul to Fort William by the shortest Canadian National line is 1,227 miles, as compared with 1,243 from Calgary by the Canadian Pacific main line. Divided into 12 groups for rate purposes between Edmonton and Winnipeg on the Canadian National main line, the groups would average 66 miles each; on the Canadian National line by way of Warman, 69 miles each and on the Canadian Pacific secondary trunk line, 70 miles. On the Canadian Pacific main line the 12 groups average somewhat less than 70 miles.

While the distance between stations vary, there is an average of approximately ten stations to seventy miles. There seems to be no reason why stations on the three lines converging at Edmonton should not be divided into twelve groups of equal or approximately equal length on each line, or if the step up of half a cent were adopted instead of one cent, then into twenty-four groups of approximately five stations each.

Lethbridge, the most southerly of the three western railroad centres mentioned is 1,256 miles from Fort William by way of the most southerly through line of the Canadian Pacific Railway. By that line it is 836 miles from Winnipeg. Although this is four miles further from Winnipeg than Calgary, Lethbridge has a 25 cent rate to Fort William, as compared with Calgary's 26 cents. This comes about because of the short cut from the Canadian Pacific main line at Dunmore to Lethbridge which gives it the same actual rail distance from Winnipeg as Gleichen on the Canadian Pacific Railway main line, which also has a 25 cent rate. As already stated, the rate by way of the shorter line governs and Lethbridge gets the benefit in this case.

Although the secondary through line between Lethbridge and Winnipeg is as long as the main line of the Canadian Pacific Railway to Calgary, the rate to Lethbridge fixes the maximum that can properly be charged points east of Lethbridge. This condition would be met by dividing the south line distance between Winnipeg and Lethbridge into eleven groups instead of twelve. In that case the average length of a group would be seventy-six instead of seventy miles as on the main line.

In Manitoba and to some extent in Eastern Saskatchewan the adjustment of rates on connections and branch lines has been made on the basis of the Crow's Nest rates. The like adjustments in the regions further west would have to be made after due consideration of each case, having regard on the one hand to mileage distance from Fort William and on the other to the stress of competition. There is no reason to suppose that the difficulties which have been overcome in making rate adjustments in accordance with the Crow's Nest Agreement on branches and connections in Manitoba, cannot equally be overcome, in making similar necessary adjustments in Saskatchewan and Alberta.

It is a recognized principle in adjusting railroad rates that the longer haul is entitled to the lower rate per mile. The graduation of rates from Winnipeg westward accords with this principle. The fourteen cent rate per 100 pounds for 420 miles from Winnipeg to Fort William is equal to .0333 of a cent per 100 pounds per mile or two cents per bushel per 100 miles. The twenty cent rate per 100 pounds from Moose Jaw, 820 miles, is .0244 of a cent per mile, or 1.464 cents (a shade under one and a half cents) per bushel per 100 miles. The twenty-six cent rate per 100 pounds from Calgary, 1,243 miles, is .0209 of a cent per mile or 1.256 cents (a shade over $1\frac{1}{4}$ cents) per bushel per 100 miles.

Longer Distance Rates

Lethbridge is situated on the Canadian Pacific line which extends through the Crow's Nest Pass. There is a large area of important grain producing territory along that line extending for over seventy miles west of Lethbridge. That area is entitled to share according to mileage in the advantage enjoyed by Lethbridge because of its short connection with the main line. A 26-cent rate at present applies to the four stations west of Lethbridge within a distance of 32 miles. Beyond that distance the rate is increased to 27 cents for five stations within the next 36 miles and then to 28 cents. It would appear that the group now taking the 26-cent rate should extend as far west of Lethbridge as Calgary is west of Gleichen which is at the end of the 25-cent group on the main line, or fifty-one miles, instead of thirty-two miles west of Lethbridge, and that the next group carrying the 27-cent rate should be of approximately the average length of seventy miles.

The same rule would properly apply to the branch extending sixty-five miles southwesterly from Lethbridge to Cardston.

The grain producing area lying west of Calgary and tributary to the Canadian Pacific main line for a distance of thirty-four miles, including six stations, has a group rate of 27 cents per 100 pounds. At a distance of forty-two miles from Calgary the rate becomes 28 cents. This latter increase is not warranted by the mileage, but as there is little or no grain production at or beyond that point, the material result is not important.

There is an important grain producing area on the Canadian National main line immediately west of Edmonton and on the nearly parallel Whitecourt branch. For approximately seventy miles west of Edmonton on both lines, the maximum rate as fixed by the Act of 1925 and as ordered by the Board, should not be more than 27 cents. But instead, on the main line, in the first grouping of 13 stations in sixty miles, the rate is 28 cents, a step up of two cents instead of one cent as is the case east of Edmonton. On the second grouping of 11 stations in forty-eight miles, the rate is 29 cents and on a third grouping of two stations in five miles, which includes Edson, the divisional point next west of Edmonton and 133 miles distant, the rate is 30 cents. This makes a difference in rate of 4 cents per 100 pounds in 133 miles westward from Edmonton which is 2 cents per 100 pounds more than the rates on the Canadian Pacific main line for the like distance. As the stations at which these rates govern are on the main line of the Canadian National Railways to Vancouver, there can be no contention that there is an extra cost of haul because of track, traffic or any other conditions.

On the Whitecourt branch the like rates prevail. The first group west of Edmonton, 9 stations in fifty-five miles, takes a 28-cent rate; the next group of 2 stations in five miles takes 29 cents, and the third group of 7 stations in forty-six miles, including the terminus at White court, 107 miles from Edmonton, takes a 30-cent rate, which is two cents per 100 pounds more than the mileage from Fort William warrants.

On the Athabasca branch of the Canadian National which extends northerly from Edmonton, the first group of 12 stations in sixty-six miles northward from Edmonton pays a 28-cent rate and the remaining 4 stations in twenty-eight miles pay a 29-cent rate. In this case the excess rate is one cent per 100 pounds for the whole branch.

On the St. Paul de Metis branch of the Canadian National, which extends 127 miles northeasterly from Edmonton, the first station 14 miles from Edmonton, pays a 27-cent rate, but the second station at 22 miles is one of a group of 10 stations in seventy-three miles which pay a 28-cent rate. The remaining five stations on the branch pay 29 cents. The excess rate in this case is one cent per 100 pounds throughout.

In the case of all four Canadian National lines above mentioned,—the main line west of Edmonton and three branches,—the first group increase beyond Edmonton is not one but two cents, while on both the Canadian Pacific Railway main line and the Crowsnest line, the group increase beyond both Lethbridge and Calgary is only one cent. In my opinion this is plainly in defiance of the Board's Order of July 8, 1925.

The Edmonton, Dunvegan and British Columbia Railway extends northwesterly from Edmonton to Wembley in the Grande Prairie District of the Peace River country. This railway is owned and operated by the Government of the Province of Alberta, but having been built under Dominion Charter, it is under the jurisdiction of Parliament and therefore its rates are subject to the Act of 1925 and to the Board's Order of July 8 of that year. Since November 11, 1926, the eastbound grain traffic of this railway has been routed to Fort William over the Canadian National Railways. Dunvegan Yards within the city of Edmonton, near by and connected with the Canadian National main

line, is the southern terminal of the Edmonton, Dunvegan and British Columbia Railway. From that point to Fort William the rate is 26 cents per 100 pounds.

The groups and rate from, but not including, Dunvegan Yards to the terminus at Wembley, are as follows,—

Group	Stations	Miles	Rates in cents
1	10	52	28
2	7	40	29
3	3	30	29½
4	4	13	30
5	4	17	30½
6	3	13	31
7	3	12	31½
8	3	14	32
9	3	14	32½
10	4	25	33
11	3	28	33½
12	3	20	34
13	5	22	34½
14	3	21	35
15	3	22	35½
16	2	15	36

The total distance from Dunvegan Yards to Wembley is 417 miles.

The amendment of 1925 to the Railway Act says,—

> "Such rates (Crowsnest rates) shall apply to all such traffic (grain and flour) moving from all points on all lines of railway west of Fort William to Fort William and Port Arthur, over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament."

The Edmonton, Dunvegan and British Columbia Railway was constructed to Grande Prairie City by a company chartered by and therefore under the jurisdiction of Parliament. It became the property of the Government of Alberta by foreclosure of mortgage against the company. The extension from Grande Prairie City was built by the Alberta Government after foreclosure, but under and subject to the powers conferred by the Charter. Therefore the Board's Order of July 8, 1925, applies to that railway.

The rail distance from Winnipeg to Moose Jaw on the Canadian Pacific Railway main line,—upon which the Crowsnest rates are admittedly effective,—is 400 miles. The difference in rate between the two points is six cents. From Moose Jaw to Calgary the rail distance is 433 miles and the difference in rate is also six cents. By averaging the respective mileages between Winnipeg and Moose Jaw and between Moose Jaw and Calgary, and applying that average to the mileage from Edmonton to Wembley, the difference in the Fort William rates as between Edmonton and Wembley is limited to six cents instead of ten cents as at present. The proper rates from intervening points can be arrived at by dividing the 63 existing stations into 12 groups of four to six stations each, with an increase in rate of half a cent per 100 pounds from group to group as mileage from Fort William increases.

The Central Canada branch of the Edmonton, Dunvegan and British Columbia Railway leaves the main line at McLennan, 262 miles from Edmonton and extends to Whitelaw west of Peace River, a distance of eighty-six miles. As this branch was built under Provincial Charter and without Dominion aid, the Board's Order of July 8, 1925, does not apply to it. It is being operated in conjunction with the Edmonton, Dunvegan and British Columbia Railway by the Railways Department of the Alberta Government.

The Provincial Government also owns and operates the Alberta and Great Waterways Railway which extends three hundred miles from Carbondale Junction on the Edmonton, Dunvegan and B.C. line to McMurray on the Athabasca river. That Government also owns and operates the Lacombe and North Western Railway, which joins the Canadian Pacific Calgary and Edmonton line at Lacombe and extends northwesterly some fifty or sixty miles. These two lines, operated by the Provincial Department of Railways, are also outside the scope of the Board's Order of July 8, 1925.

Effect on Railway Revenues

A great deal of time was occupied during the several hearings by the endeavour of the railways, in evidence and in argument, to establish, first,—that the general application of equalized rates as provided by the amendment of 1925 would so reduce their revenues that their welfare would be seriously prejudiced; and second,—that the present rates on grain and flour were in themselves unprofitable.

It may fairly be estimated that the difference between the earnings of the railways because of the discriminatory feature of the tolls at present collected and what their earnings would have been had the Board's Order of July 8, 1925 been obeyed, has meant to each of the two great systems an average of more than one million dollars during each of the two crop years since the amendment of 1925 was passed. The amount is large enough and the result of the shifting of that much of the burden of cost of transportation of western grain to market, as betwen producer and carrier, is sufficiently far reaching, to constitute the matter a national problem of major importance.

On behalf of the Canadian Pacific Railway reference was made to the fact that the Interstate Commerce Commission of the United States was authorized by Congress to allow rates that would enable the railways of that country to earn 5¾ per cent on the value of the railway property. The property investment of the Canadian Pacific Railway, as at the end of 1925, was stated by Mr. E. E. Lloyd, Assistant Comptroller, to be $939,849,107. The average investment for the past five years was $921,814,800. The average net earnings of the system for the five years 1921-1925 was $37,072,892 per year, which provided a rate of only 4.022 per cent and was therefore $15,931,450 per year short of what he claimed the company was entitled to.

Mr. Lloyd emphasized this position by stating that on the present average earnings, "there is an investment in the railway property of $277,068,852, which is not earning any return whatever".

In further emphasis of the same point, he said that the average net earnings $37,072,892, only represents a fair return on the investment (average) of $921,814,800 for 255 days of each year, "with the result that the public has had the free use of our transportation facilities for 110 days of each year".

Mr. Lloyd further estimated that with the rate for money at five per cent, any industrial enterprise has a right to a surplus of two and a half per cent above fixed charges and dividends. With this addition the Company was entitled to a surplus of $23,045,370. On these calculations instead of an average earning of 37 millions as at present, they were entitled to earn 76 millions. Or in other words, instead of the fraction over 4 per cent which the Canadian Pacific actually earned in 1925 on nearly a billion of property investment, it was entitled to earn something over 8 per cent.

The rates charged for transportation service are the source from which railway revenues are chiefly derived. If there is merit in the Canadian Pacific contention that they are entitled to an 8 per cent dividend on their total property investment instead of the fraction over 4 per cent which the present rates give them, the obvious and only remedy is the doubling of the railway rates, not only in the prairie west but throughout Canada.

The Congress of the United States has taken the responsibility of fixing a standard of railway earnings in that country, to which the Interstate Commerce Commission is subject. The Parliament of Canada can do the same whenever it is so minded. The Railway Act does not empower and its terms do not contemplate the empowering, of the Board of Railway Commissioners to make general increases or decreases of rates merely of its own motion.

In the past on extraordinary occasions, the Government, acting under Parliamentary authority, has instructed the Board to make general increases in railway rates. No such authority has been conferred upon the Board in the present case. On the contrary, the Order in Council of June 5, 1925, under which the general freight rates enquiry was held, expressly directs the Board to establish equalized rates both eastward and westward. And the Act of June 27, 1925, also expressly directs that rates on grain and flour eastbound from the prairies to Fort William be equalized to a standard already fixed by legislation. In the face of these facts, the suggestion by the Canadian Pacific Railway that they are entitled to twice their present earnings on all their lines throughout Canada, cannot be accepted as a reason for maintaining prairie grain rates eastbound at a point one to three cents per hundred pounds higher on 84 per cent of its prairie system than the statutory rates which admittedly apply on the remaining 16 per cent. Even assuming that the Company are entitled to earn 8 per cent on their total property investment, as they assert, the fact that they thereby have a claim for increased rates against the users of all their lines throughout the Dominion cannot fairly be offered as a reason for the maintenance of alleged discriminations in respect of grain rates, against the people of a section of a section of the Dominion,—that is the grain producers along branch railway lines in the prairie west.

In the course of his evidence Mr. Lloyd "conservatively estimated" the present value of the railway property only, not including land or outside assets, at $1,500,000,000, or one-third more than its investment value as shown in the Company's books. Having regard to the attitude of Counsel for the railway as to earnings on the full value of the property investment of the Company, knowledge of the sources from which the values comprised in this property investment are derived becomes necessary, especially in view of the estimate of value over and above the amounts actually shown. The common stock, preferred stock, debentures and debenture stock, 10 year bonds, Algoma Branch bonds, etc., upon which interest or dividends are paid, amounted at the end of 1925 to $648,893,470. This is the amount of money actually invested in the Company. Interest on the interest-bearing securities comprised in this investment varies from 4 to 5 per cent. In no case is over 5 per cent interest paid. No interest is paid on $290,945,637 of the total property investment upon which the earnings paid over 4 per cent in 1925. This non-interest-bearing "property investment" of the Company comprises surpluses from all sources "ploughed back into the property", as Mr. Lloyd said. It includes besides railway earnings, premiums on stock issues, earnings on special income account, sales of lands, townsites, etc.

From the foregoing it appears that of the property valuation amounting to nearly a billion dollars, upon which the company claims the right to earn a total of eight per cent, a little over two-thirds represents money invested and nearly one-third comes from undistributed profits and cash and land bonuses. It also appears that the average net earnings for the past five years of $37,072,892 approximated fairly closely to $5\frac{3}{4}$ per cent on $648,893,470 of capital actually invested as of 1925.

An exhibit filed by Mr. Lloyd showed that the net earnings of 1925 were $40,154,774 (the highest earnings since 1917 and three millions over the five-

year average), and the surplus for the year was $3,010,315. The company's annual report for 1926 gives the net earnings for that year as $44,945,126, and the net surplus for the year as $7,462,824.

If the question before the Board were the sufficiency of the railway revenues, it can scarcely be successfully argued that a reduction in revenue following upon rate equalization and amounting to one and a half to two millions a year, would wipe out the surplus of three millions in 1925 or that of seven millions in 1926.

Responsibility as to Wage Increases

In the course of the hearing Counsel for both railways used the argument that wage increases now under consideration, or recently granted to various classes of employees, would amount to from five to seven millions of dollars for each railway system, and that in view of this increase in operating costs their revenues should not be further reduced by the equalization of eastbound grain rates as ordered by Parliament. When wage increases granted by the railroads to their employees are used in argument against the removal of an instance of alleged rate discrimination, in my opinion the Board is, in effect, being asked to assume a measure of responsibility altogether outside its jurisdiction. The fact that no details of the present or proposed wage agreements were brought to the attention of the Board, either in evidence or in argument, would seem to clearly establish that as the view also held by the railways. So long as the several wage agreements are a domestic matter between the railroads and their employees, they are not in my opinion, properly subject to the consideration of the Board. And if they are of such an amount that it becomes necessary to pass increases in wages on to the public by a general increase in rates, that must be a subject for consideration by the Government and instruction to the Board, as on former occasions when it was held that general wage increases were to be met by general rate increases.

In this connection I desire to submit, first that to order a general rate increase for any cause except when specially authorized by the Government, is not within the jurisdiction of the Board as contemplated by the Railway Act, and second that a condition which might be held to warrant a general rate increase cannot be used to justify the maintenance of an existing case of rate discrimination.

Receipts from Land Bonus

Among the items which make up the 940 million dollars of property investment of the Canadian Pacific Railway Company, as at the end of 1925, are the net revenues derived from sales of agricultural lands in the prairie west and also an estimate of value of the lands still held, being part of the original 18½ million-acre land bonus. The statement of land and properties contained in the Canadian Pacific report for 1926 shows that the company held at the end of that year, 4,292,000 acres of selected agricultural land in the prairie west. Of this amount 158,000 acres valued at $10 an acre was in Manitoba; 1,314,000 acres in Saskatchewan, and 2,406,000 acres in Alberta. The lands in the two latter provinces were valued at $12 per acre. There was besides in Alberta 52,136 acres of irrigable land valued at $30 an acre and 361,863 acres valued at $40 an acre. The total value of these lands is given as $62,000,000.

It also appears from the company's several annual reports that up to and including the year 1926, sales of both ordinary agricultural and irrigable land have amounted to $182,000,000. The sums thus derived have been charged with various expenditures, so that the net amount as shown in the books is only a comparatively small part of that amount. But that is the amount that the agricultural settlers of the prairie west have paid or are in process of paying

the railway company. And it is from them or from other such settlers that the company expects to get the $62,000,000 at which it values the remainder of its agricultural and irrigable lands. The total of $244,000,000 is what the agricultural population of the west has paid, is paying, and is expected to pay in aid of the construction and operation of the Canadian Pacific Railway, over and above bearing their equal share of the general burden of taxation borne by the people of the rest of the Dominion in respect of bonuses paid the Canadian Pacific Railway in cash and in constructed line. In this connection it may be mentioned that although the average price of unsold agricultural lands in Saskatchewan and Alberta is placed at $12 per acre, the actual price of such land as sold in the years from 1912 to 1924 inclusive, averaged from $15 to $17 an acre. Although the land belonged to and was granted by the people of the whole Dominion, it is the farming population of the west only that actually has provided and is providing the money. And the money is paid for land from which they produce the crops that give the railway its traffic.

It was clearly established during the hearing that the earnings on the transportation of grain, chiefly wheat, was the great source of net revenue, directly and indirectly, of both railways. Statutory rates on grain were provided in 1897 to encourage the development of grain growing on the prairies, as a means to national prosperity. The results have magnificently justified the policy of that date. By the Amendment of 1925, Parliament reaffirmed and extended the policy of 1897. In my opinion it is for the Board to see that full effect is given to the intent of Parliament. Increased volume of traffic is the great need of the railways of Canada. Rates that are believed to be unjust, because they are unequal, can only tend to decrease production and thereby decrease traffic.

As to Profits on Grain Rates

As to whether the present grain rates are profitable to the railways; it was established by reference to the official traffic returns made by the railways themselves, not only that the net earnings per mile of line were higher in the western grain traffic region than is the region east of the Great Lakes, but also that it was during the months of heaviest grain movement that the net returns were highest. This applied to both railway systems. It was also shown that the net returns were higher in the years of largest crop. In view of these facts, it does not seem possible to accept as proven the first contention of the railways that the present grain rates are, in themselves, unprofitable.

In this connection it becomes necessary to point out that while the Amending Act of 1925 provided for the equalization downward of eastbound grain rates, it also permitted a substantial increase on the westbound rates on a considerable list of important commodities of heavy tonnage, moving from eastern to western Canada. The amendment of 1925 released the rates on these commodities from the statutory limitations of the Crowsnest Act. The Board by its second Order of July 8, 1925, already mentioned, authorized substantially increased rates on those commodities.

From July 23, 1925, the railways have been enjoying and the consumers of the west have been paying these increased rates. There can be no doubt that Parliament intended this gain to the railways, as granted by the Board, in respect of the westbound traffic mentioned, should be considered as an offset against any possible temporary loss following upon the equalization of the eastbound grain rates, until increased production had made up such loss, if any were actually incurred.

At this date the railways have for nearly two years, been in the full enjoyment of these increased westbound commodity rates; but, during the same period, have been permitted to maintain the higher discriminatory grain rates that the

amendment of 1925 was intended to reduce. If there is to be consideration of the question of loss to the railways because of the extension and proper application of the Crowsnest rates on grain, in my opinion there must also be an equal consideration of the gain to them resulting from the increase of westbound commodity rates released from the limitations of the Crowsnest Act.

Further, in regard to the contention of the railways as to the injury to their financial position that must result from the equalization of all present eastbound grain rates to a Canadian Pacific main line basis, it must be admitted that if there were only to be a fixed amount of grain to haul, from the prairies to Fort William each year, certainly a decrease in the grain rates must correspondingly decrease the revenues of the railways. But that is as far from the actual condition as it is possible to conceive. Having regard to the area of vacant cultivable land readily available and the present distribution of population throughout the provinces of Saskatchewan and Alberta, it is safe to say that given crop and market conditions sufficiently favourable, the area of wheat production in those provinces would be doubled within five years.

It was urged upon the Board by the railways that increased density of traffic, which means increased volume of tonnage, was an important factor in reducing the actual cost of haul. The breaking up of new ground—the increase of cultivated acreage and therefore of railway traffic,—whether by the man already in occupation, or the new arrival, is a matter of judgment for each settler. Given the assurance of a reduction in the cost of getting his grain to market, the settler is encouraged to increase his acreage of cultivation. But the settler hauling his surplus grain to a certain railway station, who knows that another settler, circumstanced as he is but who hauls to a different station, gets his grain to market at a lower cost, is not thereby encouraged to increase his acreage. And if he understands that that condition is to remain notwithstanding an Act of Parliament to the contrary, he is definitely discouraged by the feeling that he is being treated unfairly.

If increase of tonnage and consequent density of traffic mean to the railways what they represented to the Board that they did mean during the several hearings, the quickest and easiest way to get that desirable increase of tonnage is by a proper equalization of the grain rates eastbound,—and westbound as well—thereby removing the sense of injustice now felt by so large a proportion of the farmers of Saskatchewan and Alberta, and encouraging them by a sense of receiving fair treatment to do their best for themselves, which by increase of production means best for the railways, according to their own showing.

This further fact, it seems to me, is also worthy of attention. Canada's grain export is such a large proportion of her total trade that its increase or decrease is a matter of serious national interest. A transportation policy that would involve a continuance of discriminatory grain rates,—or an increase of present standard rates as suggested by the railways,—could not fail to have a far-reaching effect to the detriment of the national welfare and prosperity by tending against increased production.

United States Grain Rates

During the course of the hearings in the rates case, it was persistently urged by the railways that as grain rates were somewhat higher in the Western United States than in the Candian west, that was proof that the Canadian rates were unduly low. It does not appear to me that the comparison is fortunate, from the railway point of view. In the northwestern States, with which the comparison is made, wheat is the chief cash crop of the farmer, as it is in the Canadian west. The cash returns from his wheat is the measure of his buying power and of his material success. The cost of rail haul to market is an important factor in his operations.

Throughout the chiefly grain-growing regions of the United States a serious condition of agricultural depression admittedly prevails. The Fordney Tariff, actually in force, and the McNary-Haugen Farm Relief Bill which passed both Houses of the United States Congress at its latest Session and was only prevented from becoming law by the President's veto, are not merely local admissions, they are national assertions, of the wide-spread character and the seriousness of that depression. Failing legislative relief, or indeed because of the depression itself, there is and has been in progress a campaign to decrease production in the grain growing States.

Decreased returns of the railways which serve these States reflect the result of this condition of depression and campaign for decreased production. Given such a condition of mind amongst the farmers of the Canadian west as has prevailed for some years and still prevails throughout the grain-growing regions of the United States, and the two Canadian railroad systems would be showing much less favourable returns than at present. Conditions which so affected the railways would of necessity be reflected in the general financial state of the country.

The difference in situation between the grain rates in the two countries since the War, has been that in Canada there was a moderate maximum, fixed in the first place and afterwards reaffirmed by Parliament, which guaranteed to the producer in advance what the cost of the rail movement of his crop would be. Except for the discriminations complained of, which are the subject of present consideration, this gave him an assurance against exploitation that encouraged and enabled him to meet other difficulties with better spirit and therefore with greater success.

In the United States the Interstate Commerce Commission is by legislation permitted to allow such rates as will enable the railways to earn from $5\frac{1}{2}$ per cent to 6 per cent on their capital investment, measured by reproduction cost. In pursuance of this instruction, it would appear that the Commission has laid an undue share of the burden of general transportation costs on the basic product of grain, which in proportion as it gives purchasing power, causes the movement of other traffic. The producer in the United States suffers material injury from the higher grain rates thus imposed and his resentment is no doubt a factor in creating the state of mind which has found expression, as already stated, in the Fordney Tariff, in the McNary-Haugen Farm Relief Bill and in decreased railway earnings. To yield to the demand of the railways for a continuance of the present discriminatory rates—or for a general increase of grain rates, which they also urged with great insistence—would, it appears to me, create a condition of mind amongst the grain growers of the Canadian west similar to that now existing throughout the grain growing regions of the United States and with the same or even more damaging results to the railroads themselves and to the country at large. It is to be remembered that the export grain trade of Canada forms a much larger proportion of her total trade than is the case with the United States. For that reason it does not follow because United States business is generally prosperous while agriculture is depressed, that Canada could maintain her present prosperity with western agriculture in the same condition of depression as it is in the United States.

Recommendation

Under all these circumstances, I am of opinion that an Order of the Board should issue requiring the Canadian Pacific Railway, the Canadian National Railways and the Edmonton, Dunvegan and British Columbia Railway to file, within a stated time, for the consideration of the Board, tentative rate schedules applying to all their lines under the jurisdiction of Parliament, with maxima conforming to the standard now in force on the main line of the Canadian

Pacific Railway between Winnipeg and Calgary, but with that distance divided in twenty-four groups of approximately equal mileage and having an increase of half a cent from group to group westward from Winnipeg. Such tentative schedules to be amended as the Board may consider necessary to give effect to the terms of the Act of 1925; and thereafter to be declared effective at such time and under such circumstances as may be decided by the Board.

II

RATES WESTBOUND FROM THE PRAIRIES TO PACIFIC PORTS

The General Freight Rates Enquiry was held under the terms of an Order in Council of June 5, 1925, (P.C. 886); the directive section of the Order in Council reads as follows,—

> "The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate-structure, which will, under substantially similar circumstances and conditions be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various Provinces and Territories of the Dominion, and the expansion of its trade, both foreign and domestic, having regard to the needs of its agricultural and other basic industries, and in particular to,—
>
> (*a*) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate bases which they enjoyed, prior to 1919;
>
> (*b*) The encouragement of the movement of traffic through Canadian ports;
>
> (*c*) The increased traffic westward and eastward through Pacific coast ports, owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal".

The subjects covered by sub-section (*c*) included three leading features of special interest to Western Canada,—

(1) Export rates on grain and flour westbound from the prairies to Pacific ports;
(2) Class rates on merchandise and other commodities between the coast and the prairies;
(3) Domestic rates on grain and flour from the prairies to British Columbia.

Grain and Flour for Export

The first rate schedules established by the Canadian Pacific Railway on the completion of that line in 1886 were higher in the mountain region between Canmore and Vancouver than for like distances between Canmore and Fort William. These differences were made by the railway and allowed by the Railway Commission after its organization in 1903, on the ground that the higher cost of operation in the mountains than on the prairies warranted higher rates on that section of the line. When the National line was built to Vancouver it was allowed the same class rates per mile for mountain haul (from Edson westward), as the Canadian Pacific Railway. When the export grain rate westbound was established, the same principle was recognized on both roads, and the per mile rate was much higher from prairie points on westbound than on eastbound grain traffic.

From time to time steps towards equalization of mountain with prairie rates were taken, chiefly on representations made by the Province of British Columbia. At the date of the Order in Council of June 5, 1925, (P.C. 886), the westbound grain rate was 22½ cents per 100 pounds to Vancouver from Calgary, 642 miles, and from Edmonton 765 miles, as compared with 26 cents from both points to Fort William, a distance of 1,243 miles from Calgary and 1,227 miles from Edmonton. At the same date, the "mountain differential" on merchandise and other commodities moving under class rates between the prairies and the coast was "one-and-a-quarter to one." That is, in calculating what the class rate on any commodity would be, the actual mileage in the prairie region was taken, but in the British Columbia section one quarter was added to each actual mile.

The rate on grain and flour for domestic use in British Columbia was 41½ cents per 100 pounds as compared with 21 cents for export, from Calgary and Edmonton to Vancouver, with a correspondingly increased rate from more easterly prairie points.

Canadian Pacific Railway Westbound Rate

In regard to export grain rates westbound, the situation requires special explanation.

An Order of the Board was issued on September 2, 1925, as follows:—

> "That the Canadian Pacific and the Canadian National Railway Companies file tariffs, effective not later than the 15th day of September, 1925, reducing the rates on grain and flour to Pacific ports within Canada for export to the same rates proportioned to distance as such grain and flour would carry if moving eastward for export."

The Order was the result of a hearing which had taken place in Vancouver on November 5, 1924, before the Chief Commissioner and Commissioner Oliver. This sitting was held in pursuance of an Order in Council of date October 2, 1924, which authorized a hearing and "effective action" in regard to export grain rates westbound on an appeal of the Provinces of British Columbia and Alberta from a decision of the Board dated June 30, 1922.

Immediately following the issue of the equalizing Order of September 2, 1925, an appeal was entered by the Canadian Pacific Railway, the Montreal Board of Trade and a number of allied and associated interests. The appeal was heard in Ottawa on September 29, 1925 by the full Board. On December 19, 1925 decision refusing the appeal was rendered by Mr. Deputy Chief Commissioner Vien, which was concurred in by the Chief Commissioner and Commissioner Oliver. Not having secured the approval of a majority of the Board, the appeal failed and the Order of September 2, 1925 was therefore confirmed.

The Canadian National system had given due effect to the Order by reducing their westbound rates on grain from the prairies to Vancouver to the same per mile rates as prevailed on grain traffic over their main line to Fort William.

The Canadian Pacific Railway had made some reduction in their rates, but instead of computing westbound rates on actual mileage from prairie points on their main line to Fort William, they had taken the eastbound mileage basis of the National main line (which was at that time and still is, the subject of a special complaint before the Board), and had added a computed (non-existent) 130 miles. Calgary is 642 actual miles from Vancouver. Red Jacket on the Canadian Pacific main line is 646 miles from Fort William; it pays an 18 cent rate. Therefore under the Board's Order of September 2, 1925, Calgary is entitled to an 18 cent rate to Vancouver. But the rate schedule actually charged by the Canadian Pacific from Calgary to Vancouver is 21 cents.

Two crops have moved under these rates. It is estimated that the gain to the Railway Company by its failure to fully comply with the Board's Order has been not less than from one half to three quarters of a million dollars on the amount of each crop actually moved.

United Front of Railways

Although the action of the Canadian National Railways differed from that of the Canadian Pacific in regard to the Board's Order of September 2, 1925, during the numerous hearings, and in the argument, both railways united in their demand that grain and flour rates westbound from the prairies should be higher than those permitted by the Board's Order above mentioned.

In regard to both grain and merchandise rates, the railways rested their case entirely on the alleged greater difficulty and therefore greater cost, of railway operation and maintenance through the mountains than on the prairies. But although they were united in that presentation, owing to radical differences in the physical character of the lines of the two systems between the prairies and Vancouver, in order to reach a proper conclusion it is necessary to consider them separately. Besides it is also necessary to consider the changed traffic conditions which have arisen as the result of the construction of the second line of railway from the prairies to Vancouver.

The Canadian Pacific Railway was built over the shortest available route between the two oceans and incidentally between the prairies and the Pacific. That was the objective,—and it was achieved, but at the cost of crossing two high summits, reached by steep gradients, in the Rocky and Selkirk ranges. There might have been something to be said for special local,—as distinguished from through,—rates that recognized excess costs of railway operation in the mountains before export traffic from the prairies had developed. But when the prairies had been linked with the coast by a second railway, built over a longer route than the first for the express purpose of avoiding high summits and steep gradients, and when westbound export traffic from the prairies had developed so that for the crop year, 1923-24, fifty-three million bushels of Canadian wheat went overseas from Vancouver, as compared with sixty-one millions from Montreal, the question of traffic rates between the prairies and the Pacific ports had obviously ceased to be of merely local and had become of national importance.

The fundamental purpose of the pioneer railway was to link ocean to ocean by the shortest route. The corresponding purpose of the Canadian Northern Railway, now the National main line to Vancouver, was to give the western portion of the grain producing prairies access to the nearest tidewater with the lowest reasonable rates, while also connecting eastern and western Canada by a competing railway service.

It is clear that unless rates are adjusted to admit of traffic moving with a proper degree of freedom between the prairies and the coast, the purpose of the construction of the Canadian Northern line to Vancouver has not been achieved, and the money paid from the Dominion treasury to secure its construction is in large measure thrown away.

Contentions of C.N. Railway

In support of the contention that operation through the mountains on the Canadian National main line to Vancouver was so much more difficult and costly than on the prairie as to justify higher westbound grain rates and a mountain differential on merchandise eastbound from the coast, counsel for that railway submitted a statement showing the number of cars at present being hauled by one locomotive westbound from Biggar to Port Mann, which is the western end of the Canadian National tracks. Connection between Port Mann

and Vancouver, 16.9 miles, is made over Great Northern railway and Vancouver Harbour Commission tracks. The statement showed in detail that the present average maximum train haul by one locomotive, rated as having 38 per cent capacity, is forty cars, with average loads of 37 tons each. It was also shown that this locomotive performance compares favourably with that on lines generally on the prairies, other than the main lines of the two competing systems; also with that on many lines in Ontario and the Maritime Provinces, where the locomotive performance is no better,—and in many cases not as good —as it is shown to be on the mountain section of the Canadian National line.

The statement mentioned also showed that the present average maximum train haul on the National line from Biggar eastbound to Fort William is 66 cars. This is 16 cars per train more than the westbound average and therefore shows a much greater profit on the operation. But the rated locomotive capacity required to produce that result was an average of 54.6 per cent, 16.6 points greater than the average of the locomotives used in the westbound traffic. This comparison of locomotive performance eastward from a mid-prairie point and westward from the same point establishes beyond argument the similarity of basic physical conditions as related to operation between the prairie and mountain sections of the Canadian National main line. The higher summits in and near the mountains are more than balanced by the deeper depressions below the prairie level, plus the rise over the Laurentian plateau on the way to Fort William.

Counsel for the National Railways argued that as operation in the mountains was presently at an actually higher cost than on the main line on the prairies, therefore a higher grain and merchandise rate over that section was warranted. But costs on the main line eastward are exceptionally low because the largest locomotives hauling the longest trains and therefore giving the most economical service are used. Not many years ago the maximum locomotive haul eastward was no greater than it now is westward and the costs were correspondingly higher than at present, but the rates were the same. The changed traffic conditions came about by reason of large capital expenditures on the main line and also on extensive and modern terminals at Fort William.

Possibly the volume of traffic westward from the prairies does not yet warrant the large capital expenditure that would be required to put the line in the same condition for carrying heavy locomotives as the line eastward and so secure reduction of the cost of haul westbound to the level of that eastbound. To attain that result terminal facilities at Vancouver comparable to those at Fort William would also have to be provided. From time to time no doubt measures will be taken to place the westbound track and terminals in the same condition to handle westbound traffic as economically as that eastbound on the main line is now handled.

In the meantime, until such capital expenditures on the main line west bring it up to the operating standard of the main line east, there is no reason from a comparison of operating costs why rates on the main line west should be higher than on the branch lines east of the mountains, where the present operating costs are at least as great. The branch and secondary trunk line mileage east of the mountains is 85.5 per cent of the total mileage of the system between Lake Superior and the Rockies.

No evidence was brought forward to show that the elevations or gradients on the line in the mountain region were such as would prevent the Canadian National main line from Edson westward to Port Mann from being operated as economically and efficiently as that part from Edson to Fort William is now. A comparison between the gradients and elevations to be overcome by railroad traffic westbound from Edson,—where mountain rates begin,—to Vancouver

and eastbound to Fort William is valuable in this connection. Figures as to elevation and distance are taken from the time tables:—

—	Rise	Miles	Average feet to mile
WESTBOUND—			
Edson to Obed	577 feet	35	16·4
Entrance to summit of pass in Rockies	504 feet	62	8·12
Swift Creek to Albreda	268 feet	24	11·16

Total adverse rise against westbound traffic, 1,349 feet in 3 sections totalling 121 miles. Average 11 feet to the mile.

—	Rise	Miles	Average feet to mile
EASTBOUND—			
Clover Bar (8 miles east of Edmonton) to Uncas	304 feet	15	20·26
Saskatoon to Leross	630 feet	138	4·56
Treat to Oakner	371 feet	34	10·91

Total adverse rise between Edson and Winnipeg 1,305 feet in 187 miles, an average rise of 6.97 feet to the mile on the adverse grades as compared with 11 feet to the mile on the adverse grades from Edson westward.

The average rise per mile is so small in both cases that the difference between eastward and westward is negligible, while the maximum gradient in both cases is the same, four-tenths of one per cent, except for 3,700 feet near Albreda which has a one per cent upgrade westbound, partly compensated for by 2,400 feet of five-tenths of one per cent down grade. The difference of 44 feet in the gross rise between the mountain and the prairie sections is not important.

But comparison must be made between the "mountain" section between Albreda and Port Mann and the "prairie" section between Winnipeg and Fort William in order to be complete. The distance is approximately the same in both cases, say 425 miles. From Albreda there is a descent in level to Port Mann of 2,680 feet, with no material adverse grade intervening. From Winnipeg to George, the summit station towards Fort William, there is a gross rise of 903 feet in 352 miles, making the total adverse rise against eastbound traffic between Edson and Fort William 2,208 feet, as compared with a total rise of 1,349 feet between Edson and Vancouver. That is, there is a greater total adverse rise by 859 feet against traffic eastbound from Edson to Fort William than westbound from the same point to Vancouver, while the maximum adverse gradient is four-tenths of one per cent both ways to the summit of the pass in the Rockies and one-half of one per cent beyond, except for the short distance as mentioned at Albreda.

Contentions of C.P. Railway

As already stated while both railways were united in the demand for maintenance of the mountain differential on merchandise and the present rates on grain from the prairies for domestic use at the coast, the position of the Canadian Pacific differed from that of the Canadian National in regard to export grain rates. While the Canadian National had complied with the Board's Order of September 2, 1925, the Canadian Pacific had not; counsel claiming

that the greater difficulties of mountain operation on the Canadian Pacific main line caused forty per cent of increased costs as compared with prairie operation, and therefore justified the railway in not reducing its export grain rates westbound to the per mile level of the eastbound rates over their main line as ordered by the Board.

The shorter line of the Canadian Pacific between Winnipeg and Vancouver compels the more southerly route. The difference in distance in favour of the Canadian Pacific, as compared with the Canadian National, is 93 miles. The general slope of the western region of Canada is from south to north, therefore the elevation of both the plains and mountains is greater on the southerly than on the northerly railway route. With the higher elevation the country is more rugged and railway construction and operation correspondingly more difficult both on the plains and in the mountains.

On the Canadian Pacific main line, the Rocky and Selkirk ranges lie between Canmore on the east and Revelstoke on the west. The distance between is 195 miles. The elevation of the railway pass through the Rockies at Stephen is 5,332 feet above sea level,—52 feet more than a mile. Distances and elevations are taken from the railway time tables and are sufficiently accurate for comparative purposes.

Prairie rates have always applied on all Canadian Pacific lines from Canmore easterly. It is at the entrance to the Rockies, 67 miles west of Calgary and 55 miles eastward of the summit. To decide how far mountain conditions justify higher rates on grain westbound than eastbound, it is necessary to compare operating conditions west and east from Canmore, because it is on the special difficulties west of that point that the railway rests its claim for a "mountain differential" in class and commodity rates. If operating conditions do not demand a difference in class and commodity rates east of Canmore, then they cannot be held to justify rates on grain above the prairie scale to or from that point.

To clear the ground for due consideration of difficulties of operation in the Rocky and Selkirk ranges, a comparison between the conditions westbound from Revelstoke to Vancouver and eastbound from Medicine Hat to Fort William may first be made. From Revelstoke westward to Clan William, 9 miles, there is an adverse rise of 324 feet and a pusher is used. From Clan William the railway follows the waters of the South Thompson and Fraser rivers to Vancouver. From Tappen to Notch Hill, 9.2 miles, there is a rise of 533 feet and a pusher is used. From Savona to Wallachin, 7 miles, there is a rise of 96 feet. A pusher is used there only when traffic is heavy. There is an adverse rise of 85 feet in four miles from Thompson to Gladwin. This is an average gradient of four-tenths of one per cent. A pusher is not used but full tonnage is reduced from Wallachin to North Bend, on account of this grade.

Although the time-table shows a continuous decline in elevation from 493 feet at North Bend to 103 feet at Ruby Creek, the evidence given by the railway was that the maximum tonnage westbound was also reduced between those points.

The several adverse gradients as shown by the time-table aggregate 1,038 feet, of which 953 feet is in three pusher grades, totalling 26 miles. The decrease in elevation between Revelstoke and Vancouver is 1,482 feet, distance 380 miles.

Eastbound from Canmore to Winnipeg, pushers are required on heavy traffic from Suffield to Bowell, 127 feet rise in 7 miles; Medicine Hat to Dunmore, 230 feet rise in 7 miles; Regina to McLean, 390 feet rise in 24 miles and Broadview to Perceval, 78 feet rise in 7.5 miles. Besides the four pusher rises there are important adverse rises against eastbound traffic of 143 feet from Cummings to Cross, 38 miles; of 129 feet in 14 miles from Sidewood to Carmichael and from Moose Jaw to Belle Plaine, 136 feet in 17 miles.

As the country is undulating in character all the way from Medicine Hat to within 100 miles of Winnipeg, there are of course a number of minor adverse grades that need not be considered. Adverse gradients as shown by the time-table amount to 1,226 feet of which 825 feet is in four pusher grades of 45.5 miles. Total distance Medicine Hat to Winnipeg is 656 miles. The decrease in elevation between Medicine Hat and Winnipeg is 1,409 feet.

From Winnipeg to Fort William the distance is 420 miles. Winnipeg is 772 feet above sea level and Fort William 617 feet. From Winnipeg easterly to Lowther, 106 miles, the grade rises 439 feet. From Keewatin to Raith, 243 miles, the grade rises 498 feet, a total rise of 937 feet in 349 miles. There are no pushers used and the up grade does not exceed four-tenths of one per cent. The total adverse rise Canmore to Fort William is 2.264 feet with 45.5 miles of pusher grade as compared with 1,038 feet with 26 miles of pusher grades Revelstoke to Vancouver.

Mr. W. M. Neal, Assistant to the Vice-President in charge of Canadian Pacific operation and construction, gave a statement of comparative engine performance between divisional points westbound and eastbound, using the standard engine of 210 per cent rated capacity, maximum trainload on level track 3,500 tons.

Westbound—

Revelstoke to Kamloops .. .. 2,070 tons, with pusher for 9 miles, Revelstoke to Clan William, and another 9.2 miles, Tappen to Notch Hill.

Kamloops to North Bend.. .. .. 2,701 tons to Wallachin, with pusher for 5 miles from Savona to Wallachin.

(This tonnage reduced to 1,500 tons, Wallachin to North Bend, 89 miles, because of adverse grade near Lytton. No pusher used beyond Wallachin.)

North Bend to Vancouver.. .. .. 1,500 tons to Ruby Creek, 48 miles, and 3,500 tons Ruby Creek to Vancouver, 81 miles.

Eastbound—

Calgary to Medicine Hat.. .. .. 2,709 tons, with pusher Suffield to Bowell, 6.9 miles.

Medicine Hat to Swift Current.. .. .. 2,800 tons with pusher Medicine Hat to Dunmore, 7.1 miles.

Swift Current to Moose Jaw.. .. .. 2,866 tons. By using a "turn-around" train from Swift Current to Secretan, the tonnage from Secretan to Moose Jaw is increased to 4,065 tons during the grain rush.

Moose Jaw to Broadview.. .. .. 2,867 tons to Regina, and from Regina to Broadview, 3,255 tons by using a pusher for 24.1 miles to McLean.

Broadview to Brandon.. .. .. 3,396 tons, with pusher Broadview to Percival, 6.5 miles.

Brandon to Winnipeg .. .. 3,118 tons from Brandon for 40 miles east to Sydney. By using a "turn-around" train from Brandon to Sydney the train load Sydney to Winnipeg is increased to 4,200 tons during the grain rush.

Eastbound—Concluded

Winnipeg to Kenora	3,116	tons.
Kenora to Ignace	2,916	tons.
Ignace to Fort William	3,116	tons. No pushers or "turn-around" trains used eastbound Sydney to Fort William.

The statement by Mr. Neal shows considerable disparity in locomotive performance between the eastbound and westbound hauls. The performance is especially low in the westerly section from Wallachin to Ruby Creek, both east and west of North Bend, although the differences in track elevation strongly favour westbound traffic. While a difference in elevation of 465 feet in 93 miles, between Sydney and Winnipeg enables the 210 per cent locomotive to haul 4,200 tons or 700 tons above the rated maximum, notwithstanding that there is a net drop of 674 feet from Wallachin to North Bend, there is a reduction from the train load of 2,701 tons that left Kamloops to 1,500 tons for the 89 miles of remaining distance to North Bend. From North Bend to Ruby Creek, with a drop of 390 feet in 48 miles and no adverse grades shown on the time-table, the maximum load is 1,600 tons. Although closely questioned on the subject, Mr. Neal gave no specific reason for this low performance.

From Kamloops westerly both the Canadian Pacific and the Canadian National closely follow the waters of the Thompson and Fraser rivers. Sometimes both tracks are on the same side of the stream. The statement submitted by the Canadian National Railways, as already mentioned, showed that from Kamloops to Port Mann the locomotive performance on that road compared favourably with the eastbound movement from the prairies to Fort William. It was stated that a locomotive of 50 per cent rated capacity can haul from Kamloops Junction to Boston Bar, corresponding to the Canadian Pacific division Kamloops to North Bend, 58 cars of 37 tons load or a train load of 2,146 tons. From Boston Bar to Port Mann the same locomotive hauls 65 cars with a load of 2,405 tons. The Canadian National locomotive performance westbound from Kamloops Junction to Boston Bar is only exceeded in eastbound performance by four out of the ten main line divisions east of Biggar; and that from Boston Bar to Port Mann by only one, that from Rivers to Winnipeg.

The Canadian Pacific line from Vancouver to Kamloops was built many years ago when economy in construction was more important than maximum haulage capacity. The Canadian National was built to meet modern conditions and needs of railway traffic. This is clearly established by the disparity in locomotive performance over the two closely parallel lines from Kamloops to Vancouver.

In the course of his evidence, while speaking of the efficiency of operations between Winnipeg and Fort William, Mr. Neal said,—

> "When I first went west, if we moved 400 cars a day east from Winnipeg, we thought we had done a good day's work; and if we got them to Fort William in three days it was good work. * * * * As crops increased we rehabilitated the line until we move up to 1,500 cars a day east of Winnipeg and put them through to Fort William in 30 to 36 hours."
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> "The traffic which is handled through these large facilities in the west outside of the grain rush period, could be moved just as easily with the facilities which we had 20 years ago as with what we have at the present time, and without the millions of dollars of expenditure for double track, grade reduction, revision of line, increased and improved yards, elevators and rolling stock which we were compelled to undertake in order to cope with the growing fall grain movement."

* * * * * * * * * * * * *

"For instance North Transcona Yards, with over 100 miles of track and a capacity of 12,000 cars,—one of the most modern yards on the continent, is only used in handling revenue traffic for from two to three months of the year. During the balance of the year it is mainly used for storing empty grain cars.

"The Bergen cut-off from Bergen to Transcona, a distance of 16.5 miles of double track fully equipped with block signals was built entirely on account of the grain movement and for from 8 to 9 months of the year is used principally for storing idle cars."

In this connection it was further stated that the doubling of the track from Winnipeg to Fort William had cost thirteen million dollars and the recent enlargement and improvement of the Fort William Yards over $200,000. West of Winnipeg to Swift Current the main line is double tracked nearly all the way, upwards of 500 miles.

Very large capital expenditures were necessary on the Canadian Pacific main line east to make possible the large locomotive haul and consequent economy in operation shown in Mr. Neal's evidence. Obviously, like expenditures are necessary to the handling of the westbound traffic with equal economy. The locomotive performance over the parallel Canadian National line is evidence that the physical conditions permit of such improvements being made. But even under present conditions, the haulage is quite as economical over the line from Revelstoke westward as it was over that from Medicine Hat eastward before the large capital expenditures spoken of by Mr. Neal were made, and when the rates over the Canadian Pacific main line east were the same as they are now.

While haulage conditions from Revelstoke westward are not as favourable as on the main line eastward from the mountains, they compare favourably with those on the secondary trunk and branch lines of the Canadian Pacific Railway on the prairies. An important secondary trunk line of the Canadian Pacific gives direct connection between Edmonton and Winnipeg. The distance is 848 miles. This connection leaves the Calgary and Edmonton branch at Wetaskiwin forty miles south of Edmonton and joins the main line at Portage la Prairie, fifty-six miles west of Winnipeg. The rate, Edmonton to Fort William, is the same as from Calgary by way of the main line, 26 cents per 100 pounds.

Speaking of that line, Mr. Neal said:—

"We do not maintain our line up there to such a high standard as we do the main track. . . . Owing to track conditions we use 155 per cent locomotives instead of 210 per cent as on the main line."

He gave the locomotive performance on the line, Edmonton to Winnipeg, as follows:—

Hardisty (1st Divisional point out of Edmonton) to Wilkie	2,132	tons, with pusher from Hardisty to Rosyth, 6 miles.
Wilkie to Saskatoon	2,200	tons.
Saskatoon to Wynyard	2,066	tons.
Wynyard to Bredenbury	2,170	tons.
Bredenbury to Minnedosa	1,317	tons, with pushers Millwood to Binscarth, 7.6 miles, and Birtle to Solsgirth, 8 miles. (These are permanent pushers when traffic is moving in volume.)

From Minnedosa the maximum train load is 3,500 tons, but a pusher is used for 2.2 miles from Minnedosa to reach a summit from which there is a fall of 941 feet in 76 miles to Portage la Prairie. From Portage la Prairie on

the main line to Winnipeg there is a drop of 90 feet in 56 miles and the maximum train load is 4,000 tons. These figures show the great difference between locomotive performance on branch and secondary trunk as compared with main lines. On the Canadian Pacific between Fort William and Canmore the branch and secondary trunk lines are 84 per cent of the system.

Mountain Section of C.P.R.

The summit of the Kicking Horse pass in the Rockies on the main line of the Canadian Pacific is 5,332 feet above sea level,—52 feet over a mile. Canmore where the mountain differential becomes effective on westbound traffic is 4,296 feet above sea level. All westbound merchandise traffic reaches Canmore at prairie rates. Calgary, the largest city and most important junction point on the Canadian Pacific between Winnipeg and Vancouver, is 3,438 feet above sea level. Medicine Hat, 176 miles east of Calgary, on the main line, is 2,181 feet above sea level. Lethbridge at the terminal of the Aldersyde branch, 126 miles south of Calgary, is 2,987 feet above sea level. All traffic from Medicine Hat or Edmonton to the Pacific coast must reach Canmore by way of Calgary. From Lethbridge all through freight passes by way of Calgary and Canmore. To find the measure of disability as to traffic conditions suffered by the Canadian Pacific on its main line between the section Canmore and westerly, where the mountain differential is effective, and Canmore and easterly, where prairie rates prevail, it is necessary to compare the elevations and gradients to be overcome in each case.

From Medicine Hat to Canmore the rise is 2,115 feet with a pusher grade for the first 15 miles out of Medicine Hat. From Lethbridge to Canmore the rise is 1,309 feet. Between Edmonton and Calgary there is a summit at Crossfield. The rise from Edmonton to Crossfield is 1,430 feet and from Edmonton to Canmore 2,308 feet. In surmounting these rises westbound to Canmore, merchandise pays only prairie rates. Therefore there is no warrant for more than prairie rates on grain from prairie points as far westerly as Canmore.

From Calgary to Canmore the distance is 68 miles and the difference in elevation 758 feet. From Canmore to the summit the distance is 55 miles and the rise is 1,036 feet.

The performance of a 210 per cent locomotive from Calgary through Canmore to the summit and beyond to Field was stated by Mr. Neal to be 1,365 tons, with pusher service Louise to Stephen, 6 miles; from Medicine Hat to Calgary with pusher Medicine Hat to Bowell, 15.6 miles, 1,700 tons. The use of a pusher for 15 miles out of Medicine Hat on westbound traffic under prairie rates may fairly be balanced against the use of one for six miles under the mountain differential at the summit of the pass.

As the case stands on the evidence brought before the Board, westbound freight arrives at the summit of the pass in the Rockies under traffic conditions no more disadvantageous to the railway than those under which it reaches Canmore.

From the summit of the Rockies, the elevation drops 2,900 feet in 77 miles to Beavermouth. No adverse grades are shown on the time table.

From Beavermouth to Glacier, the high point of the Selkirk range, the distance is 22 miles. Of this distance 2 miles has a 1.7 per cent gradient; 8½ miles a 2.2 per cent and 6 miles .95 per cent (shade under 1 per cent). The remaining 5½ miles is at normal gradient. The load limit for a 210 per cent locomotive with pusher for the 22 miles, is 1,050 tons.

From Glacier to Revelstoke there is a drop in elevation of 2,282 feet in the distance of 41 miles with no adverse gradients shown on the time-table.

From these comparisons it would appear that the only section of the Canadian Pacific main line which offers adverse conditions against westbound traffic

over those found on prairie lines, is the section of 22 miles from Beavermouth to Glacier, and of that distance only 10½ miles has abnormal gradients; as grades of one per cent frequently occur on the prairies.

From Beavermouth to Vancouver the total adverse rise including that over the Selkirks is 2,383 feet, with 48 miles of pusher grades as compared with 2,264 feet of adverse rise between Canmore and Fort William, with 45.5 miles of pusher grades.

For the distance from Beavermouth to Glacier, 22 miles, the reduced tonnage which the locomotive can haul undoubtedly adds to the cost of operation of the railway, over that on the prairie main line. How far the adverse rise over the Selkirks is offset by the mile of drop from the summit in the Rockies to the coast, with the addition of the drop on the west side of the Selkirks corresponding to the rise on the east side, was not brought out during the hearing. The railways held strongly that a favouring grade does not give benefit proportioned to the extra costs in operation resulting from an equal adverse grade. Counsel for the provinces held strongly that there was very material advantage in a down grade. Without accepting in full the contentions of either party, there would seem of necessity to be some advantage in such a preponderance of down grades—over one mile—from the summit of the pass in the Rockies to the coast, as would balance some part of the disabilities imposed by the exceptionally heavy grade for 10½ miles between Beavermouth and Glacier.

While it is universally accepted that there is a material advantage in railway operation over a line which avoids steep grades, there may be a situation in which it is more economical to use a pusher on a short steep grade than to lengthen the line sufficiently to allow the rise to be overcome without its use. The longer line will usually involve greater capital cost and must include increased maintenance charges proportioned to the additional miles. This no doubt is why so many pusher grades are used on the prairie section of the Canadian Pacific Railway main line. Maintenance charges on a line of the first class are now placed at a yearly average of about $2,000 a mile. No doubt these cost factors were considered by the company when in the first place it was decided to cross the Selkirks in order to get the shortest line from coast to coast, instead of following the Columbia river around from Beavermouth to Revelstoke as might have been done, but with an increased length of haul of possibly 100 miles.

However far the adverse operating conditions between Beavermouth and Glacier may be minimized by the considerations above mentioned, it is a fact that a large and important traffic from coast to coast is carried at rates which not only do not recognize any mountain differential but are generally much lower than the rates to prairie points for much shorter distances from Montreal and Toronto, over routes that do not approach, much less cross, the mountains. On steel bars, iron and steel pipe, electric fixtures, paper, tools, linoleum, rope, glass, tinware nested, and no doubt many other commodities, the rates from Montreal to Vancouver range from 65 cents to $1.45 per 100 pounds. The rates to Calgary compare with those to Vancouver as follows:—

On steel bars, 65 cents Montreal to Vancouver and to Calgary $1.81 per 100 pounds; on linoleum, Montreal to Vancouver, $1.25, and to Calgary, $2; on rope, Welland, Ontario to Vancouver, $1.30, and to Calgary, $2. Many other commodities taking through rates show a like differential in favour of,—not against—the mountain haul.

During the rates hearing it was shown that in very few cases was the through rate to Vancouver higher than that to Calgary, and in no case was the difference proportioned to the lesser mileage to Calgary, taking no account of the claimed greater cost of the mountain haul.

It is also worthy of note that mountain difficulties do not prevent the operation of a passenger train which makes the shortest time across the continent of any train on any line in North America.

The grain rate of 26 cents per 100 pounds, Calgary to Fort William, 1,243 miles, is .0209 of a cent per 100 pounds per mile, or 1.254 cents per bushel per 100 miles. A grain rate of 18 cents per 100 pounds from Calgary to Vancouver, 642 miles, would be .028 of a cent per 100 pounds per mile, or 1.68 cents per bushel per 100 miles. The present 21-cent rate Calgary to Vancouver is .0327 of a cent per 100 pounds per mile, or 1.962 cents per bushel per 100 miles.

The western part of Southern Alberta is more highly productive than the eastern. Its westbound grain traffic centres at Calgary. At the 21-cent rate, Calgary to Vancouver, that traffic now pays an average of over one half more per mile than it would pay if it went to Fort William at the 26-cent rate, and would pay one-third more per mile than the Fort William rate, if it were hauled from Calgary to Vancouver for 18 cents per 100 pounds.

Mountain Construction and Maintenance Costs

Higher maintenance costs in the mountain region west of Canmore than eastward on the prairies was strongly urged by the Canadian Pacific as a reason for higher rates on the mountain than on the prairie haul. That these costs were, on the whole, higher was strongly disputed by counsel for the provinces. In any case a railway must be maintained in all its parts, or it cannot serve a useful purpose for any part. It is obviously unfair to charge exceptional costs of local maintenance to the freight traffic of a certain section, when the special maintenance in question is just as necessary to and is used as fully by through traffic of all kinds as by local freight traffic. Construction costs are in the same position. The cost of construction of each part of a line is necessary to and must be carried by the earnings on the traffic of the whole line, whether the cost of construction or of maintenance of any part be either great or small. The exceptionally high costs of construction and subsequent improvement of the lines over the Laurentian plateau north of Lakes Huron and Superior, have never been reflected in special rates over that section of either line between Montreal or Toronto and Winnipeg.

Situation of Wheat Producer

So, long as traffic was in its greater part local between the prairies and the coast, as it was for many years, whether there was a mountain differential or not was chiefly a matter of local concern. But when wheat for export is the main feature of the traffic between the prairies and the coast, the national interest becomes the dominant factor. Wheat is Canada's principal export. On increased wheat production Canada in large measure rests her expectations of prosperity and greatness. The wheat area extends 900 miles from east to west. It is narrowest in the extreme east and widest in the extreme west. Production is much more fully developed in the eastern than in the western part. Therefore the region of future expansion must be in that part of the prairies which, for geographic reasons, should find its most economical access to tidewater at the Pacific coast.

Canada's wheat fields are further from either ocean than those of any other country competing in the world's market, therefore a low cost of haul for its wheat to both seaboards is more important to Canada than to any other country. Canada must place her wheat on the world's market at a price that will compete with the offerings of other countries. If she cannot do that she cannot sell, and if she cannot sell—and at a profit to the producer—she cannot produce for export. In all cases the cost of transportation is paid by the producer in the price he receives for his wheat. Therefore the variation of each

cent or fraction of a cent per bushel in the cost of transportation is reflected in the returns which the producer receives and is again reflected in the measure of his activities towards increase of production. The great world market for wheat is in western Europe. The western Alberta producer is further from that market by direct eastern route than his fellow farmers in Eastern Manitoba by the width of the whole wheat growing region and the cost of rail haul through it. From Vancouver the ocean distance to Liverpool is three times that from Montreal. Whether his wheat moves east or west, there is an initial disadvantage of greater actual distance from the principal market against production in Alberta; while the national interest imperatively demands that production shall be increased in that region to the limit that the world market will take at a price that will meet costs of transportation and enable the farmer to successfully continue and to expand his operations. Therefore the lower the rate by which the wheat of the western part of the prairie region reaches the nearest seaboard, the better for Canada, provided that the railways receive the fair cost of haulage as compared with earnings for like services elsewhere in Canada —no less and no more.

When the subject of through rates, Montreal and Toronto to Vancouver was under consideration during the hearing, it was urged by eastern shippers and agreed to by the railways, that rates to Vancouver, so low that they did not recognize mountain conditions, were justified as a means of enabling eastern industry to hold its place in the British Columbia coast market against world competition and thereby profitably expand production to the benefit of the country at large.

If the national interest demands that rates across the continent which disregard mountain conditions and mileage as well must be given to the manufacturing industries of eastern Canada in order to enable them to hold the trade of Canada's Pacific coast against world competition from overseas, it would seem to be equally in the national interest that the wheat farmer of Alberta and eastern Saskatchewan who must also meet world competition—not in Canada but overseas in Asia and in Europe—shall not be prevented from doing so by the maintenance of rail rates to the Pacific based on conditions which are not recognized in the case of the eastern manufacturer.

National Advantage in Retaining Wheat Traffic

There is a further phase of the situation regarding westerly grain traffic that was brought to the attention of the Board during the hearing. If Canada's total overseas export of grain were carried by her own transportation facilities to her own seaports, whether it went west or east from the prairies would be a matter of merely local concern. But when successive crop years show much the larger volume finding United States ports over United States routes from Fort William easterly, instead of Canadian seaports over Canadian routes and using Canadian traffic facilities, the matter becomes one of national as well as of local concern. Canada has built three lines of railway between Atlantic navigation at Montreal and the prairies. She has also made practicable through navigation from Fort William to Montreal by a costly canal system and besides has a short-cut lake-and-rail connection by way of McNicol and Midland on Georgian Bay to Montreal.

Comparatively little use is made of the through rail lines from Fort William for grain traffic. The great bulk of the eastbound grain goes forward from Fort William by water and is held in storage in the interior or at Fort William during the four months period of closed navigation on the lakes. Of that which leaves Fort William by water, the smaller part takes the Canadian lake-and-rail route by way of McNicol and Midland to Montreal. Another part goes to Colborne on Lake Erie to be transferred to smaller boats by which it reaches Montreal through the Canadian canals. But by far the largest part takes the

United States lake-and-rail route by way of Buffalo to United States Atlantic ports. For the past five and a half crop years, the distribution of Canadian export wheat, in bushels, has been as follows:—

Crop Year	Pacific Ports	Canadian Atlantic	United States Atlantic
1922–23	17,829,000	69,044,000	129,871,000
1923–24	53,809,000	72,980,000	141,079,000
1924–25	23,992,000	44,723,000	75,071,000
1925–26	52,954,000	69,963,000	142,174,000
1926–27 (½ year)	18,007,000	37,456,000	90,992,000

These figures show that considerably more than half of our total wheat export crossed the Atlantic from United States ports, and of the total amount that went eastward both by water and rail, nearly two-thirds took the United States instead of the Canadian route. Grain traffic more than any other builds up the port from which it is shipped and of course pays toll to the carriers who take it there. The ninety million bushels of Canadian wheat of the crop of 1926 that went overseas from United States ports by the end of January, 1927, paid United States carriers and dealers a bulk sum of between eleven and twelve million dollars. Grain shipped from the prairies to our Pacific ports pays toll only to Canadian railways and builds up Canadian ports; while eastbound, our export wheat traffic is internationalized on the basis of nearly two bushels through the United States to slightly over one through Canada.

Rail rates that are unduly unfavourable to traffic on the short haul from the prairies to the Pacific necessarily divert it to the long haul eastward, to the benefit of United States ports in the proportion of two to one as compared with Canadian. But not only so; there are times when the facilities of the port of Montreal are so heavily taxed by the present flow of grain that an increase of the easterly movement by the placing of higher rates against that to the Pacific would simply send, not two-thirds of the thereby increased easterly traffic, but the whole of the increase, to United States ports, by United States routes.

In this connection it is to be remembered that the maintenance of the standard of Canadian wheat in the world's market has an important bearing on its basic price. The maintenance of that standard has for many years been the subject of special legislation and careful administration. Grain passing through Canada's Pacific ports and through her Atlantic ports as well, is under Government supervision until it is in the hold of the ship. But grain that goes into a Buffalo elevator is then and there beyond Canadian Government control and is subject to manipulation in respect of its grades that would be illegal in Canada and is detrimental to the reputation, and therefore the market value, of Canadian grain generally, however profitable it may be to the dealer who is handling it.

Advantage in Winter Movement

An important feature of the grain traffic to Pacific ports as compared with that to Fort William is that it is not subject to the same seasonal conditions. Fort William is closed for four months of the year while Vancouver is open the year round. The eastward grain rush that follows harvest closes abruptly on the closing of navigation in the first half of December. This situation was discussed during the hearing and it was stated that on the Canadian Pacific the whole western personnel and machinery are built up to cope with the peak period of the grain movement eastward which lasts for from three to four months from the beginning of threshing in late August until the close of navigation in early December. In September to December 1925 the eastern movement on the Canadian Pacific Railway from Winnipeg ran from 750 to 1,091 cars a day, while

for the succeeding months it ran from 185 to 281 cars a day. The statement was made that assuming facilities were used to full capacity during the four autumn months, they were from two-thirds to three-quarters idle during the balance of the year. To that extent the working force had to seek other employment, and the money that was invested in the extra track and rolling stock was earning no return. Seasonal conditions regarding lake traffic eastbound cannot be changed; but just so far as the grain traffic by way of the Pacific coast is developed, it makes possible the profitable employment of men and rolling stock that would otherwise be idle during the winter months, to the benefit of the country generally and of the railways as well. Of itself this would appear to be a substantial reason against discriminatory westbound rates.

Merchandise Rates (Both Ways)

The contention of the railways in support of the maintenance of the "mountain differential" on merchandise moving under class rates both ways within the western mountain region was based on the same grounds as their demand for increased westbound grain rates, namely excess difficulties of operation, maintenance and construction in that region as compared with the prairies.

The prairies sell grain and buy merchandise. The grain movement is both eastward and westward to either ocean. The merchandise movement to the prairies is from both oceans or from the industrial centres adjacent to them. The eastbound rate on grain is statutory and the claim is made on behalf of the prairies that conditions being as they are, the westbound rate should not be higher. Similarly the claim is made that under existing conditions, merchandise rates from Pacific ports and cities to the prairies should not be higher per mile than those from Eastern Canadian cities and seaports. The mountain differential which applies throughout the region between the Pacific and the prairies increases by approximately 15 per cent the rates to westerly prairie points over those on similar merchandise coming from the east.

While the mountain differential applies westbound from the prairies to the Pacific as well as eastbound from the Pacific to the prairies, chief consideration was given during the enquiry to the traffic eastbound. Partly because the bulk of the movement that comes under the mountain differential in the region between the prairies and the coast is in that direction and partly because the question of mountain conditions adverse to westbound traffic was very fully dealt with in connection with export grain rates.

The only important difference between the adverse conditions against westbound traffic and that eastbound is that the rise, or lift, eastbound is from sea level to the summit of the passes in the Rockies, whereas westbound traffic reaches these summits by a comparatively short rise from the high level of the prairie plateau adjoining the mountains. The region covered by the mountain differential extends on the Canadian Pacific main line from Vancouver to Canmore, 575 miles, and on the Canadian National main line from Vancouver to Edson, 642 miles. Under the mountain differential between Vancouver on the west and Canmore and Edson on the east, each actual mile is reckoned as a mile and a quarter. That is the 575 miles, Vancouver to Canmore, becomes 719 miles, and the 642 miles Vancouver to Edson becomes 802 miles when the class rates used on the prairie are applied.

Eastbound Conditions on C.N.R.

On the National the traffic conditions eastbound resemble those westbound except for the longer uphill pull. The summit is at an elevation of 3,720 feet. The total adverse rise on the National from Vancouver to the summit, 483 miles, is less than 4,000 feet. The maximum adverse grade is one half of one per cent, except that between Swift Creek and the summit, 56 miles, where

there are sections in which the maximum grade is seven-tenths of one per cent.

The adverse rise or lift on the Canadian National main line from Winnipeg to Edson at the western limit of the region of mountain differential is over 4,000 feet in 925 miles with a maximum grade of four-tenths of one per cent. From Fort William the rise is over 5,000 feet. On lines of the National system on the prairies other than its main line, it is compelled to overcome elevations and gradients quite as adverse as those eastbound in the mountain region. For instance on its Saskatoon-Calgary line from Drumheller eastward the lift is 720 feet in 28 miles with a 1.3 per cent grade for $\frac{3}{4}$ of a mile and one-half of one per cent and over for $17\frac{1}{2}$ miles. From Drumheller to Calgary westbound the lift is 1,185 feet in 84.4 miles with a seven-tenths grade for half a mile and a half of one per cent and over for $22\frac{1}{2}$ miles. Drumheller is an important coal producing point. Coal, a commodity taking a comparatively low per ton rate, is shipped over these adverse grades in large volume to all prairie points and merchandise is carried both ways at strictly prairie rates.

In the Province of Ontario the National through line to Windsor rises 753.9 feet in the first 48 miles from Hamilton, an average of 15.7 feet to the mile. The main line Toronto to Sarnia overcomes a rise of 965 feet in the first forty miles from Toronto, an average of 24.62 feet to the mile. The Sudbury line rises 778 feet in the first 29.2 miles from Toronto; an average of 26.67 feet to the mile. The North Bay line rises 748 feet in the first 23.3 miles from Toronto; an average of 28.44 feet to the mile. The Hamilton-Woodstock line rises 493.3 feet in the first 11.4 miles from Hamilton, an average rise of 43.27 feet to the mile. The most extreme rise eastbound in the mountain region on the National main line is 1,118 feet from Swift Creek to the summit, 56 miles, an average of slightly less than 20 feet to the mile. Notwithstanding the adverse conditions on these particular lines in Ontario, traffic over them is not penalized by differential rates. Not only so, but throughout the Ontario and Quebec region, as defined by the railways, the class rates average substantially lower than those which prevail on the prairies, to which the mountain differential is added on traffic between the Pacific coast and the prairies.

Eastbound Conditions on C.P.R.

On the Canadian Pacific Railway the summit is 5,332 feet above sea level and the total adverse rise Vancouver to Stephen was stated by Mr. Neal of the Canadian Pacific to be 10,288 feet. The distance is 520 miles. The summit of the Canadian Pacific pass in the Rockies is 1,612 feet higher than that on the National. Besides there is the rise of 2,282 feet over the Selkirks from Revelstoke to Glacier which does not occur on the National. Therefore, the conditions regarding eastbound traffic in the mountains as compared with westbound traffic on the prairies is less favourable on the Canadian Pacific than on the Canadian National.

The performance of a 210 per cent locomotive eastbound Vancouver to Stephen, was given by Mr. Neal as follows:—

	Miles.	Tons.
Vancouver to Ruby Creek	81	3,500
Ruby Creek to North Bend	48	1,500
North Bend to Wallachin	90	1,400
Wallachin to Kamloops	32	2,686
Kamloops to Sicamous	84	2,712
(with pusher Chase to Notch Hill, 13.9 miles)		
Sicamous to Revelstoke	44.8	2,650
(with pusher Taft to Clan William, 15.2 miles)		
Revelstoke to Glacier	41	1,330
Glacier to Golden	50.2	1,330
Golden to Leanchoil (with pusher)	18.2	1,330
Leanchoil to Field	17	1,400
Field to Stephen (with pusher)	14	525

On the figures as given the average train load from Vancouver to the summit is 1,851 tons for 520 miles with 81 miles of pusher assistance, as compared with 2,340 tons on the like calculation from Winnipeg to the summit, with 20 miles of pusher assistance.

While the figures indicate more favourable conditions westbound on the prairies than eastbound in the mountains on the main line of the Canadian Pacific, a comparison between mountain and prairie conditions must include branch and secondary trunk lines, in order to be complete. Regarding cost of operation on prairie branch lines, Mr. Neal said:—

> "Our branch line construction and maintenance would not justify operation of 210 per cent locomotives. . . . . Our line Melfort to Regina would probably carry 155 per cent engines".

Regarding the secondary trunk line from Wetaskiwin on the Calgary and Edmonton branch to Portage la Prairie on the main line, Mr. Neal stated that the maximum train load for a 155 per cent locomotive from Millwood to Binscarth, 7.6 miles, was 750 tons, therefore a pusher was required permanently. From Birtle to Solsgirth, 8 miles, on the same division, a pusher was also permanently required. The Canadian Pacific branch Langdon to Drumheller had a rise of 925 feet in 43 miles from the Knee Hill terminus, with a number of .65 per cent adverse gradients, and three adverse velocity grades of 1.3, 1.6 and 1 per cent respectively. The chief purpose of this branch is to haul coal from the Drumheller mines, for distribution throughout the prairies at strictly prairie rates.

The Canadian Pacific main line comprises slightly less than 16 per cent of the system between Fort William and Canmore.

On the Toronto, Sudbury line in Ontario the Canadian Pacific has a rise of 942 feet on the first 35.5 miles out of Toronto; on its Orangeville branch, 1,074 feet in the first 52 miles, and on its Owen Sound branch 1,363 feet in the first 52 miles out of Toronto. As in the case of the Canadian National, there is not only no differential against any class of traffic over these lines, but they share in the lower rates enjoyed by eastern lines as compared with rates in the prairie west.

Surplus of Westbound Freight

Before the flow of grain from the prairies to the coast began, when the bulk of the traffic through the mountains was eastbound in lumber, fish, fruit, etc., its handling meant a double movement of locomotives and empty cars for a single and expensive movement of freight.

Present conditions are that the principal movement, chiefly grain is from the prairies to the coast. The condition would seem to be much like that at Fort William in which the preponderance of eastbound traffic automatically takes care of that westbound.

On the Canadian Pacific line the summit west of Fort William is at Raith, and the rise is 967 feet in 53 miles. On close questioning regarding the effect upon westbound traffic of the somewhat sudden rise from the shore of Lake Superior to the Laurentian summit, the evidence of both railways was in agreement that owing to traffic conditions the difficulty because of the adverse physical features, was negligible. From the fact that the immense preponderance of the traffic was eastbound—grain to the lake-head—there was usually ample locomotive power arriving from the west to take care, on its return to the west, of the lesser tonnage of westbound merchandise traffic. If, for any reason, that was not the situation, when a heavy train had to be moved westward for the Canadian Pacific, an extra engine took a part of the train up the hill to Raith and left it there to be picked up by the other part of the train when it came along, the extra engine returning to Fort William without serious loss of time. It was agreed by the representatives of both railways that in

either case owing to traffic conditions as described, the westbound operation of that section of the two systems was not burdensome. The maximum haul of a 210 per cent locomotive from Fort William to Raith was stated to be 1,427 tons.

The endeavour was made by both railways to show that the movement of grain westward did not take place at the same periods of the year as lumber and other commodities moved eastward to the prairies and therefore that the railways did not benefit by the westward taking care of the eastward flow as was the case at Fort William. On the other hand, the traffic both ways at Fort William is essentially seasonal, the port being completely closed for four months in each year and the grain rush being confined to a four months' period in the fall. The port of Vancouver is open the year round and the grain movement to it is spread over a much longer period than that to Fort William.

That the preponderance of traffic is now westbound was universally agreed and as well that in earlier years when the mountain differential was established, it was in the opposite direction. On that statement of facts, it is clear that the condition which was in largest measure assumed to be justification for the mountain differential does not now exist.

Through Rates Eastbound

Through rail rates from the Pacific coast to central Canada on commodities which originate at the coast and are distributed for consumption throughout central Canada—not for export—are on a basis similar to that which governs through commodity rates westbound from Montreal and other eastern points to Vancouver. Although the length of haul Vancouver to Montreal is more than four times that from Vancouver to Calgary, and is over the same tracks from sea level to the summit of the pass in the Rockies, there is no recognition of adverse mountain conditions in those through rates. But a comparison of distances, together with rates, shows clearly that the rates on these same commodities to prairie points are in fact a recognition of the principle of " mountain differential " as applied to merchandise traffic from the coast to the prairies under class rates.

Following is a comparison of carload rates from Vancouver to Montreal, Toronto and Calgary, the distance Vancouver to Montreal is 2,885 miles, to Toronto 2,706 miles and to Calgary 642 miles.

Commodity	To Montreal	To Toronto	To Calgary
	cts.	cts.	cts.
Lumber	90	88½	50
Rice, cleaned or milled	115½	115½	98
Fish (canned-boxed)	105 (min. 70,000 lbs.)	105	98
Fish (canned-boxed)	138 (min. 40,000 lbs.)	138	98
Wood pulp (dry)	107½	91½	50
Hides (green)	125	125	98
Oil (fish including whale oil)	105	75	98
Fish (dried, smoked or salted)	131½	131½	98
Berry Baskets (k.d. flat)	114	107½	50
Conduits (creosoted, wooden)	90	88½	98
Mop Broom handles	128	105½	59
Potatoes	110	110	56

Haulage Conditions Over Laurentian Plateau

Comparison has been made between haulage conditions within the prairie and mountain regions respectively. But prairie conditions are not properly in question in considering justification for the "mountain differential". In practical effect it is an extra charge upon the prairie consumer in respect of goods reaching the prairie from the Pacific region, and is only properly comparable

with the charge made in respect of like goods reaching the prairie from the Atlantic region. The extra charge on traffic from the west has been permitted because of alleged extra difficulties and costs of haul from the west as compared with that from the east.

Traffic reaches the prairies by all rail to Winnipeg, which is near the eastern limit of the prairies, or by lake to Fort William and by rail to Winnipeg. During four months of the year the lake-and-rail route is not available, and all traffic must take the all-rail route. Even during the season of open navigation the merchandise traffic, which moves under the higher class rates, largely takes the all-rail route. The Laurentian plateau lies between North Bay and Fort William just as the Rockies and Selkirks lie between Vancouver and Calgary. Conditions on the Canadian Pacific main line Montreal to Fort William are properly comparable to those on the main line Vancouver to Calgary. A detailed statement of the haulage performance of a 210 per cent locomotive, Montreal to Fort William, was given by Mr. Neal as follows:—

	Tons.
Montreal to Smiths Falls	2,436
Smiths Falls to Chalk River	1,600
Chalk River to North Bay	1,270
North Bay to Cartier (with pusher Markstay to Cartier, 57.8 miles)	2,300
Cartier to Chapleau	1,290
Chapleau to White River	1,292
White River to Schrieber	1,170
Schrieber to Fort William	1,320

The average is 1,584 tons per train with 57.8 miles of pusher assistance, as compared with an average of 1,851 tons, Vancouver to Stephen, with 81 miles of pusher assistance. The total adverse rise to be overcome, Montreal to Fort William, is 11,389 feet, as compared with 10,288 feet Vancouver to Stephen. To make another comparison; the distance from Cartier to Fort William is 520 miles, the same as from Vancouver to Stephen. For that distance the maximum haul is 1,268 tons without pusher; or from North Bay to Schrieber, 500 miles, the maximum is 1,513 tons with pusher for 57.8 miles.

Differential Westbound to Prairies

Although the actual per mile costs of railway operation on the Canadian Pacific Railway from Montreal to the prairies is approximately the same as from Vancouver to the prairies, a differential of 130 miles has been established in favour of the haul from the east on both railways. This differential applies on the rail haul from Fort William in respect of lake traffic, as well as on the all-rail haul from Montreal. Instead of the class rates from Montreal to Winnipeg on the Canadian Pacific being charged on 1,411 miles, they are charged only on 1,281 miles, and instead of the like rates from Fort William to Winnipeg being charged on 420 miles, they are charged only on 290 miles. The situation therefore is that traffic from the east to the prairies is carried 130 miles for nothing, while traffic from the west to the prairies pays on 144 miles more than the actual haul. As between traffic from the east and from the west, there is a double differential, while the actual operating conditions do not appear to give reason for any difference whatever.

The second differential against the haul from the west is to some extent cancelled by the distributing rate from Vancouver as a wholesale centre. But, during the hearing, it was agreed by both railways that the cancellation of the "mountain differential" would mean a substantial reduction in their respective revenues. The actual amount of loss can only be estimated. Whether it would be more or less than half a million the amount is large enough to be of serious interest both to the railways, to prairie consumers and to the dealers who desire to supply the merchandise affected by these rates.

The Order in Council under which the general rates enquiry took place is explicit in stating that the rate structure to be established as a result of the information secured, shall, under substantially similar circumstances and conditions, be equal in its application to all persons and localities. The question of which party shall lose or gain as the result of its conclusions as to what is an equal application of rates, is not, I respectfully submit, within the responsibilities of the Board in this case.

Grain and Flour for Domestic Use

The rate from Calgary on grain and flour for home consumption in British Columbia is 41½ cents per 100 pounds, as compared with the present rate of 21 cents per 100 pounds for export. It was urged by the Province that this rate was unduly high, and was especially burdensome on the dairy and poultry industries of the lower main land and Vancouver Island, which must depend in largest measure on imported feed for their stock. On the part of the province of Alberta it was urged that a lower rate would permit the profitable marketing of a proportion of the low grade or damaged grain that from time to time results from unforseen and unfavourable seasonal conditions, and that, at present rates, finds no adequate demand.

Both railways opposed the application for lower rates on grain and flour for domestic use. They were supported in this position by a representative of the Canadian Millers' Association, who argued that if grain for domestic use were permitted to reach the west at export rates, it would be possible for United States millers on the Pacific coast to profitably import it for mixing purposes and thereby enable them to compete more successfully in the foreign markets with Canadian mills. It appeared from the evidence that export rates on grain from the prairies to Vancouver do not apply if the grain is destined for the United States.

It is an accepted principle in railroad rate making that export and domestic rates on any certain commodity, being based on different conditions as to marketing, may properly differ in amount for the like per mile service. Therefore, the export grain rate from the prairies to British Columbia ports cannot be accepted as fixing the standard rate on grain required for domestic use within the province. At the same time, as British Columbia produces less wheat in proportion to population than any other province, the question of rates from the prairies on grain and flour for local consumption is of greater importance to every section of the people there, including those engaged in the various forms of agriculture, than to those of any other section of the country. Therefore, they ask for rates on grain and flour for domestic use that shall be as favourable to them as the lowest accorded any of the other provinces.

From prairie points eastbound to Fort William, there is no difference in rail rates between grain and flour for export and for domestic use. The consuming population at the lake head who thus get the benefit of an export rail rate on their domestic supplies, is not large enough to be considered as a factor in the case. But the major portion of the grain consigned to Ontario and Quebec points, leaves the lake head by boat, not by rail, and reaches the lake and river ports of these provinces by the same means. In this way the greater part of the two larger provinces of the Dominion containing two-thirds of the total population of the country, may receive the bulk of their domestic supply of wheat and flour, either actually at export rates,—as in the case of all cities on the water front, including Toronto, Montreal and Quebec,—or at those rates with local distributing costs added for delivery at interior points from the most convenient lake or river port.

Under these circumstances Counsel for British Columbia contended that the rate of 41½ cents per 100 pounds from Calgary to Vancouver for domestic use

was excessive and discriminatory. It appears from the published Government returns that aside from the cost of sacking grain exported to Japan and China, the grain and flour from the prairies used in Yokohama and Hong Kong frequently paid no greater total freight rate from prairie points than that used in Vancouver and Victoria.

The all-rail export rate Fort William to Montreal is 34½ cents per 100 pounds. The domestic rate is 37½ cents which is three cents over the export rate. The rail distance Fort William to Montreal is somewhat more than one-half greater than that between Calgary and Vancouver. There would not appear to be any reason why the difference between export and domestic rates on grain of export standards from prairie points to Vancouver should be greater than that between domestic and export rates on the longer haul, Fort William to Montreal.

Without discussing the merits of the contention of the Canadian Millers' Association against equalizing domestic and export rates to Vancouver, as they are now equalized to Fort William, it would seem that a differential rail rate of 3 cents per 100 pounds would be as much protection against the overseas competition of United States Pacific coast millers as Canadian millers can reasonably claim to be entitled to at the sole cost of the people of the province of British Columbia, where the consumption of flour,—exclusively the product of Canadian mills,—per head of population is greater than in any other province of the Dominion.

Export Rate for Grain below Export Quality

Although a domestic rate three cents per 100 pounds over the export rate from prairie points to Vancouver would be the same difference between domestic and export rates as now prevails on the all-rail grain movement from Fort William to Montreal, it would not put the respective populations of Vancouver and Montreal in the same relative positions as to cost of their domestic supplies, because central Canada generally, including Montreal, in fact gets the bulk of its domestic supply by rail and water at the export rate.

As already mentioned, special representations were made to the Board on behalf of the poultry and dairy industries of the lower mainland and Vancouver Island sections of British Columbia in regard to their need of cheap feed grain. It was also brought to the attention of the Board that while Alberta under normal conditions produces the highest quality of wheat, oats, barley and other grain, from time to time a more or less considerable proportion of the crop of these grains is damaged by exceptional seasonal conditions and thereby rendered unfit for export. The bulk of this damaged or low grade grain can be used as feed for cattle, hogs and poultry; and if there is live stock of these classes locally in sufficient numbers to consume it, there is some salvage on what would otherwise be total loss. But unfortunately, in the sections of the prairie region where wheat is the principal crop, the number of live stock is generally limited. Also, when unfavourable seasonal conditions occur, they are usually quite general in character and the supply of grain thereby rendered unfit for export is beyond the local demand; resulting in serious loss to the producer. Damaged grain is not as suitable feed for live stock as sound grain, but if it can be secured at a sufficiently lower price, it answers the purpose fairly well and will be used accordingly. The present domestic rate of 41½ cents per 100 pounds practically excludes such grain from use by the poultry and dairy farmers of the coast region and compels them either to pay the full price for grain of export quality, with the 41½ cent transportation cost added, or to buy corn imported by ship from the Argentine. Either way the country suffers an economic loss and their difficulties in carrying on their operations are materially increased.

With the view of adjusting freight rates so that "Under substantially similar circumstances and conditions" they shall be—so far as may be reasonably

practicable—" Equal in their application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion", as directed by the Order in Council which authorized the General Freight Rates Enquiry, it was suggested that while domestic rates substantially higher than those for export might properly be established in respect of grain of export quality, it would in some measure equalize the advantage which central Canada now enjoys in respect of its domestic supplies, if grains of all varieties which are below milling or export quality were allowed export rates from the prairies to Pacific points, as all grades of all grains are allowed to Fort William.

The feed value of low grade or damaged grain is not sufficient to allow the British Columbia consumer to pay a price that will enable the producer to haul to the railway station and pay the present domestic rail rate as well, in competition with corn from the Argentine, delivered by ship in Vancouver. The railroad therefore altogether loses the haul on this grain, while the producer loses the selling value of the grain and the British Columbia poultry and dairy farmer pays his money for a foreign supply.

All grain shipped to Vancouver is officially graded at Calgary or Edmonton. The difference between the grades is well defined and universally recognized. The several grades are hauled in different cars and stored in different elevator bins at Vancouver. The milling and export grades of wheat do not go below No. 4 Northern. In the case of oats and barley export grades do not go below No. 3 C.W. (Canada Western). All grades of wheat below No. 4 Northern and all grades of oats and barley, rye and flax below No. 3 C.W. are only useful for local feed purposes.

The transportation of grain of these lower grades at export rates would not by any means place the consuming population of British Columbia in the same favourable position in regard to their domestic food and feed supply as that at present enjoyed by the people of central Canada, but it would be in that direction and would be of substantial advantage to the prairie producer and to the railway as well.

Because of the facts and conditions as above stated I am of opinion that action should be taken to bring about results as follows,—

(1) The Canadian Pacific Railway be required to comply with the Order of the Board of September 2nd 1925, by reducing the export rate on grain and flour from prairie points on their main line to Vancouver to the per mile rate now in force from prairie points on their main line to Fort William.

Also that if in pursuance of an Order of the Board, changes are made in their export rates on grain and flour from prairie points to Fort William on the main line of the Canadian Pacific, the export rates westbound should forthwith be made to conform with such changes.

(2) The Canadian National Railways be notified that when any changes are made in the per mile export rates on grain and flour on the main line of that system from prairie points to Fort William, the same per mile rates are to be made effective forthwith from prairie points to Vancouver.

(3) That the Canadian Pacific and Canadian National Railways be notified to amend their class rates applicable in the region between Canmore and Edson on the east and Vancouver on the west to the level of actual mileage.

(4) That the Canadian Pacific and Canadian National Railways be notified that rates on grain and flour for domestic use shall not be more than 3 cents per 100 pounds higher from prairie points to Vancouver, than the rates from the same points on grain and flour for export.

Provided that the rate on grain below export quality, that is wheat of a quality below the grade of No. 4 Northern, and other grains below the grade of No. 3 C.W. (Canada Western) shall not exceed the export rate.

III

RATES FROM THE PRAIRIES TO ATLANTIC PORTS ON GRAIN FOR EXPORT

The Order for a General Freight Rates investigation dated June 5, 1925, (P.C. 886) was supplemented by a further Order (P.C. 24) dated January 7, 1926, by which the Board was directed,—

> "Especially to enquire into the causes of Canadian grain and other products being routed or directed to other than Canadian ports; and to take such effective action under the Railway Act, 1919, as the Board of Railway Commissioners for Canada may deem necessary to ensure as far as possible the routing of Canadian grain and other products through Canadian ports."

The wheat crop of Canada for the season of 1925 was estimated by the Dominion Bureau of Statistics at 411,375,000 bushels of which 384,047,000 bushels was produced west of the Great Lakes. Canadian Customs returns show wheat exports for the crop year ending July 31, 1926, amounting in round figures to 275,000,000 bushels; of which 53,000,000 bushels went overseas from Canadian ports on the Pacific; 90,000,000 bushels from Canadian Atlantic ports; 122,000,000 bushels from United States Atlantic ports and 10,000,000 bushels to the United States for consumption there.

Canada's barley crop of 1925 amounted to 112,000,000 bushels, of which 94,000,000 bushels was produced west of the Great Lakes. Total exports were 34,000,000 bushels of which 14,000,000 bushels went from Canadian and 20,000,000 bushels from United States seaports—roughly forty-two per cent from Canadian and fifty-eight per cent from United States Atlantic ports. Of the total export Britain took 25,000,000 bushels or almost seventy-five per cent.

Exports of oats amounted to 33,000,000 bushels of which 28,000,000 went overseas by Canadian and 5,000,000 bushels by United States Atlantic ports. Canadian ports received eighty-four per cent of the oat traffic and United States ports sixteen per cent. Britain took almost exactly half the total export.

The total exports of Canadian barley and oats from United States ports equalled in tonnage twenty million (20,000,000) bushels of wheat.

The principal purchasers of Canadian wheat of the crop year 1925-26 were:—

	Bushels.
United Kingdom	198,402,001
Irish Free State	1,645,317
Belgium	10,749,600
France	3,008,538
Netherlands	9,851,546
Germany	4,928,339
Sweden	1,166,711
Italy	8,630,666
Greece	1,651,413
United States	10,464,041
Japan	12,927,933
China	7,689,834

Twenty other countries purchased quantities of less than one million bushels each. British imports, which were for distribution to other countries as well as for home consumption, amounted to 72 per cent of our total wheat exports.

Wheat is Canada's most important export both in total tonnage and gross value. In the period corresponding to the Canadian crop year 1925-26 Argentina exported 87 million, United States 74 million, Australia 54 million, Hungary 11 million, Jugo Slavia 10 million and India 6 million bushels of wheat. That is to say, within recent years, Canada has become the leading wheat exporting country of the world. The United States and Russia each produce more wheat, and in former years exported more than Canada. But since the beginning of the Great War, Russia's exports have been negligible, while exports from the United States have decreased, owing to increase of population without corresponding increase of production.

Wheat is a most desirable cargo for ocean shipping. Under modern conditions it is cheaply and easily handled both into and out of the ship. It is not readily subject to damage and cannot damage other cargo. It always has a gold value and can always be conveniently used to fill out a shipload. Taken altogether, it is probably the most desirable commodity that any country can offer in large volume to ocean carriers. Therefore wheat traffic through any certain ocean port is a means of attracting shipping and trade generally to that port, to the vast benefit of all dependent or associated interests, including the railways which serve the ports. The fact that Canada is the principal producer of the commodity which gives this desirable ocean traffic would seem to offer Canada an advantage in world commerce which, as shown by the trade returns, she does not, in actual fact, enjoy.

So far as the grain movement from the western part of the prairie region to the Pacific coast is concerned, the United States plays no part. The haul is by Canadian railways to Canadian ports only. But in the case of the movement from the eastern part of the prairies to the Atlantic coast, United States transportation interests and seaports evidently play the dominating part.

Following are the totals for the past eight years of Canadian wheat exports through Atlantic ports with the respective percentages passing through the ports of each country:—

Year	Total Bushels	Canadian percentage	United States percentage
1918–1919	56,972,757	64·6	35·3
1919–1920	61,369,052	78·7	21·2
1920–1921	86,387,488	36·6	63·3
1921–1922	134,837,740	25·8	74·2
1922–1923	198,916,079	34·8	65·2
1923–1924	214,060,314	33·7	66·3
1924–1925	119,794,384	37·5	62·5
1925–1926	212,128,279	42·2	57·7

From these figures it is plain not only that the United States receives the benefit from the handling of the major portion of Canada's eastbound export wheat traffic, but that this condition is in large measure stabilized and that radical measures are necessary if any important change is to be brought about. Canada has the shortest all-rail haul and the shortest ocean haul from the prairies to Liverpool. She has three rail lines from the prairies to the St. Lawrence ports. She has the only actually serviceable all-water route from the head of the Lakes to the Atlantic ports. She has the shortest lake-and-rail haul between the same points. Notwithstanding these advantages, and

the vast expenditures that have been made to provide them, during the crop year 1925-26 Canada paid to United States interests for the transportation of 122 million bushels of her export wheat to United States seaports, not less than 15 million dollars ($15,000,000), and besides sacrificed the vast trade benefit that went to the United States because of that diversion of wheat traffic.

In the year 1925 the total number of transatlantic liners arriving at Montreal was 1,040, having a total cargo capacity of 4,744,793 tons, or an average of 4,562 tons per vessel. The volume of Canadian wheat, oats and barley shipped overseas through United States Atlantic ports in the crop year 1925-26 would have provided full cargoes for 1,000 ocean vessels of 4,300 tons each.

There are many reasons tending to bring about this result, but the two most important and outstanding are, first, the lower ocean rates available at United States Atlantic ports for wheat as return cargo because of the vast volume of merchandise tonnage reaching these ports and second, the period of closed navigation to the St. Lawrence ports, and the consequent longer rail haul during that season to the Maritime ports. Of the two the former is much the more important.

The "Pull" of United States Ports

So long as Canada exported a less tonnage of wheat than she imported of merchandise, she had no difficulty in retaining the export traffic in her own grain. Montreal was the seaport that, being farthest inland, was the most suitable point for distribution of merchandise throughout all westward Canada. The problem then was to get wheat to Montreal for export in sufficient volume to balance the imports of merchandise and so cheapen the ocean rate on the latter. As the Canadian grain surplus for export was not then sufficient, the constant endeavour was to divert export wheat of the United States from its own ports to that of Montreal. It was chiefly with that object in view that the Canadian canals were deepened to 14 feet, that the Canada Atlantic Railway was extended to Parry Sound and that, by the building of elevators at Tiffin by the Grand Trunk and at McNicol by the Canadian Pacific on Georgian Bay at its southeastern extremity, these ports were established as transfer and storage points on the lake and rail route from Duluth, Chicago and Fort William to Montreal; as Buffalo had already been established on the route from the same lake head ports to New York.

The conditions of twenty to thirty years ago do not prevail to-day. In 1890 Canada exported two and a half million bushels of wheat of which only 422,000 bushels was of home production. In 1904 she exported 23,000,000 bushels of which 17,000,000 bushels was home production, and in the year 1925-26 she exported 275,000,000 bushels of wheat of home production only, while United States wheat to the amount of 26,000,000 bushels was handled through Canadian ports during the same period. It is of course gratifying that Canada has been able to retain such a considerable amount of the traffic in United States grain. But shipment of 26 million bushels of United States wheat from Canadian ports does not compensate Canada for the loss of the haul of 122 million bushels of Canadian wheat that was shipped from United States ports in the same season especially in view of the fact that of the United States wheat shipped through Canadian ports, the part that was brought to Montreal by United States lake carriers—by far the larger proportion—contributed practically nothing to Canadian earnings either by lake or rail.

Montreal is Canada's natural eastern outlet for her export grain. It can be brought from the lakehead (Fort William and Port Arthur), to Montreal by the lake and canal route, by the shorter and quicker lake and rail route, or by either one of two all-rail routes. For the amount of grain sufficient to fill the vessels bringing merchandise and seeking return cargo, Montreal has a

material advantage over any or all of the United States Atlantic ports. Up to the amount of the tonnage of her incoming merchandise, Montreal gets a return rate on an equal tonnage of outgoing freight. Whatever outgoing vessel tonnage is not occupied by other cargo, can be filled with grain at return cargo rates. Naturally a vessel which has brought a profitable cargo of merchandise to Montreal, can take return cargo at a rate below that which a vessel that came out light for the purpose of loading with grain on the return trip, could afford. As the great commercial port of Canada, Montreal receives an immense tonnage of merchandise, proportioned to the needs of the country, and to that extent, whatever it may be, is able to handle Canada's export grain traffic. But Canada's import tonnage is by no means equal to her export tonnage when grain is included. And for the grain that is over the amount of the return tonnage available in the vessels outbound from Montreal, a one way rate must be paid for the ocean voyage if it is loaded at that port.

Following are the shipments overseas by way of Atlantic ports, during the crop year 1925-26:—

Canadian—

	Bushels.
Montreal	74,660,253
Quebec	3,095,334
St. John	10,963,458
Halifax	834,339
	89,553,384

United States—

	Bushels.
New York	75,424,890
Philadelphia	16,931,010
Baltimore	12,516,907
Norfolk, Va.	335,874
Boston	3,146,690
Portland	5,592,270
	113,947,641
In store at United States Atlantic ports on July 30, 1926	1,888,404
In bond for grinding and export	16,841,000

The above figures regarding wheat exports appear in the report of the Dominion Bureau of Statistics. Those regarding the United States are from the United States Department of Commerce report.

The United States Atlantic ports have a larger tonnage of incoming than of outgoing cargo. The difference increases from year to year as population increases while the area of wheat production does not. The United States Atlantic ports have need of wheat in constantly increasing volume to give return cargo to the vessels bringing them merchandise. Consequently while there is a limit to the volume of grain that Montreal can take as return cargo, there is practically no limit to the amount that the United States can take at return cargo rates.

Rates by Inland Water Route

During the season of navigation of 1926, the lake and canal rate from the lake head to Montreal was 9.60 cents per bushel, and to Quebec 10.20 cents.

But in addition to the transportation charges by vessel and rail on grain taking the lake-and-rail route from the prairies to the Atlantic seaboard, there are storage and transfer charges at each point where bulk is broken.

On the lake and canal route there are elevator, storage and sundry charges at Fort William amounting to 1.53 cents per bushel and an additional charge for lake insurance and wharfage at Montreal of .49 of a cent. Adding these amounts to the boat rate makes the cost, lake and canal route, Fort William to

Montreal for the year 1926, 11.24 cents a bushel with Colborne transfer from lake to canal sized vessels: 11.37 cents with Buffalo transfer and 11.62 cents through without transfer, or an average of 11.41 cents by the all water route to Montreal, or 12.01 cents to Quebec.

By lake and rail through the Bay ports, there would be the same elevator, storage and sundry charges as on grain going all water, of 1.53 cents per bushel at Fort William, an average lake rate (season of 1926) of 3.01 cents; lake insurance and elevator charge at Bay ports .44 of a cent, rail rate to Montreal 8.6 cents and wharfage at Montreal 0.18 of a cent, a total of 13.86 cents, Fort William to Montreal.

By way of lake and rail through Buffalo to New York there would be the same Fort William charges of 1.53 cents per bushel, an average lake rate (season 1926) of 3.67 cents, lake insurance and elevator at Buffalo, .44 of a cent, rail rate Buffalo to New York 9.1 cents; F.O.B. New York 1 cent, total 15.76 cents per bushel. To Philadelphia and Baltimore the rate would be 0.3 of a cent less than to New York, or 15.46 cents per bushel.

This comparison gives Montreal an advantage of 4.35 cents per bushel in the all-water rate and 1.9 cents in the lake and rail rate over New York. The fact that notwithstanding this advantage in inland freight rates, New York handled as much Canadian wheat as Montreal, while Philadelphia, Baltimore and Norfolk, Virginia, handled an additional 26 million bushels, is evidence that, in spite of more favourable inland rates, overseas shipments of wheat by way of Montreal under present conditions are limited by the amount of return cargo tonnage available at that port.

Marine Insurance Rates

Rates of insurance on vessels and cargoes play a large part in diverting traffic from or directing it to any certain seaport or group of seaports. Mr. A. Johnston, Deputy Minister of Marine, told the Board during the enquiry that tramp vessels (not liners) trading into the River St. Lawrence during the summer months are penalized to the extent of an additional 1¼ per cent insurance premium, as compared with New York on value of vessel (not including cargo). For the period from November 1st until the close of navigation, there is a further penalty of 1 per cent. A tramp vessel valued at $500,000 and insured for that amount, will, if it arrives in Montreal for a cargo during the summer months, have to pay an extra premium over New York of $6,250. In the months of November or December, the extra premium would be $11,250 for the trip. These conditions apply to both Montreal and Quebec and to St. John as well, but not to Halifax.

Insurance rates on cargoes from North Atlantic ports to the United Kingdom are as follows:—

New York, Boston and Portland	12½	cents	per	$100
Halifax and St. John	20	"	"	"
Quebec	22½	"	"	"
Montreal	25	"	"	"

The rates from New York, Boston and Portland are for the year round. From Montreal and Quebec these rates apply only from the opening of navigation to October 15th. Beyond that date, up to the close of navigation, rates range from 5 cents to 27½ cents above those mentioned.

The Imperial Shipping Committee on Marine Insurance Rates in its 1925 Report, estimates that on wheat from St. Lawrence ports to the United Kingdom, the insurance premium over the New York rate on hull and cargo amounts to approximately 5 per cent of the ocean freight.

The marine insurance of the world is largely in the hands of "Lloyds" having headquarters in London, England. The attitude of that organization towards

Canadian traffic may be gathered from a warranty form appearing in the 1925 Report of the Imperial Shipping Committee on Marine Insurance Rates. This warranty must be signed as a condition of securing insurance at standard Atlantic (that is New York) rates. It is as follows:—

> "Warranted not to enter or sail from any port or place in British North America on the Atlantic coast, its rivers or adjacent islands, except the port of Halifax, and for bunkering purposes only the ports of Louisburg and Sydney, or to enter or sail from any port or place north of 50 degrees North Latitude on the Pacific coast of America, its rivers or adjacent islands."

The penalty of additional premium (amount varying at the discretion of Lloyds), must be paid if the vessel sails to any port excluded by the warranty. Since the date of the report Prince Rupert has been removed from the black list. Halifax was included until 1925.

In the General Rates Enquiry the Board was instructed to find and take suitable action on the facts. But the comparative weight of what appear to be contradictory facts can only be correctly estimated if their foundation and relationship is understood. Assuming that marine insurance charges are based on a fair estimate of vessel risks, it is difficult to appreciate the situation which demands an insurance penalty on the cargo of a vessel destined to Halifax, while the vessel itself is relieved from penalty; or that permits a vessel to enter Louisburg harbour for coal, but does not permit her to load or discharge cargo while doing so. Especially having regard to the fact that over 200 years ago Louisburg was established as the French naval base on the North Atlantic largely because of its superior accessibility and safety. It is equally difficult to understand on what principle Portland, Maine, is given the same rates for the same season as New York, while St. John, only 250 miles further easterly on the same coast, is so heavily penalized as to hulls and cargoes, and limited as to seasons. The Canadian Pacific and Allan Lines had 871 winter sailings from St. John between 1908 and 1924 and in that period had only one wreck.

It would seem reasonable that the St. Lawrence ports should pay extra insurance rates for short periods at the opening and closing of navigation, but it is difficult to see why the vessel that at the eastern end of her summer voyage passes through the narrow waters that lead either to Liverpool, Glasgow, London or the Danish, Swedish or German western Baltic ports without extra insurance, must pay a penalty at the western end of her voyage on the wider, calmer and as well lighted waters of the Bay of Fundy or the Gulf and River St. Lawrence. Vladivostock, Siberia, is closed by ice in winter. But vessels may sail to or from that port between May 1st and November 1st without penalty.

Whether or not in the future it may become possible to remedy in whole or in part these adverse conditions of marine insurance, their present existence has an important bearing on ocean grain rates, both from our St. Lawrence and our Maritime Province ports. There can be no doubt that they have been very effective in keeping vessels other than liners (which carry much lighter insurance rates) away from all Canadian Atlantic ports and thereby are in considerable measure responsible for the extent to which Canadian grain has been diverted to United States seaports.

Liners sometimes run light one way; and sometimes tramps bring as well as take cargo. But, speaking generally, if Canada is to recover a dominant position in the export of her own grain, it must be through the attraction to her ports in larger measure of vessels seeking one way cargo, in other words, tramps.

The insurance penalty imposed on tramp vessels and applicable to all Canadian Atlantic ports except Halifax, is serious enough, but its indirect effect in tending to exclude such vessels from the St. Lawrence route, is even more

important in connection with the one way grain traffic. So long as conditions remain as they are, the insurance penalty on both hulls and cargoes must be "absorbed" by the inland rates.

United States Ocean Traffic needs Canadian Wheat

Of 264 million bushels of wheat which reached the lake head from the prairies in the crop year 1925-26, all but ten million bushels went forward by the lake and canal or lake and rail route. This included the portion to be milled in Canada both for domestic consumption and for export as flour. The fact that of the amount that was forwarded for export overseas only 90 million bushels went through Canadian ports while 122 million bushels went forward for export through United States ports, is evidence that although Canada has the only lake and canal route to her St. Lawrence ports and the shortest lake and rail route as well, these combined do not give her sufficient advantage over the United States to enable her to retain the export of her own grain. Rather it indicates very clearly that as long as Canada depends solely on those routes, she must divide her export grain traffic with the United States and take the smaller share.

The conditions of thirty years ago are now reversed. Then the United States had more outgoing wheat than incoming merchandise, while Canada had less wheat than merchandise. The navigation of the upper lakes is common to both countries. The Buffalo-New York route was the great outlet for export grain from the northwestern States. When Canada needed wheat to give return cargoes to ships bringing merchandise to Montreal, she was able by deepening the canals and establishing rail connection with the Georgian Bay ports, to attract some share of United States wheat for that purpose from the Buffalo-New York route. Now that the United States needs Canadian wheat to give return cargoes to vessels bringing merchandise to her Atlantic ports, she is able to attract a large share of it from the Canadian lake-and-canal and lake-and-rail routes to the Buffalo-New York route. How great is the need of the United States seaports for Canadian grain as return cargo, is shown by a comparison in bushels, of exports of Canadian and of United States grain of all kinds by way of United States Atlantic ports during the year 1926, as given in the 1926 report of the Montreal Harbour Board, as follows:—

	United States Grain.	Canadian Grain.
New York	20,138,626	79,159,096
Boston	282,255	4,542,953
Philadelphia	6,832,016	14,789,631
Baltimore	10,857,472	14,436,550
Norfolk	460,619	669,500

The records of the past nine years prove conclusively that if Canada is to hold even a fair share of the export traffic in her own grain, she must supplement whatever advantage there may be in her lake-and-canal and lake-and-rail routes by the effective use of her three railway lines which give connection between the wheat fields and the St. Lawrence ports in summer and the Maritime Province ports in winter.

The Georgian Bay ports

Regarding the lake situation: The big carriers of the upper lakes are too large to go through the St. Lawrence canals. They carry from the lake head to the Canadian ports on Georgian Bay or to Colborne and Buffalo on Lake Erie. At the Bay ports they transfer for rail haul to Montreal; for local storage and forwarding in summer for domestic consumption, or to Maritime Province and New England ports in winter. At Colborne transfer is made from the upper lake carriers to smaller vessels of canal size for forwarding to Montreal or

Quebec. At Buffalo transfer may be made as at Colborne to the canal route to Montreal; to the rail route to New York, Philadelphia, Baltimore or Norfolk, or into storage for winter forwarding as the liners arriving at those ports need return cargo. The lake haul to the Bay ports is much more direct and therefore shorter than to Buffalo. A vessel can make three round trips from the lake head while she is making two to Buffalo. But return cargo of coal may be had on the Buffalo route while none is available on the Bay ports route. Consequently the difference in length of lake haul is not reflected in a correspondingly lesser lake rate to the Bay ports.

The rail haul from the Bay ports to Montreal is considerably shorter than that from Buffalo to New York. The rate to Montreal is 8.6 cents as compared with the New York rate of 9.1 cents. While the St. Lawrence is closed, grain for export must take the longer haul to the open winter ports. The rate from the Bay ports to Boston, St. John and Halifax is the same as from Buffalo to New York. Quebec is not a winter port. It is only 170 rail miles from Montreal while the winter port of Boston is 340 miles, St. John 481 and Halifax 848 miles. Notwithstanding the much shorter distance to Quebec and the fact that it is not a winter port the rate from the Bay ports to Quebec is the same as to Boston, St. John and Halifax. It would seem fair, as the winter ports of Boston, St. John and Halifax are grouped under one rate although the length of haul varies so widely, that the summer port of Quebec should be grouped under the same rate as Montreal, especially when the difference in distance between the two summer ports is so much less than the average between the several winter ports. In actual fact grouping is discrimination, but if for good and sufficient reasons it is necessary in the case of the winter ports, both Canadian and foreign, the same reasons it would seem should be sufficient to place the two summer ports of the St. Lawrence in the one rate group.

The winter rail haul from the Bay ports to St. John and Halifax is much greater than to the United States ports of Portland, Boston, New York, Philadelphia or Baltimore. Rail rates from the Bay ports to Canadian and United States winter ports are the same. As a purely business matter when there are the same rates for different lengths of haul, the railways naturally prefer to route the grain to take the shorter haul. There is an exception in the case of St. John to the amount of the grain needed as return cargo by Canadian Pacific liners discharging at that port. But beyond that amount the rule holds.

It is to be noted however, that in the case of haul to a Canadian port, the Canadian railway gets the whole cost of haul to the port, and the return haul, if any, as well, while it only gets a share of the earnings on the haul to a United States port. On grain delivered at New York from the Bay ports, one-third of the haul would be in Canada and two-thirds in the United States. At a rate of 9 cents a bushel from the Bay ports to New York, the Canadian roads would get 3 cents for 200 miles and the United States roads 6 cents for 400 miles. In hauling to St. John the Canadian Pacific gets 9 cents over the line of 837 miles and the Canadian National would get the same for the longer haul of 1,025 miles to the same port, or for a haul of 1,215 miles to Halifax.

With the completion of the new Welland Canal, now in progress, the large vessels of the upper lakes will be able to come to the eastern end of Lake Ontario. There they will have to transfer either to smaller vessels of canal size by which the grain will reach Montreal, or to elevators for storage and rail haul, as at the Georgian Bay ports. The Canadian transfer point may be Kingston, Brockville or Prescott, as it now is at Colborne on Lake Erie. But Oswego is on the United States side of Lake Ontario, opposite Kingston, situated as conveniently to the Canadian route as Buffalo is to

Colborne. It is 100 miles nearer New York and Boston by rail than Buffalo. The new condition will not be materially different from the present, so far as the possibility of New York sharing in the export traffic in Canadian grain by way of the lake route is concerned.

Quebec as an Ocean Port.

From Winnipeg, which is the most easterly grain assembling point on the prairies, the National line to Montreal, by way of Nakina, Capreol and North Bay is 1,357 miles. The Canadian Pacific by way of Fort William is 1,411 miles from Winnipeg to Montreal, and the Transcontinental to Quebec is 1,350 miles. From Montreal to Quebec the rail distance is 170 miles. Of the two St. Lawrence ports, Montreal has every facility for handling liner traffic. Having the advantage of the lake-and-canal and of the lake-and-rail haul as well, together with the all-rail haul and complete harbour facilities, it will always have abundance of wheat on hand to provide return cargoes for vessels bringing merchandise, whether liners or tramps. But for vessels seeking one way cargo, Quebec has important advantages over Montreal. It is a tidal port, with sufficient depth of water at all seasons to float any but the very largest ocean vessels. It is 165 miles nearer the open sea than Montreal, and therefore a vessel saves practically two days on the round trip by loading at Quebec. It is open both earlier and later than Montreal. In only three years between 1890 and 1926 inclusive was the last outward bound ocean sailing from Quebec earlier than December. The respective dates were November 24th, 25th and 27th. Of the twenty-three December dates, eight were between the 10th and the 21st, and twelve earlier than the tenth. In 1918 the last ocean sailing from Quebec was on January 11th. It is fair to say that the respective dates of the late sailings rather reflect the insurance than the navigation conditions. In the same years, of the first arrivals from the sea, twenty were in April, the dates ranging from the 15th to the 27th. The latest arrival in May was on the 5th, in 1923. There is a saving in pilotage charges from Quebec to Montreal and the insurance rate on outbound cargo is slightly less. All vessels to and from Montreal must pass Quebec, therefore whatever risks there are in St. Lawrence navigation are less to Quebec than to Montreal by that much.

The ocean distance from New York to Quebec is under 1,400 miles while the distance from New York to Liverpool is over 3,000 miles. Therefore a vessel which discharges a merchandise cargo at New York and is unable to get a return cargo there, would, under ordinary conditions, find it more profitable to make the 1,400 mile trip to Quebec light in order to get a cargo of grain to Europe than to make the more than 3,000 miles return trip to Liverpool or other European port without cargo. The marine insurance penalty against Canadian ports on incoming vessels and on outgoing cargoes would of course to a considerable extent counterbalance the natural advantages of Quebec until they are removed or substantially decreased.

Quebec as a Forwarding Point

Quebec is favourably situated as a forwarding point for grain to the Maritime ports. By the National lines the rail distance from Quebec to St. John is 493 miles and to Halifax 660 miles. From Montreal to St. John by the National is 634 miles and to Halifax 842 miles. By the Canadian Pacific the rail distance from Montreal to St. John is 481 miles and to Halifax (using the National line from St. John) 760 miles. The Canadian Pacific system has no line of its own between St. John and Halifax. Quebec is therefore 100 miles nearer Halifax than by the shortest line from Montreal and only 12 miles further from St. John than by the Canadian Pacific short line across the State of Maine.

Although Quebec has the shortest rail haul from the prairies to the Atlantic seaboard and has special advantages for the handling of outgoing ocean traffic, the present rail rate of 20.7 cents a bushel on wheat from Fort William prevents grain from moving by that route. It is true that the rail rate to New York is 21.3 cents; but an all-rail rate of 21.3 cents to New York does not mean anything when the lake-and-rail rate is only 15.76 cents and when there is ample wheat in storage at Buffalo and ample shipping seeking wheat cargoes at New York.

Quebec handled only three million bushels of wheat in 1926. All of this came by the lake-and-canal route through Montreal and was the largest volume shipped through Quebec in any season. All the grain of all the west could be carried through the Canadian canals to the St. Lawrence ports. The lake-and-canal rates to Montreal are over four cents a bushel lower than the lake-and-rail rates to the United States Atlantic ports, but not one-third of the total volume of export grain takes the lake-and-canal route.

The advantages of the lake-and-rail route are evidently sufficient to overcome in large measure the cheaper rates of the lake-and-canal route. No doubt these advantages are chiefly in the shorter time required to move grain from the lake head to the ocean port by the lake-and-rail route. The difference is from a week to ten days; the lake-and-rail trip taking a week or under and the lake-and-canal two weeks or over. Owing to rapid and radical fluctuations in wheat prices in the world's markets, and to even more rapid and radical fluctuations in ocean rates of transportation, the prompt and certain movement of wheat from the point of production to the consuming market is in the highest degree important to all interests concerned. With the crop movement suspended by winter conditions on the lakes for from four to four and a half months of each year, the urgency of prompt and certain movement is greatly increased.

As lake-and-rail gives greater certainty and speed of grain movement than lake-and-canal, so all-rail gives still greater certainty and speed over lake-and-rail. It is reasonable to assume that if grain were forwarded all-rail direct from the producing areas to Quebec at rates truly competitive with those to New York, the more prompt and certain delivery thereby made possible would tend to balance in some degree the advantages now enjoyed by New York and thus tend to swing so much of the Canadian traffic by the Canadian route.

The fact that during the crop year 1925-26 over ten million bushels of wheat was moved eastward from the lake head by rail is evidence first that the long all-rail haul is practicable, and second that circumstances may be such as to make it profitable to shippers even at the present non-competitive rates.

A feature of the lake-and-canal haul that tends strongly to throw the grain traffic by way of Buffalo and New York is the fact that in the fall grain comes forward in its largest volume to Buffalo and the Bay ports for several weeks after the ocean movement from Montreal has become negligible. Vessels leaving Fort William can get insurance for the outbound trip up to December 12th. This lake insurance is good on eastbound cargoes until arrival at destination, up to say December 20th. Very little grain is loaded in Montreal after November 20th. Therefore, for the last month during the very peak of the movement on the lakes, the St. Lawrence outlet is in effect blocked, for if the grain does reach Montreal after November 20th, it must go into storage as it would have done at the Bay ports or Buffalo.

All Rail to Quebec

Grain from the prairies reaches the navigation of the Great Lakes at Fort William over four railway tracks from Winnipeg. In the crop year 1925-26 this movement amounted to 264,000,000 bushels of wheat, 36,000,000 bushels of barley and 40,000,000 bushels of oats, with rye and flax besides. There is

no such rapid movement of such a volume of grain to any other port in the world as that which occurs at the twin lake ports of Fort William and Port Arthur in the three months after harvest and before the close of navigation in each year.

There are three lines of railway from Winnipeg to Quebec. The evidence given by both railways was that their respective western equipments and organizations were fully employed during only one-third of the year while the grain movement was greatest between harvest and the close of navigation on the lakes; and that during the remaining two-thirds of the year two-thirds of their equipment was idle and their organization disrupted for lack of traffic.

The prairie grain producing area extends over 850 miles westward from Winnipeg or over 1,250 miles from Fort William. The average rail haul on the grain reaching Fort William is approximately 800 miles. Taking the several railway points 400 miles west of Winnipeg respectively as centres of the grain production, the average length of rail haul to Quebec would be 1,750 miles, as compared with present average haul of 800 miles to Fort William. The all-rail haul from the prairies to Quebec would thus be 150 miles or one-fifth more than twice as far as the present rail haul to Fort William. Clearly the equipment that was able to haul 264 million bushels of wheat 800 miles, using it to capacity one-third of the year, must be adequate to haul less than half that amount (122 million bushels that went forward to United States ports), 950 miles further during the remaining two-thirds of the year.

There can be no question that Canada has ample railway equipment to forward her total grain crop to her own ports and does not need to divide either the traffic or the earnings with the railways or lake carriers of the United States. The only question is that of competitive rates, all-rail and lake-and-rail.

Rail Rates, Prairies to Quebec

It is an accepted principle in railway rate making that the longer haul pays the lower per mile rate. The distance from Winnipeg to Fort William is 420 miles and the wheat rate is 8.4 cents a bushel or two cents a bushel per 100 miles. From Moose Jaw the distance is 818 miles and the rate is 12 cents a bushel or slightly under $1\frac{1}{2}$ cents a bushel per 100 miles. From Calgary the distance is 1,250 miles and the rate 15.6 cents a bushel, or practically $1\frac{1}{4}$ cents a bushel per 100 miles. These are the rates now actually paid on the grain actually moved. Therefore it may reasonably be assumed that for any haul over 1,250 miles, $1\frac{1}{4}$ cents a bushel per 100 miles is a fair proportionate rate. All grain eastbound from the prairies passes through Winnipeg. Therefore in comparing rates to the seaboard Winnipeg may properly be taken as a common point. From Winnipeg to Quebec is 1,350 miles. On the present Calgary-Fort William basis, the rate from Winnipeg to Quebec would be 16.875 cents, or for ease in calculation say 17 cents per bushel. To get a proper comparison between the all-rail rate to Quebec and the lake-and-canal and lake-and-rail rates, it is necessary to add the rail rate Winnipeg-Fort William to the rates from Fort William to the seaboard. Allowing the minimum long haul rail rate for the distance from Winnipeg to Fort William, $5\frac{1}{4}$ cents a bushel would have to be added to the lake and rail rate from Fort William to New York, to get the rate properly comparable with the all-rail rate from Winnipeg to Quebec. On that calculation the present rate from Winnipeg to New York is 21 cents per bushel. There would thus be a margin of four cents a bushel between the suggested all-rail rate to Quebec and the present lake-and-rail rate to New York.

Ocean rates vary greatly. In 1926 the ocean rates from Montreal to Liverpool ranged from 5.2 cents to 9 cents in May, and 8.2 cents to 9 cents in August to from 9 cents up to 24 cents in November. From St. John they ranged from 9 cents in January to 6.7 cents in March, 1926. These were practically

liner rates. An addition of 4 cents a bushel saved from the inland haul should be sufficient to bring vessels seeking one way cargo to the port of Quebec, while the advantage of certain and speedy delivery from prairie points would be an inducement to shippers to use that route.

Rail Rates to Maritime Ports

Quebec is a summer port with an average open season of seven and a half months. When Quebec is closed the alternative Canadian route is by way of the ports of St. John and Halifax. From Winnipeg the rail distance to St. John by way of the National Railway and the Quebec Bridge is 1,825 miles and to Halifax 1,990 miles. By way of Montreal the distance by the National lines is 1,980 miles to St. John and 2,145 to Halifax. By way of the Candian Pacific through Montreal, the distance from Winnipeg to St. John is 1,892, and to Halifax (using the National lines from St. John), 2,170 miles. The all-rail route from Winnipeg by way of the Quebec Bridge to St. John, is 67 miles shorter and to Halifax 180 miles shorter than the shortest line by way of Montreal.

The continuation of the suggested Winnipeg-Quebec per mile rate to the Maritime Ports would give a rate of 22.75 cents a bushel to St. John and 24.875 cents to Halifax. As these rates would both be higher than the present 21 cent lake-and-rail rate Winnipeg to New York, they would not be effective in attracting traffic to the Canadian ports. Although Halifax is 550 miles and St. John 300 miles nearer Liverpool than New York, the trend of traffic to the greater port and the discriminatory marine insurance rates are more than sufficient to cancel the advantage of a somewhat shorter ocean voyage. If Canadian overseas traffic is to pass through Canadian seaports it must reach these ports by inland rates that will be actually competitive with those to United States ports. Therefore, the grain rates from Winnipeg to St. John and Halifax must be not more than the present New York rate of 21 cents a bushel.

A 21 cent rate from Winnipeg to St. John and Halifax,—to equal the present New York rate,—would only leave a margin of four cents to pay for the rail haul from Quebec to the ocean ports. This would be substantially below the suggested per mile rate Winnipeg to Quebec, and would be a very low rate for a one way haul.

But in case of a merchandise cargo arriving in winter at the port of St. John or Halifax for distribution throughout Canada by rail, it would be good business for the railways to bring empty trains from Montreal or Quebec to meet and transport that merchandise to its destination. Therefore it would be much better business to meet the merchandise at the winter port with a train loaded with grain at even a three or four cent rate from Montreal or Quebec. For the empty train that would earn nothing would cost at least two thirds as much to run as a fully loaded train of say 40 cars of wheat that at four cents a bushel would earn $2,000 on the trip from Quebec or Montreal to the ocean port. If conditions were established so that shippers could get prompt and certain delivery of grain either from transfer storage at Quebec, or from primary shipping points on the prairies to St. John and Halifax at a rate that was in actual fact competitive with that to New York, there is every reason to believe that a much larger part, if not the whole of the winter merchandise traffic of Canada could be attracted to those ports.

During the year 1925-26 St. John attracted nearly 11 million bushels of wheat from the Bay ports against competitive rates from the same ports to Portland and Boston, and from Buffalo to New York, Philadelphia and Baltimore. This was possible because the wheat provided return cargo for vessels,—chiefly Canadian Pacific liners,—bringing merchandise to St. John, during the period while the St. Lawrence was closed.

A competitive all-rail service from the prairies direct throughout the winter would give such an advantage to shippers in meeting the fluctuations of the world market by actual delivery, that ocean vessels bringing merchandise to the Maritime ports could always be assured of return cargoes. If sufficient transfer storage, such as exists at Fort William, were provided at Quebec, grain could be moved forward all-rail to that storage at all seasons. During the period of closed navigation it could go into storage (as it now does at Fort William and Port Arthur) to await the opening of navigation on the short ocean haul; and if in storage there, it could be readily pushed forward to St. John and Halifax as required to give return cargo to vessels bringing merchandise to those ports.

An established movement of wheat through the Maritime ports would be the means of bringing merchandise cargoes. But wheat cannot and will not be routed by shippers through those ports unless the rates by which they are reached are in fact competitive with those to other ports. The export traffic in wheat is highly specialized and the difference of a fraction of a cent in transportation costs, if facilities are equal, is sufficient to divert shipments of wheat from or to any certain route.

Avoiding Seasonal Break in Flow of Grain

It is of course obvious that the railways could not deliver the season's crop at Quebec within the same four months that they are able to deliver it at Fort William, because of the somewhat more than double length of haul. But if the rates to St. John and Halifax as well as to Quebec were effectively competitive with those to New York, there would be no reason why they should be required to do so. No doubt there will always be some rush of grain to the lake front in the fall. The domestic and export milling requirements of the central provinces can be supplied most cheaply by the lake route. The liners arriving at Montreal during the first months of the new crop movement, up to the close of St. Lawrence navigation, can as well or possibly better be given their return cargoes by that route. The pressure from the farms will always tend towards an early forward movement. It might be that during the peak of the fall rush to the lake front, there would not be sufficient equipment for the all-rail haul as well. But that condition could only continue for a short time. The grain that leaves Fort William after say mid-October—or possibly even earlier—is not expected to reach the seaboard for immediate consumption in Europe. The reason for the rush in that case as already stated, is to get the wheat into storage east of the lakes, so that it may go forward for consumption at the dealers' discretion during the winter. If there were competitive all-rail rates to open Canadian ports for the year round, it could just as well remain in the farmer's granary or in the country elevator during what is now the rush season, to go forward at any time during late fall and winter, or the following summer as the market conditions might seem to suggest. The element of " gamble " in regard to the third of the crop held west of the lakes by the freeze-up under present rate conditions, would thus be cut out to the vast benefit of all legitimate interests. The extra costs of rehandling and winter storage incident to present conditions would also be cut out and Canada would be on a level with other countries in getting her wheat to market, except for her long extra haul to the seaboard. That, of itself, is handicap enough, and demands that every other cost and difficulty, so far as possible, shall be eliminated. The national interest demands that the most important national export shall reach the consuming market under the most favourable conditions and at the lowest possible cost.

Canada has three lines of railway from the prairies to the St. Lawrence ports, two to St. John and one to Halifax. The three lines cost not less than 100 million dollars each. Neither of the three carries traffic approaching capacity at any period of the year. All are kept open to traffic at all seasons. It would

seem to be elementary good business that the two-thirds of the western railway equipment now lying idle during two-thirds of the year should be employed in moving over the lines of railway not now being used to capacity, to Canadian ports, also largely idle, the Canadian wheat that now helps so largely to swell the business of United States railways and to bring ocean traffic to United States ports.

Track Conditions

It is no doubt a fact that the two through lines of the Canadian National from Winnipeg to Montreal and Quebec respectively, and from Quebec to St. John, with the one line from Moncton to Halifax are not at present conditioned to carry the heavy motive power which gives the maximum profit on long haul traffic as the lines westward from Fort William have been. But it would seem difficult to find good reasons for a policy that built two national lines of railway at a cost of 100 million dollars each and then allowed them to fall short of achieving the primary reason for their construction, for lack of being put in condition to economically carry the traffic that we ourselves have made available, but that is being carried by our neighbours and trade competitors. The gradients on both lines throughout are such as to admit of maximum haul provided the road bed is conditioned to carry modern heavy locomotives.

The main line of the National system is fully conditioned from Edmonton to Sioux Lookout at the junction of the branch to Fort William, and the Fort William branch is equally conditioned. From Sioux Lookout to Quebec direct, or by way of Nakina and Capreol to Montreal, is practically 1,100 miles. If it was good business to fully condition the track from Edmonton to Fort William, 1,250 miles, in order to hand the grain traffic over to the lake carriers there, it would surely be better business to fully condition the shorter mileage on the line from Sioux Lookout to Quebec, in order to retain as large a share of the haul as possible to the railway, and give a measure of service that is not practicable by the lake route. What is applicable to the line from Sioux Lookout to Quebec is equally applicable to the lines from Quebec to St. John and Halifax. If they are not in condition to carry heavy grain traffic they ought to be. For unless they are so conditioned the grain cannot be carried with profit at the rates that are necessary to bring it by that route. What had to be done between Calgary and Edmonton and Fort William, in the matter of track improvement must be done between Sioux Lookout and the St. Lawrence and Maritime ocean ports if equal results are to be achieved. Until the tracks are put in shape for heavy long haul traffic operation must show a much less satisfactory return than it otherwise would, but that is not a reason why operation at competitive rates should be delayed.

Earnings on all Rail Haul

As to railway earnings from the suggested all-rail routes: To give Quebec a differential over New York sufficient to bring tramps seeking one way cargo, or to give St. John and Halifax rates so equalized with New York that they would attract both liners and tramps for round trip business, would mean a rate at the present per mile minimum for the long haul to Fort William, so far as traffic to Quebec was concerned, and somewhat below that figure for the winter traffic beyond Quebec to St. John and Halifax. This would mean a somewhat lower rate per bushel per mile than the average now earned on the traffic to Fort William, but on the other hand it would mean a much larger gross earning on the number of bushels hauled than at present. It would in fact mean, if Canada were to retain the whole of her wheat traffic now passing by way of United States ports, that the traffic earnings now being paid to United States lake carriers and railroads would be paid to the Canadian railways and that they would have in addition the earnings on the increased

merchandise traffic coming to Canadian ports, because of the export wheat directed to and through them. It is these resultant earnings on merchandise traffic that are the chief occasion of the intense rivalry for wheat traffic by United States railroads and seaports. A reduction of rates from the prairies to Canadian seaports would not affect the existing rates to Fort William on the traffic taking the lake route.

Idle Equipment Earns Nothing

The suggestion that the all-rail grain rate from Winnipeg to Quebec should be reduced to the level of that per mile from Calgary or Edmonton to Fort William was strongly opposed during the enquiry by both railway systems. It was freely admitted that a large proportion of Canada's grain was providing earnings for United States carriers, and aiding traffic through United States seaports, while from one half to two thirds of western Canadian railway equipment was idle and railway organization disrupted for lack of traffic during seven to eight months of each year. No suggestion was offered as to the improvement for Canada of present conditions by way of the lakes. But it was asserted, first, that grain could not be carried profitably at the rate mentioned, and, second that if the rates were reduced on the Transcontinental from Winnipeg to Quebec, United States railroads would make corresponding reductions which would cause losses to the Canadian railways in respect of their present traffic and leave the Canadian ports no better off in regard to overseas traffic than they are today.

As to the measure of profit on the present long haul grain rates: The annual statements of both railways are evidence that the grain traffic as a whole is their most important source of net revenue. This could not be if the large volume that takes the long haul and therefore the low rate were carried at an actual loss. It is of course a fact that the rate on a ton of wheat does not carry the same share of the gross overhead of the railway as a ton of first class merchandise. But it does carry some share of that gross overhead. There are not enough tons of merchandise to carry the total overhead. But there are so many more tons of grain taking the long haul than of merchandise, that the part of the overhead carried by each ton of grain possibly in the total makes up a larger part of the overhead than is provided by the lesser total of merchandise tonnage at the higher rate. In any case it is a part of the total earnings which is necessary to produce the net profit.

Of course the higher the rate paid by the grain, the greater the share of the overhead which it carries. But if the rates, or other traffic conditions are such that production cost or market price will not permit the grain to pay that rate, the grain does not move. The wheels do not turn. There are no earnings. The men are not employed. There is no contribution to the gross overhead. That is the position of the railroads of Canada in respect of the 122 million bushels of Canadian wheat shipped overseas through United States ports between July 31, 1925, and August 1, 1926, upon which United States lake carriers and United States railroads earned a gross amount of fifteen million dollars.

United States Retaliation

As to the possibility of United States railroads reducing their grain rates following a reduction over the Transcontinental from Winnipeg to Quebec. Having secured the flow of the bulk of Canada's export grain eastbound through United States ports and over United States railways, it can only be expected that determined efforts will be made by United States interests to hold the traffic that they now enjoy. Whether their endeavour will take the form of competitive or retaliatory rates,—or some other form,—Canada must be prepared to accept the situation. The alternative is to give up her own traffic in her own product after having spent several hundred million dollars in canals

and railways for the purpose of holding that very traffic. Whatever measures are taken by the United States carriers to retain their present hold on the Canadian grain traffic must be accepted as evidence of the value of the traffic to them and therefore at least equally to Canadian interests.

If the New York rate were substantially lowered it would become necessary to correspondingly further lower the Winnipeg-Quebec and Maritime port rate. There is no doubt that the United States railways find the present rail rate from Buffalo to New York very profitable and that they could afford to cut it substantially without losing money. But if they knew that any cut they made would be followed by an equal cut in the rate to Quebec, they might think it wise not to make any rate cut, and be satisfied with the share of the traffic that because of certain favouring conditions will come to them in any case while retaining present rates. As already stated, a fair measure of competition in grain transportation is desirable. But Canada's eastbound grain traffic which at one time was the subject of United States competition, has now become too largely subject to United States domination for Canada's good, either nationally or as a mere matter of plain business.

Conditions of Railway Employment

There can be no doubt that the present system of rushing to get as much as possible of the prairie wheat crop across the lakes in the fall is essentially uneconomical. In order to meet the rush, the railways have to make an investment in motive power and rolling stock three times greater than would otherwise be required to forward grain to the lake front. Interest on cost and loss from depreciation must be provided for by the year,—not by the period of useful service. But the most serious disability imposed upon the railways by the present seasonal character of the grain traffic is in the annual disorganization of their working forces. Wages can only be paid out of earnings. Where there are no earnings there can be no wages. Consequently the organization that is built up each year to take care of the peak movement, is pulled down and sacttered as soon as the peak is passed. Railway labour necessary in the movement of traffic must be highly paid. The railway man's calling demands the best that is in the best men. Measurably continuous employment is a first necessity in building up and maintaining an efficient organization of such men. Under present conditions that is something the railways cannot offer to the men specially engaged for the peak movement. Consequently they must either pay higher than normal wages or accept the services of less efficient men while the movement is on. To equalize the grain movement throughout the year instead of concentrating two-thirds of it within less than four months would seem to be in the best interests of both the railways and their employees. The cash annually paid out to United States lake and rail carriers of Canadian grain would mean a great deal to Canada if paid throughout the year to Canadian railways; as it must be if the grain goes overseas through Canadian seaports in winter as well as in summer.

The Case Shortly Stated

A short restatement of the situation regarding the export of Canadian grain by Canadian Atlantic ports may be given as follows:—

(1) Canada has three routes from the prairies to the Atlantic:—
  (*a*) Lake-and-Canal;
  (*b*) Lake-and-Rail;
  (*c*) All-Rail.

(2) As water haul under ordinary conditions is fundamentally cheaper than rail haul, the lake-and-canal and lake-and-rail routes are used and the all-rail route ignored.

(3) The United States lake-and-rail route by way of Buffalo to New York, Philadelphia and Baltimore competes effectively with the Canadian lake-and-canal and lake-and-rail route to Montreal.

(4) The immensely greater number of ocean vessels bringing merchandise from Europe to United States Atlantic ports than to Montreal creates a proportionately greater demand for grain as return cargo at these ports than at Montreal.

(5) Ocean rates fluctuate with traffic conditions. There being greater demand for return grain cargoes at New York than at Montreal, ocean rates are lower and the advantage of Montreal in the lower rates by the lake-and-canal and lake-and-rail routes is thereby cancelled.

(6) Canada has a greater tonnage of export wheat than of import merchandise. The excess of wheat over merchandise tonnage takes the New York route, because by doing so it gets a return ocean rate.

(7) The all-rail rates from the prairies to the seaboard are maintained at a level that excludes the grain traffic from the railways and therefore excludes it from the Canadian Atlantic ports beyond Montreal, which must depend upon railway service to share in that traffic.

(8) The lake-and-canal and lake-and-rail routes are subject to certain disadvantages as compared with all-rail:—

(*a*) In the short period between the commencement of grain delivery after harvest and the close of navigation on the St. Lawrence, the slower movement by lake and rail in large measure cancels the advantage of lower rates.

(*b*) The transfer, storage and incidental charges by lake-and-rail bring the total cost from prairie to seaport up to the level of a fair long-haul all-rail rate.

(*c*) Lake navigation is closed for from four to four and a half months during the year.

(*d*) Because of closed navigation on the lakes, there is a rush to get the grain across in the fall which adds to the actual cost and introduces an extra speculative element.

(*e*) Grain that does not get across the lakes in the fall is held out of world consumption for the winter and may miss the best market. In any case it meets the competition of new Australian and Argentine wheat during the following summer.

(9) The same per mile rail rate that Alberta grain now pays for the haul to Fort William would give a total cost of haul to Quebec substantially below the present lake-and-rail cost to New York.

(10) With Quebec's advantages as an ocean port that margin might be expected to be sufficient to attract vessels seeking one-way cargo.

(11) Grain could be stored at Quebec during the season of closed navigation as it now is at Fort William, the railways getting the haul that now goes to United States lake and rail carriers.

(12) Grain in store at Quebec could be readily forwarded to St. John or Halifax as required to give return cargoes of grain to vessels bringing merchandise to those ports.

(13) By using the rail haul from the prairies to the St. Lawrence ports in summer and to the Maritime ports in winter, the railways would earn the money that is now paid to United States vessels and railways; Canadian producers would be in reach of the world's markets throughout the year; the rush and congestion that now occurs in the fall season would be avoided; the producer would save paying for winter storage until he desired to sell; the railways could give continuous employment to their operating men, and while their profit on the haul per bushel would be less, their gross earnings would be greater and probably their net profit as well.

(14) Of the 4½ million tons of grain which left Canada at Fort William in the past crop season to be carried overseas through United States seaports, Canadian railways had hauled it an average distance of over 800 miles. United States carriers earned over 15 million dollars in taking it from Fort William to the seaboard. The question is,—Can the railways which hauled the grain to Fort William afford to haul it 950 miles further for that amount of money? If not, Canada has several hundred million dollars worth of railways on hand that are not fulfilling the purpose for which they were built. But if they can, and do, Canada, the greatest export producer of the commodity in greatest and most assured world demand, will have a leverage in world trade that should be of immense benefit to the country as a whole, as well as to the seaports, railways and farmers immediately concerned.

Under the directing Orders in Council of June 5, 1925 (P.C. 886), and January 7, 1926 (P.C. 24), I beg to recommend:—

(1) That a through rate on grain and grain products be established from all prairie points to Montreal and Quebec, made up as follows: .0208 of a cent per 100 pounds per mile to Winnipeg and 28 cents per 100 pounds from Winnipeg to Montreal and Quebec (equal to 1¼ cents a bushel per 100 miles).

(2) That a through rate be established from prairie points to St. John and Halifax made up of .0208 of a cent per 100 pounds per mile to Winnipeg and 34 cents per 100 pounds from Winnipeg to St. John; or 34½ cents per 100 pounds from Winnipeg to Halifax.

(3) That from Quebec and Montreal a rate be established of 6 cents per 100 pounds to St. John or 6½ cents per 100 pounds to Halifax. This rate to include transfer charges at Quebec or Montreal.

OTTAWA, August 22, 1927.

IV

REASONS FOR DISSENT FROM SECTIONS 1, 2 AND 4 OF ORDER 448

The conclusions above expressed were arrived at before Order No. 448 came before the Board for consideration. As the terms of the Order do not conform to these conclusions in so far as sections 1, 2 and 4 are concerned, I was therefore debarred from formally assenting to sections 3 and 5 of which I found myself able to approve.

Now that the considered opinion of the majority of the Board has been expressed in the terms of the Order, it appears to me desirable that there should be as full an understanding as possible, of the conditions so created. As the only member of the Board having intimate personal knowledge of the conditions affected by Sections 1 and 2 of the Order, I take the responsibility of stating those conditions as I understand them.

Grain Rates, Prairies to Fort William

Section 1 assumes to give effect to the Act of Parliament of June, 1925, amending the Railway Act, which stated that in adjusting eastbound grain rates from the prairies to Fort William in conformity with the agreement made under the Crow's Nest Act;

> "The Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference respecting rates on grain and flour governed by the provisions of Chapter 5 of the Statutes of Canada, 1897, and by the Agreement made or entered into pursuant thereto, within the territory in the immediately preceding subsection referred to, on the ground that such discrimination or preference is justified or required by the said Act, or by the Agreement made or entered into pursuant thereto."

It has been admitted that the grouping of stations as to rates on the C.P.R. main line constitutes discrimination in fact. As the groups stand to-day, confirmed by the Board's Order No. 448 it is estimated that the railway is able to collect from certain of the producers along and in the neighbourhood of its main line contrary to the intent of the Act, sums amounting to upwards of half-a-million dollars in each season of good crop, while other producers similarly situated as to railway service, but differently situated as to rate groups, are served at the proper rate.

I take the view that in assuming to give effect to the intent of Parliament it is the duty of the Board, and within its power to remove these discriminations by equalizing the rate groups, although that would reduce the earnings of the railway.

By the terms of the Board's order, the discriminations existing on the Canadian Pacific Railway main line are expressly extended to all Canadian Pacific branch lines,—necessarily producing like discriminations on the branches as on the main line.

Affecting lines of the National Railway the Order says,—"All other railway companies adjust their rates on grain and flour to Fort William, Port Arthur, Westport and Armstrong to the rates so put into effect by the Canadian Pacific Railway Company." While it is true that this part of the Order can fairly be read to require that the rates on all National lines shall conform to the rates on the C.P.R. main line (including present discriminations), it can

also be read to permit the Canadian National to adjust the rates over its shorter lines in accordance with the longer mileage on C.P.R. branch lines. As the latter reading will give the higher rate, in all cases that will give that result it can only be expected that the railway will read it in that way. In such cases the producers affected will of course fail to receive the benefit of what I understand to be the direction of Parliament to the Board.

Section 1 of Order 448 purports to repeat the Board's Order of July 8, 1925, (which was ignored by the railways). In so far as Order 448 is complied with, in some degree and in some cases there will be reductions of grain rates eastbound; but for the reasons above stated, I am unable to consider Section 1 of the Board's Order 448, as conforming to the terms of the Act of 1925, or of the Railway Act itself, or as granting the measure of relief in rates to Western grain growers contemplated by the Act of 1925.

Grain and Other Rates, the Prairies to Vancouver

By section 2 of General Order 448, the Board confirms the Canadian Pacific Railway in its defiance of the Board's Order of September 2, 1925, by which the railways were required to reduce their export rates westbound to Vancouver, to the level of rates eastbound to Fort William. By the finding expressed in section 2 prairie producers served by the Canadian Pacific Railway main line and tributary branches to Vancouver, must pay the same charge for the haulage of their grain 642 miles, that producers served by the C.N.R. main line and tributary branches pay for their haulage of 766 miles to the same port. The grain producers served by the C.P.R. main line and branches are thereby subjected to a discriminatory rate of 2 cents per 100 pounds, as compared with producers on the Canadian National Railways main line and tributary branches.

The Order in Council under which the General Rates Enquiry was held, declared the purpose to be the establishment of rates that would "permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade both foreign and domestic." Besides export grain rates from the prairies to Pacific ports, there also came within the scope of the above direction consideration of the domestic rates on grain and flour from the prairies to British Columbia, and the rates on merchandise moving in either direction between Alberta and British Columbia.

Objection was taken by the representatives of the two provinces chiefly concerned to the domestic grain rate of 41½ cents per 100 pounds from Calgary and Edmonton to Vancouver, as being excessive in comparison with the present export rate of 21 cents per 100 pounds from the same points to Vancouver. Objection was also taken to the "Mountain Differential," whereby class rates on merchandise moving over either railway system pays on an excess mileage of 1¼ to 1 on 524 miles of the C.P.R. and on 642 miles of the C.N.R. main lines. The effect of Order 448 is to confirm these discriminations.

The Order for the General Rate Enquiry (P.C. 886), dated June 5, 1925, directs the attention of the Board to three particular matters, of which the following are the first and last,—

> "(*a*) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919."
>
> "(*c*) The increased traffic eastward and westward through Pacific Coast ports, owing to the expansion of trade with the Orient, and to the transportation of products through the Panama Canal."

In regard to the subject mentioned in paragraph (*a*); after several months had passed, the matter was taken out of the hands of the Railway Board and

placed in those of a Special Commission which duly investigated and reported. Upon the Commission's report Parliament took action during its recent session, and cut internal and outgoing Maritime Province rail rates 20 per cent below the rates then existing; with the provision that whatever loss was incurred by the railways would be paid out of the national treasury.

Up to 1919 rail rates in the Maritime Provinces had been below the average in the rest of Canada. The railway returns showed a loss. It was assumed that if the rates were levelled up the loss would disappear. This was done. The result was a general disarrangement of business conditions in the Maritime Provinces, which again necessarily resulted in increased losses to the railways. The legislation of last session was an endeavour to repair the damage that had been done by the rate increases of 1919.

Section (*c*) of the specific instructions to the Board, relates especially to the two most westerly provinces. The rates there are admittedly higher for equal service, than anywhere else in the Dominion. The Board was expressly permitted (not instructed) by the Order, to level down these admittedly higher rates. The majority have declined to do so.

In the result it appears that equality of rates as expressed in the Order in Council, is understood by the majority of the Board to mean that rates from approximately 15 to 100 per cent above normal in the two most westerly provinces should be stabilized at that level as a measure of equalization, while in the three most easterly provinces Parliament has found it necessary to level down rates to 20 per cent below normal.

Considering these facts I am compelled to take the view that Section 2 of the Board's Order 448 is rather a defiance of than a compliance with the Order in Council (P.C. 886) under which the general freight rates enquiry was held.

Grain Rates, Bay Ports to Quebec

Section 5 of the Board's Order 448 places Quebec on the same export rate level as Montreal as to grain from Georgian bay ports, and merchandise from Toronto and points west. Although the rail haul is 170 miles farther to Quebec than to Montreal I consider this a proper application of the principle of blanketing rates to competitive ports of export, as in the case of the present grain rates from Bay ports to Boston, 679 miles; Portland, 677 miles; St. John, 1,025 miles and Halifax, 1,215 miles by C.N.R., or to Boston, 709 miles; or West St. John, 837 miles by C.P.R. The rate is 15.17 cents per 100 pounds in all these cases and was also the rate to Quebec; while the rates from Bay ports to Montreal 339 miles, was 14.34 cents per 100 pounds. This will now also be the rate to Quebec, 510 miles.

Grain Rates, Fort William to Quebec

Section 4 of Order 448 reduces the all-rail rate, Fort William and Armstrong to Montreal and Quebec, from 34½ cents per 100 pounds on wheat, and 33 cents per 100 pounds on other grain, to 18.34 cents per 100 pounds on all grain to Quebec, only. While I entirely approve of the reduction ordered in the rate to Quebec, I am unable to see how that reduction made to Quebec, only, does not constitute discrimination against Montreal, as expressly prohibited by the Railway Act; as the rail distance is practically the same by the National lines from Fort William and Armstrong to both Montreal and Quebec. If it is proper—as I believe it to be—to blanket Quebec with Montreal in regard to rates on export grain from the foot of the lakes, although the rail haul is 170 miles farther, I cannot agree that Montreal should be excluded from the reduced all-rail rate from the head of the lakes to Quebec. The railway from Quebec to Winnipeg was built in fulfilment of a definite national policy. It may well be that in order to give due effect to that policy it should carry export grain at exceptionally low and therefore discriminatory rates, but having regard to the terms of the

Act which authorizes the existence and defines the duties and powers of the Board, and further having regard to the terms of the Order in Council under which the General Freight rates enquiry was held, I am compelled to believe that the establishment of such discrimination in rates as that provided in section 4 of Board Order 448 is a responsibility of Parliament, and is not within the present powers of this Board. As I understand the matter, the Board has power to prevent, but has not been given the power to create discrimination in railway rates.

Grain Rates to Maritime Ports

Section (*b*) of the special instructions contained in P.C. 886 directs the Board to establish fair and reasonable rates that will have regard to,

> " (*b*). The encouragement of the movement of traffic through Canadian ports."

By a further Order in Council (P.C. 24), dated January 7, 1926, the Board was directed,

> " Especially to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports, and to take such effective action under the Railway Act, 1919, as the Board of Railway Commissioners for Canada may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports."

I assume that in reducing grain rates from Armstrong to Quebec, as provided in Section 4 of Order 448, the majority of the Board sought authorization for that action in the specific and emphatic references to the routing of grain and other products through Canadian ports as above quoted from the two Orders in Council, P.C. 886 and P.C. 24. If these Orders are to be accepted as meaning what they plainly say, they are intended to apply to St. John and Halifax, as well as to Quebec, and cannot be excluded from application to Montreal. To take action under their authority in regard to Quebec and to fail to do so in regard to St. John and Halifax is in my opinion, to disregard their evident intent, and to fall very far short of creating a condition that can reasonably be expected to achieve the purpose expressed in the directing orders.

Traffic moves to and from Canada through United States ports the year around. The St. Lawrence is closed to ocean traffic during four and a half months of each year. During that period ocean borne traffic to and from Eastern Canada must pass through United States ports so far as Quebec and Montreal are concerned. To reduce rates on grain from the prairies to Quebec can only materially alter the situation if rates that will effectively compete with the lake and rail route to New York are carried through to St. John and Halifax. Order 448 makes no change in the rates to St. John and Halifax hitherto prevailing. Therefore those ports are as securely locked against Canadian grain traffic as before the Quebec rate was reduced, or as they were when Orders P.C. 886 and P.C. 24 were issued. The fact that wheat can reach Quebec from Fort William at 11 (eleven) cents per bushel means nothing during more than one-third of each year, if it is not able to reach St. John and Halifax at a rate that is effectively competitive with the gross rate from Fort William to New York of approximately 15 cents a bushel. The establishment of a rate competitive with New York to St. John and Halifax is clearly within the powers of the Board.

Therefore, in my opinion, the establishment of an 11 cent rate to Quebec is not even an approximate fulfillment of the directions expressly given in the Order in Council of January 7, 1926.

Ottawa, August 30th, 1927.

GENERAL ORDER No. 448

In the matter of the Order in Council, P.C. No. 886, of June 5, 1925, requiring the Board of Railway Commissioners for Canada to make a full and complete investigation into the whole subject of railway freight rates in the Dominion of Canada.

File No. 34123

FRIDAY, the 26th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Whereas by Order in Council, P.C. No. 886, dated the 5th day of June, 1925, this Board was directed to make a thorough investigation into the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will in substantially similar circumstances and conditions be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade, both foreign and domestic, having due regard to,—

(*a*) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(*b*) the encouragement of the movement of traffic through Canadian ports;

(*c*) the increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal.

And whereas by Order in Council, P.C. 24, dated the 7th day of January, 1926, the Board was directed, as a part of the general rate investigation above referred to, especially to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports, and to take such effective action under the Railway Act, 1919, as the Board may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports.

Upon hearing the matter at the sittings of the Board held in Ottawa, Montreal, Windsor, Toronto, Moncton, St. John, Winnipeg, Regina, Saskatoon, Edmonton, Calgary, Kelowna, Vernon, Kamloops, Vancouver, New Westminster, Chilliwack, Victoria, and Prince Rupert, in the presence of counsel and representatives of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and the Maritime Provinces, and the Canadian Pacific and Canadian National Railway Companies, the following among other associations and Boards of Trade were represented at various sittings of the Board or submitted their representations in writing, namely: The Boards of Trade of New Westminster, Prince Rupert, Chilliwack and district, Kamloops, Calgary, Moose Jaw, Saskatoon, Prince Albert, Estevan, Regina, Brandon, Yorkton, Winnipeg, Toronto; Ontario Associated Boards of Trade, Cochrane, Montreal, St. John, Halifax, Charlottetown, Moncton and Sydney; the Victoria

Chamber of Commerce, Western Canada Fruit and Produce Exchange, Canadian Council of Agriculture, Retail Merchants' Association, Canadian Manufacturers' Association, Hamilton Chamber of Commerce, Canadian National Millers' Association, Canadian Lumbermen's Association, National Dairy Council of Canada, Fruit Branch, Department of Agriculture of Canada, Livestock Producers of Canada, Live Stock Exchange of Toronto, Quebec Harbour Commissioners; Chamber of Commerce, Joliette, Quebec; Canadian Pulp and Paper Association and Canadian Freight Association.

The Board orders as follows, namely:—

1. That the rates on grain and flour from all points on Canadian Pacific branch lines west of Fort William to Fort William, Port Arthur and Westfort be equalized to the present Canadian Pacific main line basis of rates of equivalent mileage groupings (the rates governed by the Crowsnest Pass agreement not to be exceeded): that the Canadian Pacific Railway Company publish rates in accordance with the above direction, and that all other railway companies adjust their rates on grain and flour to Fort William, Port Arthur, Westfort, and Armstrong to the rates so put into effect by the Canadian Pacific Railway Company, such changes to become effective on the twelfth day of September, 1927.

2. That the rates on grain and flour from prairie points to Vancouver and Prince Rupert for export shall be on the same basis as the rates to Fort William, but in computing such rates, the distance from Calgary to Vancouver via the Canadian Pacific Railway shall be assumed to be the same as from Edmonton to Vancouver via the Canadian National Railway, namely, 766 miles.

3. That the provisions as to distributing tariffs, set out in section XVII of the judgment in the Western Rates Case, shall, instead of being limited to the Canadian Pacific Railway, as provided therein, be extended so as to apply to the Canadian National Railway as well; the necessary amending tariffs to be effective on the twelfth day of September, 1927.

4. That the rate of 34½ cents per 100 pounds on wheat and 33 cents per 100 pounds on other grain for export from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to Quebec as shown in Supplement No. 32 to Canadian National Railway Tariff C.R.C. No. E-447 be, and they are hereby disallowed; and the Canadian National Railway Company is hereby directed to publish and file in substitution thereof a tariff showing a rate of 18.34 cents per 100 pounds on all grain for export from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to Quebec. Such changes to become effective on or before, but not later than, the twelfth day of September, 1927.

5. The Board further orders that all railway companies subject to its jurisdiction be, and they are hereby required to publish and file tariffs showing the same rate to Quebec as to Montreal on,—

(*a*) Grain from bay ports for export;

(*b*) All traffic from Toronto and points west thereof for export.

Such changes to become effective on or before, but not later than the twelfth day of September, 1927.

H. A. McKEOWN,
Chief Commissioner.

46592—12

APPENDIX
I

CERTIFIED COPY *of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 5th June, 1925.*

P.C. 886

The committee of the Privy Council have had under consideration the final disposition of the petition to the Governor in Council of the Governments of the provinces of Alberta, Saskatchewan and Manitoba by way of appeal from a General Order No. 408 of the Board of Railway Commissioners for Canada (hereinafter referred to as the "Board"), dated the 14th day of October, 1924, under which certain tariffs of the Canadian Pacific Railway Company and Canadian National Railways were disallowed and required to be withdrawn from operation.

In and by the said petition the petitioners seek to have the above-mentioned general order of the Board rescinded and further to have the discrimination which would be created by the reinstatement of the tariffs disallowed by the Board removed by lowering other rates to the level of the rates in effect on Crowsnest commodities, so-called, prior to the effective date of the said order.

Upon the hearing it appeared that the petitioners had appealed to the Supreme Court of Canada to have determined certain questions of law and jurisdiction of the Board arising in connection with the Board's general order above mentioned. The committee, being of the opinion that, whatever the power of council might be in the premises, it was essential that it should be advised as to the exact situation in reference to these questions of law and jurisdiction before finally disposing of this matter, and that the operation of the said general order of the Board should be postponed pending the outcome of the said appeal to the Supreme Court, recommended in part that the said general order of the Board be varied so as to provide that the tariffs therein referred to should again become operative and remain in effect until further order of the Board following the decision of the Supreme Court of Canada on the said appeal to it. Effect was given to this recommendation by the issue of Order in Council (P.C. 2220) dated the 25th day of December, 1924.

It appears that the Supreme Court of Canada, after argument in which were heard not only counsel for the present petitioners and the railway companies interested, but also counsel for the province of British Columbia, the Maritime Provinces, the cities of Edmonton, Alberta, and Saskatoon, Saskatchewan, and Brantford, Ontario, and after reserving judgment, directed that the questions submitted to it be answered as follows:—

Question 1. Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize railway rates upon the railway of the Canadian Pacific Railway Company in excess of the maximum rates referred to in the Crow's Nest Pass Act, being chapter 5, 60-61 Victoria, Statutes of Canada, and in the Agreement therein referred to, upon the commodities therein mentioned.

Answer. No.

Question 2. If the court shall be of the opinion that the Crow's Nest Pass Act or Agreement is binding upon the Board of Railway Commissioners for Canada, then, according to the construction of the Crow's Nest Pass Act, section 1, clause (*d*), and the Agreement made thereunder,—

(*a*) 1. Are the rates therein provided applicable to traffic westbound from Fort William and from all points east of Fort William now on the Canadian Pacific Railway Company's railway?

Answer. No.

(*a*) 2. Are such rates confined to westbound traffic originating at Fort William and at such points east of Fort William as were, at the date of the passing of the Act and (or) the making of the Agreement, on the company's line of railway?

Answer. Yes.

(*b*) Are such rates applicable to traffic originating at points east of Fort William which were, at the date of the passing of the Act and (or) the making of the agreement, on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway?

Answer. In order that the traffic provided for by clause (*d*) should fall under that clause it must originate at Fort William or some point east thereof which at the date of the agreement was "on the company's railway?

(*c*) Are the rates therein provided applicable to traffic destined to points west of Fort William which are now on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on account of the Canadian Pacific Railway Company?

Answer. In order that the rates prescribed in clause (*d*) should apply the destination of traffic otherwise within that clause must be a point which was, at the date of the Agreement, "on the company's main line or on (some) line of railway throughout Canada owned or leased by or operated on account of the company."

(*d*) Are such rates confined to traffic destined to points west of Fort William which were, at the date of the passing of the Act or the making of the Agreement, on the Canadian Pacific Railway Company's railway, or on any line of railway owned or leased by or operated on acount of the Canadian Pacific Railway Company?

Answer. Yes.

Question 3. Whether, as a matter of law, the Board is empowered, under the jurisdiction conferred upon it by the Railway Act, or otherwise, to authorize rates upon the Canadian Pacific Railway on grain and flour from all points on the main line, branches or connections of the company west of Fort William, to Fort William and Port Arthur, and all points east beyond the maximum rates specified in the Crow's Nest Pass Act and Agreement, and referred to, in chapter 41, Statutes of Canada (1922).

Answer. No.

Upon the hearing before Your Excellency in Council it appeared that the re-establishment of the rates provided for in the Crowsnest Pass Agreement upon the limited list of commodities and between the points specified therein had brought about considerable variations in the rates applicable thereto prior to the 7th day of July, 1924, and it was urged on behalf of a large section of the Dominion, and in particular by counsel for the cities of Edmonton, Alberta, and Saskatoon, Saskatchewan, and the Maritime Provinces, as well as representatives of responsible trade organizations in the provinces of Ontario and Quebec that the establishment of these rates would disrupt the rate structure built up under the control of the Board since its creation, with consequent serious injury to trade relationships throughout the Dominion.

It was also urged that sources of supply had changed since the Agreement was made and that certain commodities which were formerly shipped in large

quantities from Eastern Canada to the Prairie Provinces are now largely supplied either by local industries or from British Columbia, which latter province, it was alleged, would be cut off from a large part of its natural market by the permanent restoration of the Crowsnest rates.

It was further urged that the continuance of the Crowsnest rates (so-called) would compel the Canadian National Railways to make similar reductions from all competitive points, and thus involve a serious loss in revenue to them which would have to be made up from other Government sources and further postpone the time when it would be possible to make any general rate readjustment or to solve satisfactorily the problem of the National Railways.

The committee observe that the agreement in question was made at a time when the Canadian Pacific Railway Company was the only company having a through line of railway extending through the Prairie Provinces and British Columbia, and before the creation of the Board for the control of railway rates under the provisions of the Railway Act of 1903 and subsequent Acts; and further, that the underlying purpose of the rate control inaugurated by the Railway Act of 1903 was to do away as far as possible with all unjust discriminations and undue preferences, and to secure a fair and reasonable rate structure, which, under substantially similar circumstances and conditions would be equal in its application to all persons and localities.

The committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade.

The committee are further of the opinion that to give effect to this policy, and considering the submissions made by counsel and important trade organizations representing different provinces and localities in the Dominion as to the disadvantages that would be suffered by such provinces and localities by any partial or incomplete consideration of the freight rate structure, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners, the body constituted by Parliament with full powers under statute to fix and control railway rates.

The committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain growing provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crowsnest Pass Agreement, should not be exceeded.

The committee are further of the opinion that, before such investigation is undertaken, it is essential to ensure that the provisions of the Railway Act in reference to tariffs and tolls, and the jurisdiction of the Board thereunder, be unfettered by any limitations other than the provisions as to grain and flour hereinbefore mentioned.

The committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between

the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:—

(*a*) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(*b*) The encouragement of the movement of traffic through Canadian ports;

(*c*) The increased traffic westward and eastward through Pacific coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama canal.

The committee further advise that legislation be introduced at the present session of Parliament, making it clear that the provisions of the Railway Act of 1919 in respect of tariffs and tolls shall, save in the particular above mentioned, be operative notwithstanding any special Acts or agreements and removing all doubts as to the validity of tariffs heretofore filed.

The committee submit the same for Your Excellency's approval.

(Sgd.) E. J. LEMAIRE,
Clerk of the Privy Council.

II

BOARD OF RAILWAY COMMISSIONERS FOR CANADA

Notice to the Public

In compliance with the instructions to this Board contained in Order in Council P.C. 886, dated June 5, 1925, by which the Committee of the Privy Council made final disposition of the petition to the Governor in Council of the Governments of the provinces of Alberta, Saskatchewan and Manitoba, by way of appeal from General Order No. 408 of the Board of Railway Commissioners for Canada, which Order in Council, among other things, recites that,—

"The committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade.

"The committee are further of the opinion that to give effect to this policy, and considering the submissions made by counsel and important trade organizations representing different provinces and localities in the Dominion as to the disadvantages that would be suffered by such provinces and localities by any partial or incomplete consideration of the freight rate structure, a thorough and complete investigation of the whole subject of railway freight rates in the Dominion should be carried out by the Board of Railway Commissioners, the body constituted by Parliament with full powers under statute to fix and control railway rates.

"The committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain-growing provinces of the West, on which development the future

of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crowsnest Pass Agreement, should not be exceeded.

"The committee are further of the opinion that before such investigation is undertaken it is essential to ensure that the provisions of the Railway Act in reference to tariffs and tolls, and the jurisdiction of the Board thereunder, be unfettered by any limitations other than the provisions as to grain and flour hereinbefore mentioned.

"The committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:

(*a*) The claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(*b*) The encouragement of the movement of traffic through Canadian ports;

(*c*) The increased traffic westward and eastward through Pacific coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama canal";—

The Board of Railway Commissioners for Canada, in order to effect and carry out as expeditiously as possible the directions of the above in part recited Order in Council, keeping in view the specific instructions contained therein, hereby requests the public, both as individuals and organizations, as well as provincial, municipal and civic authorities. Boards of Trade, Chambers of Commerce; Trade, Industrial and Labour organizations; firms, companies and individuals, including shippers and carriers, as follows:—

(*a*) To submit to the Board any statement of facts under which it is claimed that unjust discrimination, or undue preference, or unfair treatment exists in connection with the rates of freight charged upon any commodities; or in the treatment of any person, city or province by any railway company:

(*b*) To set forth the grounds upon which it is claimed on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(*c*) To make submission as to the encouragement of the movement of traffic through Canadian seaports:

It is recommended that all submissions filed pursuant to the above suggestions be printed or legibly typewritten, and at least twenty copies thereof be forwarded to the secretary of the Board at Ottawa, not later than the 15th day of August, 1925. All statements and memoranda so filed will be open to public inspection at the office of the secretary of the Board. Persons inspecting the same will be permitted to take copies thereof, and to reply thereto by statement filed with the secretary of the Board not later than the 1st day of September, 1925. Not less than twenty copies to be filed. All memoranda and statements filed in pursuance of the above are for the consideration of the

Board in the matters involved, being intended as an aid and guidance to the Board in its investigation, but are not to be received in lieu of evidence upon the matters therein dealt with.

Testimony now before the Board in cases already heard and in which no decision has been given is not to be repeated. New and material evidence in such cases may be submitted in the usual way.

The purpose of the above request is to put the Board, as early as possible, in possession of any and all complaints against the existing rate structure which may be put forward for its consideration in the investigation to be held pursuant to the directions contained in the Order in Council, and to specifically direct the attention of the Board to the subject matter of such complaints, with a view of considering what changes, adjustments and redistribution in rate incidence, in accordance with the law, may be necessary to correct the defects complained of, and to secure to the fullest possible extent the equalization of freight rates, so as to deal equitably with all parts of Canada, as well as to facilitate the interchange of commodities between various portions of the Dominion and to encourage industry and agriculture and the development of export trade.

The Board desires to enter upon such investigation with the least practicable delay, and to conduct the same in a manner most calculated to secure a complete and systematic development of all facts material to the inquiry with a minimum of disturbance to business and traffic conditions generally.

A. D. CARTWRIGHT,
Secretary.

OTTAWA, July 9, 1925.

III

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 7th January, 1926.

P.C. 24

The committee of the Privy Council have had before them a report, dated January 6, 1926, from the Minister of Railways and Canals, representing that the committee of the Privy Council has had under consideration the advisability of encouraging to the fullest extent the movement of Canadian grain and other products through Canadian ports.

The minister states that by Order in Council (P.C. 886), dated June 5, 1925, the Board of Railway Commissioners for Canada was directed to make a thorough investigation, already under way, of the rates structures of railways and railway companies subject to the jurisdiction of Parliament with a view to the establishment of a fair and reasonable rate structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries, and in particular to:

(*a*) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;

(*b*) the encouragement of the movement of traffic through Canadian ports;

(*c*) the increased traffic westward and eastward through Pacific coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama canal.

The committee of the Privy Council therefore recommends that the Board of Railway Commissioners for Canada be directed, as a part of the general rate investigation above referred to, especially to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports, and to take such effective action under the Railway Act, 1919, as the Board of Railway Commissioners for Canada may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports.

The committee submit the foregoing for Your Excellency's approval.

(Sgd.) E. J. LEMAIRE,
Clerk of the Privy Council.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, September 12, 1927 No. 13a

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

In the matter of Order in Council, P.C. No. 886, of June 5, 1925, requiring the Board of Railway Commissioners for Canada to make a full and complete investigation into the Rate Structure of Railways and Railway Companies subject to the jurisdiction of Parliament.

(File No. 34123.)

IN THE MATTER OF VARIOUS INDIVIDUAL SUBMISSIONS AND APPLICATIONS PRESENTED TO THE BOARD IN THE GENERAL FREIGHT RATE INVESTIGATION.

It is set out in the judgment of the Chief Commissioner that in addition to the issues raised in the submissions from the various provinces, there were some eighty individual submissions presented to the Board, not involved in the matters dealt with by the Board's judgment, which would be disposed of in a separate schedule. These individual submissions were received from all parts of the country and related to the rates on various commodities and with varying territorial application. In some cases discrimination was alleged, and in other instances reductions in rates were applied for. Some of the applications were developed orally at sittings of the Board at various points, and others are on the record to be disposed of on written submissions.

Subsequent to presenting same, a number of parties making submissions wrote the Board asking that they be considered withdrawn. A list of these follows:—

File Number.

34123.4.2 —Dominion Foundries and Steel, Ltd., Hamilton, Ont.
34123.7 —Salada Tea Company of Canada, Ltd., Toronto, Ont.
34123.9 —Canada Western Cordage Co. Ltd., New Westminster, B.C.
34123.14.2—Guy Tombs, Ltd., Montreal, Que.
34123.21 —Spanish River Pulp & Paper Mills, Ltd., Sault Ste. Marie, Ont.
34123.22 —Northern Ontario Light & Power Co. Ltd., Cobalt, Ont.
34123.27 —Bird & Son, Hamilton, Ont.
34123.28 —H. J. Heinz Co., Pittsburgh, Pa.
34123.41 —Grande Prairie Board of Trade, Grande Prairie, Alta.
34123.43 —Cassidy's Limited, Winnipeg.
34123.49 —Niagara Falls Branch, Can. Manufacturers' Ass'n.
34123.54 —Schofield Paper Company, Saint John, N.B.
34123.56 —Canadian National Millers Ass'n., Montreal, Que.
34123.73 —South Shore Board of Trade, St. Lambert, Que.

47647—1

There were a number of submissions which expressed general views on rate and transportation matters, but which did not raise specific issues, or, where certain rates were alluded to, the matter was not developed in sufficient detail. While what is stated in these submissions, worded in general terms, has been noted and considered, they are not being herein specifically dealt with, except that in some cases the questions raised in these general submissions are covered by other submissions that are dealt with in the judgment of the Board or the report which is contained herein. The submissions coming under this category are as follows:—

File Number.

34123.5 —Canadian Council of Agriculture, Winnipeg, Man.
34123.8.2 —Ontario Fruit Growers' Associations, St. Catharines, Ont.
Niagara Peninsula Fruit Growers' Association, St. Catharines, Ont.
St. Catharines Chamber of Commerce, St. Catharines, Ont.
34123.13.2—United Farmers of Manitoba.
34123.14 —Canadian Lumbermen's Association, Ottawa, Ont.
34123.19 —Canadian Pulp and Paper Association, Montreal, Que.
34123.20 —Board of Trade of the City of Toronto, Ont.
34123.29.1—Cochrane Board of Trade, Cochrane, Ont.
34123.31 —Vegreville Board of Trade, Vegreville, Alta.
34123.36 —W. O. Sealey, Hamilton, Ont.
34123.40 —Fort William Board of Trade.
Port Arthur Board of Trade.
34123.52 —Dominion Fuel Board, Ottawa, Ont.
34123.71 —Montreal Board of Trade.
34123.72 —Tisdale, Sask., Board of Trade.

In some of the submissions the questions that were raised related to international rates from points in Canada to destinations in the United States. The decision of the Board is that the submissions that raised the question of international rates will be dealt with apart from and subsequent to its disposition of the matters coming under the heading of the General Freight Rate Investigation. Submissions coming under this heading are as follows:—

File Number

34123.2.2 —Associated Shippers of New Brunswick, Hartland, N.B.
34123.8.1 —Fitzsimmons Fruit Company, Ltd., Port Arthur, Ont.
34123.14 —Canadian Lumbermen's Association, Ottawa, Ont.
34123.14.1—Gillies Bros. Ltd., Braeside, Ont.
34123.19 —Canadian Pulp & Paper Association, Montreal, Que.
34123.47 —American Cyanamid Company, Niagara Falls, Ont.

The matter of joint rates is raised in certain submissions and the decision of the Board is that same will be dealt with subsequently, and independently of the General Freight Rate Investigation. This refers to the following:—

File Number

34123.20 —Board of Trade of the City of Toronto, Ont.
34123.50 —Nestle's Food Company (Inc.) New York, N.Y.
34123.70 —John P. Stevenson & Co., Toronto, Ont.

The question of rates on iron and steel commodities is to be dealt with apart from the General Freight Rate Investigation. Tariffs filed by the carriers revising the rates on iron and steel articles to be effective December 1, 1926, were suspended by Order No. 38462 dated November 27, 1926, and the matter is standing for hearing. This has reference to submissions of the British Empire Steel Corporation and others, as well as being referred to in file number 34123.4

(the Steel Company of Canada, Limited, Hamilton, Ont.) and file number 34123.20 (Board of Trade of the City of Toronto, Ont.).

While the issues raised in the submissions from the various provinces are dealt with in part in the judgment of the Board, and in other respects in the report which follows herein, there are some rates that were referred to that are not dealt with in detail, or specifically, herein, although in this connection it may be stated that the record has been read and considered.

With regard to the balance of the individual submissions, the Board concurs in the conclusions arrived at by the Chief Traffic Officer, whose report follows:—

REPORT OF THE CHIEF TRAFFIC OFFICER

File 34123.1

Submissions of the Saskatchewan Stock Growers' Association, the Saskatchewan Live Stock Board, the Western Stock Growers' Association, and of Counsel for the Provinces of Manitoba, Saskatchewan and Alberta, re *rates on live stock.*

The Saskatchewan Stock Growers' Association and the Western Stock Growers' Association forwarded written submissions under date of July 9 and October 5, 1925, respectively, in the form of resolution passed by their associations. Both resolutions were in the same language as follows:—

> "Whereas the prices received by the producers of live stock, whether such live stock is marketed in Canada or exported, are controlled by prices prevailing in export markets, and which the cost of transportation to such export markets operates to reduce by that amount the prices received for live stock at the point of shipment.
>
> "Therefore be it resolved by the Saskatchewan Stock Growers' Association in annual convention assembled, that the executive be instructed to bring these facts to the attention of the Dominion Government, railway companies and the Board of Railway Commissioners, when the new freight rates are being drawn up, and further, that all bodies concerned be strongly urged to regard live stock as being at least as fully entitled to basic commodity rates as grain and flour in the new freight rate structure."

The Saskatchewan Live Stock Board filed written submission under date of September 11, 1925, in which they expressed the opinion that the following changes were necessary in order to foster the live stock industry:—

> "A reduction of the charges on cattle for export to approximately pre-war rates, and a corresponding reduction on horses.
>
> "A reduction on rates on shipments of horses, cattle, sheep, swine and poultry to local and Eastern markets to approximately pre-war rates.
>
> "An adjustment of the local rates on horses to conform more closely to rates on cattle.
>
> "A renewal of the privilege of completing loading of stock at primary provincial markets."

That portion of the written submission of counsel for the province of Saskatchewan, dated May 3, 1926, which deals with rates on live stock, reads:—

> "That in order to permit of the freest possible interchange of commodities between the various provinces of the Dominion and the expansion of its trade having due regard to the needs of the basic industry of agriculture, the existing tariffs covering the movement of cattle, hogs, sheep and horses be examined with a view to:

" (*a*) Equalizing the rates presently published for the movement of these commodities within prairie territory to the basis of the rates for similar movements in eastern territory.

" (*b*) Reducing the rates on cattle, hogs and sheep from stations in the prairie provinces to Montreal and stations west thereof for consumption in eastern Canada, and to the ports of Montreal, Quebec, St. John and Halifax for export.

" (*c*) To a closer approximation between the rates for the movement of horses and cattle within prairie territory. The movement is largely of range horses of low value, not exceeding that of cattle. At present it costs the producer $17 more per car of 20,000 pounds to ship horses of this type than cattle from Maple Creek to Moose Jaw.

" (*d*) Providing wider privileges for the completion of loads en route to and at primary markets. When cars of cattle, hogs or sheep less than minimum weight are received at primary markets under the present regulation, the local buyer has practically no outside competition, as a result of which the producer receives a substantially lower price for his product.

" (*e*) The encouragement of finishing live stock on the farms and in the feedlots of the west by the maintenance of a low rate on feeder stock from primary markets to such farms and feedlots."

In the written submission of counsel for the province of Manitoba, dated August 21, 1925, it is set out:—

" That mixed farming has become a very important industry in Manitoba: that with the increased volume of business, lower rates outward should prevail on cattle, sheep, hogs and dairy produce of all kinds."

The submission and argument of counsel for Alberta was largely confined to an application for reduction in the rates on cattle, hogs and sheep from Alberta points to Vancouver.

The submissions of the various live stock associations, and of the province of Saskatchewan, were developed at sittings of the Board in Regina, June 21 and 22, 1926. At the final hearing in Ottawa further evidence was put in, as well as argument. Numerous exhibits were also filed. While the evidence, exhibits and argument have all been carefully read and considered, it is not proposed to comment in detail upon all the exhibits and evidence.

The various applications for a reduction in the live stock rates are all based on the ground that this is a very important industry, and the necessity exists of doing everything possible to make it favourable for live stock to be produced, which includes as low freight rates as it is possible to obtain; in other words, reduced rates are applied for based on the alleged needs of the industry, and nowhere in the record will there be found any evidence adduced to the effect that the rates now current on live stock, in themselves, or as compared with rates on other commodities, are unreasonable.

At the Regina sittings various representatives of the live stock industry appeared. Mr. Wylie made some comparison of the conditions as they existed in the early ranching days, that is, prior to 1905 or 1906, and as they are to-day. He stated under the old conditions there was practically no expense and no taxation, and while, at that time prices were not high, owing to the small expense of production, he expressed the opinion that they were better off under those conditions than to-day. At present the cost of production is a good deal heavier by reason of cost of fencing and equipment, and one of the greatest factors in the increased cost is due to the necessity of purchasing a larger area of what is known as owned land as against grazing lands which were rented prior to 1905

from the Dominion Government at 2 cents per acre, to which was added a provincial tax of $1\frac{3}{4}$ cents, making a total rental of $3\frac{3}{4}$ cents per acre per annum. He stated the cattle producer was not receiving a satisfactory price and, therefore, needs assistance through reduced freight rates. Figures were given showing estimates of cost of raising cattle, but admittedly these figures would show a material variance in different localities, so that there is nothing conclusive on the record as to the situation as a whole in this respect.

Mr. Learmonth stressed the desirability of finishing feeding cattle in Saskatchewan rather than shipping them out of the province and to Eastern Canada for finishing. He gave statistics concerning the production of live stock and the handling of feeders. He stated:—

> " The present feeder rates help to stimulate feeding and although the volume is a long way from ideal, the assistance to the feeder is both of importance in helping him to secure his stock and after he has finished it to help him to secure a stronger price on the best markets."

Mr. Learmonth's only submission as regards the freight rates was the statement, " It would surely be encouraging to the feeder to have the present rates favourable and lower rates to eastern points on finished cattle either for consumption or for export."

Mr. Wright, President of the Western Canada Live Stock Union, dealt particularly with the export situation and referred to the competition in Great Britain with Argentine chilled beef and the war between the Argentine producers and American packers as affecting the market in Great Britain for Canadian finished cattle. He stated the miners' strike in England last year had seriously affected the Canadian cattle trade. He also referred to the important outlet for Saskatchewan surplus cattle in the United States after removal of its tariff against Canadian cattle in 1909, and the severe curtailment in that trade following the year 1919 in which the United States Government again imposed the tariff against Canadian cattle.

Mr. Robertson, Live Stock Commissioner of the province of Saskatchewan, stressed the extent and importance of the live stock industry and the necessity of doing everything possible to make it favourable for live stock to be produced. He pointed out that while there had been a marked development in the live stock industry in the last twenty years, the development during the last ten years has been slow, and in the period last named there has not been the progress expected. He stated there were several factors contributing to the conditions existing in recent years, the principal one being the upsetting of things caused by the deflation after the war. He stated that in 1920 the price of cattle underwent a deflation that was so serious that it crippled the finances of stock raisers and put many of them out of business, and others will require a considerable period of prosperity to recover.

At page 7550 Mr. Robertson stated, after giving statistics as to estimated value of live stock and live stock products:—

> " These figures indicate that the live stock industry has been passing through, and is still passing through a period of depression, and as the permanent prosperity of this country depends upon agriculture, and the permanent success of agriculture depends on the growing of live stock it behooves every allied interest to give the live stock industry every possible assistance, and the railways of Canada can play a very important part by granting the very lowest possible freight rates. In fact, it is to their interest to assist the stock men of Western Canada and the live stock industry in general to the utmost of their ability, and there is considerable evidence to show that they are alive to the situation."

In the various submissions it is apparent that the live stock industry recognizes that the railway companies have been of considerable assistance. In the written submission of the Saskatchewan Live Stock Board, dated September 11, 1925, it is stated:—

> "It is recognized that the continuance of the successful raising of live stock is of the greatest importance to the well being of the province, in fact, is of national importance, is evidenced by the efforts put forward by Dominion and Provincial Governments and the transportation companies."

Mr. Robertson stated (page 7555):—

> "That the railways are far sighted and broad minded is evidenced by the fact that they in other ways do considerable for the encouragement of the growing of live stock. They play their part in promoting better live stock on the farms by carrying pedigreed breeding stock at half rates, carrying live stock to provincial exhibitions free one way, encouraging better live stock through the operation of better live stock trains, encouraging Boys' and Girls' Swine Clubs, assisting drought areas by reduced rates for the transportation of fodder, and in various other ways. All these are important and indicate a proper appreciation of the importance of developing this basic industry."

Again at page 7575 he stated:

> "The railway companies have always, when they were approached to do anything for the encouragement of better live stock, shown a willingness to co-operate."

The reduction sought in the rates on cattle, hogs and sheep from prairie points to Eastern Canada for consumption there, or for export, is on the ground that any reduction in the toll will be of just that much assistance to the live stock industry.

With regard to rates locally between points in Western Canada on cattle, hogs and sheep, exhibits were filed showing that up to 50 miles rates in prairie territory are the same or lower than in Eastern Canada; beyond 50 miles the rates in prairie territory are higher than in Eastern Canada, the differences in the case of cattle, hogs and sheep ranging from 1 to 4½ cents per 100 pounds. Equalization with Eastern Canada with respect to these local movements of cattle, hogs and sheep between points in prairie territory, is applied for.

With regard to horses, exhibit F.H. 154 shows no uniformity as between points in prairie territory and in Eastern Canada, the rates in cents per 100 pounds being:—

Miles	Eastern	Prairie
10	7	6½
25	12½	11½
50	16½	17
75	19½	21
100	24	26
150	29	29½
200	34½	33
300	43	41
400	47½	46
500	52	51½
600	59½	57½
700	66½	61
800	80	66
900	94	71
1000	102½	75½

The reduction applied for in the rates on horses was more particularly for shipments from prairie points to Eastern Canada. It was stated that there is a market for range horses in the Maritime Provinces and for heavy draft horses in Ontario. It was set out that there was a surplus of horses for which there was no local demand in the west, consequently they are very low in price. While the low value of the horses was referred to, there are no specific figures on the record making comparison as to value between horses and cattle. On referring to the Canada Year Book, 1926, page 227, under the heading of "Estimated Numbers and Values of Farm Live Stock in Canada, by provinces, 1922-1925," the following data are found regarding horses and cattle in the provinces of Manitoba, Saskatchewan and Alberta:—

Province	1922	1923	1924	1925	1922	1923	1924	1925
	No.	No.	No.	No.	000 $	000 $	000 $	000 $
Manitoba—								
Horses	374,632	362,407	369,722	359,839	31,599	23,265	23,055	24,815
Milch Cows	252,245	253,715	263,577	233,273	10,589	10,170	10,248	10,229
Other cattle	488,495	437,996	446,705	487,472	12,302	9,952	10,069	13,525
Total cattle	740,740	691,711	710,282	720,745	22,891	20,122	20,317	23,754
Saskatchewan—								
Horses	1,143,502	1,137,301	1,170,745	1,169,952	76,978	59,931	70,245	77,217
Milch cows	456,006	403,813	468,151	496,502	18,405	15,645	19,194	20,357
Other cattle	1,146,780	1,131,274	1,060,716	1,002,909	26,064	24,133	24,396	26,076
Total cattle	1,602,786	1,535,087	1,528,867	1,499,411	44,469	39,778	43,590	46,433
Alberta—								
Horses	863,316	829,143	861,537	849,939	36,630	33,439	33,038	36,393
Milch Cows	392,037	410,242	433,528	460,722	14,724	15,808	16,332	18,318
Other cattle	1,261,005	1,110,682	1,188,468	1,066,007	26,124	25,253	27,114	27,635
Total cattle	1,653,043	1,520,924	1,621,996	1,526,729	40,848	41,061	43,446	45,953

There is nothing to indicate specifically whether or not this includes the range horses referred to.

It was stated there were large numbers of these horses of little value in Western Canada and it was urged that something should be done to stimulate their movement to some market where they could be disposed of. Mr. Wylie stated that there was a market in Quebec and that they were moving there in considerable volume at present, but that it was more or less a speculative business. At page 7480 the following discussion took place:—

By Mr. Watson:

"Q. I do not want to impose on Mr. Wylie, but I am interested in this horse business. Have you any idea what these horses would be worth in the province of Quebec, what could be got for them?—A. I do not know what they are getting for them, but they are coming up here and buying them at a very cheap rate and taking them down there, and they keep coming to get more, so I suppose it must be remunerative to the people who are engaged in it.

"Q. So that the present rate is not an obstacle to the horses moving? —A. I say much larger numbers would go, in fact, I do not know but what we would move them all, that are here, in time, especially if a few thousand are taken to Europe. The older animals would be taken to Quebec probably, because there seems to be a great market there for these light horses."

The carriers point out that the question of reduced rates is approached entirely from the standpoint of assistance to the live stock industry. They refer to the assistance that they gave to the live stock industry in 1921, following the serious condition existing in 1920 as result of the post-war deflation. At that time

the industry was in a very serious condition and effective August 15, 1921, the railway companies reduced the rates on cattle, hogs and sheep locally in both Western and Eastern Canada by taking off all the increase in rates authorized by the Board effective September 13, 1920, while from Western to Eastern Canada a reduction of 20 per cent was made. This action had the effect of making a greater reduction from the peak level of freight rates, in the case of live stock, than has yet taken place with respect to other commodities, except in the case of the Crowsnest grain rates which are statutory. The carriers point out that there has been a marked improvement in the live stock industry since 1921, and they refer to exhibit No. 23 filed by counsel for Saskatchewan, being 6th Annual Live Stock Market and Meat Trade Review for 1925, in which the following appears:—

"It would appear that after a long period of depression the live stock industry has once again entered upon a cycle of prosperity and, given normal pasture and feed conditions during the next few years, cattle, sheep and swine production should more than compensate for the post-war depression.

"Markets were remarkable for the absence of sharp and wide fluctuations, so common in other years. The autumn marketing period was outstanding by virtue of the comparative ease with which the increased supplies went into consumption and the unusual steadiness to price levels. No gluts nor drastic price reductions occurred, a condition which can be credited to few autumn runs in the history of our marketings. This unique situation as regards cattle was attributed to a very excellent demand for stockers and feeders to turn the big crop of winter feed into money, and an improved consumptive demand for beef for both home and export trade.

"It is estimated that the average price on the rank and file of cattle marketed during the last three months of the year was from 90 cents to $1.35 per hundred higher than during 1924, and this on a run containing an increased offering of lightweight cattle, very heavy marketings of female stock, and fewer strongweight cattle than during the previous year. Country buyings of export cattle were relatively heavy in 1925 and a much smaller percentage of weighty stock reached the market than would have been the case had country buyers been less active. Demand was so good that during the autumn prices paid for weighty stock for export were often out of line with British market values.

"Heavyweight cattle, a class which normally has not proved economic of production, came back to trade popularity during the year, due to the shortage of beef tonnage and the small supplies of good weights: This class enjoyed a similarly strong season in the United States and sold at times better than the smaller stock.

"Prospects are encouraging. No surplus of beef stock exists in any of the chief producing countries and world consumption based on purchasing power should more than hold the present rate. Reference to English, Irish and United States statistics indicates no heavy production for 1926-1927.

"The hog situation in Canada in 1925 was remarkable for strong and steady prices on a pretty good run, and a very noticeable improvement in the general quality of the offering. It is estimated that the per head value of hogs of good bacon weights and quality was a full $7 higher than during the previous year. Short supplies on the British market from Denmark and the United States contributed to the good price movement and our export of 86,000 head to the Pacific Coast states of the United States was a buoyant factor. But among the chief reasons for the improved market was a generally higher standard of quality in the select and thick smooth

classes, combined with a better export pack, and a regained reputation among British consumers, as producers and manufacturers of high quality export bacon.

"During 1925 we were able to materially narrow the spread in price between the best grades of our product and the best of the Danish. On December 31 we were down to $1.25 difference as compared with $2.50 in 1924 and $3 in 1923. This promises well for the future, indicating as it does that the improvement in the quality of our hogs and the product is progressive and this has proved a big factor in expanding sales and making new customers.

"Market prospects may be considered as very favourable. Denmark does not promise any marked increase in production. Her big effort of 1924 is reported as having been uneconomic and is not likely to be repeated. The most recent statistics regarding United States pig population and littering prospects show very little improvement and the consumption of meats in the United States is increasing by 250,000,000 pounds annually. According to reliable authorities there is not much chance of any material increase in export surplus from that country. Ireland's climatic conditions at the close of the year were not such as to promise any increase in Irish contribution.

"As regards sales prospects, it is expected that industrial conditions in Europe will continue to improve. The United States consumer is maintaining a most astonishing purchasing power. In both instances, a permanently high standard of living is apparent and there are no prospects for a return of consumption in Great Britain and the United States to pre-war volume."

The 7th Annual Live Stock Market and Meat Trade Review for 1926 is since at hand, and from same the following is quoted:—

"The live stock market during 1926 lacked the stimulating effect of steadily rising prices, yet compared quite favourably with that of the previous year when the market was strongly on the upturn and was considered as being the strongest for all classes of live stock since as far back as 1900. The rank and file of cattle showed even better prices than in 1925, and at the same time were greater in volume. Had export quality and weights of cattle received as strong recognition as did the ordinary run, the market would have been without parallel.

"Many depressing and abnormal factors entered into the export situation but a broad domestic demand accounted for generally good average prices paid on all public stock yards in the Dominion. Of the seventeen grades of cattle listed in the statistical section of this report, only two showed lower average prices in eastern markets, while in the west, every grade showed higher averages as compared with those of 1925. In some instances, grades were higher by from 75 cents to $1.75 per hundred.

"Unfortunately, however, the export classes of cattle sold on a market which showed steady declines during the last half of the year. This is particularly true of those offered on the eastern markets or bought at country points in Ontario, after the fed-stock was exhausted. After July, the outlet for cattle of export weights revealed a steadily growing price weakness, and that class ended the year without the usual strong demand for the Christmas trade.

"The British market, our chief outlet for heavy cattle, showed considerable weakness, and sales failed to provide a reasonable margin of profit over costs which were high on account of keen competition from

the domestic trade during the fed-cattle period. Later on in the year, shipments overseas were sharply curtailed. The depressing factors which affected our trade in the British market included the miners' strike, which greatly reduced the buyers' purchasing power and as well developed a shortage of fuel, which in its turn instituted a preference for ready-cooked meats. The disagreement as between the various companies in Argentine introduced a price-cutting war in frozen and chilled meats, and as a result, bargain prices prevailed. This situation reacted very strongly on the market for fresh beef, and as well, in view of the uncertainty of the issue, more or less discouraged the demand for store cattle, which was already suffering from the effects of a prevalence of foot and mouth disease.

"Our other important export outlet, the United States, while allowing for a heavier movement than during the previous year, showed a similar situation as in Canada between the top grades of cattle and the general run. As a result, sales of fat cattle on that market were generally at comparatively poor price levels, whereas the lower grades showed relatively high values. Records indicate that the top for Alberta range steers at Chicago was $8.90 in 1926, as compared with $11.50 in 1925. On the other hand, cows, heifers, bulls and oxen consignments had a top of $7 as compared with the lower top of $6.75 for the previous year. Reflecting the general trend of the United States market, the spread in price on Alberta cattle was the narrowest since 1914 and unfortunately was such as to be unfavourable on the top end.

"Despite the deadness in heavy cattle during the latter part of the past year, the market has since early in 1925 shown steady recovery from the depression which then prevailed. Early in the new year there was strong evidence of further improvement with re-establishment of the better grades of steers at very fair prices.

"Most of the abnormalities which depressed the market of 1926 have disappeared. Our prospects for a better trade with Great Britain have improved with the settlement of the coal strike and the consequent industrial betterment within that market. As regards the United States market, the situation offers much encouragement."

The carriers referred to the fact that they had in numerous ways assisted the live stock industry, some reference to which on the part of witnesses for the live stock industry has already been referred to herein. At page 4658 (Vol. 502) Mr. Watson stated:—

"In all these submissions there is no claim that our rates to-day on live stock are unreasonable or that the railways have not in the past given this particular industry preferred treatment and service in every possible direction, but on the contrary the attitude and action of the railways has been voluntarily and favourably commented upon by those who have the greatest knowledge and deepest interest in this particular traffic."

Reference was also made to exhibit 19, filed by counsel for Saskatchewan, being proceedings of the 13th Annual Convention of the Western Canada Live Stock Union, held at Saskatoon, December 10, 11 and 12, 1925, and on page 108 thereof, being portion of address by J. H. Auld, Deputy Minister of Agriculture, province of Saskatchewan, the following appears:—

"Transportation companies, on the other hand, could show, I have no doubt, that the movement of traffic is much more costly since the war, and that either higher rates or more business or both of these, are

necessary in order for them to carry on, so that if in deciding when freight rates are equitable we are to consider both the railways and their patrons we may have considerable difficulty.

"We can only point out the facts, however, as they affect the live stock producer, recognizing at the same time that the railway companies are as indispensable to the success of agriculture as agriculture is to them. That they are alive to the importance of agriculture, and the live stock industry, is clearly demonstrated by the way in which the railways have recognized it in their policies.

"Let me mention some of the things which the railways in Western Canada are doing to encourage the live stock industry:—

"1. Half rates on all pedigreed stock. This rate was granted exclusively in Western Canada for many years, and only within the last three years have railways in a few of the States of the United States granted similar concessions.

"2. Carrying live stock to provincial fairs and expositions free one way.

"3. The Canadian Pacific in the early days presented the farmers with purebred bulls free of charge, and in later years, through live stock trains, have distributed purebred bulls free of freight charges, and also returned scrub bulls to market free of charge.

"4. In order to help the live stock industry, freight free distribution has been made of fodder crop seeds through fodder crop cars.

"5. Encouragement has been given to the raising of bacon hogs by assistance to boys' and girls' bacon hog clubs in the three Prairie Provinces, including prizes and free trips for the winning team in each Province to the Toronto Royal Winter Fair.

"6. Better live stock trains have been run for many years demonstrating the desirability of the use of purebred sires.

"7. Half rates on stockers have been given to encourage winter feeding and finishing of cattle.

"8. The railways have also given assistance in the movement of both stock and fodder during the drought years, when they absorbed one-third of the charges on hundreds of carloads of fodder and returned live stock free of charge from points where they had been shipped for wintering."

Counsel for the province of Saskatchewan referred to exhibit F.H. 99 containing statements produced by the Canadian Pacific Railway pursuant to request of counsel for Saskatchewan, page 46, which is a statement of earnings, etc., on various commodities, in carloads, carried during 1925, and in the case of live stock the figures are as follows:—

——	Tons	Tons one mile	Average haul in miles	Revenue	Rate per ton mile
				$	c.
Lines east of Port Arthur	287,817	95,814,778	333·0	1,516,064.35	1·58
Lines west of Port Arthur	409,951	137,433,919	335·2	2,264,326.62	1·65

With regard to the above figures Mr. Lloyd of the Canadian Pacific Railway, Vol. 494, page 1165, stated that while these showed a rate per ton per mile on lines east of Port Arthur of 1.58 cents as compared with 1.65 cents on lines west of Port Arthur, there was included in the lines east figure about 33,000,000

tons one mile of live stock which moved through from Western to Eastern Canada, and which was carried at a rate per ton mile of 1.16 cents, and the balance of the live stock on eastern lines, being the local movements in the east, was carried at a rate per ton per mile of 1.81 cents as compared with per ton mile rate of 1.65 cents on lines west of Port Arthur. The ton mile statistics, however, do not reflect any existing differences in average hauls or car loading.

Exhibit F.H. 242 made comparison of minimum carload weights of live stock and other commodities between points in Canada, showing that while with respect to other commodities, minimum weights have materially increased over a period of years, there has been no increase whatever in the carload minimum weight for live stock and, as a matter of fact, there has been a decrease in the case of hogs and sheep in single deck cars.

Exhibit F.H. 244 shows car mile earnings on representative movements of various commodities, and in connection with cattle and hogs the car mile earning from prairie points to Eastern Canada ranges from 9 to 14 cents, as compared with Canadian Pacific Railway figures for the year 1925, (exhibit F.H. 99, page 9) of 23.81 cents on lines east, 21.98 cents on lines west, and 22.69 cents total lines east and lines west.

Exhibit F.H. 243 indicated the nature of special live stock train service on western lines of Canadian National Railways as an example of the special service accorded to live stock which, being a perishable traffic, requires expedited service and extra switching at terminals in many instances.

With regard to many other low grade commodities, on account of heavier loading than live stock, car mile earnings are very appreciably higher, and with regard to many of such commodities, practically any type of railway equipment can be used, while live stock requires special equipment, and it is stated on the record that the percentage of empty haul as compared with loaded haul, in the case of live stock cars, is at least double that of other cars. In view of the very low average loading of live stock and the fact that it requires to be given expedited despatch and prompt handling on arrival at destination, there would seem to be no question that the handling of this traffic involves a greater cost per unit than in the case of other traffic. An additional expense in the handling of live stock traffic is the cost of the facilities for feeding, stock pens, etc., that are necessary at loading stations and en route.

Reference has been made to differences in the rates applying locally in Eastern Canada as compared with the local movements in Western Canada. In this connection what is stated in section XIII of Board's Judgment in the application of the Calgary Live Stock Exchange, Vol. XIII, Board's Judgments, Orders, Regulations and Rulings, page 233, (at pages 245-7) is particularly relevant. Aside from the differences in rates there are other factors with respect to which the advantage is with the local movements in Western Canada. For example, between points in Western Canada as well as in the case of shipments from Western Canada to Eastern Canada, reduced return transportation is granted to the attendant or owner, who has travelled in charge of the shipment, at one-half the regular first class fare. Between points in Eastern Canada there is no provision for reduced return transportation. In any rate comparison this has to be taken into consideration. Again there is the special reduced basis of rates applicable in Western Canada on stockers and feeders which witnesses for the live stock industry admitted was a very important concession; there is no similar arrangement in Eastern Canada. Equalization as applied for would involve complete equalization and it would seem very questionable, from the record, if this would not result in disadvantage to Western Canada.

With regard to horses, witness for the carriers at page 2764 of Vol. 498 pointed out that the pre-war relationship between the rates on horses and cattle was restored on August 16, 1923, that is, that the then current rates on horses were

reduced, the reductions varying from 14.7 to 16.3 per cent. It is also set out that the carload movement of horses from Western Canada to Eastern Canada via Canadian Pacific Railway during the last five years was as follows:—

	Cars
1922	143
1923	228
1924	510
1925	443
1926	711

and it was alleged that these figures, which included shipments via Canadian Pacific Railway only, indicated that substantial progress is being made in the marketing of horses in Eastern Canada. Reference is made to their greater value on the average and the greater liability which the railway assumes under the provisions of its live stock contract.

The reduced rates applied for, in the case of live stock, are not based on the allegation and evidence that the rates are not in themselves reasonable. Counsel for the province of Saskatchewan stated (Vol. 506, page 6223):—

> "I am simply suggesting that, having regard to the importance of the development of this industry, and the almost unlimited extent to which it can be developed in Western Canada with favourable markets, and the fact that there are no markets to-day for our surplus cattle to speak of, except in the old country, any encouragement that can be given by reduction of rates on cattle for export, combined with the reduction that has already been received on the ocean rates, would be of great assistance."

At page 6490, Vol. 507, counsel for the province of Manitoba stated:—

> "I am not going to attempt to show that the cattle rates are in themselves unreasonable. I do not think I can, and I do not propose to take up time doing it. I am frank to confess that I could not do it."

He did, however, suggest equalization as between local rates in Eastern and Western Canada.

One thing is very clear from the record and that is, there are a great many factors which affect the live stock industry to a much greater extent than the freight rate, as without any alteration in freight rate most marked changes have taken place in the industry and violent fluctuations in price.

In 1920 and 1921 the live stock industry was in a very serious condition, yet the rates thereon were not considered by the Board to be unreasonable as railway rates, having in view cost of railway operation and general level of freight rates. While, therefore, in 1921 the Board did not feel justified or see on what grounds it could order a reduction in rates; as a result of round-table conference and to assist the industry in the serious condition then existing, the carriers made the reduction in rates which has already been referred to herein. In other words, there has been a substantial reduction in the rates that were then considered in themselves to be reasonable, and there is nothing on the record indicating that there has been a change in railway cost of operation or other conditions of such a character as would now justify the Board in finding that the present rates on live stock, embracing as they do the substantial reductions referred to, should be further reduced. Further, I do not consider that a case of unjust discrimination has been made out.

With regard to rates from Alberta points to Vancouver, such evidence as was adduced does not, in my opinion, warrant any direction as to reduction in these rates.

The submissions also asked for additional stop-off privileges, but this feature of the matter was not sufficiently developed in evidence and on the record to enable it to be here dealt with intelligently.

File 34123.1.1

Application of

The Eastern Canada Live Stock Union for—

1. *Reduction in minimum carload weights on mixed cars of live stock.*
2. *Reduction of 25 per cent on stockers and feeders shipped from market to country points.*

Heard at Toronto, January 14, 1926.

I

Reduction in Minimum Carload Weights on Mixed Cars of Live Stock

This is an application for a reduction between points in Eastern Canada in the minimum carload weights, as published in the tariffs of the carriers, applicable on cars containing a few head of cattle mixed with other live stock. The question concerns single deck cars, and consequently the various minimum carload weights quoted herein will refer to single deck cars not over 36 feet 6 inches in length. Excluding horses, which are not here concerned, the minimum carload weights as required by the provisions of the tariffs now in effect are:—

Straight Carloads.—Cattle, 20,000 pounds; Calves (under 6 months old), 14,000 pounds; Sheep or lambs, 14,000 pounds; Hogs, 16,000 pounds.

Mixed Carloads.—When live stock is shipped in mixed carloads, charges for the entire carload are assessed at the highest carload minimum weight applicable on straight carloads of the class of stock the car contains.

While the minimum carload weights applying on straight carloads of one kind of live stock only are also above set out, this being necessary to a proper understanding and interpretation of the provision as to mixed cars, there is no question here at issue or complaint of any kind as to the minimum weights for straight carloads; it is only the rule as to mixed carloads that is involved and the application is, that for the rule requiring the application of the highest minimum weight on a mixed carload, there should be substituted a rule providing the following scale of minima:—

In mixed cars containing 1 or 2 cattle, 17,000 pounds; 3 or 4 cattle, 18,000 pounds; 5 or 6 cattle, 19,000 pounds; over 6 cattle, 20,000 pounds.

Summarizing briefly the position taken by the applicants, it is stated that the chief characteristic of agriculture in Ontario is a system of diversified mixed farming under which there is a lack of specialization in the raising of one class of live stock, resulting, therefore, in two or three classes of stock offering for shipment and consequently necessitating the shipment of a large number of mixed cars.

The importance of mixed car movements to the Union Stock Yards, Toronto, was emphasized by the submission of figures showing that during the past five years approximately 50 per cent of the total cars of live stock received there have been mixed loads. It is stated this is approximately double the proportion of mixed cars that move to the larger United States yards. This does not mean, however, that approximately 50 per cent of the total movement into Toronto is affected by this application, because it does not embrace mixed cars that contain no cattle or mixed cars containing over six cattle, which have constituted the bulk of the total mixed car shipments. This is clearly illustrated by the figures submitted by applicants showing an analysis of the mixed car receipts at the Union Stock Yards, Toronto, for a three months period, viz., the months of October, 1923, March and August, 1925, which it was stated

were chosen because they represent characteristic light, medium and heavy movements into Toronto, in so far as cattle are concerned. These figures are:—

Mixed cars containing over 6 cattle	1,243	58·4%
Mixed cars containing 5 or 6 cattle	136	6·4
Mixed cars containing 3 or 4 cattle	92	4·3
Mixed cars containing 1 or 2 cattle	52	2·4
Mixed cars containing no cattle	605	28·5
Total	2,128	100·0%

It will be noted that of the total mixed cars, during the period in question, 13.1 per cent would be affected by the minima applied for in this application.

It is alleged by applicants that the shippers cannot, as a rule, afford to ship less than six head of cattle in cars with hogs, calves or sheep, as the inclusion of the cattle results in raising the minimum weight from 16,000 pounds to 20,000 pounds, which, it is claimed, imposes an excessive cost for the transportation of these small lots of less than six cattle.

These small lots of cattle offered for shipment in mixed cars with other stock consist largely of three types, described as (*a*) reasonably well finished butcher or export animals; (*b*) springer cows, which usually consist of dairy cows that are about ready to freshen, and (*c*) what are called stockers or feeders, i.e., an animal not properly finished for butcher purposes, usually steers and two-year-olds, and which are desirable for the farmer who buys a few more cattle than he raises in order to finish them. When not accepted and included in the mixed loads, these cattle frequently find their way into other trade channels; the disposition of same by types as above described being (*a*) sold to the local butchers, and is one of the principal sources of supply of the local butcher in the smaller communities; (*b*) bought by local farmers; (*c*) sold locally to farmers engaged in feeding and finishing cattle. The contention of applicants is that this results in some loss of traffic to the carriers, also that it tends to narrow the market of the farmer, or as described by applicants—"the railway loses the opportunity to carry them; the farmer who has them to sell loses the opportunity of the best market." Not all these cattle go to these other trade channels. In many cases it simply means they are held over at the shipping point for a few days until others offer, so that there is a larger number available for shipment. Frequently they are also shipped in the small numbers of 2, 3 or 4, as illustrated by the analysis of mixed loads already quoted herein.

The railway companies oppose this application. They point out that this live stock traffic all moves under special commodity rates appreciably lower than the classification basis; further, that the minimum carload weights provided in connection with these special commodity rates for straight carloads of live stock, except in the case of cattle, are lower than contained in the Canadian Freight Classification as approved by the Board. Ordinarily where special commodity rates are established the minimum carload weights prescribed in connection therewith are higher than contained in the Classification, so that in according live stock a minimum weight the same or lower than contained in the Classification it has received exceptionally favourable treatment.

Another objection of the carriers is that the universal rule regarding mixed carloads of live stock, or any other freight, not only in Canada but also in the United States, is that the highest minimum weight of any article or commodity in the mixed car governs. The rule applied for on live stock is a departure from the rule that has always applied on this traffic, as well as from the rule obtaining with regard to all other commodities, and they submit there is no reason why live stock should not receive the same treatment in mixed carloads as other commodities. That the applicants understand the situa-

tion as to this mixing rule, is indicated by the statement of Professor Leitch at p. 519 that "the mixed car rules under which our carriers operate are the usual mixed car rules found in railway transportation."

It may be here noted that the granting of mixed carload privileges, whether it be on live stock or other freight, has the effect of permitting shippers to assemble less than carload lots of different articles or commodities of sufficient volume in the aggregate to make up a carload quantity, and such mixed shipment, instead of being charged for at the respective less than carload rates appertaining to the different articles in the mixture, is accorded the benefit of the carload rate, the only restriction being that the carload rate shall be that applying on the highest rated article in the mixture, if of more than one class, and that it shall be subject to the highest minimum carload weight applicable on any of the articles contained in such mixed carload. Obviously, any other arrangement would actually accord to articles or commodities shipped in less than carload quantities more favourable treatment than when the same traffic is shipped in a straight carload; an anomaly which surely would be unreasonable and indefensible.

Dealing with the statement of applicants that if the proposed minima were adopted many cars now shipped at 16,000 pounds would undoubtedly be transported at 17,000, 18,000 or 19,000 pounds which, in addition to being of benefit to the shipper, would also mean additional revenue to the carriers; Mr. Ransom pointed out that cars now moving at 20,000 pounds would be reduced to 19,000, 18,000 and 17,000 pounds, which is admitted by Professor Leitch (p. 547). Mr. Ransom contended the applicants' proposal would result in loss of revenue to the carriers.

With regard to the difficulty in at all times collecting full carloads of live stock at one station, Mr. Ransom referred to the tariff provision of the carriers which permits a part carload loaded at one point to be stopped in transit for completion of load at a charge of $3 per car for each stop, the carload weight and rate from original point of shipment to final destination being accorded.

Professor Leitch stated (p. 541) he considered "the minimum weights for straight carloads of stock are, considering the amount and character of the animals themselves, pretty reasonable." I do not understand it is alleged by applicants that the rule as to mixed carloads is unreasonable per se; but it is claimed it at times works some hardship on the shipper and a more favourable rule is consequently applied for.

This application has its origin in the fact that in the special commodity tariffs the minimum carload weight for hogs is 16,000 pounds, while on cattle it is 20,000 pounds, and a brief history concerning the establishment of the reduced minimum weight on hogs would consequently seem to be particularly relevant to the issue here. In the Canadian Freight Classification first approved by the Board in 1904 (also previously in force) cattle, hogs and calves (six months old or over) were provided with a carload minimum weight of 20,000 pounds; sheep and calves (under six months old) 18,000 pounds. The mixed carload rule provided that cattle loaded with calves, hogs or sheep would be charged at the weight for cattle. This classification provision has remained unchanged and is contained in Canadian Freight Classification 17, the current issue, approved by General Order No. 421 dated July 17, 1925.

The tariffs publishing special commodity rates on live stock carried the same provisions as to carload minimum weights until 1907, when the minimum weight on sheep and lambs was reduced to 14,000 pounds. This change was brought about as a result of complaint of packers in Toronto regarding the minimum weight applicable to Buffalo under the Official Classification, and it was urged that the Buffalo packers had an advantage in buying in Canada.

This competitive situation led to the adoption of the reduced minimum on the Canadian movement. In 1909 the minimum weight of calves (under six months old) was also reduced to 14,000 pounds.

There were contemporaneously in effect special tariffs naming still lower rates on "hogs to packing-house points for packing and reshipment." From 1903 (the earliest tariff on file) to 1906 the carload minimum weight under these tariffs was the same as in the other tariffs referred to in preceding paragraph, viz., 20,000 pounds. In September, 1906, a change was made in these tariffs, providing that the hogs would be billed at an estimated weight of 20,000 pounds, with a provision stipulating that on arrival at destination, provided actual weights were in all instances furnished to receiving agent of the railway by consignee, charges would be corrected to actual weight at destination subject to minimum of 16,000 pounds. There was a further condition, viz., that this arrangement only applied to a list of packers, as shown in the tariff, who had advised the railway company they desired to avail themselves of this arrangement and agreed that they would permit a representative of the railway to examine their books at the packing house, in order to verify from time to time the weights furnished to railway agents. This arrangement continued in effect until September, 1910. The special basis of rates on live hogs for packing and reshipment was made because there was originally intended to be the reshipment out again in the form of packing-house products for export to foreign countries, and it was the desire of the railways to assist and encourage the exportation of hog products from Canada in competition with packers in the United States.

In 1909, Mr. H. P. Kennedy, a live stock shipper at Peterborough, complained to the Board that as an independent shipper he was discriminated against in the matter of freight rates by reason of the lower rates in favour of the packers. The foundation of his complaint was that the preferential freight tariff enabled the packers to overbid their competitors in buying and to undersell them in the local meat market. The carriers admitted the discrimination. In the meantime, there had also been a change in the situation, in that no longer was the output of the packing houses all reshipped, and in the larger cities much went into local consumption and some packers had retail stores (Davies of Toronto had at that time over 30). Conferences took place between the carriers, shippers and packers, with the result that the discrimination was removed by the publication of new commodity tariffs which were general in their application. One of the concessions made by the carriers at this time was to extend generally the minimum weight provision for hogs as formerly contained in the special packers' tariffs. In 1920 the 16,000 pounds minimum on hogs was made absolute; as in fact, for all practical purposes, it had been since 1910.

This is the reason for the existence in the special commodity tariffs of a minimum weight on hogs lower than the Classification basis, which is an exception to the general rule under commodity tariffs, and I do not consider that a reduced minimum weight having its origin under such circumstances should be the basis from which to approach the question of minimum weights on mixed carloads of cattle and hogs, quite aside from the general principle governing mixed carloads, as already herein referred to.

As already outlined, the applicants' whole case here rests, not on the question of the reasonableness of the mixing rule per se, or from a transportation standpoint, but solely from the standpoint of the shipper and the allegation that it imposes an excessive cost for the transportation of small lots of six cattle or less when included in the mixed car. Does the rule impose an excessive cost? I have taken for the purpose of computation the 15½-cent rate named by applicants as governing into Toronto from the territory from which the bulk of the mixed cars originate; the computation on any other rate gives

the same relative result. On a straight carload consisting of twenty cattle the charge is 20,000 pounds at 15½ cents or $31, which makes the transportation cost $1.55 per animal. On a car of hogs the charge is 16,000 pounds at 15½ cents, or $24.80. Under applicants' proposition, if two cattle are included with the hogs the charge will be 17,000 pounds at 15½ cents, or $26.35, or $1.55 (representing the difference between $24.80 and $26.35) for the transportation of the two cattle, or 77½ cents per animal, which is exactly one-half the cost of transportation per animal in a straight carload. Applicants' proposition produces exactly the same results where four or six cattle are included, viz., transportation per animal for one-half the amount paid in the case of a straight car of twenty cattle. Of course, with more than twenty head in a straight carload the figures would be slightly altered, but as numerous straight cars are shipped with twenty head the illustration is a fair one. To put it another way, and merely illustrating the one instance, applicants' proposition involves adding up to 2,400 pounds additional weight in the car and paying for only 1,000 pounds additional.

In the case of the straight car illustrated, the charge per animal is $1.55. Under the carriers' present mixed carload rule the inclusion of cattle makes the transportation cost per animal as follows:—

1 animal	$6 20	
2 animals	3 10	each
3 animals	2 06	"
4 animals	1 55	"
5 animals	1 24	"
6 animals	1 03	"

The record does not indicate whether there are many instances where only single animals are offered, and only 2.4 per cent of the mixed cars contained two animals or less. Where three animals are included the charge approaches that for shipments in straight carloads; in the case of four animals it is the same, and with five or six animals it is less. In this connection it is interesting to note that of the mixed car shipments only 10.7 per cent contained cattle ranging from three to six in number, and yet the charge per animal of these cattle in said mixed cars is the same or lower, when four or more are included, as the charge per animal in straight carloads, and the latter is admitted by applicants as being "pretty reasonable". In other words, although shipper can obtain transportation for three to six cattle included in a mixed carload at practically the cost per animal when shipped in straight carloads, the privilege is not being very largely availed of.

I do not consider the rule applied for should be directed, the principal reasons for this conclusion being:—

1. It would produce the anomaly of a charge per animal in less than carload quantities of cattle, included in mixed carloads, lower than when the same animals are shipped in straight carloads.

2. It would do violence to universal and long-established rules governing mixed carloads.

Is not the shipper of groceries, hardware, furniture, iron and steel, or any other commodity, and who just as frequently as the live stock shipper has to contend with a similar mixed carload rule, entitled to the same treatment?

3. The adoption of the suggested rule would, I submit, to be consistent, have to be extended also on live stock in other sections of the country and on other commodities.

4. I do not consider it proven that the present rule imposes an excessive transportation cost.

II

Reduction of Twenty-five Per Cent in Rates on Stockers and Feeders Shipped from Market to Country Points

Application is made for a reduction in freight rates of 25 per cent on stockers and feeders between points in Eastern Canada. Stockers and feeders consist of cattle which are not sufficiently finished or fattened to be ready for the butcher block or the export market. In many instances it is more profitable for some farmers to produce and ship the partially finished animal than the fully grown animal. In other cases, farmers find it profitable to purchase, in excess of what they themselves raise, quantities of these feeders or stockers and finish them. Apparently in some districts, or portions of them, the feeding conditions are more favourable to the production and shipping of the feeder, while other sections, or portions of them, are more favourable for the purchasing and shipping in of the feeder for finishing. Again, in some cars shipped by the farmers to the primary markets there may be some animals that can profitably be further finished. Quantities of these feeders are sold and purchased locally in or contiguous to the feeding districts, but the bulk of them, according to the record, are purchased at the primary market in Toronto and shipped out to Ontario points, within approximately a radius up to 150 miles, for finishing. It is explained that the advantage of buying these feeders in the primary market is that the farmers have varying ideas and desires as to the kind of feeder most profitable for their particular condition, and, therefore, want different kinds of cattle; and that at the primary market the incoming shipments are classified and graded, and the purchaser can consequently obtain there the kind of cattle desired. Professor Leitch, witness for the applicants, stated with regard to the reduction of 25 per cent in freight rates applied for (p. 531):

> "It would have this effect: It would encourage feeders to use the central market for the purpose of their requirements for feeding purposes, because there would be a lowering in the cost of getting a car from the central market to their home station. If that is encouraged, if the reduction is sufficiently large so that it would be a factor in determining a feeder whether he should go to the market and take all the advantages of that market, or try to get his cattle at home, something that would meet his travelling expenses or his keep while he is at the market, it would swing him over to using the market. And it would also tend to make a keener demand at the market for feeder and stocker cattle, and undoubtedly encourage the moving of those cattle in from the country."

A number of witnesses, being parties engaged in the feeding and finishing of cattle in various representative districts, stated that in their opinion the reduction in rates applied for would increase appreciably the volume of this traffic.

Applicants stated the Ontario counties supplying the best finished cattle, also those in which feeding is practised to the greatest extent, are Ontario, Wellington, Waterloo, Bruce, Huron, Grey, Perth and Middlesex. The counties of Ontario, Wellington and Waterloo are stated to be within approximately a 55-mile radius of Toronto, and the counties of Bruce, Huron, Grey, Perth and Middlesex within a radius of from 75 to 150 miles. An analysis was submitted, distinguishing between these two groups of counties, of the number of head of cattle shipped into Toronto and the number shipped from Toronto, showing that a much larger percentage was shipped out from Toronto to the group of

counties within the 55-mile radius than to the further distant group. The figures are:

	Percentage shipped out of the total number shipped in	
	A. 55-mile group	B. 75-150-mile group
	per cent	per cent
1920	30	10
1921	13	4
1922	53	16
1923	58	15

The opinion was expressed that if the primary market were used exclusively for supplying feeders in all the feeding and finishing areas, it would possibly result in shipments therefrom approximating 60 per cent of the number shipped in; consequently, the above figures indicate that the counties in group "B" obtain the largest percentage of their feeders locally. It was, therefore, suggested by applicants that through a substantial reduction in freight rates on feeders from the primary market there was an opportunity for the railway companies to materially increase their business in this traffic to the counties in group "B". However, when asked by counsel for the applicants if the decrease in freight rates applied for would result in as large a percentage of the movement from Toronto to Group "B" counties as now exists to group "A" counties, Professor Leitch stated (p. 536):—

> "I would not expect it unless the rates were put on an absolute parity; that is, if the Middlesex rates or Huron rates were made equal to Waterloo or Wellington."

In other words, unless a fixed rate is established which is the same to all these feeding counties, entirely irrespective of distance, there would not, in the opinion of Professor Leitch, be a movement to group "B" points comparable with that to group "A". The application, however, is for a reduction of 25 per cent from all rates.

It seems obvious that with regard to stations some considerable distance from Toronto the local supply of feeders would largely be disposed of locally, where there also exists a demand for them, because if they are shipped into Toronto and then back from Toronto, two freight rates are involved, and it would appear that in many instances even nominal freight rates both ways would still leave an advantage in favour of the local supply. However, in this connection there is the statement that large numbers of feeders in these districts are purchased from Western Canada, Winnipeg and west, on which there are no special reduced rates in force, or applied for, below the regular live stock rate. This indicates the existence of market conditions that are not altogether, at least, influenced by the rates from the primary market at Toronto. Very little necessity, apparently, exists for the reduction in rates applied for to the counties in group "A", the following discussion (at p. 545) being pertinent to this:

> "Mr. Flintoft: Would you suggest, Professor Leitch, that the same concession is necessary for those nearby points that only pay 14½ cents, or a less rate?—A. The business is developing now under the present rate, from 13 to 14½ cents. It is not so necessary for them, but I qualified that again by saying that practical considerations probably would not admit of giving a certain scale of rates at 50 miles, and then a reduction.
>
> "Q. There are difficulties about that, are there not?—A. Yes."

As supporting the application for reduced rates in Eastern Canada, reference was made by applicants to the reduced rates published by the carriers on stockers and feeders in Western Canada. The carriers state there is an entire dissimilarity of conditions; that in the West, as compared with the East, a relatively much smaller percentage of the cattle are finished there; that the distances hauled are considerably greater both into and out of the primary markets of Winnipeg, Calgary, etc.; that the same conditions in regard to mixed farming do not exist, and the reduction in the West was established to assist the live stock industry there and encourage mixed farming in Western Canada. Mr. Todd, a member of the executive of the Eastern Canada Live Stock Union, agreed with the foregoing statement as to differences in distance; admitted that the East has natural advantages over the West, and that the conditions as to mixed farming are not the same. It was not alleged by applicants that discrimination exists because there is a reduced basis in the West below the regular live stock rate and not in the East; their application is in essence founded on the submission that if a reduction was good for the West, a similar reduction would be good for the East. A mere difference in rate, particularly in different sections of the country, does not necessarily result in discrimination which is unjust. There is nothing on the record indicating that the Ontario live stock farmer or shipper is in any way hurt by the arrangement in Western Canada referred to.

> "The Board has recognized that differing conditions, competitive conditions, etc., have brought about differing rates and rules in different sections.
>
> "In speaking of rate adjustments in the West, it has been said that particular facts of the section in which the rate adjustment is made must be considered, and it does not follow that the arrangement operative in the West would be a criterion of discrimination in connection with a complaint as to a different rate adjustment east of the Lakes. Re *Freight Tolls, 27 Can. Ry. Cas., 153, at p. 174.* Manifestly, the same principle applies when the comparison is concerned with a rate or practice existing in Eastern Canada."—Board's Printed Judgments and Orders, Vol. XIII, No. 18, at p. 245.

Applicants put into the record figures showing the number of feeders and stockers shipped from Toronto to points in the eight counties above named, as follows:—

1920	20,600
1921	12,300
1922	37,300
1923	48,509

According to the reports of the Public Markets, Limited, controlling the Union Stock Yards at St. Boniface, Man. (Winnipeg), the disposition of stockers and feeders from those yards for the years for which we have the data is as follows:—

Year	Manitoba, Saskatchewan, Alberta	East	South	Overseas	Total
1917	36,323	17,096	20,495	.....	73,914
1918	41,958	15,647	44,047	.....	101,652
1919	28,315	5,103	105,696	.....	139,114
1920	19,751	31,265	65,835	.....	116,851
1921	13,532	7,580	39,700	.....	60,812
1922	15,926	39,699	84,543	.....	140,168
1923	21,067	32,421	65,629	8,341	127,458
1924	18,159	40,935	46,261	3,341	108,696
1925	17,821	55,318	40,832	4,410	118,381

Reference was made by applicants to reduced rates on feeders from the St. Boniface Yards while there is no reduction in the rates from the Union Stock Yards at Toronto. It will be observed, so far as the St. Boniface Yards are concerned, that the shipments under reduced rates to destinations in Manitoba, Saskatchewan and Alberta are not as heavy as they were some years ago, viz., 1917-18-19, and it will be further noted that the shipments to the East, i.e., Eastern Canada, and to the South, i.e., to United States points, are very much heavier than to the prairie points, yet it is only to the latter that reduced rates are in effect. For example, taking 1925 as illustration, 17,821 cattle moved at reduced rates to stations in Manitoba, Saskatchewan and Alberta; 55,318 moved under the regular live stock rates to Eastern Canadian points; 40,832 at the regular live stock rates to United States points; and 4,410 were shipped overseas. Attention is directed to the large number of cattle shipped from the Winnipeg Yards to Eastern Canadian points at the regular live stock rates, indicating that there exists market conditions, not influenced by freight rates, which govern the movement of stockers to Ontario feeding grounds; because, of course, the rates from Winnipeg are naturally, on account of greater distance, very much higher than are the rates from the Toronto market, which are merely nominal rates in comparison with the Winnipeg rate, on account of the shorter distance. Attention is also directed to a comparison between the shipments from Toronto yards to country points under the present rates, and from Winnipeg yards to Manitoba, Saskatchewan and Alberta under the reduced rates. It will be noted that to the eight counties specifically referred to by applicants the shipments from Toronto exceed in number those from Winnipeg to prairie points.

Applicants readily acknowledge, and of course it is perfectly patent, that a 25 per cent reduction in freight rates would mean a considerable loss in the earnings of the carriers, but they affirm that in their opinion the stimulus to the industry and increased business flowing from the reduction in rates would shortly actually increase the earnings of the carriers. Submissions of this same character are frequently made to the Board. The record is most inconclusive as to what increase in the traffic in feeders would actually ensue from the decrease in rates applied for. If reduction is made in the rates of 25 per cent, then, in order for the carriers to obtain, not an increase in earnings, but exactly the same gross earnings as they did before the rates were reduced, they would require an increase of $33\frac{1}{3}$ per cent in the volume of the traffic. With this increase of $33\frac{1}{3}$ per cent in the volume of the traffic handled, the carriers gross earnings therefrom would be exactly the same as before the reduction was made; but would it be seriously suggested that their net earnings would be the same; or in other words, that it would cost nothing at all to supply and haul one-third more cars of this highly perishable traffic, which requires special equipment and expedited handling? This point might be enlarged upon, but I do not think it necessary, beyond to say that, in my opinion, some fallacy exists in some submissions of this character that are from time to time placed before the Board.

The railway companies pointed out that the general level of rates on cattle, sheep and hogs is relatively lower than on other traffic. This condition was brought about in the following manner: Under the Board's General Order No. 308, dated September 9, 1920, rates generally in Eastern Canada were increased 40 per cent, effective September 13, 1920. As a result of subsequent orders directing reductions in rates, the present position is that the rates on certain so-called basic commodities (as described in paragraph "A," page 77, Board's Printed Judgments and Orders, Vol. XII) are now on a basis of $17\frac{1}{2}$ per cent over the rates in effect prior to September 13, 1920, while rates on other traffic—with one

or two exceptions—are on the basis of 25 per cent over the rates in effect prior to September 13, 1920. However, with respect to the rates on cattle, sheep and hogs, these were reduced in August, 1921, by restoring them to the rates in effect prior to September 13, 1920; in other words, all the increase of that date was taken off. This was brought about, not under Order of the Board, but as a result of a conference between the Canadian live stock interests and the carriers, held in Ottawa at the instance of the Board, and the reduction was made by the carriers in order to assist in preserving the basic industry of live stock, which found itself in a very distressing and depressed condition in 1921 as a result of post-war conditions. Having regard to all the circumstances, the Board did not feel warranted in 1921 in directing this basis of rates on live stock, but it was at the suggestion of the Board that the conference took place with a view to seeing if, under the exceptional conditions then prevailing, the carriers would accord special treatment in the matter of rates on live stock, without it being looked upon as establishing a precedent with regard to rates generally. The reduced rates then established have been continued in effect, although it is well known, and admitted on the record, that there has been a very great improvement in the condition of the live stock industry since 1921. For example, in the Sixth Annual Live Stock Market and Meat Trade Review for 1925, issued by the Dominion Department of Agriculture, it is stated: "It would appear that after a long period of depression the live stock industry has once again entered upon a cycle of prosperity, and given normal pasture and feed conditions during the next few years cattle, sheep and swine production should more than compensate for the post-war depression." As illustrating the rates on live stock, there is shown below a few comparisons for representative distances, of 80 and 120 miles, of the revenue per car on cattle with other freight, and there has been taken for this comparison, not the rates on higher grade freight, but the rates on the cheapest and lowest grade commodities which are handled by the carriers.

Commodity	Min. weight	80 miles			120 miles		
		100 lbs.	Per car	25 p.c. red.	100 lbs.	Per car	25 p.c. red.
	lb.	c.	$	$	c.	$	$
Cattle	20,000	15½	31 00	23 25	19	38 00	28 50
Cinders	60,000	10	60 00	.....	12	72 00	
Sugar beets	40,000	6	24 00	.....	9	36 00	
Beet pulp	60,000	7	42 00	.....	11½	69 00	
Ice	60,000	7	42 00	.....	9	54 00	
Brick	50,000	11	55 00	.....	13	65 00	
Bituminous coal	60,000	8	48 00	.....	9	54 00	
	80,000	8	64 00	.....	9	72 00	
Sand and gravel	60,000	7¼	43 50	.....	8¾	52 50	
	80,000	7¼	58 00	.....	8¾	70 00	
Moulding sand	60,000	10½	63 00	.....	12½	75 00	
	80,000	10½	84 00	.....	12½	100 00	
Agricultural limestone	60,000	8½	51 00	.....	10	60 00	
	80,000	8½	68 00	.....	10	80 00	
Rubble stone	60,000	9	54 00	.....	11	66 00	
	80,000	9	72 00	.....	11	88 00	
Fertilizer	40,000	10½	42 00	.....	12½	50 00	

With regard to many of the commodities above named, practically any type of railway equipment can be used. So far as live stock is concerned, this requires special equipment, in respect to which the records of the carriers in 1921 show that their percentage of empty haul, as compared with loaded haul, in the case of live stock cars was double that of other cars. There is also the very low average loading of live stock; and the fact that it requires to be given expedited

dispatch, also prompt handling on arrival at destination. I think there can be no question but that the handling by the carriers of live stock traffic involves a greater cost per unit than in the case of other traffic.

This application, however, does not attack the present rates on live stock or allege that they are unreasonable or discriminatory. There was an entire absence of any evidence of this character. Such reference as was made to rates by witnesses for the applicants may be summed up in the statement of Mr. Todd, of the Eastern Canada Live Stock Union, that he considered they had received fair treatment in the matter of rates. Professor Leitch, at p. 540, stated: "Considering the necessities of the live stock traffic, and the special equipment that is moved, it is moved at an extremely reasonable rate." This application, therefore, has as its foundation the submission that the live stock industry would be stimulated by the granting of the reduced rates applied for. However, before directing a reduction in the rates, it seems to me the Board would have to be satisfied that the present rates, either of themselves or in comparison with other traffic, are unreasonable, and I can find nothing on the record that would furnish any justification for such a conclusion being reached.

File 34123.2

Complaint of J. Troop McClelland, Lunenburg, N.S., re rates on Potatoes from points in Prince Edward Island and New Brunswick to destinations in Nova Scotia.

Written submission was made to the Board by Mr. J. Troop McClelland, Lunenburg, N.S., dated July 14, 1925, containing the suggestion that readjustment of freight rates in the General Freight Rate Investigation should result in reductions in rates on potatoes from Prince Edward Island and New Brunswick points to destinations in Nova Scotia. At sittings of the Board at Moncton April 8, 1926, Mr. McClelland was not present or represented. The railway company put on the record its statement, and a copy thereof was sent to the applicant, from whom there has been no further communication or submission. The railway company stated that the scale of rates applicable on this traffic in the territory here in question was the same as in effect throughout all territory east of Westfort, Armstrong, Sarnia and Windsor and that no argument had been adduced showing that the rates were discriminatory or unreasonable. These rates were reduced July 1, 1927, under the provisions of the Maritime Freight Rates Act, 1927, and no further action by the Board at this time seems necessary.

File 34123.2.1

Smithers District Board of Trade, Smithers, B.C., re rates on Potatoes.

There is on the record the written submission of Smithers District Board of Trade, dated August 3, 1925, and the reply of Chairman Ransom of the Canadian Freight Association under date February 15, 1926, on behalf of the carriers, copy of which is shown as having been forwarded to the Smithers District Board of Trade. The matter was not further developed by oral submission at the sittings of the Board in Vancouver or Prince Rupert, where various features of the General Rate Investigation were spoken to.

The Smithers District Board of Trade refer to an "inequality in freight rates working against the farmers of this district in the matter of freight on potatoes and vegetables to Prince Rupert." They cite rate of 20 cents per 100 pounds on potatoes, carloads, from Ashcroft to Vancouver, 203 miles, as compared with rate of 29½ cents from Moricetown to Prince Rupert, 204 miles, and 30½ cents from Smithers to Prince Rupert, 226 miles.

There is in effect, covering the movement of potatoes in carloads between points in British Columbia, a mileage scale of rates, and it is this mileage scale which is applicable from Moricetown and Smithers to Prince Rupert. The same mileage scale is the normal rate applicable from Ashcroft to Vancouver. However, there is in effect a special competitive commodity rate from Ashcroft and other points in Southern British Columbia to Vancouver, which is lower than the normal mileage scale applicable in British Columbia. The railway states the reduced rates in Southern British Columbia were established to enable British Columbia vegetable growers in that section to meet competition in Vancouver from adjacent United States territory; that the existence of these competitive rates has no bearing or influence on the movement of potatoes from Smithers or Moricetown to Prince Rupert; that is to say, there is no competition in the Prince Rupert market with potatoes shipped from the Ashcroft district or from United States territory.

The Railway Act contains specific provisions authorizing a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates, and it has been held in numerous decisions of the Board that comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates per se. There is no specific complaint before the Board against the normal mileage scale applicable on potatoes and vegetables in British Columbia, and the reasonableness of this mileage scale per se, which, it is noted, is a substantial reduction from the 8th class rates which would be applicable under the provisions of the Canadian Freight Classification in the absence of lower commodity rates, is not attacked.

File Nos. 34123.3 and 34123.16

Submissions of the Town of Simcoe and the Canadian Canners, Ltd., re so-called "Town Tariff Class Rates."

The town of Simcoe, by written submission dated August 8, 1925, in response to circular of the Board dated July 9, 1925, asking for statement of facts under which it is claimed that unjust discrimination exists in connection with freight rates, set out that in 1920 complaint had been lodged with the Board that the inhabitants of the town of Simcoe were obliged to pay higher freight rates on goods going in and out of Simcoe than accorded to other places, and application was made for an order directing the railway companies to give residents of the said town as favourable rates as the companies accord to other places. The application was refused by Order of the Board No. 30822 dated March 20, 1921, and the judgment of the Board in respect thereto is set out in Vol. X of Board's Judgments, Orders, Regulations and Rulings, page 500. It is stated by the town of Simcoe that the same state of affairs still exists, which the Board is asked to rectify. Chairman Ransom of the Canadian Freight Association, on behalf of the carriers, pointed out that this was a revival of the application refused in 1921, and as the town of Simcoe rests its case on the submissions made at the previous hearing the carriers would do the same. In reply to Mr. Ransom the town of Simcoe wrote the Board on January 14, 1926, as follows:—

> "In this matter we are enclosing herewith copy of letter dated December 31, 1925, received from Mr. G. C. Ransom, Chairman, Canadian Freight Association.
>
> "We are calling your attention particularly to this letter because Mr. Ransom seems to have been under the impression that the Town made an application for lower freight rates.
>
> "This is scarcely correct. What the town really did was to reply to the circular letter of the Board, bearing date the 9th of July, 1925, issued

by the Board by virtue of Order in Council, P.C. 889, dated June 5, 1925, regarding freight rates in Canada and asking municipalities to submit to the Board any statement of facts under which it is claimed that unjust discrimination or undue preference or unfair treatment existed in connection with rates of freight charged upon any commodities or in the treatment of any person, city or province by any railway company, etc., and our letter of August 8, 1925, was in reply to such request, and for the information of the Board, it desiring such information as municipalities had to give. We simply desire to make ourselves clear in the matter so that there may be no misunderstanding."

The Canadian Canners, Ltd., in written submission dated July 23, 1925, named thirty points at which they operate factories in Ontario in the territory west of Toronto, Niagara Falls and Bridgeburg. The points enumerated are not so-called town tariff points (list of the latter being given in the judgment above referred to) and they alleged that unjust discrimination exists on class traffic between such points as are not accorded the town tariff or schedule "A" basis, which should be corrected at this time. In a further submission dated November 29, 1926, the Canadian Canners referred to the points in the above described territory at which they operate factories, and stated that with respect to shipments moving between such points they are compelled to pay standard mileage class rates. They attach an exhibit showing comparison between the standard mileage and schedule "A" class rates, but the actual differences in rates paid are not, in many instances, those represented by this comparison, for the reason later outlined herein. It may be here noted that the schedule "A" and standard mileage scales are identical up to 35 miles.

The Canadian Canners point out that while the same standard mileage class rates are applicable in the territory east of the above defined territory, i.e. east of Toronto, the towns given the special town tariff rates seem to be so equally distributed that there does not seem to be the same cause for complaint as in the territory west of Toronto. They further state:—

> "This company owns and operates a number of factories east of Toronto at points which are not accorded town tariff or schedule "A" rates, but the situation is such that the long and short haul clause of the Railway Act of 1919 can be applied and, as a result, no great injustice is done at the present time."

They also state that after careful consideration of their submission of July 23, 1925, they do not ask for the publication of town tariffs from all of the thirty points previously enumerated, and, therefore, modified their application to a request that these rates should be published from Aylmer, Simcoe, Strathroy, Burlington, and Forest.

It is stated above that the actual differences in rates paid is not reflected in a comparison between the standard mileage and schedule "A" class rates. Taking the case of Simcoe this cannot be more clearly indicated than by quoting the following excerpt from the Chief Traffic Officer's report of January 28, 1921, which was adopted as the Board's judgment in the previous application of the said town:—

> "It should be understood that the application of the town of Simcoe is by no means so far reaching of itself as might appear on its face. In the first place the "town" tariff and the Standard are identical up to 35 miles. Secondly, to and from all points east of Toronto, Simcoe is already on the same footing as all other points west of Toronto under the grouping system outlined in the International Rates Case. This was admitted by applicants. Further, since the rates of the "town" tariffs apply in both directions, that is to say, to as well as from the distributing centres, it

follows that Simcoe has the advantage of those rates to all the points west of and including Toronto enumerated in the list given above; also, under the long and short haul principle, to directly intermediate stations not in the list until the standard rates thereto become the lower. For example; the 1st class rate from Simcoe to Barrie, which has a "town" tariff, is 66 cents (61½c.). The three next intermediate points are Thornton, Cookstown and Beeton which are not "town" tariff points. The standard rate to Beeton is 70 cents (65c.), and to Cookstown and Thornton 73½ cents (68c.), but they get the benefit of the 66 cent (61½c.) Barrie rate.

"The tariff is plain on this point, reading as follows:—

'Rates to and from intermediate points; Shipments between points on the G.T.R. System. . . . not specified herein will be charged standard mileage rates. . . . subject to rates shown (hercin) as maxima between stations directly intermediate.'

"The only additional advantage that Simcoe would secure, if its application were granted, would be the substitution of the "town" scale for the standard tariff to and from other points west of Toronto over 35 miles distant which do not fall within this arrangement."

In connection with above excerpt, the present rates are shown in brackets, a reduction in the rates having been made since the date of the said report.

The situation is similar with respect to the other points from which town tariff rates are now applied for. For example, the standard 1st class rate from Forest to Beamsville is 72 cents, but the actual rate is that of the St. Catharines "town" tariff, namely, 65 cents. From Forest to Wiarton, which is a town tariff point, the 1st class rate is 65 cents; Hepworth, Tara and Chesley are intermediate points and the standard rate 1st class would be 75½ cents to point first named and 72 cents to the other two stations, but the rate paid is the 65 cent Wiarton rate as maxima. The town tariff scale, if applied from Forest to Hepworth and Tara, would be 65 cents 1st class, which is the same as is actually now in effect under the maxima above referred to. Similarly, from Strathroy to Jordan the standard 1st class rate is 68 cents, but the actual rate is that of the St. Catharines town tariff, namely, 61½ cents, and the town tariff basis from Strathroy to Jordan would also be 61½ cents, so that there would be no reduction here. From Aylmer to Tecumseh and Belle River the standard 1st class rate is 65 cents but the rate that would be paid is that to Windsor, namely, 58 cents, and the application of the town tariff scale from Aylmer would make no lower rate than 58 cents to Tecumseh and Belle River.

The present class rate situation is that there are certain town tariff points to and from which schedule "A" class rates apply; there are other centres which have been given special class tariffs which, while "special," are not on the "town" tariff or schedule "A" basis; and between those points that these two classes of tariffs do not operate as maxima, under the long and short haul provisions of the Act, the standard mileage class rates apply. The origin of the special class tariffs is explained in the previous judgment herein referred to, Parry Sound being taken as an illustration.

There would seem to be no question that there is an element of discrimination in favour of the centres that have these so-called town tariffs. Those here in question had their origin in competition between the Grand Trunk and Great Western of former days. With regard to discrimination of this character, the following extract from the Board's judgment in the Western Rates Case is relevant:—

"It has also to be borne in mind that any special rate, such as those contained in town tariffs or commodity rates, of necessity results in some discrimination. Commodity tariffs, under which the large bulk of the

country's merchandise moves, work a two-fold discrimination. In the first instance a discrimination in favour of shippers of a particular class of merchandise from points where the volume moving justifies a commodity rate as against shippers of the same commodity at points where no commodity rate exists; and, secondly, a discrimination in favour of the article carried at the commodity rates as against articles of a kindred nature which might come more or less into competition with the article moving under the commodity rate. The effect of the town tariff is to give an advantage, of course, to a distributing centre as against similar stations within the area in which goods are distributed under a town tariff scale.

"Discriminations of this class are undoubtedly those which require the elasticity of treatment which, as pointed out by the former chairman, the Hon. A. G. Blair, the Act is framed to permit."

The town tariff points are the same now as they were twenty years ago; there has been no enlargement or additions. The solution of the matter is not to be found by the addition of the five points here applied for, as it may be assumed with some certainty that any additions directed would be followed by further similar applications and there are other non-town tariff points that furnish equal and greater tonnage than some of the points covered by the present application.

There are no data at present available to the Board which would indicate the actual detriment existing, if any, under the present rate adjustment, and from the fact that the present rate situation is one that has existed for half a century, and the only complaint with regard thereto has been the one application in 1920 and the present application, it might be assumed that there has not been any great measure of hardship or detriment. Numerous towns from which the town tariff scale is not applicable have had very substantial industrial development, while, on the other hand, there has been a decline in industrial development in certain towns from which the town tariff scale is applicable. To measure the effect of any alleged detriment, it would be necessary to have detailed records of the traffic actually moving, showing points of origin and destination, and the actual differences in rates, when the extent of the differences could be determined.

In the previous judgment of the Board it is stated:—

"The discrimination might, of course, be rectified by abolishing the "town" tariffs, as such, in favour of a uniform class tariff everywhere within each territory of the various scales. There might be three ways of doing this; by raising the distributing scale to the level of the Standard, a step which would undoubtedly be strenuously opposed by the manufacturing and jobbing interests; or by making the distributing scale the Standard, thus reducing what is now the Standard; or by a compromise between the two. Clearly, however, a system that in a lesser degree has been established for over half a century would demand very careful consideration."

A uniform class rate tariff for general application throughout the territory would seem the most desirable from an ideal rate standpoint, and it would, of course, remove all ground for alleged discrimination, but I do not consider any such revision should result in diminishing in the aggregate the revenues of the carriers, and this would involve both increases and reductions. It seems to me that all interests affected should have an opportunity of expressing their views on any such proposition before final action. It would require a most exhaustive and lengthy study of the rates and traffic movements and much data that are not available to the Board on this record, so as to approach, in the final

adjustment, a parity with the present revenues of the carriers on this traffic. Further investigation might also reveal difficulties in the working out of a uniform adjustment along the lines suggested, having in mind the circumstances surrounding the establishment of the present schedule "A" basis and its relationship to the question of international rates.

In my opinion, the present situation should not be changed until there is evidence of a more widespread demand for it, together with evidence showing clearly what detriment actually exists under the present rate situation and what real necessity there is for making the change.

Files 34123.3.2 and 34123.3.1

Submissions of the Northern Canning Company, New Liskeard, Ont., and the New Liskeard Board of Trade, re *rates on canned goods.*

Submission of the Windsor Canning Company of St. Johns, Que., re *rates on canned goods.*

The submissions and applications in these two cases are so closely related that they may properly be dealt with together.

The representations of the Northern Canning Company, supported by the New Liskeard Board of Trade, are covered by written submissions. In letter dated August 11, 1925, the Northern Canning Company, who pay fifth class rates on their shipments of canned goods in carloads, point out that their competitors in southern Ontario enjoy commodity rates lower than the class rates to Montreal and points east thereof. Competing in the same markets, the canning company state it is important that their rates be placed upon the same basis as other points, and they consequently apply for commodity rates "with the understanding that, in the event of the Board authorizing the cancellation of the present existing commodity rates, the rates from New Liskeard would get the same treatment." In supporting letter from the New Liskeard Board of Trade dated November 17, 1926, they ask for the establishment of commodity rates from New Liskeard "until a complete cancellation of all commodity rates is affected."

The Windsor Canning Company, St. Johns, Que., in letter dated August 18, 1925, point out that their competitors in Ontario enjoy commodity rates on canned goods to the large distributing centres, while from their plants at St. Johns and Napierville the class rates are charged and they have been refused commodity rates, consequently the Board is asked to direct the establishment of commodity rates from applicant's plants so as to remove the unjust discrimination against them. The matter was spoken to at sittings of the Board in Montreal on January 8, 1926. The question of unjust discrimination was raised by Mr. Windsor, Managing Director of the Windsor Canning Company, and the following discussion took place (Vol. 449, p. 294-295):—

> "Mr. Flintoft: There are two ways of removing it. Either reduce Mr. Windsor's rates to the lower basis or bring the others up. We say the proper method is to bring the lower basis up.
>
> "Commissioner Boyce: That is, abolish the commodity rates.
>
> "The Deputy Chief Commissioner: Are you satisfied with that?
>
> "Mr. Windsor: No, I do not want to go against my confreres in Ontario. I submit that canned goods should be moved as cheaply as possible. I would not want to go on record as saying that I want to cancel the commodity rates. All I say is that I want the same rates as they have."

Chairman Ransom, of the Canadian Freight Association, on behalf of the carriers, filed an exhibit of rates making various comparisons. The commodity

rates are only in effect from Western Ontario points to Montreal, Ottawa and points east thereof, and to this territory, with the exception of Ottawa, the rates from St. Johns, Que., are appreciably lower than from the western canning points. However, this is not particularly relevant, because the favourable geographical location of St. Johns produces this result, and it is, of course, entitled to any benefits flowing from its favourable location with respect to the destination territory in question. A brief historical summary concerning these commodity rates seems necessary in order that their origin and the present rate situation may be readily understood.

Canned fruits and vegetables, in carloads, are rated fifth class in the Canadian Freight Classification, and the normal rates thereon are consequently the fifth class tariff rates. For many years there have been in effect from canning points in Ontario to Montreal and points east, special commodity rates lower than the fifth class rates. These commodity rates appear to have originated with the canneries around the bay of Quinte, in competition with the St. Lawrence waterway, followed by accretions as canneries were established at other western Ontario points, with the object of maintaining all on some system of rate equality. These commodity rates to Montreal and Ottawa operated as maxima to intermediate direct line points. To points in the province of Quebec, outside of Montreal, the usual proportioned arbitraries were added to the special commodity rates to Ottawa and Montreal. To the Maritime Provinces the rates pivoted on the then most easterly canning point, Napanee, whence the fifth class tariff rate was charged, and to this rate certain additions, lower than the fifth class rate difference, were made from canning points west thereof to St. John; other points in the Maritime Provinces taking the fifth class rate difference above the St. John rates. These rates were modified and increased under the judgment of the Board in the Eastern Rates Case in 1916, Vol. VI, Board's Judgments, Orders, Regulations and Rulings, p. 133 (reference to canned goods being found at p. 172). In that judgment it is stated, with regard to the rates authorized to St. John, which is the point upon which the rates to Maritime territory are built, that they "have no particular basis." The various percentage increases and decreases, to which rates generally have been subjected since 1916, have also applied to these special commodity rates. Effective April 14, 1924, the carriers published tariffs reducing all class rates between points in the Maritime Provinces and stations in Ontario. To St. John and Halifax, the reduction was a flat decrease approximating from five to six cents per 100 pounds, fifth class, from all Ontario points; to Sydney the reduction was approximately nine cents, fifth class. This reduction was made in class rates only, commodity rates remaining unchanged. The effect of this class rate reduction in 1924 was that the normal fifth class tariff rates, from canning points Hamilton and east to certain stations in Quebec and all points in the Maritime Provinces, became the same or lower than the special commodity rates, owing to the slight difference previously existing. From other canning points west or south of Hamilton, where the difference previously existing was greater, the commodity rates remained somewhat lower than the class rates to certain destination territory, although even from these points to some of the eastern territory the class rates became the same or lower than the commodity rates.

While, therefore, commodity rates formerly were in force from these Ontario canning points to all territory Montreal and east, material changes have been brought about under the circumstances above set out. Mr. Ransom's exhibit, already referred to, showed a comparison between the fifth class rate and the commodity rate, as existing in 1919 and at present, from typical shipping points to the principal centres Montreal and east as far as Sydney, N.S., and Tignish, P.E.I. In 1919 the fifth class rate in all cases exceeded the commodity rate. At present from Napanee and St. Catharines the commodity rate has been superseded by the class rate to stations Mont Joli, Que., and east. From Belle-

ville, Bowmanville, Oshawa and Hamilton the commodity rate has been superseded by the class rate to stations Rivière-du-Loup and east. A comparison is given below in the case of Belleville, Oshawa, Hamilton and Windsor:—

FROM BELLEVILLE, ONTARIO

To	October 18, 1919			September 16, 1925			
	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate exceeds 5th class by
Montreal, Que	24	29	5	30	36½	6½	.....
Ottawa, Ont	24	24½	½	30	30½	½	.....
Sherbrooke, Que	32½	34½	2	40½	43	2½	.....
Quebec, Que	34	36½	2½	42½	45½	3	.....
St. Louis, Que	37½	39	1½	47	49	2	.....
Riviere-du-Loup, Que	40	42	2	50	50	.....	.....
Mont Joli, Que	43	44½	1½	54	52½	.....	1½
St. John, N.B	44½	46½	2	55½	54	.....	1½
Halifax, N.S	46½	47½	1	58	55½	.....	2½
Mulgrave, N.S	49	50½	1½	61½	58	.....	3½
Sydney, N.S	52	53	1	65	59½	.....	5½
Tignish, P.E.I	54½	56½	2	68	58	.....	10

FROM OSHAWA, ONTARIO

To	October 18, 1919			September 16, 1925			
	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate exceeds 5th class by
Montreal, Que	27½	33	5½	34½	41½	7	.....
Ottawa, Ont	27½	29	1½	34½	36½	2	.....
Sherbrooke, Que	36½	39	2½	45½	49	3½	.....
Quebec, Que	37½	40	2½	47	50	3	.....
St. Louis, Que	40	43	3	50	54	4	.....
Riviere-du-Loup, Que	43	46½	3½	54	54	.....	.....
Mont Joli, Que	46½	49	2½	58	55½	.....	2½
St. John, N.B	47½	50½	3	59½	58	.....	1½
Halifax, N.S	49	52	3	61½	59½	.....	2
Mulgrave, N.S	52	54½	2½	65	61½	.....	3½
Sydney, N.S	54½	57½	3	68	63	.....	5
Tignish, P.E.I	57	60½	3½	71½	61½	.....	10

FROM HAMILTON, ONTARIO

To	October 18, 1919			September 16, 1925			
	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate exceeds 5th class by
Montreal, Que	29	34½	5½	36½	43	6½	.....
Ottawa, Ont	29	33	4	36½	41½	5	.....
Sherbrooke, Que	37½	40	2½	47	50	3	.....
Quebec, Que	39	42	3	49	52½	3½	.....
St. Louis, Que	42	44½	2½	52½	55½	3	.....
Riviere-du-Loup, Que	44½	47½	3	55½	55½	.....	.....
Mont Joli, Que	47½	50½	3	59½	58	.....	1½
St. John, N.B	49	52	3	61½	59½	.....	2
Halifax, N.S	50½	53	2½	63	61½	.....	1½
Mulgrave, N.S	53	56½	3½	66½	63	.....	2½
Sydney, N.S	56½	59	2½	70½	65	.....	4½
Tignish, P.E.I	59	62	3	74	63	.....	11

FROM WINDSOR, ONTARIO

To	October 18, 1919			September 16, 1925			
	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate	5th class	5th class exceeds Comm. by	Comm. rate exceeds 5th class by
Montreal, Que	35	43	8	44	54	10	.....
Ottawa, Ont	35	42	7	44	52½	8½	.....
Sherbrooke, Que	44	49	5	55	61½	6½	.....
Quebec, Que	45	50½	5½	56½	63	6½	.....
St. Louis, Que	46½	53	6½	58	66½	8½	.....
Riviere-du-Loup, Que	49	56½	7½	61½	66½	5	.....
Mont Joli, Que	52	59	7	65	68	3	.....
St. John, N.B	53	60½	7½	66½	70½	4	.....
Halifax, N.S	54½	62	7½	68	72	4	.....
Mulgrave, N.S	57½	65	7½	72	74	2	.....
Sydney, N.S	60½	67½	7	75½	75½	.....	.....
Tignish, P.E.I	63	70½	7½	79	74	.....	5

There is also on file a communication from the Eastern Canadian Preserved Foods Traffic Association, dated March 3, 1926, in which reference is made to the application of the carriers to the Board in 1919 for authority to cancel the commodity rates and permit the class rates to apply. As will be noted, from what is above set out, the commodity rates had a considerably wider application in 1919 than they have at present. No decision was rendered by the Board in that case and this association submits that no order should issue with respect thereto at this time.

Since that case was heard the railways have refused to establish commodity rates from new canning points in a number of cases, with the result that there is now before the Board the complaints of the Northern Canning Company and the Windsor Canning Company.

Canned goods, in carloads, are also being shipped from Chesterville and Brockville to destinations Montreal and east at class rates. There is, therefore, now the anomalous situation that some shipping points are paying class rates; others enjoy commodity rates. There is the further anomaly that while commodity rates lower than the class rates apply to Montreal and certain Quebec destinations east thereof; to still further distant destination territory in Quebec and the Maritime Provinces the full 5th class tariff rate applies from canning points Hamilton and east, while from canning points west and south of Hamilton there is no uniformity, the class rates applying in some cases and commodity rates in others. In this connection it may be pointed out that for the longer hauls, all-rail, from Eastern Canadian canning points to stations in Western Canada, the 5th-class tariff rates apply. All movements of canned goods from canning points in Quebec pay class rates. The class rates apply for all movements between points in the province of Ontario, except that eastbound the Montreal-Ottawa commodity rates apply as maxima. To destination territory, with Montreal and Ottawa as the western boundary, and extending east to approximately Quebec city, commodity rates apply from nearly all the canning points in Ontario; class rates apply from Quebec canning points to this territory. East of Quebec city and to all points in the Maritime Provinces class rates apply from canning points Hamilton and east; from canning points south or west of Hamilton the class rates apply to some of the destination points in this territory while in other cases commodity rates apply. When the same traffic carried through Montreal and on to the Maritime Provinces pays class rates, there would seem to be no very good reason why the class rates should not apply to Montreal. The various rate changes have resulted in the

wiping out of a great many of the commodity rates, and where the latter still remain there is no uniformity in their application and discriminations exist. In my opinion, the carriers should be authorized to cancel what commodity rates remain, placing the whole of this traffic on a class rate basis. I anticipate this may result in a complaint from certain canning points alleging the necessity for commodity rates to Montreal on account of competition with foreign importations of canned goods, but any such complaint, if made, can best be dealt with separately; there are no data on the record here that would enable the Board to form any opinion as to this.

File 34123.3.3

Complaint of Quality Canners of Canada, Ltd., Windsor, Ont., re alleged discrimination against the county of Essex in the matter of freight rates on Canned Fruits and Vegetables to various Canadian consuming centres.

Heard at Windsor, Ont., January 12, 1926.

This complaint alleges that there is an unjust discrimination against the county of Essex in the matter of freight rates on canned fruits and vegetables to various Canadian consuming centres. As developed by complainants, it requires to be dealt with under different headings.

I

With respect to consuming centres in the Maritime Provinces, it is alleged that a handicap has been placed against Essex county " through discriminatory freight rates, brought about by the various changes in rates which have been put in effect from time to time in favour of other producing centres, without corresponding reductions or changes in rates applying from points in Essex county." Changes in rates effective April 14, 1924, are specifically referred to. The statement of complainants, above quoted, that changes in rates were made from other producing centres without corresponding changes from points in Essex county, is illusory. In order to obtain a proper perspective of the rate situation, a brief historical summary seems necessary.

Canned fruits and vegetables, in carloads, are rated 5th class in the Canadian Freight Classification, and the normal rates thereon are consequently the 5th class tariff rates. For many years there have been in effect from canning points in Ontario to Montreal and points east, special commodity rates lower than the 5th class rates. These commodity rates appear to have originated with the canneries around the Bay of Quinte, in competition with the St. Lawrence waterway, followed by accretions as canneries were established at other western Ontario points, with the object of maintaining all on some system of rate equality. These commodity rates to Montreal and Ottawa operated as maxima to intermediate direct line points. To points in the Province of Quebec, outside of Montreal, the usual proportioned arbitraries were added to the special commodity rates to Ottawa and Montreal. To the Maritime Provinces the rates pivoted on the then most easterly canning point, Napanee, whence the 5th class tariff rate was charged, and to this rate certain additions, lower than the 5th class rate difference, were made from canning points west thereof to St. John; other points in the Maritime Provinces taking the 5th class rate difference above the St. John rates. These rates were modified and increased under the judgment of the Board in the Eastern Rates case in 1916, Vol. VI. Board's Judgments, Orders, Regulations and Rulings, p. 133 (reference to canned goods being found at p. 172). In that judgment it is stated, with regard to the rates authorized to St. John, which is the point upon which the rates to maritime territory are built, that they "have no particular basis." The various percentage increases and decreases, to which rates generally have been subjected since 1916,

have also applied to these special commodity rates. The situation as existing prior to April 14, 1924, was, therefore, that from canning points east of Toronto the special commodity rates to Maritime Provinces were slightly lower than 5th class tariff rates, while from the canning points in western Ontario and Essex county the commodity rates represented a greater spread, or reduction, under the 5th class rates, than from points east of Toronto. Effective April 14, 1924, the carriers published tariffs reducing all class rates between points in the Maritime Provinces and stations in Ontario. To St. John and Halifax, the reduction was a flat decrease approximating from 5 to 6 cents per 100 pounds, 5th class, from all Ontario points; to Sydney the reduction was approximately 9 cents, 5th class. This reduction was made in class rates only, commodity rates remaining unchanged. The effect of this class rate reduction in 1924 was that the normal 5th class tariff rates, from canning points Hamilton and east to certain stations in Quebec and all points in the Maritime Provinces, became the same or lower than the special commodity rates, owing to the slight difference previously existing. From other canning points, west or south of Hamilton, where the difference previously existing was greater, the commodity rates remained somewhat lower than the class rates to certain destination territory, although even from these points to some of the eastern territory the class rates became the same or lower than the commodity rates. This is illustrated by taking typical shipping points as follows:—

To	FROM									
	Niagara Falls		Simcoe		Aylmer		London		Windsor	
	Com. Rate	5th class	Com. Rate	5th class	Com. Rate	5th class	Com. Rate	5th class	Com. Rate	5th class
Plaster Rock, N.B. Edmunston, N.B. St. Leonards, N.B. Woodstock, N.B. Bottrell, N.B. St. Andrews, N.B. St. Stephen, N.B. Fredericton, N.B. McAdam, N.B. St. John, N.B.	61½	61½	63	65	63	66½	63	66½	66½	70½
Riviere-du-Loup, Que.	55½	58	58	51½	58	63	58	63	61½	66½
Mont Joli, Que.	59½	59½	61½	63	61½	65	61½	65	65	68
St. Anselme, Que.	61½	*58	63	*61½	63	63	63	63	66½	66½
Chipman, N.B. Campbellton, N.B. Bathurst, N.B. Moncton, N.B. Sackville, N.B. Amherst, N.S.	61½	61½	63	65	63	66½	63	66½	66½	70½
Londonderry, N.S. Truro, N.S. Halifax, N.S. New Glasgow, N.S. Trenton, N.S.	63	63	65	66½	65	68	65	68	68	72
Tracadie, N.S. Mulgrave, N.S. Point Tupper, N.S.	66½	*65	68	68	68	70½	68	70½	72	74
Iona, N.S. North Sydney, N.S. Sydney, N.S.	70½	*66½	72	*70½	72	72	72	72	75½	75½
Tignish, P.E.I.	74	*65	75	*68	75	*70½	75	*70½	79	*74
St. Eleanor, P.E.I. Summerside, P.E.I. Charlottetown, P.E.I.	66½	*63	68	*66½	68	68	68	68	72	72
Mount Herbert, P.E.I. Tracadie, P.E.I. Bear River, P.E.I. Elmira, P.E.I.	74	*65	75	*68	75	*70½	75	*70½	79	*74
St. Rose, Que. St. Therese, Que. Lachute, Que. Grenville, Que. Montebello, Que. Buckingham, Que. Angers, Que.	46½	*45½	49½	*49	50	50	50	50	53	54

* 5th Class lower than Commodity rate.

The class rates have, from time to time, been subjected to changes, both increases and decreases, but the change has been made from all points; the same is true of the special commodity rates, so that any suggestion that changes in rates "have been put in effect from time to time in favour of other producing centres without corresponding reductions or changes in rates applying from points in Essex County" is not a correct statement of the facts.

Complainants made comparison as between Essex County and Bowmanville with respect to shipments to St. John, N.B. Their submission states:—

> "Prior to April 14, 1924, the movement of canned fruits and vegetables from producing points in Ontario to the consuming centres in the eastern provinces of Canada was governed by commodity rates on carload shipments with a minimum weight of 40,000 pounds per car. The said rate from points in Essex County to St. John, N.B., is 66½ cents per 100 pounds or $266 per minimum carload shipment, in comparison with 59½ cents per 100 pounds from Bowmanville, Ontario, to St. John, N.B., or $238 per minimum carload, an advantage to Bowmanville, owing to geographical position, of $28 per carload shipment. Prior to April 14, 1924, the fifth class rate, which applies on shipments of Canned Foods in minimum carloads of only 24,000 pounds, was 61½ cents from Bowmanville, Ontario, to St. John, N.B., as compared to the commodity rate on 40,000 pound carloads of 59½ cents per 100 pounds; therefore all shipments were made in 40,000 pound carloads at the lower rate. On the above mentioned date, however, a reduction was made in the class rates whereby the rate from Bowmanville, Ontario, to St. John, N.B., for example, was changed from 61½ cents to 55½ cents per 100 pounds on shipments of only 24,000 pounds, thus making the total cost for a minimum carload shipment $133.20, whereas the commodity rate of 66½ cents per 100 pounds on 40,000 pounds carloads is still the lowest rate effective from points in Essex County, with cost per carload of $266, or a differential in favour of Bowmanville and against Essex County of $132.80 per carload shipment, owing to the change in the class rate, as compared with the differential of only $28 per carload prior to April 14, 1924, when the commodity rates were the lowest rates in effect."

The difference in carload minimum earnings, under the commodity rates, should read $30 instead of $28 as stated by complainants, made up as follows:—

From Windsor, 40,000 lbs. at 66½cts. per 100 lbs. equals	$ 266 00
From Bowmanville, 40,000 lbs. at 59 cts. per 100 lbs. equals	236 00
Difference	$ 30 00

Complainants state this differential in favour of Bowmanville has been increased to $132.80 per carload, but this figure is arrived at by comparing unequal carload quantities. A fair comparison, under the present rates, is given below:—

1st. If a car of 24,000 lbs. is shipped:

From Windsor (rate 70½ cts.)	$ 169 20
From Bowmanville, (rate 55½ cts.)	133 20
Difference	$ 36 00

2nd. If a car of 40,000 lbs. is shipped:

From Windsor, (rate 66½ cts.)	$ 266 00
From Bowmanville, (rate 55½ cts.)	222 00
Difference	$ 44 00

Examples of alleged discrimination were given by complainants as follows:—

	Miles	Rate
Essex county (Windsor) to St. John	1,047	66½ cts.
Bowmanville to Halifax	1,051	58 cts.
Trenton and Belleville to Sydney	1,241	59½ cts.
Essex county (Windsor) to St. John	1,047	66½ cts.

The rates here under consideration are built up on a system of grouping of destination territory by the addition of arbitraries over the St. John rate, and mere mileage comparisons in connection with rates so constructed, are, therefore, not conclusive, and especially is this the case where different points of origin and different points of destination are used as the basis for comparison. Practically similar comparison to that here given by complainants might have been made at any time during the many years these commodity rates have been in force. To make a proper comparison, the same destination points require to be taken. The following comparison is given in exhibit No. 2 filed by complainants with their written submission of August 13, 1925:—

From	Miles	To St. John			
		5th class rate	Com. rate	Per ton per mile	
				5th class	Com.
		cts.	cts.	cts.	cts.
Windsor	1,047	70½	66½	1·34	1·27
Bowmanville	773	55½	59	1·43	1·52

There is a slight error in mileages given by complainants, the correct figures being, from Windsor 1,033 miles and from Bowmanville 765 miles, but this would not affect the comparative relationship of the rate per ton per mile. It will be observed that the rate from Windsor produces a lower earning per ton per mile than the rate from Bowmanville, indicating a tapering of the rate for the longer mileage. Reference has already been made to the rates beyond St. John, in the Maritime Provinces, being built up on a group system by the addition of arbitraries, which results in a diminishing mileage influence. This is illustrated by the following comparison:—

From	To	Miles	Rate	
			5th class	Com.
			cts.	cts.
Windsor	St. John	1,033	70½	66½
	Halifax	1,312	72	68
	Sydney	1,465	75½	75½
Bowmanville	St. John	765	55½	59
	Halifax	1,044	58	60
	Sydney	1,197	61½	67½

It will be observed that the 5th class rate from Windsor to St. John, 1,033 miles, is 70½ cents, and to Halifax, 279 miles further, it is increased by 1½ cents, and to Sydney, 432 miles further, it is increased 5 cents. From Bowmanville to Halifax the 5th class rate is 2½ cents over St. John, and to Sydney 6 cents over, for corresponding increases in mileage. A similar comparison

to that given in complainant's exhibit No. 2, above mentioned, taking Halifax as a point of destination and Trenton and Windsor as shipping points, is given below:—

From	Miles	To Halifax			
		5th class	Com.	Per ton per mile	
				5th class	Com.
		cts.	cts.	cts.	cts.
Trenton	982	55½	58	1·13	1·18
Windsor	1,312	72	68	1·09	1·03

No discrimination is apparent as between Windsor and Bowmanville or other shipping points, as far as relates to the arbitraries added to the St. John rate to points beyond, similar rate treatment being accorded all shipping points in this respect. Similarly, to St. John proper, which is the pivotal point, unjust discrimination against Windsor, as compared with other shipping points, having in mind class rate differences and distance, is not indicated. Measured by the class rate spread, which would be applicable in the absence of special commodity rates, it might be argued that Windsor enjoyed a favourable rate adjustment.

Complainants claim that the spread formerly existing between Windsor and points east of Toronto, under the commodity rates, enabled them to compete successfully with other canning points for business in the Maritime Provinces, and that the widening of the spread now prevents competition. They did not, however, produce any evidence showing what detriment to their business had resulted from changes in the rates. When an argument is advanced, based on asserted detriment to business resulting from changes in rates, some concrete evidence in support thereof should be furnished. It is not sufficient proof to merely point to the changes in rates. It was for this reason that, at the hearing of this case at Windsor, the Board requested complainants to furnish a detailed statement showing their carload shipments to destinations Quebec and eastward for the last four or five years, which was promised. This statement was never furnished.

II.

Complainants submitted that if, on account of its geographical position, higher rates were justified from Essex county to eastern Canadian points, the shippers of Essex county were entitled to the advantage of their geographical position and shorter mileage via United States routing to points in Western Canada, by the granting of lower rates than are applicable from other points in Ontario to Western Canada. Complainants stated that:—

> ". . . cannery points east of Toronto are placed in the position whereby they not only secure the exclusive benefit of the markets of the Eastern Provinces through lower freight rates, but are permitted to ship via longer mileage hauls to Western Canada at exactly the same rate of freight as applies via the short haul from Essex county points to Western Canada. For example:—
>
> Windsor to Winnipeg via U.S.A. routing is 1,199 miles.
> Windsor to Winnipeg via Canadian routing is 1,459 miles.
> Deseronto to Winnipeg via Canadian routing is 1,357 miles.
> Belleville to Winnipeg via Canadian routing is 1,341 miles.
> St. Catharines to Winnipeg via Canadian routing is 1,346 miles.
> Niagara Falls to Winnipeg via Canadian routing is 1,357 miles.

Mileages given by complainants are incorrect. The proper short line mileages should be:—

Windsor to Winnipeg via U.S.A. routing, 1,149 miles.
Windsor to Winnipeg via Canadian routing, 1,415 miles.
Deseronto to Winnipeg via Canadian routing, 1,275 miles.
Belleville to Winnipeg via Canadian routing, 1,255 miles.
St. Catharines to Winnipeg via Canadian routing 1,272 miles.
Niagara Falls to Winnipeg via Canadian routing, 1,285 miles.

No commodity rates are in force from Eastern Canadian points to stations in Western Canada applying on canned goods moving all-rail. The 5th-class tariff rates apply on carload shipments. While the complaint covers only canned goods, it is obvious that whatever principle is found to be properly applicable on this traffic would have to be extended to all other classes of traffic moving under class rate tariffs; on the grounds set out by complainants, a different principle could not consistently apply on canned goods than on traffic generally. Practically the same contention as here advanced by complainants was brought before the Board in 1912, in the application of the Dominion Sugar Co. Ltd., for readjustment of rates on sugar, in carloads, from Wallaceburg, Ont., to Winnipeg and other Manitoba points. This application was dismissed and the judgment of the Board in the matter is to be found in Vol. 1, Board's printed Judgments, Orders, Regulations and Rulings, p. 507. The following excerpt from this judgment is particularly relevant here:—

"The consideration of the attack upon the existing rate basis requires some attention to be given to the geographical situation of Wallaceburg, since it is contended that the existing rate basis does not take due cognizance of the geographical advantages possessed by Wallaceburg. Wallaceburg is located 542 miles west of Montreal. At present, the rate on refined sugar from Montreal to Winnipeg over the Canadian lines is the same as from Wallaceburg to Winnipeg, viz., 71 cents per hundred pounds in car lots. When the short line rail mileages are taken, it appears that from Montreal to Winnipeg is 1,420 miles, while from Wallaceburg to Winnipeg is 1,429 miles. By way of lines through the territory of the United States, the distance by way of Sarnia, Manitowoc, and Duluth to Winnipeg is 1,028 miles, which is made up as follows:—

Pere Marquette to Manitowoc, 319 miles.
Soo Line to Duluth, 331 miles.
Duluth, Missabe and Northern and Canadian Northern to Winnipeg, 378 miles.

"On shipments to points in the Northwest, the Canadian lines blanket the territory from Montreal to the Detroit and St. Clair rivers. . . . It is, therefore, an established practice to give over a territory extending over 500 miles west from Montreal a blanket rate to points in the Canadian Northwest.

"As has been indicated, Wallaceburg is 542 miles west of Montreal. Furthermore, it is by rail connections through United States territory 392 miles nearer Winnipeg than is Montreal. As to the allegation that Wallaceburg has certain geographical advantages, it is apparent that in regard to its proximity to the lakes, as well as to its mileage through the United States to Winnipeg, it does possess certain geographical advantages. Without developing the point, it may be recognized that in respect of water-borne transportation and the competition arising in connection therewith, Montreal also has geographical advantages. As, however, Montreal was not heard in the present case, it is unnecessary

to attempt to estimate the comparative value of the water advantages possessed by the two points.

"In so far as the advantage of rail situation is concerned, the Board must take cognizance not only of the rail mileage through United States territory, but also of the actual route which must be traversed by rail in Canada. The Board must recognize the existing rail conditions in Canada as it finds them, and it therefore appears that while Wallaceburg is over 500 miles west of Montreal, it is as a matter of fact 9 miles farther from Winnipeg by the Canadian route than is Montreal. For all practical purposes, they may from the standpoint of Canadian railway mileage be regarded as equi-distant from Winnipeg."

The blanketing of a territory extending for 500 miles west of Montreal is above referred to. This situation was reviewed by the Board *in re* Freight Tolls, 1922, Vol. XII, Board's printed Judgments, Orders, Regulations and Rulings, p. 61, and at p. 69 the Board stated:—

"With reference to rates between Eastern Canada and points west of Fort William, a different situation is found to exist. Instead of territorial groupings in Ontario, as in the case of the rates between Ontario and the Maritime Provinces, the rates are blanketed to and from the whole territory Montreal to Windsor and Sarnia, inclusive, Sudbury to Niagara Falls, all intermediate points and all lateral lines. The reason is apparent—the water lines operate from Montreal, calling at intermediate points to Sarnia, at a common rate to the head of the lakes, while the westernmost points, such as Sarnia and Windsor, can reach St. Paul and thence Western Canadian points with a short mileage via Chicago. From and to points east of Montreal it has been the practice to add an arbitrary to the Montreal rate. Montreal, through its geographical situation at the head of ocean navigation and as the terminal of the western river and lake routes, is a natural breaking point. This group with its blanket rate takes in a large area—Montreal to Windsor, 555 miles—Montreal to Sudbury, 444 miles—Niagara Falls to Sudbury, 337 miles—Windsor to Sudbury, 480 miles. The distance from Montreal, the most easterly point, to Fort William, the head of lake navigation and the rate breaking terminal between Eastern and Western Canada, is 997 miles. From Windsor, the most westerly point, the distance is 1,032 miles."

The Board further stated in its judgment "the blanket rate covering this territory is justified by the governing conditions outlined." As stated by the Board, recognition must be given to the existing rail conditions in Canada and of the actual route which must be traversed by rail in Canada. By the route traversed by the Canadian rail lines, the haul from Windsor is in excess of that from other Canadian shipping points within the same blanket territory, examples being:—

Windsor to Winnipeg, 1,415 miles.
Montreal to Winnipeg, 1,355 miles.
Deseronto to Winnipeg, 1,275 miles.
Belleville to Winnipeg, 1,255 miles.
Toronto to Winnipeg, 1,208 miles.
Hamilton to Winnipeg, 1,246 miles.
Niagara Falls to Winnipeg, 1,283 miles.
London to Winnipeg, 1,305 miles.

The granting of complainants' request would not only precipitate complaints from other shipping points with shorter mileage to Western Canadian points, but involve a tearing down of the present rate structure between Eastern and Western Canadian points. The present adjustment has been found equitable by the Board, and that it is generally satisfactory is evidenced by the absence of any other complaints having been received concerning it. No unjust discrimination as against Windsor or shipping points in Essex county exists, and the Board would not be warranted in disturbing the present situation on the record before it.

III

In addition to the all-rail rates, reference was also made to the rail and water and all-water rates from Ontario to Western Canadian points. The rail and water rates on canned goods, at the time this case was heard, were based on a uniform reduction of 6 cents less than the all-rail rates, so that the same general blanketing arrangement is seen to exist here. Complainants refer to an all-rail rate to the head of the lakes of 57 cents, rail and water 51 cents, and all-water 47 cents. The first two figures are not the published rates, but represent the proportion applying east of the head of the lakes on the through rates. The all-water rate is that charged by the boat lines from water ports of call and is not within the jurisdiction of the Board. It was stated that the water lines were also taking, at the 47 cent rate, shipments from nearby inland points such as Grimsby, Beamsville, Vineland and St. Catharines, and absorbing out of their earnings, the cost of the rail haul from the inland points to the lake port, and it appears from complainants' representations that a similar absorption was not made by the boat lines with respect to their traffic from points in Essex county. It was suggested that the division between the boat lines and the rail carriers of the through rail and water rate was too generous to the boat lines, thus enabling them to grant concessions to producers in certain districts, and it was submitted that "the railroads should accordingly share the responsibility for the discriminations which result therefrom, and be obliged to take such steps as may be necessary to rectify the unfair situation arising therefrom." The action of the boat lines in absorbing the rail charge from nearby inland points to lake port deprives the rail carriers of their long haul on this traffic, and it is surely obvious that the railway companies do not view with complacency the loss of this traffic. The Board has held:—

> "Division of a through toll as between connecting carriers on hauls over two or more lines is a matter of domestic concern, and so long as a through toll is not unreasonable it does not matter to the public how it is divided." West Virginia Pulp and Paper Company, Vol. VIII, Board's Printed Judgments, Orders, Regulations and Rulings, p. 28.

However, it is not apparent that the action suggested by complainants would supply a remedy. Some of the boats operating have no connection whatever with the rail lines, that is to say, they do not participate with the rail carriers in the rail and water movement. They operate direct from the lake ports to the head of the lakes, and not only take such traffic as they can secure at these lake ports, but also handle traffic from nearby inland points, which is carried to the lake port by motor truck or rail. There is a boat line known as the Tree Line operating in this territory, and they are handling a considerable proportion of the canned goods that are moving all-water to the head of the lakes. I am informed they are sending their trucks back into the interior, but the extent of the trucking or the amount they are absorbing is not known. With the evident object of endeavouring to meet this competition, it is noted that

effective April 22, 1927, the carriers issued a tariff naming a special competitive rail and water rate of 41 cents per 100 pounds on canned fruits and vegetables, in carloads, from stations in Ontario to Fort William and Port Arthur, applicable on traffic destined beyond. This, of course, applies from Essex county points and makes their through rate to Winnipeg 98 cents per 100 pounds, which is 10 cents less than the former rail and water rate of $1.08, and 6 cents less than the rate all-water of $1.04, to which complainants referred as being applicable from the lake ports, and certain inland points through the absorption alluded to.

IV.

Complainants cited certain rates from United States points, namely, Canton, Ohio, and Pittsburgh, Pa., to Winnipeg, and from Baltimore, Md., to Quebec, and made mileage comparisons with Windsor. They also refer to an all-water rate from California points to St. John and Halifax. Mere mileage comparisons of this character are of little probative force, because comparison is made between rates constructed under entirely different conditions. These international rates are governed by a different classification and rate structure from that existing within Canada. With respect to the movement from Canton and Pittsburg to Winnipeg, with distances as cited by complainants, of 1,313 and 1,321 miles respectively, only approximately 66 miles of the haul is within Canadian territory under this Board's jurisdiction. No evidence was adduced or allegation made that canned goods are actually moving from these United States points to destinations indicated; the rates are merely the class rates that apply on any traffic taking the same class in the governing United States classification. Before any showing of unjust discrimination could be predicated on any such comparisons, it would be necessary to have evidence showing whether complainants are in any way detrimentally affected thereby.

V.

It was further alleged by complainants that unjust discrimination against them, in the matter of rates, has resulted from the establishment of the commodity rates at present in effect from British Columbia canning points to Western Canadian destinations. They stated:—

> " We further respectfully beg to draw the attention of your Honourable Board to the fact that further undue discrimination has resulted against the producers of Essex County owing to the changes in freight rates on canned foods from British Columbia producing points to the Prairie Provinces, which were made effective under date of March 19, 1924. For example, the fifth class rate on canned foods from Nelson, B.C., to Winnipeg, Manitoba, is $1.92 per 100 pounds (on minimum carloads of 24,000 pounds), as compared with the fifth class all rail rate from Essex County to Winnipeg of $1.14 per 100 pounds. However, under date of March 19, 1924, special commodity rates were put into effect whereby on shipments of 40,000 pounds the rate from Nelson to Winnipeg was made $1.10 per 100 pounds and on shipments of 60,000 pounds the rate was reduced to 98 cents per 100 pounds, whereas no change has been made in the rates from Essex County points, consequently Nelson, B.C., can now land its products in Winnipeg, Man., at 98 cents per 100 pounds, as compared with $1.14 all rail or $1.08 lake and rail from Essex County to Winnipeg, whereas prior to the British Columbia reduction made effective in March, 1924, the rate to Winnipeg was lower from Essex County than from Nelson, B.C. The same comparative difference applies on shipments from all British Columbia producing points to the various consuming markets of the Prairie Pro-

vinces, so that by concessions in freight rates granted in March, 1924, to the B.C. producing centres on shipments to the Prairie Provinces, a severe handicap was placed against the producers of Essex county."

Complainants state the fifth class rate from Nelson to Winnipeg is $1.92 per 100 pounds. This is incorrect, as the fifth class rate is $1.56 per 100 pounds. Taking the example cited by complainants the present rate situation is:—

From	Miles	To Winnipeg					
		C.L. Min. 24,000 lbs.	Rate per ton per mile	C.L. Min. 40,000 lbs.	Rate per ton per mile	C.L. Min. 60,000 lbs.	Rate per ton per mile
		c. per 100 lbs.	cts.	c. per 100 lbs.	cts.	c. per 100 lbs.	cts.
Nelson	1,091	132	2·42	110	2·01	98	1·80
Windsor	1,415 A.R.	114	1·61	.....	.....	.....	.....
	R.&W.	98	1·38	.....	.....	.....	.....

A.R.—All rail. R. & W.—Rail and water.

The matter of rates on canned goods, in carloads, from British Columbia canning points to distributing centres in Alberta, Saskatchewan and Manitoba, as compared with rates from Eastern Canadian points to the same destinations, was before the Board and carefully considered in the application of Mr. J. C. Hodgson, Chairman, Transportation Committee, Jam Section, Canadian Manufacturer's Association, and it is very fully gone into in the judgment of the Board dated June 11, 1925, Vol. XV, Board's printed Judgments, Orders, Regulations and Rulings, p. 162. The Board found that it was not shown that there was unjust discrimination or undue preference, and there is nothing on the present record that would warrant any change in the considered judgment of the Board at that time. In this connection attention may be directed to the fact that the rail and water rates from Eastern Canadian canning points are 10 cents lower than those existing in 1925, when this judgment was written.

VI.

Complainants requested that the Board direct

> "the establishment of a policy of freight rates similar to that which is in effect throughout the United States, and which permits of reasonable competition at all the principal consuming or distributing centres throughout their country in marketing the products of agriculture from the various producing centres in the Union, which policy has succeeded in preventing the possibility of discrimination against any particular producing centre or district."

In this connection complainants filed exhibit No. 4 reading as follows:—

EXHIBIT No. 4

UNITED STATES CLASS AND COMMODITY RATES—TARIFF REFERENCES

From	To	Mileage	5th class freight rate		Tariff reference
			c. per 100 lbs.		
Rochelle, Ill.	Chicago, Ill.	75	17½		C.F.A. 231A.
Hoopeston, Ill.	Chicago, Ill.	99	19		C.F.A. 231A.
DeWitt, Ill.	Chicago, Ill.	138	22		C.F.A. 231A.
			Commodity freight rate		
Sturgeon Bay, Wis.	Chicago, Ill.	271	17		Soo Line.
Kewaunee, Wis.	Chicago, Ill.	237	17		G.F.D. 32500.
			5th class freight rate		
Arlington, Minn.	Minneapolis, Minn.	54	13½		Nor. Pac.
LeSuer, Minn.	Minneapolis, Minn.	72	16		M.R.C. 879.
Wadena, Minn.	Minneapolis, Minn.	162	25		M.R.C. 879.
			Commodity freight rate		
Cobly, Wis.	Minneapolis, Minn.	160	14		Soo Line.
Marengo, Wis.	Minneapolis, Minn.	255	22		G.F.D. 32500.
			5th class freight rate		
Holland, Mich.	Detroit, Mich.	177	25		C.F.A. 224.
Benton Harbour, Mich.	Detroit, Mich.	225	27		C.F.A. 224.
Mackinaw City, Mich.	Detroit, Mich.	301	31		C.F.A. 224.
Decatur, Ind.	Detroit, Mich.	257	23½		C.F.A. 223.
Hoopeston, Ill.	Detroit, Mich.	382	28½		C.F.A. 231A.
Algoma, Wis.	Detroit, Mich.	537	34½		C.F.A. 224.
			5th class rate	Com. rate	
Kewaunee, Wis.	Milwaukee, Wis.	251	23	15½	Soo Line.
Sturgeon Bay, Wis.	Milwaukee, Wis.	186	23	15½	G.F.D. 32500.
Theresa, Wis.	Milwaukee, Wis.	49	15½	None	
Peoria, Ill.	E. St. Louis, Ill.	179	22	19	(C.F.A. 256B Class).
Bloomington, Ill.	E. St. Louis, Ill.	156	23	19	(B/4 525M Comm.).
Alexander, Ill.	E. St. Louis, Ill.	111	18½	None	(C.F.A. 256B).
Clay City, Ind.	Terre Haute, Ind.	25	12½	12½	(C.F.A. 223 Class).
Elnora, Ind.	Terre Haute, Ind.	61	16	12½	(B/4 525M Comm.).

The complainants state the rate comparisons given in this exhibit demonstrate that it is the policy in the United States to make commodity rates to enable different producing sections to compete with one another in reaching various consuming centres on an approximately equalized freight cost. The exhibit does not, on its face, bear out this contention, and unfortunately, this phase of the matter was not very fully developed on the record. The exhibit contains numerous errors in mileages. There is shown below the mileage given on the exhibit and the correct figure, the latter being the rate basing mileage on which the 5th class rates named are constructed.

From	To	Complainants' figure	Correct figure
Sturgeon Bay	Chicago	271	257
Wadena, Minn.	Minneapolis	162	149
Benton Harbor	Detroit	225	216
Mackinaw City	Detroit	301	291
Decatur	Detroit	257	167
Hoopeston	Detroit	382	299
Algoma	Detroit	537	352
Kewaunee	Milwaukee	251	115
Sturgeon Bay	Milwaukee	186	172
Peoria	East St. Louis	179	163
Bloomington	East St. Louis	156	152
Alexander	East St. Louis	111	93
Elnora	Terre Haute	61	46

The carriers pointed out that in this exhibit movements from stations in Central Freight Association territory to Chicago were compared with movements from Western Trunk Line territory to Chicago, and they stated that, generally speaking, all rates on canned goods in Central Freight Association territory are on the class rate basis, while from Western Trunk Line points the western roads have published some very subnormal rates. The class rates applying in Central Freight Association territory are graduated, increasing with additional mileage, and there is no recognition of an equalized freight rate which ignores mileage. With the meagre information before the Board a conclusive opinion as to the value, if any, of the comparisons, as supporting complainants' contention of United States policy, is precluded. It is not shown whether or not the various stations are points from which canned goods are moving in volume to the destinations indicated, or, if so, whether there is competition in the same kind of product. Taking first, Chicago, as a large consuming centre, there is shown the class rates which apply from Rochelle, Hoopeston and DeWitt, Ill., in Central Freight Association territory, and comparison is made with the commodity rates applying from Sturgeon Bay and Kewaunee, Wis., in Western Trunk Line territory. The rates from Rochelle, Hoopeston and DeWitt are stated by complainants to be the lowest rates available from short haul points to Chicago, and it is difficult to understand why, under a policy of approximate equalization in rates, there is a lower rate from Sturgeon Bay, 257 miles, than in effect from Rochelle, 75 miles, and it would seem that in comparison with the 17 cent rate for 257 miles, the shipper paying 19 cent rate for 99 miles and 22 cent rate for 138 miles, would feel discriminated against, and from points in Central Freight Association territory of greater distance the disparity would be still more marked. With regard to shipments to Minneapolis, it is noted that there is a commodity rate of 14 cents from Colby, Wis., 160 miles, as compared with the class rate of 16 cents applying from LeSeur, Minn., 72 miles; a similar comparison being Marengo, Wis., to Minneapolis, Minn., 255 miles, 22 cents, as compared with Wadena, Minn., to Minneapolis, 149 miles, 25 cents. The intra-state and interstate comparisons of rates to Detroit indicate increasing rates for increasing mileage, but a difference in the rate scales intra-state as compared with interstate. A policy of equalization is not evident in these comparisons.

More information than is on the record would be necessary to form any concluded opinion as to what the rate comparisons really do demonstrate; on the face of it, a departure from any policy of approximate equalization of freight rates from all producing centres is apparent, and disparities and inequalities are also noted.

Complainants then state that—

> ". . . since the experience of the United States has demonstrated the necessity and practicability of granting equal opportunity for marketing in the various consuming centres the products of the farms in the different producing territories, through the scientific application of both class and commodity rates to equalize the freight cost, and thus eliminate discrimination against any producing section, that there is every justification for the prompt issue of an order from your Board for the immediate removal by the railroads of the discrimination now effective against the products of the county of Essex, Ontario, through the present unfair scale of freight rates, and for the early substitution of a revised basis of class and commodity rates which will permit of the products of the farms of Essex county being shipped to all the principal consuming centres in both the eastern and western markets on an approximately equalized freight cost basis with the products of the other producing sections of the Dominion."

As already pointed out, the circumstances surrounding the United States rates cited were not fully put on record, but the brief analysis above made does not demonstrate a scientific equalization of freight cost in the United States. There is no such policy in effect in the United States within the knowledge of this Board. Complainants made some rate comparisons which are very inconclusive, but made no reference to any decisions of the Interstate Commerce Commission, the rate regulating tribunal in the United States. The position in the United States is very clearly set out in various decisions of the Interstate Commerce Commission over a long period of years, citations from a few of these cases being quoted below: —

"The Commission may not require carriers to equalize natural advantages, such as location, cost of production, and the like."—Colorado Fuel & Iron Co. v. Director General, 57 I.C.C. 253, 255.

"The Commission has repeatedly held that it has no authority to equalize economic conditions or so to adjust rates that compensation is made to one producing region for its natural disadvantages as compared with another producing region with which it desires to compete."—Inland Empire Shippers League v. Director General, 59 I.C.C. 321, 338.

"It is not the duty of carriers, nor is it proper, that they undertake by adjustment of rates or otherwise to impair or neutralize the natural commercial advantages resulting from location or other favourable condition of one territory in order to put another territory on an equal footing with it in a common market. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages. If this result in prejudice to one and advantage to another, it is not the undue prejudice or advantage forbidden by the statute, but flows naturally from conditions beyond the legitimate sphere of legal or other regulation." Inland Empire Shippers League v. Director General, 59, I.C.C. 321, 338.

"That rates should be fixed in inverse proportion to the natural advantages of competing towns, with the view of equalizing commercial conditions as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute."—Inland Empire Shippers League v. Director General, 59, I.C.C. 321, 338.

"The Commission can not require carriers to adjust rates for the purpose of equalizing natural or commercial disadvantages."—Natchez Chamber of Commerce v. Director General, 60 I.C.C. 397, 400.

"The Commission may not require carriers to equalize natural advantages, such as location, and cost of production."—United Iron Works Co. v, Director General, 61 I.C.C. 33, 35.

"It is not the province of the Commission to make adjustments which will offset the natural advantages or disadvantages of one locality as compared with another."—Harrisonburg Milling Co., v. A.A.R.R. 52, I.C.C. 63, 72.

"Regulation of commercial competition, is not the Commission's function; that is to say, its powers do not extend to the preservation of rates in order to enable one point or community to compete on

approximately equal terms with another irrespective of other transportation factors."—Natchez Chamber of Commerce v. L. & A. Ry. 52, I.C.C. 105, 122, 123.

"There is no obligation at law upon defendants to take up the burden of equalizing natural disadvantages and no power or authority is vested in the Commission to compel them to do so."—United States v. S.V. Ry. Co., 53, I.C.C. 607, 616.

"A carrier cannot be compelled to disregard distance between two competing cities for the purpose of putting the two cities on a commercial equality."—New York Produce Exch. v. Baltimore & O.R. Co., 7 I.C.C. 612.

"It is the province of the Commission to interfere, and secure, if possible, a fair adjustment in cases of unreasonable rates or unjust discrimination, but the Commission has no more authority to place competing millers in different states upon precisely the same footing than it has to equalize conditions in all localities and in every industry."—Mayor and Council of Wichita, Kas. v. M.P.R.R. 10 I.C.C. 35, 40.

"Natural advantages of location are neither to be enlarged or minimized by the Commission, whose duty and purpose is to secure just and reasonable transportation rates, as nearly equal as possible for all localities and individuals, having due regard to differences in circumstances and conditions."—Enterprise Manufacturing Co. v. Georgia R.R., 12 I.C.C. 451, 456.

"Equalization of commercial advantages and disadvantages through regulation of rates from competing points of production, irrespective of the transportation services performed, is not the function of the Commission."—Western Coal Rates, 80, I.C.C. 383, 461.

"It is not the duty of carriers, nor is it proper, that they undertake by adjustment of rates or otherwise to impair or neutralize the natural commercial advantages resulting from location or other favourable condition of one territory in order to put another territory on an equal footing with it in a common market. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages. If this result in prejudice to one and advantage to another, it is not the undue prejudice or advantage forbidden by the statute, but flows naturally from conditions beyond the legitimate sphere of legal or other regulation."—Commercial Club of Omaha v. C.R.I. & P.R. Co., 6 I.C.C. 647, 675.

The position in Canada, under the provisions of the Railway Act and the powers of the Board, is well defined in decisions in various cases over a long period of years. The proposition that a producer's geographical location should be equalized in the freight rate is something which transcends the powers or functions of the Board.

"The Board has no power to regulate tolls for purpose of equalizing cost of production or geographical, climatic or economic conditions."

Imperial, etc., Co. v. C.P.R., 14, C.R.C. 375; Hudson Bay Mining Co. v. C.N.R. Co., 16 C.R.C. 254; Canadian China Clay Co. v. G.T.R. Co., 18 C.R.C. 347; Western Retail Lumbermen's Assn. v. C.P.R. et al, 20 C.R.C. 155; Dominion Millers' Assn. v. Can. Frt. Assn., 21 C.R.C. 83.

"It is axiomatic, not only in this country, but in others, that rate-regulating bodies cannot overcome by an adjustment of freight rates the natural advantage which one competing locality has over another."

Complaint of Spanish River Pulp & Paper Mills Ltd. re rates on paper from Sturgeon Falls and Espanola, Ont., to Toronto and other destinations, Vol. XII, Board's printed Judgments and Orders, p. 268, at p. 275.

On the record a case for revision in rates has not, in my opinion, been made out, and the complaint should, therefore, be dismissed.

File No. 34123.3.4

Submission of The Canadian Tobacco Growers Co-operative Company, Ltd., Kingsville, Ont., re freight rates on products grown by the farmers in Essex County.

This submission consists of a resolution passed by the Board of Directors of the company above named, supporting the complaint made by the Quality Canners of Canada, Ltd., *re* alleged discriminatory freight rates applying against shipments of products of Essex county. The matter was not further enlarged upon or specifically dealt with as far as the above-named company is concerned. The complaint of Quality Canners of Windsor has been fully considered and dealt with under file 34123.3.3.

File No. 34123.4.1

Application of the Page-Hersey Tubes, Limited, Toronto, Ont.

I.

REQUESTING REDUCTION IN RATES ON WROUGHT IRON PIPE, CARLOADS, FROM APPLICANTS' MILL AT WELLAND, ONT., TO WESTERN CANADIAN POINTS

Applicants base their request on the allegation that the rates on wrought iron pipe, carloads, to certain western Canadian destinations, from Pittsburg, Pa., and Lorain, Ohio, discriminate against Welland, Ont., and are preferential to Pittsburgh and Lorain, at which points there are pipe mills with which the applicants have to compete on shipments from Welland. As illustrating the rate situation complained of, the applicants set out the following comparison of all-rail rates:—

(Rates per 100 lbs.)

To	From Pittsburgh	From Lorain	From Welland	From Welland
Calgary, Alta	$1 62	$1 62	$2 00	.....
Edmonton, Alta	1 86	1 86	2 00	.....
Lethbridge, Alta	1 41	1 41	1 92	.....
Medicine Hat, Alta	1 60	1 60	1 83	.....
Nelson, B.C	1 96	1 95	2 27	$2 00
Rossland, B.C	1 96	1 95	2 27	2 00
Fernie, B.C	1 79	1 74	2 03	2 00
Trail, B.C	1 96	1 95	2 27	2 00
Revelstoke, B.C	1 83	1 83	2 27	.....
Kipp, Alta	1 42	1 42	1 95	.....
Macleod, Alta	1 47	1 47	1 98	.....
Wetaskiwin, Alta	1 80	1 80	1 98	.....
Coutts, Alta	1 15	1 15	1 98	.....

As, however, there are numerous commodity rates in effect from Welland which are not shown in the applicant's comparison, it is essential, for the proper consideration of this matter, to have the entire rate comparison set out, and this is shown below:—

To	1	2	3	4	5	6	7	8	9	10
Calgary, Alta	162	162	200	171	.....	.....	165½	180½	161½	176½
Edmonton, Alta	186	186	200	171	.....	.....	165½	180½	161½	176½
Lethbridge, Alta	141	141	192	162	.....	.....	156½	172½	152½	168½
Medicine Hat, Alta	160	160	183	154	.....	.....	148½	163½	144½	159½
Kipp, Alta	142	142	195	165	.....	.....	159½	175½	155½	171½
Macleod, Alta	147	147	198	166	.....	.....	160½	178½	156½	174½
Wetaskiwin, Alta	180	180	198	166	.....	.....	160½	178½	156½	174½
Coutts, Alta	115	115	198	166	.....	.....	160½	178½	156½	174½
Nelson, B.C	196	195	227	195	200	194	189½	207½	185½	203½
Rossland, B.C	196	195	227	195	200	194	189½	207½	185½	203½
Trail, B.C	196	195	227	195	200	194	189½	207½	185½	203½
Fernie, B.C	179	174	203	174	200	194	168½	183½	164½	179½
Revelstoke, B.C	183	183	227	195	.....	.....	189½	207½	185½	203½

It is necessary to explain these various rates, which are shown in cents per 100 pounds, and cover wrought iron pipe, in carloads.

Columns 1 and 2 show the rates from Pittsburgh and Lorain, respectively, on all sizes of pipe.

Columns 3 to 10, inclusive, show the various rates in effect from Welland.

Column 3 shows the 5th class all-rail rates applicable on all sizes of pipe.

Column 4 shows commodity rates all-rail on pipe over 4" in diameter.

Column 5 shows all-rail commodity rates for all sizes of pipe.

Column 6 shows lake-and-rail rates for all sizes of pipe.

Column 7 shows combination of rail and water rates to Fort William and Port Arthur, and rail rate thence to destination, on pipe over 4" in diameter.

Column 8 shows the combination rail-and-water rate to Fort William and Port Arthur, thence rail to destination, on pipe 4" and under in diameter.

Column 9 shows combination of all-water rate to Fort William and Port Arthur, thence rail to destination, on pipe over 4" in diameter.

Column 10 shows combination of all-water rate to Fort William and Port Arthur, thence rail, on pipe 4" and under in diameter.

With regard to the rates from Pittsburg and Lorain to the Alberta destinations cited by applicants, these are controlled by rates established by United States carriers. A rate of $1.15 is published from Pittsburgh and Lorain to the Pacific coast, and applies as maxima to intermediate territory, including Sweetgrass, Mont., which is at the boundary between Montana and Alberta, and in this way the rate of $1.15 to Coutts, the Canadian boundary station, is arrived at, and the rates thence to Alberta destinations are the full 5th class rates added to the Coutts rate. The rates to the British Columbia destinations shown are also based on similar combinations. From Pittsburgh and Lorain, therefore, the Canadian carriers make no reduction in their rates, but charge the normal class rate from the Canadian boundary point to destination.

In explanation of the special commodity rates from Welland, which are lower on the pipe over 4 inches in diameter than are published on the pipe when 4 inches and under in diameter, Mr. Ransom, on behalf of the carriers, explained that some years ago they established special commodity rates on the pipe 4 inches and over in diameter for the reason that at that time there was no duty on pipe of that diameter coming into Canada from the United States, and the carriers had been requested to provide commodity rates on the pipe on which there was no duty to assist the Canadian manufacturers in meeting United States competition. Mr. Ransom pointed out that there had been a change in the situation, and at the present time there is a duty of 30 per cent on pipe 10 inches or less in diameter, and 15 per cent when over 10 inches in diameter, so that based on an average price of pipe of 5 cents per pound, the duty on pipe formerly entering free was now $1.50 per 100 pounds, when 10 inches or less in

diameter, and 75 cents per 100 pounds when over 10 inches in diameter. The railways, however, had continued their line of demarcation at the pipe over 4 inches in diameter.

As already pointed out, the through rates from Pittsburgh and Lorain are made up of the combination of the rate of $1.15 established by the United States carriers to the Montana-Alberta boundary point, plus the regular class rate of the Canadian carrier thence to destination. Obviously, through rates established in this manner are appreciably lower to destination points reasonably contiguous to the boundary point than they are to points of greater distance where the higher local rates of the Canadian carrier from the boundary point come into play. Of the eight Alberta destinations cited by applicants, Coutts is the boundary point and, of course, shows a much lower rate than any of the other destination points, but it is doubtful if any of this traffic goes to Coutts proper. Lethbridge, Kipp and Macleod are within a 100-mile radius of Coutts, and Medicine Hat and Calgary within a 200-mile radius. The other two Alberta destinations named, viz., Edmonton and Wetaskiwin, are in the northerly portion of the province, and all of the rates from Welland to the two latter destinations are lower than from Pittsburgh and Lorain, except the regular 5th class rate from Welland. In the case of Calgary, there is one rate from Welland lower; to Medicine Hat four rates from Welland are lower. Similarly, in the case of the British Columbia destinations cited it will be observed there are lower rates available from Welland. If a similar comparison were taken out covering a great many other destinations in western Canada situated north of the Canadian Pacific Railway main line, it would show that Welland has the advantage in rates.

Before it would be possible to form any conclusion as to what rate disparity actually exists, as between Welland and the United States points named it would be necessary to have regard to the rates applying from Welland on the traffic as it actually moves. For example, rates on pipe over 4 inches in diameter are lower than on pipe 4 inches and under. What proportion of applicants' pipe moves under the lower rates? The rates based on combination of the rail and water rate to the head of the lakes are lower than the published through all-rail and lake-and-rail rates; what proportion of applicants' tonnage moves under these rates? The rates via all-water route to the head of the lakes, thence rail, are still lower than the combination last mentioned; what proportion of applicants' tonnage moves on these rates? Applicants submitted no data on these points. They merely confined their submissions to rate comparisons based on the highest rates published from Welland, viz., the all-rail rates, and without this being accompanied by an analysis of the rates actually paid, having in view the numerous lower rates available, such rate comparisons are not very helpful and are most inconclusive. There is on the record the undisputed statement of Mr. Ransom that the bulk of the pipe moving to western Canada is over 4 inches in diameter; further, that during the summer season the most of the pipe moves all-water to the head of the lakes. These statements, uncontradicted on the record, indicate that much lower rates than cited in applicants' comparison filed with the Board are actually being paid on a considerable portion, at least, of the traffic moving.

Mr. Ransom contended that importations from the United States were negligible, the Canadian carriers having, as evidenced by the special commodity rates published, established rates to assist shippers in meeting United States competition. In rebuttal of this statement, applicants stated that customs and excise statistics for the period January 1 to November 30, 1925, show imports to the value of $63,683. This information, standing by itself, and being all that was submitted on the record, conveys very little meaning, because there is no information before the Board as to whether, in proportion to the total wrought iron pipe consumed in the provinces of Alberta and British Columbia, the figures named represent a small or a large percentage. It seems to me it can be assumed that there is bound to be a certain amount of wrought iron pipe imported from

the United States, as probably there are varieties of pipe manufactured there that are not made in Canada. Mr. Middleton, representing the applicants, stated they did not manufacture 12-inch pipe. There is shown below a statement of imports of tubing, as specified, from United States entered for consumption in the provinces of Alberta and British Columbia and the Port of Vancouver, during the calendar year 1925, these figures being obtained from the Department of Customs and Excise.

STATEMENT OF IMPORTS OF TUBING AS SPECIFIED FROM THE UNITED STATES ENTERED FOR CONSUMPTION IN THE PROVINCES OF ALBERTA AND BRITISH COLUMBIA AND THE PORT OF VANCOUVER DURING THE CALENDAR YEAR 1925

Item	Province of Alberta	Province of British Columbia *	Port of Vancouver
	$	$	$
Wrought or seamless iron or steel tubing plain or galvanized, threaded and coupled or not, over 10 in. in diameter, n.o.p.....	24,351	9,362	9,362
Wrought or seamless iron or steel tubing plain or galvanized, threaded and coupled or not, 10 in. or less in diameter, n.o.p...	31,523	25,972	4,229
	55,874	35,334	13,591

* Including the Port of Vancouver.

Of the total imports into British Columbia of $35,334, $13,591 was through the port of Vancouver, and it is unlikely that the Vancouver importation has any bearing in connection with the rates here under discussion. There is no information showing, in connection with these United States importations, what proportion went to destinations where the rates from Pittsburgh and Lorain may be slightly lower than some of the rates available from Welland.

In connection with this matter, the Board has, in numerous cases, stated that with regard to rates to meet competition—market, rail, or water—or to develop traffic, the railway companies have a discretion and may voluntarily establish rates lower than could be justifiably directed or compelled by the Board. See *Mount Royal Milling and Manufacturing Company, Ltd., Montreal, Que.*, re *rates on cleaned rice, Montreal to western Canada*, Board's printed Judgments and Orders, Vol XV, page 58, and citations therein quoted. Aside from the position taken by the Board, as above referred to, and the fact that the applicants have not in any way attacked the present rates from Welland as being unreasonable per se, I am of opinion, in view of the rate situation herein set out, and for the other reasons mentioned, that the applicants have not made out a case that would warrant the Board directing a reduction in the present rates from Welland.

II

(*a*) REQUESTING LOWER EXPORT RATES TO MONTREAL THAN TO AMERICAN ATLANTIC SEAPORTS ON WROUGHT IRON PIPE AND PIPE FITTINGS

Application is made that on the commodities named there should be established from Welland an export rate to Montreal lower than to New York or other United States Atlantic ports. Normally, the export rate to Montreal would be lower than to New York, but from southern Ontario territory served by American railways they establish on export traffic to New York during the summer months competitive tariffs, applying to New York the same rates as are published to Montreal. The whole situation regarding this competitive territory in southern Ontario and the export rates therefrom to Montreal *v.* New York, was before the Board and is fully covered by the Board's judgment

dated April 18, 1923, found in the Board's Printed Judgments and Orders, Vol XIII, No. 3, page 19. For the reasons fully gone into in that judgment, the suggestion of applicants is one that could not be given practical effect to.

(*b*) RATES ON WROUGHT IRON PIPE, CARLOADS, FROM WELLAND TO CANADIAN ATLANTIC PORTS, FOR FURTHERANCE TO NEWFOUNDLAND OR THE ISLANDS OF ST. PIERRE AND MIQUELON

This matter was not included in the original application, but was brought up at the sittings of the Board in Toronto. There are special commodity rates quoted from Welland to Montreal, Quebec and Canadian Atlantic ports on wrought iron pipe, in carloads, destined to Newfoundland or the islands of St. Pierre and Miquelon, and applicants stated they were unable to take advantage of these rates unless shipments constituted a carload or more and it is seldom they are able to sell a straight carload of pipe at one time in Newfoundland. As a result, they stated, their business was in less than carloads, which subjected it to the payment of domestic L.C.L. rates, whereas if they had the privilege of putting L.C.L. shipments for Newfoundland in with carloads of pipe for export to other countries they would be in a position to compete with Pittsburgh and Lorain mills. Their application, therefore, was that they be accorded the privilege of carload rates on mixed carloads of pipe from Welland to the Canadian Atlantic ports, part of the carload being for furtherance to Newfoundland and the balance exported to British or foreign countries. It would appear from the record that there is some misunderstanding on the part of applicants. The carload rate on wrought iron pipe from Welland to St. John and Halifax for export is 30 cents per 100 pounds. This same rate is also published from Welland to Saint John and Halifax when the traffic is destined to Newfoundland or the Islands of St. Pierre and Miquelon and, further, in the tariff quoting the rates last named a provision is now published reading:—

> "*Mixed Cars.*—Shipments for furtherance to Newfoundland and the Islands of St. Pierre and Miquelon may be accepted in mixed cars with shipments for export to British and foreign countries (not including the United States), Cuba, the Insular Possessions of the United States and the Panama Canal Zone, and charges thereon assessed at the carload rate applicable on traffic for furtherance to Newfoundland or the islands of St. Pierre and Miquelon, subject, however, to the highest minimum carload weight."

The applicants appear to have, therefore, exactly the arrangement they are contending for, so far as relates to shipments from Welland to St. John and Halifax. The rate to North Sydney for furtherance to Newfoundland is 35 cents per 100 pounds, and there is no rate published to North Sydney when for export to British and other foreign countries. To Montreal there is some difference, in that the special commodity rate from Welland on pipe for export to British and foreign countries is 25½ cents, while when for furtherance to Newfoundland the rate is 28 cents, so that under the mixed car provision in the tariff as above quoted the mixed carload to Montreal would take the 28 cent rate, but it would not be subjected to payment of domestic L.C.L. rates, as referred to by applicants. As stated, there appears to have been some misunderstanding on the part of applicants, but, in any event, without the matter being more definitely developed on the record it is not clear that applicants are contending for anything further than is already provided by the tariff.

III

ALLEGING DISCRIMINATION AGAINST WELLAND IN FAVOUR OF MONTREAL IN RATES TO VARIOUS POINTS IN QUEBEC

This portion of the application was withdrawn at the hearing in Toronto.

IV

REQUESTING REDUCTION IN RATE ON WROUGHT IRON PIPE AND PIPE FITTINGS, CARLOADS, FROM WELLAND TO HAMILTON

On wrought iron pipe and pipe fittings, carloads, from Welland to Hamilton, the class and commodity rate is the same, viz., 18 cents per 100 pounds. Applicants point out that on the same commodities from Montreal the class rate to Hamilton is 43 cents, and the commodity rate 35 cents, or 81.4 per cent of the class rate. The contention of applicants is set out in the following statement (p. 639):—

> "It is our contention that we should be accorded the same treatment as our Montreal competitors, and since the commodity rate, Montreal to Hamilton, is approximately 81 per cent of the fifth class rate, we consider we should have a rate, Welland to Hamilton, of 14½ cents, which is approximately on the same percentage basis."

It is not contended by applicants that a lower commodity rate from Welland to Hamilton is necessary to meet Montreal competition, Mr. Middleton, representing the applicants, stating they could get the order in Hamilton as against Montreal. Mr. Middleton stated (p. 641):—

> "Our application for a commodity rate, Welland to Hamilton, is not made with the idea of meeting Montreal competition, but merely asking for an equality of treatment, to which we believe we are justly entitled."

In other words, the essence of applicants' submission is that if the commodity rate from Montreal is 81 per cent of the class rate, "equality of treatment" entitles them to a commodity rate from Welland that is 81 per cent of the class rate. If commodity rates generally were constructed on a fixed percentage of the class rate there would be force in the applicants' position, but no such basis governs the commodity rates in effect; they are governed by numerous and varying conditions, and, in the majority of cases, bear no particular relation to the class rates. The commodity rates from Montreal on the articles here in question are not uniformly 81 per cent of the class rates to all destination points to which such rates are published. Further, taking a few shipping points, the class rate and the commodity rate on iron and steel articles, carloads, to Hamilton is given below.

To Hamilton, Ont. from	(In cents per 100 lbs.) 5th class rate	Commodity rate	Per cent that commodity rate is of the class rate
Montreal, Que.	43	35	81·40
Belleville, Ont.	32	30	93·75
Collingwood, Ont.	29	27½	94·83
Sarnia, Ont.	30½	30	98·37
St. Catharines, Ont.	18	18	100·00
Walkerville, Ont.	34½	30	86·96
Welland, Ont.	18	18	100·00

Applicants' position, carried to its logical conclusion, would obviously involve an entire revision of all the commodity rates on iron and steel articles from all shipping points—of which only a few are above named—to all points of destination. It will be noted that St. Catharines is in the same position as Welland; also, that Belleville, Collingwood, Sarnia and Walkerville—as well as other points not shown—have rates appreciably in excess of 81 per cent of the class rate.

As to the actual burden of the rate to Hamilton, Welland pays 18 cents and Montreal 35 cents. In other words, Montreal pays a rate, in competing with Welland in the Hamilton market, which is 94 per cent greater.

Subsequent to hearing of this case the carriers filed tariffs proposing a revision of the rates on iron and steel articles, effective December 1, 1926. On application of various interested steel companies these schedules were suspended by Order No. 38462, dated November 27, 1926, and the matter stands for hearing and will be dealt with independently of the disposition of the various issues involved in the General Rate Investigation.

V

COMPLAINT *re* MINIMUM CARLOAD WEIGHT ON WROUGHT IRON PIPE AND FITTINGS IN CANADIAN FREIGHT CLASSIFICATION NO. 17

In Canadian Freight Classification No. 17 the carload minimum weight on wrought iron pipe was revised from 24,000 to 36,000 pounds; no change being made in the ratings. Classification 17 was prepared by a special classification committee composed of representatives of both the shippers and carriers, and this special committee in turn arranged conferences with the interested shippers in the various lines of trade, with the object of drawing up a classification satisfactory to all interests. Thereafter, the classification was submitted to the Board and ample opportunity given for the filing of complaints by individual shippers who had not been able to agree, or who objected to what had been recommended by the special joint committee, after which the Board held sittings in various places to hear the submissions of the parties in respect to those items to which there was any objection. No representations were received by the Board from any source objecting to the revision in the carload minimum weight on wrought iron pipe. Classification 17, with such modifications as were prescribed in the judgment of the Board, was approved by General Order No. 421, dated July 17, 1925, and became effective September 21, 1925.

Applicants protest against the revision of the carload minimum weight on this pipe from 24,000 to 36,000 pounds. Only a limited volume of the pipe moves under the class rates subject to the classification minimum weight, as the largest percentage of it moves under lower special commodity rates at carload minimum weights, varying from 40,000 to 80,000 pounds per car, and regarding which there is no complaint before the Board.

The minimum carload weights shown in Classification 16 were established a great many years ago, when both the carrying capacity of cars, and, in many instances, the commercial conditions, were quite dissimilar to those existing to-day. One of the principles of revision of the classification has been to increase minimum carload weights, where this is possible, having regard to the interests of both shippers and carriers. The physical minimum, or in other words the weight representing the quantity which can be loaded into a standard car, is not here in question, as the pipe can be loaded to in excess of 80,000 pounds per car, applicants stating they have loaded cars to as high as 110,000 pounds. What is involved is the question of the commercial minimum, viz., that minimum which takes into consideration trade requirements, conditions of manufacture, distribution and consumption.

Applicants readily admit that the larger points can easily take the revised minimum weight, and the application is, therefore, based on the ground that it will possibly work some hardship in shipping to the smaller communities and jobbers. Mr. Middleton stated (p. 647):

> "I admit, sir, that the raising of the minimum is not very objectionable in connection with shipments to the larger centres like Toronto, Hamilton, or Montreal, but the fact that there have been, as I stated, 28 cars between the effective date of the tariff and the end of the year goes to show that certain jobbers must order 36,000 pounds often to get a reduced rate of freight."

Representative of the carriers drew Mr. Middleton's attention to the fact that on many other articles a corresponding revision had been made in the minimum weight, and at pp. 647-8 the following discussion took place:—

> "Mr. FLINTOFT: Mr. Middleton, do you not think that these small jobbers in the small centres will adjust themselves in time as they have in regard to other lines. We have heard this same story time and again about not being able to sell as much as the minimum carload, but, as Mr. Ransom says, they are adjusting themselves to the new conditions.
>
> "Mr. MIDDLETON: Possibly they will, and I sincerely hope they will, sir, but the fact that there has been so many cars that have not run up to the minimum, so far, is fairly good evidence that they had not adjusted themselves at the present time."

Mr. Middleton stated that from September 21, when Classification 17 became effective, to December 31, 1925, they had shipped from Welland 28 cars of pipe containing less than 36,000 pounds. He was asked to file a statement showing the details of these, which has since been received. The destinations, and number of cars to each, are shown below.

To	*No. of Cars*	*To*	*No. of Cars*
Hamilton	4	Peterboro	1
Chatham	2	Rockfield	1
Montreal	1	Brampton	1
London	5	Kirkland Lake	1
Toronto	1	Caledonia	1
Kitchener	2	Grimsby	1
St. John	1	South Porcupine	1
Edmonton	1	Prairie Siding	1
Three Rivers	1	Notre Dame des Anges	1
Grand Mere	1		

It will be noted that a considerable number of these cars moved to points to which Mr. Middleton stated the present minimum weight is not very objectionable, e.g., Hamilton, London, Montreal, Toronto, etc. I would only consider the last eight cars in the list as coming under the heading of the grounds of this complaint, and the weights shipped in these instances ranged from 24,600 to 31,140 pounds per car.

Classification is of necessity a matter of averaging. Whatever minimum weight is fixed, there will be cases where there will be difficulties, at times, in making up that weight. Under the circumstances, it would be unreasonable to establish a carload minimum weight based solely on the quantity that can be taken by the smallest communities or jobbers and disregard entirely the weight that can be readily shipped to the larger points, and all the other considerations that are ordinarily weighed in arriving at a conclusion as to a fair and reasonable minimum carload weight.

The present minimum weight is the same as provided for many other iron and steel articles of an analogous character and, in my opinion, is a reasonable commercial minimum and should not be changed. This is in line with the

decisions reached by the Board in similar cases before it when Classification 17 was under consideration, and in this connection reference may be made particularly to Sections 22 and 32 of the Board's judgment dated June 23, 1925, *re* Classification 17, found in Volume XV, No. 10, of the Board's Printed Judgments, Orders and Rulings.

File 34123.4.3

Application of the Trussed Concrete Steel Company of Canada, Limited, Walkerville, Ont.

Heard at Windsor, January 12, 1926

I

COMMODITY RATES FROM WALKERVILLE TO WESTERN CANADIAN POINTS ON CORRUGATED IRON, STRUCTURAL STEEL BEAMS, STEEL WIRE MESH, STEEL LATH, AND WIRE REINFORCING FABRIC, IN CARLOADS

At the present time class rates apply on carload shipments of the commodities named from Walkerville to western Canadian points. Fifth class applies on steel wire mesh, steel lath, and wire reinforcing fabric, while 6th class applies on structural steel beams and corrugated iron, plate or sheet. On the corrugated iron 5th class applied at the time this application was submitted to the Board in August, 1925, and the rating was reduced to 6th class in Canadian Freight Classification No. 17, subsequently effective.

As developed by the applicants, the issue here presented deals with the question, not from the standpoint of the present rates being alleged to be unreasonable per se, or discriminatory, but on the premise of establishing rates from Walkerville based on the alleged needs of the Walkerville industry in relation to competition from St. Paul and Minneapolis, Minn. Applicants stated there was not involved the question of discrimination as against other Canadian manufacturers or Canadian shipping points and, in substance, their complaint was solely in regard to competition with St. Paul and Minneapolis. The information submitted by applicants as to the rates, and the relative advantages or disadvantages in the production of these articles at Walkerville as compared with St. Paul and Minneapolis, was not developed on the record with any definiteness, and was very inconclusive. They stated the rate from Walkerville to Winnipeg averaged approximately $20 per ton, and from St. Paul $10.85 per ton, and as to production costs the only statement on the record is that at p. 482, reading:—

> "We have material which we assume our competitors can manufacture at $90 a ton, this assumption being based on the cost to our company in the States, basing it on like costs. At 30 per cent duty they would lay that down at Winnipeg at $114 a ton placed, freight $10.85, or approximately $124.85. Our cost laid down in Winnipeg is about $5.85 more than that from St. Paul or Minneapolis on the same products."

The rate situation is set out below:—

From	To	Miles	Rate in cents per 100 lbs.	Rate in cents per ton per mile
St. Paul	Winnipeg.....	457	A—48	2·10
Minneapolis			B— 57	2·49
Walkerville	Winnipeg.....	1,415	A—101	1·42
			B—114	1·61

A—Applies on corrugated iron and structural steel beams.
B—Applies on steel wire mesh, steel lath and wire reinforcing fabric.

It will be noted applicants gave a laid-down price at Winnipeg from St. Paul of $124.85 per ton, and stated their cost is about $5.85 more than that, which would be $130.70. They take an assumed production cost at St. Paul of $90 per ton, but have made an error in calculation of the duty and freight. At 30 per cent duty, this item amounts to $27 per ton, and the St. Paul-Winnipeg freight rates to $11.40 and $9.60 per ton on the 5th and 6th-class items, respectively, making the laid-down cost $128.40 and $126.60, respectively, but which is based merely on an assumed production cost, as to the accuracy of which the record is devoid of evidence; and further, no information whatever was given as to production cost at Walkerville.

According to the record, the competition, up to the present time at least, has been potential rather than actual, as the applicants stated they had been able to keep these products from coming in from the United States, although it is alleged that in doing so they are not showing a profit on the Winnipeg business.

The rate from St. Paul and Minneapolis to Winnipeg is very largely controlled by the United States carriers, as the Great Northern and Northern Pacific railroads have their own direct lines between these points. The benefit of establishment of commodity rates from Walkerville could, therefore, be nullified by the United States carriers making a reduction in the rate from St. Paul and Minneapolis to Winnipeg, with the result that the applicants would be in no better relative position.

However, aside from the foregoing, taking the points concerned, I am of opinion that an analysis of the mileages and rates fails to furnish evidence that the rates from Walkerville are unreasonable or unjustly discriminatory. It will be observed it is 1,415 miles from Walkerville to Winnipeg as compared with 457 miles from St. Paul. The rates per ton per mile are approximately 50 per cent greater from St. Paul than from Walkerville, indicating full allowance for tapering of the rate on the longer haul from Walkerville. The difficulty of establishing a rate adjustment which would annihilate Walkerville's disadvantage in geographical location of 958 miles, or over 200 per cent greater distance than St. Paul from the Winnipeg market is, I think, obvious. There is also the fact that Walkerville, and not St. Paul and Minneapolis, is getting the Winnipeg business. In my opinion, a case has not been made out warranting a direction that the rates from Walkerville should be reduced.

II

COMMODITY RATES ON STEEL LATH, IN CARLOADS, FROM WALKERVILLE TO EASTERN CANADIAN POINTS

Under this heading the applicants stated there were no commodity rates on steel lath, carloads, from Walkerville to eastern Canadian points. All that they advanced in support of this application was that there is a commodity rate on

this product to British Columbia coast points, and that steel lath competes with wooden lath, the classification ratings being 5th and 10th class, respectively. The applicants did not develop their case to any greater extent than this. The commodity rate to the British Columbia coast is a competitive rate as against Panama canal water route. As far back as the Board's records go, the steel lath has been rated 5th class and the wooden lath 10th class. There has never previously been any complaint. Nothing was adduced showing relative values; whether the volume of steel lath produced is increasing or decreasing, and if decreasing to what extent this is actually influenced by wooden lath. There may be other considerations apart from the question of the rate that have a bearing on the situation. It was not stated what reduction in rate would be necessary to meet the alleged competition. These and other considerations are particularly relevant, but no evidence is before the Board in respect to them, and on the record I recommend dismissal of this application without prejudice to the right of the applicants to renew it and develop their case with such definiteness and completeness as will enable an intelligent conclusion to be reached.

III

COMMODITY RATES ON STEEL WIRE MESH AND WIRE REINFORCING FABRIC FROM WALKERVILLE TO EASTERN CANADIAN POINTS

This steel wire mesh and wire reinforcing fabric is laid down in the making of concrete roads, reinforcing same to prevent cracking and to provide strength for heavy traffic. The competition for this purpose is with wire fencing, which is laid double. In their submission dated August 26, 1925, applicants set out that there was a special basis of 4th class L.C.L. authorized on wire fencing, while their commodities were charged 3rd class. There is a misunderstanding here as all these commodities are rated 3rd class L.C.L. With respect to carload shipments of wire fencing there were special commodity rates, and in 1923 the wire reinforcing fabric and steel wire mesh was provided with the same carload commodity rates as the fencing. However, on October 19, 1925, subsequent to the filing of submission of applicants, which referred only to the L.C.L. rates, the carload commodity rates on the wire fencing and the wire reinforcing fabric were cancelled and the class rates now apply. There is, therefore, no discrimination at present with regard to the rates on these commodities, all taking 3rd class L.C.L. and 5th class C.L. Applicants were unaware of the tariff situation and I would infer from the record that when this was explained to them at the hearing they pressed their case no further under this heading.

File 34123.4.4—File 34123.45—File 34123.48—File 34123.53

Submissions of British Empire Steel Corporation, Limited, Sydney, N.S.

In letter dated March 3, 1926, from the British Empire Steel Corporation, Limited, on file No. 34123.45, Mr. McIsaac stated they were co-operating with the Maritime Rights Committee in connection with the General Freight Rates Investigation, but that it was their intention to place before the Board their own position. In this connection Mr. McIsaac stated:—

> "Your suggestion that we co-operate with the presentation to be made by the Maritime Rights Committee, which is in the hands of Mr. J. L. Ralston, K.C., is quite in order. I may say that we have already been co-operating with these people, and as our interests are almost identical there is every reason that we should, and, as suggested in your

letter, we shall continue to co-operate with them. It is our intention, however, to place before the Board our own position, if we are given the opportunity to do so, but this will not detract from the Maritime Rights Committee's position, but will, we hope, substantially support it."

At the final hearing, and subsequent to passing of the legislation known as the Maritime Freight Rates Act, 1927, Mr. Duchemin, on behalf of the Maritime Provinces, withdrew their submissions and case from the General Freight Rates Investigation, and stated that, if necessary, after the full effect of the Maritime Freight Rates Act was determined, they could re-submit an amended submission if desired, to be dealt with subsequent to and apart from the General Freight Rates Investigation.

I do not understand that the submissions of the British Empire Steel Corporation were withdrawn, but I do not consider their submissions can be at this time dealt with as part of the General Freight Rates Investigation. Their submissions cover a wide range of matters, such as rates on coal, coke, iron and steel, various other commodity rates, class rates, etc.

The matter of coal rates is being dealt with separately by the Board pursuant to Order in Council, and no doubt whatever action may finally be taken in connection with the coal rates would have some bearing on the question of rates on coke. With regard to rates on iron and steel commodities the decision of the Board was to deal with same subsequent to and apart from the General Freight Rates Investigation. Rates on explosives were modified, as a result of Order of the Board, subsequent to the submission filed by the British Empire Steel Corporation. A great many other rates, to which they alluded are affected by the reduced tolls provided by the Maritime Freight Rates Act.

As some of the items are to be dealt with apart from the General Freight Rates Investigation, and others are affected by, and the rates reduced under, the legislation, it would seem impracticable to deal with the British Empire Steel Corporation's submissions in their present shape and as a part of the General Freight Rates Investigation. It will be some little time yet before the full effect of the Maritime Freight Rates Act can be analyzed. There will probably be controversy with respect to some of the tariffs filed under the authority of that Act, and further time may elapse before decisions will have been reached and any amendments necessary effected with regard to such matters. The basis of submissions as now on file will be largely altered.

I consider, therefore, that subsequent to the matters of coal rates and iron and steel rates being dealt with, and the effect of the Maritime Freight Rates Act and new tariffs filed thereunder finally determined, the British Empire Steel Corporation should then, if desired, file formal complaint under the general rules and procedure of the Board. In case complaint is subsequently filed I do not think it necessary that new exhibits throughout be furnished, as the British Empire Steel Corporation could refer to those portions of exhibits already filed which might be relevant to any new complaint made, and they could submit typewritten corrections in other instances where necessary.

File 34123.6

Regina Board of Trade—Yorkton Board of Trade

The representations of the Regina Board of Trade, covered by written submission under date of August 23, 1925, and spoken to at sittings of the Board in Regina, June 23, 1926, Vol. 465, commencing at page 7748, dealt with:

1. Class rates from Fort William to prairie distributing centres.
2. Class rates Minnesota Transfer, etc., to Canadian prairie points.
3. Commodity rates British Columbia points to Regina and Winnipeg.

One, refers to the question of Fort William terminal rates, which is dealt with in the judgment of the Board.

Two, deals with international rates which are to be dealt with outside of the General Freight Rate Investigation.

The third point sets out that in regard to certain eastbound commodity rates from British Columbia points, the City of Winnipeg enjoys the same rate as Regina, while with respect to commodity tariffs applying from Eastern Canadian points the rate to Regina is in excess of that to Winnipeg.

With regard to the eastbound commodity rates from British Columbia points, canned goods, canned salmon and rice are specifically referred to. With respect to canned goods, the situation as to these rates is fully set out in judgment of the Board dated June 11, 1925, in application of J. C. Hodgson, Chairman of the Transportation Committee, Jam Section, Canadian Manufacturers' Association, Vol. XV, Board's Judgments, Orders, Regulations and Rulings, p.162. It is therein stated that the rates from British Columbia canning points are on a competitive basis. The following excerpt from judgment in question is particularly relevant as explaining the situation with respect to these rates:—

> "The rates from British Columbia canning points to the distributing centres above referred to are on a competitive basis. The rate which is specially significant is that from Vancouver to Winnipeg. This being on a competitive basis, it, in turn, influences the rate adjustment from other points in British Columbia.
>
> "For many years, eastbound rates on specific commodities from points in British Columbia—recognized as Pacific Coast terminals—to certain points in Western Canada as well as to destinations in Eastern Canada have borne a relationship to the rates on like commodities from the corresponding terminals in the State of Washington. The result is that rates from British Columbia points have thus been held down to a basis lower than what is provided for under the regular scale of the Canadian Freight Classification.
>
> "Under these competitive conditions, the rates from Vancouver to Winnipeg are influenced and controlled by the rates published by American lines, such as the Great Northern and Northern Pacific from Seattle to Winnipeg. The Vancouver-Winnipeg rate is a competitive one and the tariff so indicates, the rate being described as a competitive rate. The Seattle-Winnipeg rate on canned goods is $1.42½ per 100 pounds, minimum 40,000 pounds, and $1.26½, minimum 60,000 pounds. As a result of this and arising out of competitive reasons, there are these two sets of rates and minima applying from Vancouver to Winnipeg.
>
> "The competitive situation thus outlined has further influence in regard to the movement in British Columbia. The Winnipeg rates operate as a maximum carrying the rate of $1.26½, with minimum 60,000 pounds, back to Regina and Saskatoon. The Vancouver-Winnipeg rate also applies as a maximum on Mission and Haney, shipping points on the main line of the Canadian Pacific directly intermediate to Vancouver, at distances of 41 and 26 miles respectively.
>
> "From Vancouver to Calgary, the regular fifth-class rate applies, regardless of the carload minimum weight; and the Calgary rate is also published to Edmonton. Rates to other points between Calgary and the destination territory to which the Vancouver-Winnipeg rates apply as maxima are keyed with relation to the differences between the Calgary and Winnipeg rates.
>
> "The rate adjustment from Vancouver, created under the conditions above described, necessitated a similar arrangement of different sets of rates and minima to the same destination territory from interior British Columbia points, in order to put the canners there on a basis relative to

the Coast canners. Therefore, from Nelson, Brilliant, Vernon, Kelowna, Penticton and Kamloops to Winnipeg, the 24,000 pounds minimum carries the fifth-class Pacific distributing rates. The rates established for the 40,000 and 60,000 pound cars are based on the same percentage of the fifth-class Pacific distributing rates as the commodity rates from Vancouver to the same destinations bear to the fifth-class terminal rates. To Regina, the rates are established on the same basis, and to Saskatoon the Regina rates are applied. From Oliver, the rates are uniformly based on 2 cents per 100 pounds, over Penticton.

"From the interior British Columbia points to Calgary, the fifth-class Pacific distributing rates apply, and this is also the basis of rates to Edmonton for cars of 24,000 pounds minimum. The rates to Edmonton for the 40,000 pounds and 60,000 pounds minimum are, in the case of Kamloops, the Calgary rate, and from the other representative interior shipping points they are based on the same difference under the fifth-class distributing rate as in the case of Kamloops.

"The situation throughout, then, from British Columbia points eastbound, involved in the present application is a competitive one arising out of conditions developed in connection with competing American lines, and this situation reacts not only on the Vancouver to Winnipeg movement but also on the rate adjustments from interior and intermediate points."

Under the provisions of sections 314 and 329 of the Railway Act competitive tariffs may be published by the railway companies and may specify tolls in respect to which the long and short haul clause, under the provisions of the Act, is not applicable; that is to say, if there is a special competitive condition existing between Vancouver and Winnipeg, a competitive rate may be published to Winnipeg which is lower than that applicable to intermediate points where the same competitive conditions are absent. It will be noted, with respect to these canned good rates, that the rates compelled by the competitive situation at Winnipeg are extended as maxima to intermediate points, although the same competitive condition does not exist in some of this intermediate destination territory. The effect, however, is to place Regina on an equality with Winnipeg as to these rates, and as the distribution from both Winnipeg and Regina is under the town tariff mileage scale, the result is that both Regina and Winnipeg receivers of these canned goods pay the same rate inbound and they can both distribute the same distance east or west from Regina or Winnipeg on exactly the same rate basis.

A similar competitive situation prevails with respect to the eastbound commodity rates on canned salmon.

So far as rice is concerned, a competitive situation also exists here, although the competition is of a different character than prevails in the case of canned goods. The situation as to rice rates is very fully set out in the Board's Judgment in the application of the Mount Royal Milling and Manufacturing Co., Limited, Montreal, Vol. XV, Board's Judgments, Orders, Regulations and Rulings, p. 43. The Winnipeg and Regina rate is the same for the reasons set out in this judgment at page 48.

A competitive situation exists at Winnipeg with respect to the rates on the commodities herein mentioned which, as a matter of fact, does not exist at Regina, although the latter point is accorded these competitive rates as maxima. Under such circumstances, before the Board could direct a further reduction below the normal rates to Regina, and which would be lower than the competitive rates applying to Winnipeg, applicant would require to make out a case for such reduced rates by the submission of evidence of the unreasonableness

per se of the rates charged from Vancouver to Regina. No such evidence was submitted, nor does the record point to the existence of any unjust discrimination.

In concluding their submission as to commodity rates, applicants also ask for the establishment of commodity rates from Eastern Canada to conform with the commodity rates now in force from British Columbia points. The exact contention of applicants in this connection is not clear. Speaking generally, it may be stated that there is no competitive situation existing with respect to rates from eastern Canadian points to Winnipeg and Regina that is at all analogous or comparable with the competitive situation as between Vancouver and Winnipeg. Nothing was adduced alleging that there is any competitive situation at Regina which would warrant the establishment of special competitive rates from eastern Canadian points of origin to that point which would be the same or no higher than the rates to Winnipeg, which is 357 miles east thereof. This phase of applicant's submission was not developed in their oral representations at the Regina sittings.

There was a communication from the Yorkton Board of Trade dated October 23, 1925, endorsing the submission of the Regina Board of Trade.

File 34123.8

Complaint of Associated Growers of British Columbia, Limited

This complaint was first heard at Vernon, B.C., on July 7, 1926, at which time Mr. W. M. Scott, traffic manager for the association, read and filed his brief.

In this brief the opinion was expressed that the freight rates on fruit from the Okanagan valley to prairie points were unreasonably high and statements were filed giving comparison of rates in both the East and West in an attempt to show the disadvantage of the Okanagan shippers.

It was claimed that, despite the high rates charged, there had been continued increase in production; believed at present to be greater than that of the Niagara peninsula.

Attention was directed to the fact that in Eastern Canada shippers have approximately seven million consumers within comparatively short distances from points of production, while the nearest markets to the Okanagan are Calgary and Vancouver; that the largest market was in Winnipeg, some 1,100 miles distant, and it was claimed as unreasonable that the Ontario grower should be able to reach this Winnipeg market at a considerable rate advantage.

Reference was also made to the disadvantage in export rates.

It was further claimed that the railways are making excessive profits from the carriage of fruit, and this phase of the case was enlarged upon at the hearing in Ottawa to which I will refer later. Cost of operation is, of course, an important factor, but the traffic department in establishing rates endeavour to make them such as will move traffic, having regard to competition, actual and market, without going into operating costs. In rate cases the cost question naturally arises in defence of the reasonableness of the rates which are attacked.

Treating the rate situation, first from a tariff standpoint.

Originally the rates on fruit to prairie points were based in the following manner: the shipping and destination territory was divided into groups of 100 miles and the central point in each group was used as a basing point, Twin Butte being used as the western boundary of destination territory. Commodity rates were then established on a general basis considerably lower than the class rate, and use was made of certain constructive mileages.

These rates were subject to the various increases and reductions, but in 1922 when there was a change in the Pacific standard by reducing the mileage

differential, the rates in the fruit tariff were adjusted to reflect the change. At present the Pacific distributing basis applies as maximum in connection with these fruit rates.

On sheet one of exhibit one filed at Vernon, comparison is made between the commodity rate on apples from Okanagan Landing with the fifth class rate from Fort William for equivalent distances. The basis of class rates from Fort William was prescribed in the Board's judgment in the Western Rates Case and is based on constructive mileage to Winnipeg. No such basis applies from the Okanagan district.

On sheet two of the exhibit a comparison is made between commodity rates on apples from Okanagan Landing and commodity rates on the same traffic from Fort William for equivalent mileage.

There is no movement of apples originating at Fort William and if any such traffic reaches that point by water, the volume must be very limited, and a mere comparison of rates where there is no movement is of little value.

On the third sheet of exhibit one comparison was made between commodity rates on fruit, carloads, from Okanagan Landing, with rates from Hamilton for equivalent distances. I find, however, that the points shown as destinations from Hamilton, are all flag stations, to which there would be no movement.

On sheet four of the exhibit, comparison is made between the rate on apples, carloads, from Vernon to Winnipeg, of $1.13 for 1,177 miles, with the rate from Grimsby of 85 cents for 1,286 miles. The rate to Kenora from Grimsby is also shown on this sheet, but it is merely the Winnipeg rate applied as maximum. The relation between the commodity rate and the 5th class rate on apples, is, however, in favour of Vernon shippers, for example:—

—	5th. class	Commodity rate on apples	Reduction from class rate
	$ cts.	$ cts.	%
Vernon to Winnipeg	1 65	1 13	31·5
Grimsby to Winnipeg	1 14	85	25·4

Sheet five of exhibit No. 1 is of no value for the reason that the mileages shown are incorrect:—

Welland to Heron Bay is 688 miles, not 780 miles.
Hamilton to North Bay is 256 miles, not 360 miles.
St. Catherines to Nicholson is 557 miles, not 519 miles.

On sheet six of exhibit No. 1 comparison is made between rates from Vernon and Kelowna with rates from Hamilton. The distance from Hamilton to Vaudreuil is 349 miles, which approximates the distance from Vernon and Kelowna to Calgary, and the distance from Hamilton to Megantic is 543 miles as shown.

The rates from Hamilton to Montreal and intermediate points are subject to water competition and the rates to points east of Montreal, being built on arbitraries, necessitate a lower basis of rates, but as there is no water competition in the movement from the Okanagan District, I do not think this is a proper comparison. However, it is a well-known fact that certain rates in Eastern Canada are lower than those in the West.

The rate on apples from Kelowna to Winnipeg is $1.13 per 100 pounds. In making rates on fresh fruits and vegetables from British Columbia the railways have worked, as in the case of other commodities from British Columbia,

on the basis of flattening out the rates to long haul points, and this $1.13 rate has been blanketed back as far as Morse, a distance of 472 miles west of Winnipeg. West of Morse the normal basis is applied. The normal freight rate on apples, in carloads, to Winnipeg would be $1.43 from Kelowna, or a difference of 30 cents per 100 pounds. To Brandon the normal rate on apples would be $1.32 as against the $1.13 rate applied. There is undoubted competition at Winnipeg with the American shippers in the State of Washington, from which this same rate of $1.13 is applied, while the same lines publish from Washington to St. Paul a rate of $1.28 per 100 pounds, although the haul is some 300 to 500 miles greater than from Kelowna to Winnipeg. The base figure for the present rate to Winnipeg is 75 cents per 100 pounds, which was the rate then applying from Washington points to St. Paul, so that there has been an increase of 53 cents per 100 pounds in the St. Paul rate compared with the increase of 38 cents to Winnipeg during the same period.

In connection with the claim that there was competition in Manitoba with low grade apples from Eastern Canada, Mr. Flintoft, in examination of Mr. Stephen, Volume 498, Page 2932, presented figures as to the movement of carloads of apples and fresh fruit from British Columbia as compared with Ontario to Manitoba and Saskatchewan for the year 1926. To Manitoba, where the competition is claimed, the figures were as follows:—

To	From British Columbia		From Eastern Canada	
	Apples	Fresh fruits	Apples	Fresh fruits
Winnipeg	329	99	22	24
Portage La Prairie	17	3	Nil	Nil
Brandon	54	16	4	2

The shipments from Eastern Canada shown above include some grapes which are not shipped from British Columbia. These figures do not indicate very serious competition.

At pages 8644 and 8645, Volume 467 of the evidence, during the cross-examination of Mr. Scott by Mr. Flintoft, it was admitted that the Okanagan shippers relatively to their competitors as far as the prairies are concerned, have a commanding position, also that the competition in Eastern Canada was not with the Canadian grown fruit, but with fruit brought in from American points under transcontinental rates. In this case it was shown that the duty on American apples was 30 cents per box or about 75 cents per 100 pounds. It was argued that the production costs, plus duty, were lower in the Western States than in the Okanagan District. It was also admitted at pages 8639 and 8642, Vol. 467, that there was no competition at Calgary and Okanagan shippers had the monopoly at Edmonton.

The export rate on apples from Vernon to Vancouver is 40 cents per 100 pounds, the distance being shown by complainant as 342.9 miles. It was argued that this rate was unreasonable as compared with an export rate of 39½ cents from Grimsby to St. John, a distance stated to be 713 miles.

The Canadian Pacific Railway distance, Vernon to Vancouver, via Sicamous, is 381 miles, and the shortest distance Grimsby to St. John, (H.G. & B. and C.P.R.), is 869 miles.

The 39½ cent rate from Grimsby is the 5th class export rate, but it is quite improper to make comparison with St. John, for the reason that this rate is made in competition with movements via other seaports, being but 2 cents higher than the rate to Montreal. The basis of export rates from Ontario

was prescribed by Order of this Board No. 586, dated July 25, 1905, and such Order established from the Niagara peninsula, rates based on 70 per cent of the current Chicago-New York rate, with a lower basis on shipments to Montreal (the Philadelphia basis).

The comparison should properly have been made with the export rate from Grimsby to Montreal, which is 37½ per 100 pounds, the distance being 384 miles, or practically the same as the Canadian Pacific distance from Vernon to Vancouver via Sicamous.

Having regard to the general rate difference in British Columbia the 40 cent rate does not seem to be unreasonable as compared with the rate to Montreal.

Reference was also made to the export rate on apples via eastern ports, and it was contended that if a lower rate was granted it would encourage greater volume via such ports. The present rate of $1.50 applies to Montreal, Quebec, St. John, Halifax, Portland and Boston and is the same rate as applied to Montreal, Toronto, etc., for domestic use.

The distance from Vernon, B.C., to Montreal, is 2,594 miles, and to St. John, 3,060 miles, and this rate certainly compares favourably with the Winnipeg rate of $1.13 per 100 pounds, which, of itself. is a low rate. It is not claimed that export shipments of apples will be increased, but merely that part of the traffic will be diverted from Pacific to Atlantic ports. I fail to see any merit in this contention, and the rate is now on such a low basis that I could not consistently recommend a reduction.

At the hearing in Ottawa on December 7, 1926, exhibit 122 was filed and described as follows:—

> " Statement showing gross revenue, cost of operation and net profit on movements of 1926 fruit and vegetable crop August 8 to November 24, from the Okanagan valley of British Columbia."

The statement covers 4,822 cars and shows considerable net profit on movements to various territories. The figures under the heading " Freight Revenue " were stated to be arrived at as follows:—

Kelowna was taken as a representative shipping point. The average mileage was determined from actual movements to the four western provinces, and the point having mileage approximate to the average was taken as a base for each province. For British Columbia, Vancouver; Alberta, Medicine Hat; Saskatchewan, Moose Jaw; Manitoba, Portage la Prairie. Fort William and Kenora, where movement was small, were included with Manitoba.

For Eastern Canada, Montreal was taken as the representative point and export shipments were also shown via Atlantic and Pacific ports. The charge per car to the representative point was then multiplied by the number of cars shipped to the particular province and the result was shown as freight revenue, for example:—

The charge per car to Medicine Hat was shown as $275, the number of cars, 868, and $275 multiplied by 868 produces $238,700, which is shown as the freight revenue for Alberta shipments.

The cost of operation was arrived at by using 17½ tons content, and 30 tons tare, per car, or 47½ tons loaded weight, and multiplying this by the miles in each operating district over which the traffic would pass to obtain the gross ton miles. These latter figures were then multiplied by the cost per gross ton mile shown at page No. 51 of exhibit F.H.-99.

For empty car movements, the number of cars was multiplied by the 30 gross tons (tare) and applying the percentage of empty to loaded car movements for 1925 as given on page 36 of exhibit F.H.-99.

The method of arriving at the representative point in each province, and the mileage used, is more particularly described by Mr. Scott on page 17479, Vol. 487, as follows:—

> " In arriving at a destination, such as Medicine Hat, Alberta, I took into consideration shipping points such as Penticton, Summerland, etc., which as you know are south of Kelowna, also destinations that we move to in Alberta, and the mileage, at least the average mileage, is arrived at by taking all shipping points as against all destinations, and we get Medicine Hat as a basis to compute my figures.".

Again at page 17480:—

> "The total of 832 miles from Kelowna to Moose Jaw is mine; that contains 262 in British Columbia, 460 in Alberta, and 110 in Saskatchewan."

Again at page 17481:—

> " The average struck was 823, so we took Moose Jaw on account of the 832 miles."
>
> " Kelowna to Portage la Prairie is the average mileage which I figured out at 1,175 miles. The actual average mileage to Manitoba is 1,163 miles and by taking out the figures on mileage we found 1,175, which gives us Portage la Prairie, so we used Portage la Prairie as the basis."

Mr. Fraser at page 18319, Vol. 489, stated that so far as the Canadian National lines were concerned, the refrigerator cars used in this fruit business were all rented and that the cost was 2 cents per mile. He also stated that the empty car movement was 100 per cent and the Canadian Pacific Railway likewise stated that their empty car movement was 100 per cent.

On January 28, 1927, exhibit 122-B was filed, following request of Mr. Fraser, which showed revised figures for part of the season's shipment, on the basis of 100 per cent empty car movement and 2 cents per mile rental for Canadian National shipments. It was admitted in evidence that the statement was based on Canadian Pacific Railway cost figures, but because of the operating advantage of the Canadian National Railways, it was considered a fair basis to apply.

Based on 100 per cent empty car movement the figures in exhibit No. 122 would be considerably changed. For British Columbia, the cost of operation would amount to $124.13 per car, instead of $93.80 as shown, or a profit of $45.87 per car, instead of $76.20, and the total operating cost for British Columbia would be $61,692.61, instead of $46,618.60. If the 2 cents per mile rental for Canadian National shipments was added, the cost of operation via that line would be further increased.

In the movement eastbound some errors in mileage have been made and lake operations have been included; for example, Kelowna to Moose Jaw has been divided:—

British Columbia, Kelowna to Field	262 miles
Alberta, Field to Swift Current	460 miles
Saskatchewan, Swift Current to Moose Jaw	110 miles
Total	832 miles

The proper figures should be:—

British Columbia, Kelowna to Field	250 miles
Alberta, Field to Swift Current	464 miles
Saskatchewan, Swift Current to Moose Jaw	110 miles
Total	824 miles

All of the movements from Kelowna via Canadian Pacific Railway would include 28 miles of lake operation, not included in the average operating costs shown in exhibit F.H.-99.

The gross ton mile costs shown in exhibit F.H.-99, for operating districts, are for all traffic, and Mr. Lloyd testified that it was impossible to figure the cost of moving any particular kind of traffic. It was further shown that the gross ton miles included caboose miles and non-revenue freight miles. Also that to cover the company's requirements the system figure of .00323 per gross ton mile shown on page 51 of exhibit 99 should be increased by 84.5 per cent or to .00596.

At page 1522, vol. 495, Mr. Lloyd stated:—

> "I have nothing to guide me whether non-revenue traffic is greater in one district than in another district. I have got it by lines East and lines West."

In view of the fact that it is impossible to segregate all costs by districts, further that costs of carrying any particular kind of traffic cannot be determined, it follows that the figures shown in Exhibit No. 99 do not indicate actual cost of moving fruit traffic and exhibit No. 122 cannot, therefore, be considered as in any way conclusive.

The fact, admitted by complainants, that fruit produced in the Okanagan has had a steady increase; that shippers are in a commanding position as far as the prairies are concerned, with the possible exception of Winnipeg; and that the competition at this point is principally with shipments from the State of Washington, where any change in rate will immediately be reflected; also the fact that the fruit business is seasonal traffic, requiring special equipment, and service only second to passenger service, leads me to the belief that the general basis of fruit rates from the Okanagan should not at the present be disturbed.

File 34123.10.1

T. H. Estabrooks Co. Ltd., St. John, N.B.

What is here involved relates to rates on tea and is tied up with the rates under suspension by Order of the Board No. 37572, dated May 10, 1926, which stands for hearing at next sittings of the Board in Western Canada and cannot, therefore, be disposed of at this time.

File No. 34123.12

Submission of the City of Winnipeg and the Winnipeg Board of Trade.

At the hearing of this case in Winnipeg on June 15, 1926, Mr. Preud'homme stated the complaint was one of discrimination; that Winnipeg had not been given the benefit of its geographical position; that in 1881 the city made an agreement with the Canadian Pacific to encourage the establishment of a distributing centre. By this agreement the company were to have tax exemption forever and was also paid a bonus. Shops and stockyards were to be established and this undertaking was carried out, but that the real purpose of the contract was the establishment of a distributing centre, which the railroads, at the time, recognized.

It is claimed that the distributing business at Winnipeg is gradually falling off and Exhibit No. 3, showing an index of wholesale houses and manufacturers for 1907-1926, also exhibit No. 4, a statement of failures, were filed in support of the claim of depression in business. It was also claimed the rates permitting Eastern competition were partly responsible for this depression.

Mr. Preud'homme stated the rate should not break at Port Arthur, but at Winnipeg, which was the logical place, and that the differential should be no more than at Port Arthur. The word differential, as used throughout this case, means the difference between the through rate and the combination of rates to and from an intermediate point. Exhibit No. 6 was filed for the purpose of showing the increase in differentials from 1914 to 1922, and exhibit 6-A, the increase of 1926 over 1917. Exhibit No. 7 shows a decrease in the differential at Fort William as compared with an increase at Winnipeg. Exhibit No. 12 was filed for the purpose of showing switching operations involved at Winnipeg in the movement of a through car in and out of Winnipeg, as compared with a carload for local delivery, and Mr. Preud'homme stated he considered a reasonable charge for the extra service would be 6 cents per 100 pounds. At page 7233, Vol. 464, Mr. Flintoft in cross-examination:—

"Q. Can you tell us how traffic moves from the East to Winnipeg, for instance carload or less than carload?—A. You mean in our Exhibit here?

"Q. I mean in the ordinary course of business?—A. Practically all carload.

Commissioner Oliver:

"Q. Those figures I was asking about related to carloads, not less than carloads?—A. They are based on 5th class carload rates.

"Q. Both through to Winnipeg and then from Winnipeg to other points as to carloads?—A. Yes.

"Q. Has it anything to do with Less than Carloads?—A. Nothing.

Mr. Flintoft:

"Q. That is what I was following up. Take traffic out of Winnipeg to a point such as Yorktown for instance, how does it move?—A. To a great extent in carloads."

At page 7237, et seq., the following discussion took place concerning the movement of this 5th class carload business in and out of Winnipeg.

"Q. The question was whether there were any direct shipments from Eastern points to points on the Prairies other than the distributing points named on the Tariff. You said no, not in any great quantity. Am I correct in saying that you would consider the quantity would be negligible?—A. To outside points I would say yes, to other than distributing points.

"Q. Other than distributing points?—A. Yes.

"Q. Therefore the competition is felt under the present rates as regards the distributing points which are in the tariff?—A. Yes.

"Q. Instead of shipping goods to Winnipeg, they are shipped directly on the through rate to distributing points, and from there distributed to local points?—A. Yes.

"Mr. Flintoft: Q. Mr. Newson, from these other distributing points, they are distributed in less than carload lots?—A. Yes.

"Q. Practically altogether?—A. Practically altogether.

"Q. Just the same as they are from Winnipeg?—A. Yes.

"Q. I suppose your competition is with those Western Distributing points?—A. Eastern points.

"Q. You do not worry about the competition of the Western Distributing points?—A. I would not say that we do not worry about it.

"Q. Will you say that the movement of traffic in carload lots from the East to any of those local points is negligible?—A. To local points other than the distributing centre?

"Q. You would hardly expect to sell at a point like Saskatoon in competition with a distributor there?—A. Yes, we would.

"Mr. McEwen: Q. Why do you say that?—A. Because the wholesalers here and the other houses import more than they can possibly do at a point like Saskatoon.

"Mr. Symington: Is your idea, that you are prepared to compete with any place on the prairie, provided the extra service which the railways render by reason of having to switch their goods here is charged at a proper rate?

"Mr. Newson: Yes.

"Mr. Symington: That is, your complaint is that the differential now established between shipments in carloads to Western points by the East is too high compared with the services the railways render?—A. Yes.

"Q. And it should be reduced to a differential roughly equal to the switching charges, which you put at 6 cents, as compared with shipments through?—A. Yes.

"Mr. Flintoft: Q. Would you mind telling the Board how shipments are made into Winnipeg? I suppose they come in on bill of lading and delivery of shipment is taken?

"Mr. Newson: Yes.

"Q. And the wholesale distributing house, when it gets an order from a local point further west, makes a new L.C.L. shipment with a new bill of lading?—A. If it is a Less than carload order, yes.

"Q. Or even a carload order?—A. Yes.

"Q. An entirely new transaction?—A. Yes."

Mr. Preud'homme, in presenting his argument, Vol. 507, page 6699, stated that the city of Winnipeg had made a joint submission with the Winnipeg Board of Trade asking for a reduction in the combined rate on movements from eastern points to Winnipeg and movements out from Winnipeg to common points in the West, as compared with the through rate from Eastern points to the same point; that the submission dealt only with movements in carload lots to what are recognized as distributing points. To quote:—

"We make that submission for the reason that since the horizontal increases were made Winnipeg has been failing as a station of competition with Eastern jobbers and wholesalers; the jobbers and wholesalers in Winnipeg have found it difficult to hold their own. The city has felt that in its municipal finances. The city of Winnipeg has also felt the strain of competition to which I referred a minute ago. If I need any excuse for being before this commission, that is the reason I am asking you to examine the position of Winnipeg as compared with that of the units further west."

The applicants abandoned their request to have put in effect the same differential as existed at Port Arthur and stated at page 6607:—

"So that in assuming the attitude we have taken and asking for only a part of what we think we should have, we are taking into consideration the interests of the West in addition to the interests of the railways so far as their revenues are concerned and our own interests so far as the railway service is concerned. .....We have been forced to come for something because of the effect which the horizontal increases have been having upon the business outlook in Winnipeg. I quite admit, and nobody can help admitting that we are asking for a

change on no very scientific basis, we are simply asking for some means of putting ourselves back in the position in which we were before these horizontal increases came into effect."

At page 6708:—

"We are asking for the through rate which the eastern house gets to the Western point plus 6 cents being a fair charge for the switching which is necessary to be performed in Winnipeg."

At page 6709:——

"I know you made some suggestion to Mr. Pitblado about it being simply carrying out what existed when the Traders' tariffs were in existence. It is not exactly the same. As you will remember we say we are asking this as an alternative to what we otherwise should have, that is, the breaking of the rate at Winnipeg, and the consideration of the effect which it might have at this time. We are asking this, which is, perhaps, a clumsy expedient, but it is better than the other. That is the way I will put it. We say we are asking for it not only for ourselves but for all Western points as well."

The evidence which I have quoted shows that the movements to the smaller points in the West are practically all L.C.L., and that the carload movements would be to the larger centres which themselves are distributing centres. Winnipeg being the largest and oldest distributor, also being located at the Eastern end of the distributing territory, would be in a better position than any one of the other distributing centres to make use of this rate arrangement if granted. It would enable Winnipeg to place cars of 5th class goods at other distributing centres in competition with the East, but if branch houses were established, there would be introduced direct competition at such centres.

Mr. Flintoft's examination of Mr. Newson, quoted above, showed that this 5th class traffic would come into Winnipeg on a bill of lading and delivery would there be taken. On the outward movement an entirely new contract would be made and a new bill of lading issued.

This must necessarily be the only method possible as the car does not come to Winnipeg and go forward to another destination, it is unloaded and the contents put into stock; and the car that goes forward is an entirely new shipment made up from goods received in various cars and at various times. It is not a stop-off arrangement.

It is claimed that if the through all-rail rate is applied from Eastern Canada to final destination, plus 6 cents, Winnipeg can successfully compete with eastern jobbers.

In actual practice, however, the railway will not receive the through all rail rate, plus 6 cents, on the majority of the business. The carload traffic largely moves to Winnipeg on lake and rail rates, or all water to Fort William, and it would be impossible to identify the outward contents of cars to ascertain the rate paid into Winnipeg. The only thing the railway could do, if the proposed arrangement was made effective, would be to charge on the outward cars, the difference between the all rail rate to Winnipeg and the all rail rate to destination, plus 6 cents.

Take Moose Jaw as a final destination; the actual contents might consist of 5,000 pounds which had paid an all rail rate of $1.14 to Winnipeg and 19,000 pounds which had paid lake and rail rate of $1.08. The freight to Winnipeg would be $262.20.

The all rail rate, Eastern Canada to Moose Jaw, is $1.61, and the charge on 24,000 pounds at that rate, plus 6 cents, would be $400.80.

The railway should properly receive, under the proposed arrangement, as charges Winnipeg to Moose Jaw, the difference between $262.20 and $400.80,

or $138.60, but as they could not identify the contents which paid the different rates, they could only charge 53 cents per 100 pounds (the difference between $1.14 and $1.67) or $127.20.

If the inward car was all water to Fort William, thence rail, the charge to Winnipeg would be 24,000 pounds at $1.08 or $259.20. The outward charge would be $127.20 or a total of $386.40 which is the charge at the all rail rate of $1.61 to Moose Jaw.

The railway in this case would not receive the six cents proposed to cover switching at Winnipeg, but charges at the through all rail rate only.

The proposed arrangement, if made effective, would cause a serious loss of revenue, and based on shipment through Winnipeg, the reduction would be as follows:—

Destination	Reduction
Portage La Prairie	7 cts.
Brandon	9 cts.
Regina	9 cts.
Moose Jaw	7 cts.
Yorkton	8 cts.
Saskatoon	9 cts.
Estevan	6 cts.
Weyburn	7 cts.
Swift Current	11 cts.
Medicine Hat	11 cts.
Redcliff	8 cts.
Calgary	6 cts.
Lethbridge	9 cts.
Camrose	8 cts.
Edmonton	6 cts.
Red Deer	6 cts.

There are a number of factories located in Winnipeg, some of which manufacture goods rated at fifth class in carloads. Under the proposed arrangement there would be nothing to prevent the inclusion in these outbound cars of such goods. Furthermore, goods are received from the south and part of these might also be included. Under these circumstances, the railway company would only receive a proportionate rate on busines which originated in Winnipeg or was imported from the United States.

Similar cases have been before the Interstate Commerce Commission and I quote below from their decisions:—

> "The theory of equalizing jobbing rates by equalizing the in and out rates from competing jobbing centres is impracticable, even if it might be assumed that the rate factors necessary to bring about such equalization would always be fair and reasonable."—Hutchison Traffic Bureau vs. C.R.I. & P. Railroad, 43 I.C.C. 689, 693.
>
> "The question of rates to and from jobbing points has been and is continually being pressed on our department by complaining shippers. The desire of jobbers located at various points is to have rates into and out of their particular point classed so that through rates to consuming territories shall be the same no matter through which point the traffic moves. It is well settled that undue prejudice and disadvantage against a distributing point cannot be predicated merely upon the fact that the combination of inbound and outbound rates exceeds the combination via a competitive distributing point."—Rates on Knitting Factory Products, 25, I.C.C. 634-639.
>
> "The Commission cannot because of the disability of some particular territory which prevents it from competing with others on even terms, require carriers to accord rates unreasonably low."—1915 Western Rates Advance Case, 35, I.C.C. 497, 624.

"Regulation of commercial competition is not the Commission's function; that is to say, its powers do not extend to the preservation of rates in order to enable one point or community to compete on approximately equal terms with another irrespective of other transportation factors."—Natchez Chamber of Commerce vs. L. & A. Railway et al, 52, I.C.C. 105, 123.

Mr. Preud'homme admits that his proposal is not on any very scientific basis and is perhaps a clumsy expedient. In my opinion it is more than that, it is unworkable and impracticable and contrary to any rate practice in Canada.

I have shown that the railway will not receive the all rail rate from Eastern Canada to destination, plus six cents, on all traffic, and probably on very little of the traffic; that the railway would not only suffer a serious reduction in the present rates on traffic from Eastern Canada, but would also not receive their proper rate on goods manufactured in Winnipeg or imported from the United States. The proposal would also destroy the present distributing rate arrangement on carload business and would, I believe, benefit Winnipeg only.

I therefore recommend that the application be dismissed.

File 34123.13.1

City of Quebec

This submission had reference to agreements between the city of Quebec and the Quebec and Lake St. John and Great Northern Railway Companies of Canada (now part of Canadian National Railways) and the obligations of the railway company flowing from such agreements. At sittings of the Board January 19, 1927, Vol. 492, page 739, the counsel for the city of Quebec suggested that consideration of this matter be postponed to a later date and dealt with as an independent issue outside of the matters involved in the General Freight Rate Investigation.

File 34123.14.1

Complaint of Gillies Brothers, Ltd., Braeside, Ont.

This is a complaint alleging that, with respect to various increases in rates since the pre-war period, the advances in rates on lumber from the Ottawa valley, and Braeside in particular, are disproportionate to the increases in lumber rates generally. The complaint covers rates between points in Canada, also from points in Canada to United States destinations. Complainant's written submission is dated August 14, 1925, and the matter was also spoken to at sittings of the Board in Ottawa January 5, 1926.

The complaint is launched in very general terms and was not very specifically developed at the Ottawa sittings. As to an increase in the rates from Braeside disproportionate to the increases generally, reference was made to the increase from Pacific coast mills, and within western Canadian territory. It is a fact that under the Orders authorizing rate increases, and particularly Order in Council P.C. 1863, July 27, 1918, many eastern rates were increased to a greater extent than western rates. This does not indicate that, as a result, the eastern rates are to-day necessarily higher than in Western Canada, and there was nothing put on the record, either by the complainant or the railway companies, making such a comparison. The disparity in the amount of increase permitted in the West as compared with the East was not confined to lumber, but was applied generally to all commodities. Further, by P.C. 1863, lumber rates were increased by a specified percentage of 25 per cent, but with a maxi-

mum increase of five cents per 100 pounds, so that the increases would, in some cases, be disproportionate, in that a rate of 16 cents would be increased 25 per cent, or to 20 cents, while a rate of 50 cents would only be increased by five cents, so that if this is what is meant by disproportionate increase, then, of course, it is a fact, but it applied generally throughout the territory and is not evidence of unjust discrimination. As already stated, specific comparisons as evidence of alleged discrimination were not put on the record. At the Ottawa sittings complainant stated that a further submission would be filed dealing with this phase of the matter, but this has never been forwarded.

In regard to the rates from Braeside to Ottawa, Montreal and Toronto, referred to by complainant, the carriers state they are on the same basis, or lower, than from other Canadian points to the same destinations, and no evidence was adduced by complainant indicating that to common markets, other points of similar mileage therefrom are provided with lower rates than published from Braeside. With regard to the rates from Pacific coast mills, there are special competitive conditions existing here which have had the practical effect of creating a maximum rate beyond which the rail carriers could not go if any of this traffic is to be secured for rail movement.

Complainant contended that the rates on lumber should be based on a fixed or uniform rate per ton per mile, applied to this lumber traffic over the country as a whole, and regardless of length of haul, and apparently the fact that rates are not to-day so constructed is also embraced in complainant's allegation regarding a disproportion in rates. For example, complainant pointed out that the rate per ton per mile for a haul of 500 miles was lower than for a haul of 175 miles, and it was suggested that the present rate per ton per mile, as applied for the longer distances, should be used in connection with the shorter hauls, the result of which would be to reduce all the present short haul rates. There are a great many so-called long haul rates with varying rates per ton per mile, and it is not clear from complainant's submission what particular long haul rates he contends should be taken as the basis from which such reductions should be worked out. In this connection, however, it may be pointed out that it is a long recognized principle of rate-making, not only in Canada, but other countries, that where special or competitive conditions do not exist, the rate per ton per mile normally decreases with increasing length of haul. This is not a principle of rate-making that governs only in connection with lumber, but has general application to all classes of traffic, so that if what is here suggested by complainant is logical as applied to lumber, the same principle should govern other traffic as well, which would involve a very radical departure from long established and current rate-making principles. Unless the carriers' revenues were to be very materially reduced, complainant's theory could only be worked out by some readjustment that would, in the aggregate, provide approximately the same revenue for the carriers as they obtain to-day. Aside from the fact that such an adjustment would disrupt the present freight rate structure and meet with much opposition, the proposition here put forward is not considered to be a practicable one.

So far as the complaint relates to rates from Canadian to United States destinations, the matter of international rates is to be dealt with outside of the General Freight Rate Investigation.

File 34123.18

Application of Dominion Sugar Company, Limited, Chatham, Ont., for a reduction in mileage rates on Sugar Beets to Chatham and Wallaceburg, Ont.

Heard at Windsor, January 12, 1926.

This application is for a change in the mileage scale of rates on sugar beets which was prescribed by the Board's Order No. 31709, following judgment of Mr. Commissioner Boyce, concurred in by Chief Commissioner Carvell.

In the first paragraph of my report of October 19, 1921, I quoted my instructions from the Assistant Chief Commissioner, in the following language:—

> "He suggests that I work out a table of rates for consideration to show what can be done in the way of constructing a mileage scale *not exceeding 35 per cent.*"

Owing to the diversity of specifics, I found it impossible to produce a reasonable scale based exactly on 35 per cent, and the examples given in the fifth paragraph of my report make this apparent. A rate was fixed for the 25 mile group (minimum) of 4½ cents per 100 pounds; for the 86-90 mile group, 7½ cents; and for the 96-100 mile group, 8 cents per 100 pounds; the rates for the other groups being reasonably scaled; all of which is explained in my report. The scale, was, however, considered a reasonable one for use of all railways and to replace the discriminatory specific rates which had been charged in the past. The Canadian Pacific Railway had no specific rates, and effective August 12, 1918, traffic over that line was moved on mileage rates. The Grand Trunk also on that date moved traffic on mileage rates into Chatham and Wallaceburg, but had specific rates for distances 91 miles and over into Kitchener. I have worked out a scale based on 25 per cent increase of the average specifics and mileage rates for the various groups, which is given below under column "A," and also show the present scale of rates under column "B."

Distances	Column "A"	Column "B"
Not over 25 miles	4½	4½
Over 25 and not over 45 miles	5	5
Over 45 and not over 60 miles	6½	5½
Over 60 and not over 75 miles	7½	6
Over 75 and not over 80 miles	7	6½
Over 80 and not over 85 miles	7½	7
Over 85 and not over 90 miles	7½	7½
Over 90 and not over 95 miles	8	8
Over 95 and not over 100 miles	7½	8
Over 100 and not over 105 miles	8	8½
Over 105 and not over 110 miles	8	8½
Over 110 and not over 115 miles	7½	9
Over 115 and not over 120 miles	9	9

It will be seen that changes in rates would be necessary to avoid violation of the long and short haul clause. The rate of 7 cents for group 75-80 miles must be increased to 7½ cents, and for the groups 95-100 and 110-115 miles from 7½ cents to 8 cents. When this is done the rates of Column "A" would be the same, or higher, than present rates for distances up to 100 miles. For group 100-110 miles they would be ½ cent lower, and for group 110-115 miles 1 cent lower.

As stated in my report, no data as to the effect of the revised scale could be furnished as we were not in possession of any information as to the tonnage moving from the different mileage groups.

Applicant has now submitted figures for the movement of the 1924 crop, and I observe there was no movement of more than 100 miles over the Michigan Central, Pere Marquette, Canadian Pacific, or Chatham, Wallaceburg & Lake Erie railways, and on the Canadian National Railways less than 5 per cent of the traffic was moved for distances greater than 100 miles. If rates as shown in column "A" were applied, the total freight charges on the 1924 crop would be very much higher. As further example of the reasonableness of the present scale of rates on sugar beets, I give below comparison of mileage scales on low-grade commodities, and it will be observed that the scale for the sugar beets is in many cases lower. It should be especially noted that the mileage rates on sand and gravel, which were not increased under General Order No. 308, are in some cases higher than the scale for sugar beets.

Miles	Sugar Beets	Ice	Agricultural Limestone	Coal Cinders	Rubble Stone	Sand and Gravel
Not over 10 miles	4½	4	5	4½	4½	3¾
Over 10 and not over 20	4½	4	5½	5	5½	4¼
Over 20 and not over 25	4½	4½	5½	5½	6	4¾
Over 25 and not over 30	5	4½	6	5½	6	4¾
Over 30 and not over 40	5	5	6½	7	6½	5¼
Over 40 and not over 45	5	5	7	7½	7	5¾
Over 45 and not over 50	5½	5	7	7½	7	5¾
Over 50 and not over 60	5½	5½	7½	8	8	6¼
Over 60 and not over 70	6	6½	8	9	8½	6¾
Over 70 and not over 75	6	7	8½	10	9	7¼
Over 75 and not over 80	6½	7	8½	10	9	7¼
Over 80 and not over 85	7	8	9	10½	9½	7¾
Over 85 and not over 90	7½	8	9	10½	9½	7¾
Over 90 and not over 95	8	8	9½	11½	10½	8¼
Over 95 and not over 100	8	8	9½	11½	10½	8¼
Over 100 and not over 110	8½	9	10	12	11	8¾
Over 110 and not over 120	9	9	10	12	11	8¾
Over 120 and not over 125	9½	9	10	12	11	8¾

The Dominion Sugar Company asked for a reduction in rates based on 77½ per cent of the present scale, which they state would reflect the 10 per cent decrease under General Order No. 350. I have shown that the scale now in effect was not based on 35 per cent increase, except in certain groups, and that the balance of the rates were reasonably scaled. The net result was much less than 35 per cent over the rates in effect on August 12, 1918.

Applicant attached a statement of freight charges paid under the present scale, and also what would have been paid under the rates of August 12, 1918, and submitted that the increase amounted to 47.7 per cent on the crop movement of 1924.

On this crop movement the increase on the C.N., C.P. and P.M. railways amounts to, approximately, 17 per cent, and the large increase in the Michigan Central movement is due to the fact that single-line specifics were at one time applied for joint hauls, while the mileage scale prescribed by the Board was for one-line movement only, with a deduction to and from junction point on joint movements. This is the common practice in connection with all mileage scales.

The increase on the Chatham, Wallaceburg and Lake Erie Railway was due to the fact that the rates on that line were abnormal, running as low as 1½ cents and 2 cents per 100 pounds, and the total mileage of the railway brings it within the first two group of the mileage scale. Rates of this company were disregarded in my calculations.

The mileage scale is for uniform application by all companies in substitution for other mileage scales or specifics, and while it does not give the C.N., C.P. and P.M. the percentage increase allowed by the Board on other commodities, it does remove discriminations and abnormally low rates and, on the whole, I consider it a reasonable scale, which up to 100 miles is the same or lower than if based on 25 per cent over an average of all the rates of 1918, except those of the C.W. & L.E. I, therefore, recommend that the application be dismissed.

File 34123.19.1

Submissions of the Canada Paper Company, Ltd., et al, re *rates on Paper and and Paper Products*

This submission was presented by Guy Tombs, Limited, on behalf of—

Canada Paper Company, Limited,
Donnacona Paper Company, Limited,
Howard Smith Paper Mills, Limited,
Laurentide Company Limited,
Belgo Canadian Paper Company Limited,

and relates to the rates on paper and paper commodities from Windsor Mills, Grand Mere, Crabtree, Donnacona and Shawinigan Falls, Que., to points in Ontario; and also, so far as the Canada Paper Company, Ltd., is concerned, alleged discrimination in the adjustment of the rates from Ottawa to the Maritime Provinces as compared with the rates assessed from Windsor Mills, Que., to Ontario points.

It is set out that for a number of years, prior to the so-called 15 per cent increase in freight rates authorized in 1917, rates from mills of complainants to Ontario points were maintained on fixed arbitraries over the current rates in effect from Ottawa as follows—

Windsor Mills	3 cts.
Grand Mere	3 cts.
Shawinigan Falls	3 cts.
Crabtree	2 cts.
Donnacona	4 cts.

whereas these differences are now at a higher figure, owing to the disruption of the relationship by the various percentage increases in rates since 1918. The restoration of rates from these points by the publication of the same arbitraries over Ottawa as were in effect prior to the Eastern Rates Case, is asked for.

It was urged by complainants that recognized differentials or arbitraries should be preserved, and in this connection reference was made to Order in Council P.C. 1863 and certain Orders of the Board. In Order in Council P.C. 1863 dated July 27, 1918, it was set out that in establishing the freight rates therein ordered, while established rate groupings and fixed arbitraries were not required to be used, their use was desirable, if found practicable, even though certain rates might result which would be lower or higher than would otherwise obtain. It will be noted the observance of differentials was not made mandatory.

Again, in Board's judgment in connection with General Order 308 of September 9, 1920, it was stated that while the principle of percentage increases must necessarily disrupt rate relationships between points of production, it was considered important in the working out of the tariffs that such recognized differentials as referred to should be preserved so far as may be practicable. Speaking generally, arbitraries or differentials were advanced in the same ratio

as other rates, and the former relationship, as existing before the year 1917, has never been restored in these cases. It was suggested by complainants that in some instances former differentials or arbitraries had been restored, but there is nothing on the record before the Board amplifying this statement or showing the character of the rate or rates where it is alleged former relationships have been reinstated. These relationships have not been reinstated in the case of rates on paper and paper commodities, and it is not only from the shipping points that are here in question, and specifically named, that the arbitrary or differential is in excess of that existing previous to 1917, but, on the other hand, the same situation prevails from the numerous other shipping points named in the tariffs. The granting of applicants' request would, therefore, be far-reaching in its effect, because such action could not be confined to the shipping points herein named, but would have to be extended without discrimination to the many other numerous shipping points set out in the tariffs. While the rate relationships have been changed, for the reasons named, not only in respect to the commodities here in question, but with regard to other traffic and in many parts of the country, there is not on the record here a case proving any unjust discrimination in the present rates as between the various paper shipping points.

I do not think the references to maintenance of differentials, as given in P.C. 1863 and the Board's judgment in connection with General Order 308, which were issued in 1918 and in 1920, respectively, and in respect to which there has been no complaint to the Board previous to filing of this submission in the General Rates Inquiry, can now be invoked at this late date with any great probative force.

I consider that, if there should be any revision of the present commodity rates on paper commodities, it should be from the standpoint that the present rates are either unreasonable per se, or unjustly discriminatory as against certain shipping points and in favour of others. The matter is not now on the record before the Board in this shape. Obviously any readjustment of these rates should be on a record that would bring before the Board, as parties to it, all interested shippers.

Since the filing and hearing of this submission the Maritime Freight Rates Act, 1927, has been put on the statutes, and section 8 of said Act reads:—

> "The purpose of this Act is to give statutory advantage in rates to persons and industries in the three Provinces of New Brunswick, Nova Scotia and Prince Edward Island, and in addition upon the lines in the Province of Quebec mentioned in section two (together hereinafter called "select territory"), accordingly the Board shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in such select territory."

There are points in the Maritime Provinces making shipments of paper commodities under the commodity tariff that is here under attack, but the record does not contain information showing just what specific paper commodities are manufactured at these Maritime Province mills or whether the same commodities are manufactured at mills of complainants, and it would, therefore, be necessary to be furnished with considerably more data than are on the record, before there could be determined the question as to whether, in view of the provisions of the Maritime Freight Rates Act, changes could be made in the rates from mills of complainants without affecting the advantages created by the statutory rates in favour of shippers at points in the Provinces of New Brunswick and Nova Scotia.

References were made to importations of paper commodities from certain United States points, and exhibits filed showing rates between certain United States points, and from United States points to Canadian points, but the record was not sufficiently developed under this heading to enable any conclusive opinion to be passed thereon in so far as it would have any bearing on a readjustment of the rates between Canadian points.

File 34123.25

Atlantic Sugar Refineries, Ltd., Montreal, Que. British Columbia Sugar Refining Company, Vancouver, B.C. Dominion Sugar Company, Ltd., Chatham, Ont.

In connection with the Board's Circular dated July 9, 1925, *re* presentation of submissions dealing with the General Freight Rate Investigation, the Atlantic Sugar Refineries, Ltd., under date of August 12, 1925, made written submission *re* rates on sugar. As a result thereof, submissions were subsequently filed by the Dominion Sugar Company, Ltd., Chatham, Ont., and the British Columbia Sugar Refining Company, Ltd., Vancouver, B.C., which, in substance, stated that if there was to be a reduction in the rates on sugar from St. John, N.B., they would apply for similar reduction. The question of sugar rates was also spoken to during the course of the sittings in the General Freight Rate Investigation.

Later, the Atlantic Sugar Refineries, Ltd., stated their submission was intended to support and agree in principle with the representations of the Maritime Provinces, and it was not their desire to proceed further in the matter individually. The Maritime case was withdrawn from the General Rates Enquiry as referred to in more detail in the judgment of the Board. There has also since been placed on the statutes the Maritime Freight Rates Act, 1927.

Under the circumstances I consider that no changes in sugar rates should be directed by the Board at this time.

File No. 34123.26

Submission of Canadian Retail Coal Association, Brantford, Ont., re rates on Coal and Coke from Niagara Frontier

The Canadian Retail Coal Association, Brantford, Ont., in written submission dated August 12, 1925, refer to rates on coal and coke from the Niagara frontier to points in Ontario, and draw attention to the difference between rates on anthracite and bituminous coal. They state the rates on anthracite coal vary from about 5 to 20 cents per ton more than on bituminous.

They further submit:—

> "We believe further that your Board should consider at this time a general reduction of the rates on both anthracite and bituminous, not only that they may be equalized, but that they may be reduced to a level which represents the earning power of the rate on most other commodities, for, as it has been shown in the past, we believe that it is still the case that the coal traffic bears more than its share of the revenue derived from the freight department of our railroad companies."

They also ask that an examination be made of the rates on coke which appear to them "to be excessive looking at it from the basis of the present rate on coal, because the difference in bulk does not warrant such a difference in the rate." This submission was not further developed orally before the Board at the final hearing, of which applicant had notice.

What is intended or meant by applicant's suggestion that both anthracite and bituminous coal rates "be reduced to a level which represents the earning power of the rate on most other commodities" is not understood, unless it has the same meaning as the statement immediately following that "as it has been shown in the past, we believe that it is still the case that the coal traffic bears more than its share of the revenue derived from the freight department of our railroad companies." The Board is unaware of the foundation or basis of applicant's allegation that the rates on coal are disproportionate to the rates on other commodities, having in view the many factors which enter into consideration in the fixation of freight rates. This allegation would require to be fully developed in evidence before the Board before it could be seriously considered as a statement of fact, and no such evidence is before the Board.

With respect to the proportional rates on coal and coke from Niagara and other United States frontier points to stations in Eastern Canada, the existing differences as between anthracite and bituminous coal and coke have been created by differences in treatment under the various increases and decreases authorized or directed as result of railway operating costs in recent years.

Uniformity in rates as between anthracite and bituminous coal was maintained until August 1, 1922. Effective on that date, by judgment of the Board dated June 30, 1922, and its General Order No. 366, of same date (Vol. XII, Board's Judgments, Orders, Regulations and Rulings, p. 61), a reduction was directed in the rates on bituminous coal by rescinding the increase authorized thereon by General Order No. 308 of September 9, 1920, but no reduction was at that time directed in the rates on anthracite coal, and this accounts in full for the difference now existing, to which applicants have drawn attention.

Following the Board's Order of 1922, above referred to, the present applicants took up with the Board the question of rates on anthracite coal, and under date of November 16, 1922, were advised by the Secretary of the Board as follows:—

> "I am directed by the Board to state that the list of basic commodities set out in its judgment of last June on which reductions applied, was accepted by the Board only after careful consideration; that the question of including anthracite coal in the reductions was very carefully considered when the Board was considering this Rate Judgment, but as it was decided to follow the list of commodities proposed to and published in the Report of the Special Committee, anthracite coal was, after full consideration, not included.
>
> "By reference to the Board's judgment, the reasons why, on the existing state of facts, the Board did not feel justified in giving a different and more extended list will be noted."

Again, in 1924 the applicants took up the matter of these anthracite coal rates, and on January 5, 1925, they were written to by the Secretary of the Board as follows:—

> "Referring to your letter of the 27th ultimo herein, I am directed by the Board to ask you if you would be good enough to advise it what difference in condition now exists as compared with the conditions of 1922 which, in your opinion, would justify the difference in treatment as between anthracite and bituminous coal from that which was provided for in the Board's General Order No. 366 of June 30, 1922.
>
> "What you are asking for is the re-opening of a matter already dealt with by the Board, and, therefore, if is incumbent upon you to set out in more detail the reasons for the reopening asked for.

"I also enclose you, under the Board's direction, a copy of Mr. G. C. Ransom's letter of the 2nd inst., for your consideration."

They replied under date of January 8, 1925, as follows:—

"I have your letter of the 5th inst. relative to this matter, together with copy of Mr. G. C. Ransom's letter dealing with the same matter, and wish to state that we will advise you later as to what steps we intend to take in connection with our application."

The next submission from the applicants is that at present under consideration, namely, under date of August 12, 1925.

With regard to the differences between rates on coal and coke, these commenced with Order in Council P.C. 1863 dated July 27, 1918, which directed increases in rates on coke which were, with respect to rates 50 cents per ton and over, somewhat higher than the increases directed on coal. When rates were increased in 1920 under the provisions of General Order 308 dated September 9, 1920, a specific increase on coal, lower than provided for commodities generally, was stipulated, but this exception was not made in the case of coke. The disparities in rates were brought about under these circumstances.

The general level of rates in Eastern Canada has remained on the basis as effective August 1, 1922, following the Board's General Order 366 dated June 30, 1922. I do not consider these rates should be subjected to any direction by the Board at the present time.

File No. 34123.28.1

Eastern Canadian Preserved Foods Traffic Association—re *rates on Canned Goods, in carloads, from Eastern Canadian points to stations in the Prairie Provinces.*

The Eastern Canadian Preserved Foods Traffic Association filed written submissions dated August 12, 1925, and January 17, 1927. In that first mentioned they submitted:—

"(1) The rates now charged for carload movement of canned food products from points in Eastern Canada to points in Western Canada are unreasonable and unduly discriminatory, to the extent that they exceed relatively the rates on carload shipments of the same commodities applicable from Vancouver and interior British Columbia points to markets in the Prairie Provinces.

"(2) Also that the rates now charged on the same commodities in carloads from Fort William, Port Arthur, and Westfort, Ontario, to points west of Winnipeg, Man., to and including interior British Columbia points, are unreasonable to the extent that they exceed the ratio which rates to Winnipeg bear to the standard mileage scale. In other words, the system of making rates from Fort William westward beyond Winnipeg tends to increase the rate per ton per mile with the increase in distance, rather than decrease, which is the established principle in rate-making."

In respect to the first point, the question of rates applying on carload movements of canned goods from points in Eastern Canada to points in Western Canada, as compared with rates on the same traffic from British Columbia canning points to distributing centres in the Prairie Province, and the claim that there is unjust discrimination with respect to the rates from the Eastern Canadian shipping points, was before the Board in the application of Mr. J. C. Hodgson, Chairman, Transportation Committee, Jam Section, Canadian Manu-

facturers' Association, and after hearing and careful consideration of the record, the Board issued Order No. 36561 dated July 3, 1925, refusing the application. The matter is fully gone into in judgment of the Board dated June 11, 1925, Vol. XV, Board's printed Judgments, Orders, Regulations and Rulings, p. 162. The finding of the Board in that case was summarized as follows:—

> " (1) The arrangement whereby the two sets of minima apply from British Columbia points to Winnipeg is brought about by competitive conditions.
>
> " (2) These competitive conditions have a bearing upon the interior and intermediate points.
>
> " (3) While these competitive conditions do not apply westward from Aylmer, this point, and other Ontario points, has the advantage of water competition which is not open to the movement from British Columbia points.
>
> " (4) The special competition complained of by the Eastern shippers is on the longer mileages. It is not shown that the difference in treatment, bearing in mind the circumstances which have brought about the existing conditions, amounts to unjust discrimination or undue preference in regard to the longer mileages from the East.
>
> " (5) The allegations that the existing rate structure has subjected Eastern shippers to a detriment by permitting the British Columbia shippers to cut into the business was not established."

No new or material evidence is before the Board on this record which would warrant any modification in the decision of the Board in the case of the application referred to. In this connection attention may be directed to the fact that since the judgment of the Board alluded to was rendered, and since the submissions of the Eastern Canadian Preserved Foods Traffic Association were filed with the Board, the carriers published, effective April 22, 1927, a rail and water competitive rate on canned goods from stations in Eastern Canada to Fort William and Port Arthur, applicable on traffic destined beyond, of 41 cents per 100 pounds, the effect of which reduces the rail and water rates from Eastern Canadian canning points to stations in Western Canada 10 cents per 100 pounds below the rates existing in 1925, when the Board's decision was rendered.

In applicants' submission of January 17, 1927, they requested the establishment of reduced rates from Fort William westbound to the principal distributing centres in Manitoba, Saskatchewan, and Alberta. This might be considered as a technical distinction from their application for reduction in the rates from Eastern Canada, but for all practical purposes no such distinction can be drawn, as the readjustment of rates westbound from Fort William is tied up with the question of through rates from eastern Canadian points, and the traffic does not originate at Fort William.

The second point of the applicants' submission deals with the rates charged from Fort William to points west of Winnipeg, which they allege are unreasonable to the extent that they exceed the ratio which rates to Winnipeg bear to the standard mileage scale. This submission deals only with the rates so far as canned goods traffic is concerned, and the question they raise, with respect to its application to all rates westbound from Fort William to points west of Winnipeg, is disposed of in the judgment of the Board under the heading of " Terminal Rates ".

File No. 34123.28.2

Submissions of Eastern Canadian Preserved Foods Traffic Association and Canadian Canners Limited, with regard to export rates on Canned Goods from Ontario points to Canadian Atlantic Ports.

The written submissions of the Eastern Canadian Preserved Foods Traffic Association and the Canadian Canners Limited (hereinafter referred to as the applicants) dated August 11, 1925, and December 29, 1926, respectively, deal with export rates on canned goods from Ontario points to Canadian Atlantic ports. Particular reference is made to the rates from Niagara Falls, N.Y., to New York, and from Niagara Falls, Ont., to Montreal, St. John and Halifax. The 5th class rates, applicable on canned goods, in carloads, for export, are as follows:—

From	To	Miles	Rate in cts. per 100 lbs.
Niagara Falls, N.Y.	New York	443	32
Niagara Falls, Ont.	Montreal	411	37½
	St. John	1,043	39½
	Halifax	1,211	39½

The 32 cent rate from Niagara Falls, N.Y., to New York, applies from stations in the Buffalo group and a zone including points located 30 miles east of Buffalo; for example, it applies from Ray, N.Y., 366 miles from New York.

The present basis of export class rates from Ontario points was established by Orders of the Board Nos. 586 and 641, dated July 25 and September 4, 1905, respectively. Applicants state that conditions and rates have materially changed since. The rates have changed, in that all rates throughout Canada and the United States have been increased since 1905 as a result of the increased cost of railway operation. The reduced purchasing power of the dollar, as compared with 1905, is reflected in all business activities. Applicants did not in any way elaborate what change in conditions is alleged as apart from the change in rates.

Reference is made to an increase in the differential between Niagara Falls, N.Y., and New York, and Niagara Falls, Ont., and Montreal, as existing in 1905 as compared with the present; or in other words, what is meant is the difference then and now. Applicants state in 1905 there was a spread of 3 cents to Montreal; 5 cents to St. John, and 6 cents to Halifax. At present the spread is 5½ cents to Montreal and 7½ cents to St. John and Halifax. There is nothing particularly significant in this change to which applicants draw attention. The same condition is reflected throughout the whole freight rate structure of the country as a result of the increased rate level as compared with 1905. With respect to the canned goods rate in question, the rate from Niagara Falls, N.Y., to New York in 1905 was 16 cents, to-day it is 32 cents. From Niagara Falls, Ont., to Montreal it was 19 cents in 1905 and is to-day 37½ cents. To St. John and Halifax the rates were 21 and 22 cents, respectively, in 1905; to-day the rate is 39½ cents to both points.

Applicants admit the difference in conditions existing in that portion of the United States here referred to as compared with Canada. The Eastern Canadian Preserved Foods Traffic Association state:—

> "They (the carriers) state that we have ignored entirely the important factors which had to be taken into consideration in fixing rates as between Niagara Falls, N.Y., and American ports and Niagara Falls,

> Ontario, and Canadian ports. Taking Montreal as an example for the Canadian port; we know of no factor that enters into the making of these rates that differs other than a density of traffic, which of course we appreciate is in favour of the American roads."

The Canadian Canners state:—

> ". . . We appreciate that American lines have somewhat lower rates on account of density of traffic and that their rates cannot be taken always as a criterion for our freight rates."

The population of the state of New York is greatly in excess of the whole population of the Dominion of Canada, and the United States railways have the advantage of density of traffic, more favourable operating and climatic conditions, and cheaper fuel.

It was stated by applicants that many of the United States canneries are located at points adjacent to the seaboard, whereas in Canada, owing to climatic conditions, canning is confined largely to inland territory. However, no details were given, so that there is nothing on the record showing what canning points in the United States are exporting canned goods or what rates they are paying; similarly, there is nothing showing what Canadian canning points are shipping canned goods for export. There are numerous canning points in Ontario located much closer to the Canadian seaboard than Niagara Falls, Ont. Whether canned goods are shipped from Niagara Falls, N.Y., for export, is not stated. The rates from Niagara Falls, Ont., were not attacked as to the unreasonableness of the rates in themselves, but on the allegation that competition makes it desirable that there should be something lower than the present rates. Applicants did not, however, make any specific application and there is nothing on the record showing what rates they consider necessary from a competitive standpoint. Quite aside from the Board's limitations with respect to establishing rates to overcome geographical disadvantages of location —which the applicants state they appreciate—the record would still be incomplete. How much export business is done by United States canneries adjacent to the Atlantic seaboard? What proportion of this might applicants reasonably expect to share? Are there other considerations apart from the question of rate that have a bearing on the situation? What reduction in rates would be necessary to give applicants an opportunity of competing? Any reduction made might be insufficient, therefore of no use and simply a paper rate. All these would be considerations particularly relevant, but no evidence is before the Board in respect to them.

During the season of lake and river navigation, Ontario shippers of canned goods forward a large share of their shipments from the canneries located at, and adjacent to, the water ports, via water lines to Montreal at lower rates than applicable by rail movement, reference being here made to domestic as well as export traffic.

While the submissions of applicants relate only to canned goods, inasmuch as the 5th class export rates apply thereon, under the basis of export class rates established from Ontario points by Orders of the Board in 1905, as already herein referred to, subject to subsequent increases authorized, the question would involve consideration of the whole Ontario export rate structure as it could not be dealt with as to canned goods alone. This is clearly indicated by the communication from The Canadian Industrial Traffic League, dated March 3, 1927, supporting the submissions of applicants. The Traffic League suggest a complete revision of the Board's Orders of 1905. Those Orders dealt not only with export rates to Montreal, but also to New York and other United States Atlantic ports. The Orders prescribed revised station groupings and percentages, from Ontario points, with respect to rates based on percentages of the Chicago-New

York rate. Niagara Falls, Ont., is in the 70 per cent group and the Traffic League suggests that the territory east of Port Dalhousie-Port Colborne be regrouped at 60 per cent, which is the same as the Niagara Falls-Buffalo group; with modification in other groups as well. The Niagara Falls-Buffalo group was 60 per cent at the time of issuance of the Board's Orders, and the entire situation was then carefully considered before the Ontario station groupings and percentages were prescribed. Between Buffalo or Niagara Falls, N.Y., and New York, the entire haul is over single line United States carriers, while from the Canadian territory there is involved a haul over Canadian carriers and across the international bridge before it reaches the rails of United States carriers, and what is a reasonable rate in the one case is not the criterion of a reasonable rate in the other.

I do not consider there exists any change in conditions—certainly it is not indicated on the record here—that would warrant any revision at this time of the Board's Orders of 1905 with respect to basis of export rates.

File No. 34123.29

Submissions of the Quebec Board of Trade

By written submission dated August 14, 1925, the Quebec Board of Trade endorsed the application of the Quebec Harbour Commission which is dealt with by the judgment of the Board.

Attention was also drawn in this written submission to the class rates from Quebec to Amos, Que., which, it was submitted, should be equalized with other class rates in effect from Quebec to points of similar mileage, and the comparisons given are shown below:—

FROM QUEBEC

To	Miles	1	2	3	4	5	6	7	10	Classes
		$	$	$	$	$	$	$	$	
New Castle, N.B.	430	0·97	0·84½	0·74	0·61½	0·49	0·45½	0·36½	0·34½	per 100 lbs.
Cobourg, Ont.	433	0·97	0·84½	0·74	0·61½	0·49	0·45½	0·36½	0·34½	"
Amos, Que.	432	1·30	1·13	0·97	0·81½	0·65	0·61½	0·45½	0·43	"

The rates above quoted from Quebec to New Castle and Cobourg are on the basis of schedule "A", which was prescribed by Order of the Board No. 3258, dated July 6, 1907, for application from certain specified points from which there were published special local class tariffs known as town tariffs, subject, of course, to the subsequent general increases under various Orders of the Board. While Amos is specifically referred to, a similar rate situation exists with respect to stations on the same line east or west thereof, as well as in other territory. The territory in question is not within that prescribed by the Order in question as schedule "A" territory. It may be further stated in this connection that even within schedule "A" territory there are a great many rates that are not on the basis above referred to, for the reason that, as stated, said rates are published only from specified town tariff points. For example, from Wallenstein to Mattawa, Ont., 430 miles, and taking only for comparative purposes the first and fifth class rates, they are $1.04 and 52½ cents per 100 pounds, respectively, while from Goderich to Stralak, 431 miles, the first and fifth class rates are $1.33 and 66½ cents per 100 pounds, respectively. It will, therefore, be observed that the rate disparities pointed out by the Quebec Board of Trade also exist in other portions of Eastern Canada, and even from certain points of origin in schedule "A" territory.

From the standpoint of shipping goods from Quebec to Amos in competition with such distributing centres as Montreal or Toronto, the rate advantage is with Quebec, the comparison being as follows:—

TO AMOS

—	1	2	3	4	5	6	7	10	Classes
	$	$	$	$	$	$	$	$	
From Toronto	1·69	1·47½	1·27½	1·06½	0·84½	0·81½	0·61½	0·59½	Per 100 lbs.
From Montreal	1·39	1·22	1·04½	0·87½	0·68	0·66½	0·49	0·47	"
From Quebec	1·30	1·13	0·97	0·81½	0·65	0·61½	0·45½	0·43	"

What is here involved, is, in principle, not dissimilar from what is raised in the submissions of the Town of Simcoe and the Canadian Canners Limited, re so-called town tariff class rates, files numbers 34123.3 and 34123.16, which are separately reported on herein. For the reasons set out in the report in the cases last named, and in the absence of the matter having been developed in more detail, I do not consider any direction should issue in the matter at this time. It is a question that would open up a wide field and would require a most exhaustive and lengthy study of the rates and traffic movement and much data that are not available to the Board on this record.

File 34123.30

Moose Jaw Board of Trade

The written submission of the Moose Jaw Board of Trade, dated August 13, 1925, may be summarized as follows:—

1. Opposition to any discrimination as between jobbing centres in Western Canada.
2. That the provisions of Classification No. 17 should be adhered to by all parties both in spirit and letter, it being stated it was the intention of carriers to issue commodity tariffs overriding certain provisions of the Classification, which will be favourable to the City of Winnipeg, but will offset the geographical advantages that the jobbing centres in Saskatchewan bear to the consumer.
3. That merchandise classifying 5th class and higher, in carloads, should move under class rates and not under commodity rates.
4. Special consideration of the live stock industry in Western Canada and freight rates thereon.

Dealing with the above points seriatim.

1. This has reference to the matter of terminal rates from Fort William, which is dealt with in the judgment of the Board.

2. Applicants did not develop this point of their submission. There is no evidence, or even allegation, that the provisions of Classification 17 are not adhered to. With regard to commodity tariffs overriding certain provisions of the Classification, it may be stated that it is a very general practice throughout the country to publish commodity rates which are on a lower basis than would be provided under the classification rating and the class rate tariff and, certainly, these are in the public interest. The provisions of the Railway Act as to unjust discrimination apply with equal force to commodity rates as to class rates. No evidence was submitted as to commodity rates which, it is alleged, favour Winnipeg, and are unjustly discriminatory against ship-

ping centres in Saskatchewan, and it may be that this also has reference to the matter of Fort William terminal rates. The matter not having been developed, it cannot be further dealt with.

3. Nothing was submitted by applicants under this heading as to why commodity rates should not be permitted on traffic classifying 5th class, and in the absence of this point being developed by the applicants, the matter cannot be further dealt with.

4. The question of live stock rates is separately dealt with in connection with file 34123.1.

File No. 34123.32

Submissions of Estevan Board of Trade; Brandon Board of Trade and Civics, and Counsel for Province of Saskatchewan, re rates on Lignite Coal from the Souris Valley Field in Southern Saskatchewan.

This matter was heard at sittings of the Board in Regina June 22, 1926, Vol. 464, pages 7600 to 7655, and argument of counsel for province of Saskatchewan is in Vol. 506, pages 6199 to 6208.

As I read the evidence and the argument it is not urged that there should be any change in the present rates on lignite coal from the Souris Valley district unless there is to be a modification in the rates from Alberta points to prairie destinations east of Moose Jaw and Regina.

At page 7641, Vol. 464, the witness being Mr. Hawkinson, Secretary of the Saskatchewan Coal Operators' Association, the following discussion took place:—

> "Mr. McEwen: Your main contention I understand is this, that whatever adjustment is made in rates on coal the same differential in regard to rates on your coal should be maintained?—A. That is right.
>
> "Mr. Woods: You are not asking for a greater differential as compared with Alberta lignite than now exists?
>
> "Mr. McEwen: No, that is correct."

At page 7646, reference here being made to rates from Alberta mines as compared with those from the Souris Valley district, the following is found:—

> "Mr. Flintoft: You do not complain of the present rate relationship Mr. Hawkinson?—A. Not very strenuously. We could stand a lower rate."

In argument, at page 6206, Mr. McEwen stated:—

> "I did not particularly urge for lower rates in connection with the movement of this coal, at Regina, and I am not going to urge it now unless there is going to be some reduction of rates in basic commodities. If during the course of this investigation the Board comes to the conclusion that basic commodities should be granted some reduction in rates, then I wish this coal matter taken into the consideration of the Board, and facts in connection with it which were brought out at Regina borne in mind, that is, the relative value of this coal with other coals, and the fact that there must be some differential in the rates on this particular coal and in the rates on which coal of a higher grade moves."

And the following discussion is also found at pages 6206-7:—

> "The Deputy Chief: When you speak of rates on other basic commodities being reduced what do you mean by that, what other commodities have you in mind?

"Mr. McEwen: The province of Alberta has made an application with regard to reduced rates on coal, and the rate which they want is one which will move their steam coal particularly to the city of Winnipeg. That is the great market for Bienfait lignite coal.

"The Deputy Chief: Is what you have in mind to say that if the rate from Drumheller to other points were reduced you would like a similar reduction.

"Mr. McEwen: We would like the same spread maintained between our rates and their rates."

The Board has before it, separate from the General Rate Investigation, the question of coal movement from Alberta to Ontario. I assume that any action taken in that regard would have a bearing on the rates on coal from Alberta mines to prairie destinations also, and consider that the whole question of rates on coal should, if necessary, be dealt with at a later date and independently of the General Freight Rate Investigation.

File 34123.33

Lethbridge Breweries, Ltd., Lethbridge, Alta.

What was involved in this submission was disposed of by Order No. 36911, dated October 12, 1925.

File 34123.34

Chamber of Commerce of Joliette, Que.

This is a request that Joliette be grouped with Montreal for rate-making purposes with respect to traffic between Joliette and stations west of Montreal in Ontario, also Western Canada. The matter was spoken to at sittings of the Board in Montreal on January 8, 1926, Vol. 449, pages 304-341.

Joliette is situated on both the Canadian Pacific and the Canadian National Railways, northeast of Montreal. From Montreal to Joliette via Canadian National Railways, the distance is 37 miles, and via the Canadian Pacific Railway 55 miles. It was stated by Mr. Guibault, K.C., representing the town of Joliette, that the distance via the Canadian National Railways from Ottawa to Montreal, as compared with Ottawa to Joliette, is about 13 miles farther to the point last named, and, in view of this small difference in mileage, it was submitted that Joliette might properly be grouped with Montreal for rate making purposes. As a matter of fact, the difference in mileage is 20.4 miles. Representatives of the railway companies stated that with respect to traffic between Joliette and points in Ontario, this would not be routed via Ottawa, so that, based on the mileage via which traffic is handled, there is a considerably greater difference in mileage than represented merely by taking the difference from Ottawa as between Montreal and Joliette. Further, when computing mileage via Ottawa to points in western Ontario the distance from Joliette is actually greater than through Montreal. Via the Canadian Pacific Railway, the distance from Joliette to Toronto via Montreal is 399 miles, and via Ottawa, 406 miles. Via the Canadian National Railways, the distance Joliette to Toronto via Montreal is 371 miles and via Ottawa 374 miles. The distance Toronto to Montreal is 334 miles via the Canadian National Railways and 344 miles via Canadian Pacific Railway.

With regard, however, to the class rate traffic, the rates between points west of Montreal and stations east and south of Montreal are not predicated

on a strict mileage basis. The territory is grouped, and under any group rate system, mileage is not the sole controlling factor, as numerous stations with varying mileages are included in the same group.

To and from points in Ontario and stations in Quebec, west and east of Hull, and east and south of Montreal, on the lines of the Canadian National and Canadian Pacific companies, the grouping of territory was defined and prescribed by the Board by its Order No. 3258, dated July 6, 1907, in the so-called International Rates Case. The grouping and scaling there fixed was as follows:—

To—

Aylmer	4 cents 1st class over Hull.
Gatineau to Buckingham, inclusive	6 cents 1st class over Hull.
East of Buckingham Junction to and including St. Augustine; north and south of St. Therese Junction to and including St. Jerome and St. Eustache	8 cents 1st class over Montreal.
St. Therese Junction to Ste. Rose, inclusive	4 cents 1st class over Montreal.
St. Vincent de Paul to Joliette, inclusive	4 cents 1st class over Montreal.
Lanoraie to Three Rivers, inclusive, including Berthier	8 cents 1st class over Montreal.
East of Three Rivers to Quebec, inclusive	10 cents 1st class over Montreal
East and South of Montreal to and including St. Rosalie, St. Johns, St. Isidore, Howick Junction and Cecile Junction	4 cents 1st class over Montreal.
Doucets Landing, Victoriaville, Dixville and east of St. Rosalie, also south of points named in preceding group (C.P.R. Group to correspond)	8 cents 1st class over Montreal.
East of Victoriaville to Point Levis	10 cents 1st class over Montreal.

As a result of the percentage increases in rates since 1907 the first class rate bases over Hull or Montreal are now higher than above set out.

With reference to rates between Eastern Canada and points west of Fort William, the present station grouping in Eastern Canada was last under review by the Board in 1922, and some modification was prescribed, see *re* Freight Tolls, 1922, Vol. XII, Board's Judgments, Orders, Regulations and Rulings, pages 69 and 70. With respect to rates to and from Western Canada, Joliette, 37 miles from Montreal via the Canadian National Railways, is in the same group with other stations on the Canadian National Railways at distances from Montreal varying from seven to seventy-two miles. On the Canadian Pacific Railway, Joliette is in the same group with other stations situated at distances from Montreal varying from 22 to 101 miles.

Most adjustments of rates on a group basis result in some inequalities when distance alone is considered, but such inequalities are not of necessity unreasonable or unjust. Under any group adjustment, lines must be drawn somewhere, and the difference in distance between the most distant point in one group and the least distant point in the next more distant group, must be comparatively small; further, it necessarily follows that even within the same group, rates to the nearer points on the edge of the group are lower, distance considered, than to or from other points in the same group. Under these circumstances, in considering adjustment of group rates, difference in distance between selected points cannot be regarded as controlling, and the reasonableness of such rates must be judged by average conditions, because a comparison made between specific points in one group, and nearby points in another group, does not reflect the relation as a whole.

Inasmuch as there are no stations east or south of Montreal that are included in the Montreal group, it is obvious that the addition of Joliette to the Montreal group would involve an entire regrouping of said territory. It would also involve an appreciable reduction in the revenue of the carriers as, if Joliette were added to the Montreal group, there are numerous other stations that would have to be similarly included. Then, again, stations just east or south of the newly constructed Montreal group would, of course, demand a revision of their rates. Groups long maintained are presumably fair, and should not be disturbed unless substantial justice requires it. The present group arrangement has not been the subject of complaint from other points or territory

in the province of Quebec, and I do not consider on the record here that a direction should be made for any change of such far-reaching character as would be involved by giving effect to the application.

File 34123.37

Application of Central Creameries, Limited, Calgary, Alberta, for reduction in rate on butter, carloads, from Calgary to Vancouver.

This is an application for a reduction in the current rate on butter, in carloads, from Calgary, Alberta, to Vancouver, B.C. The application was first covered by written submission dated August 14, 1925; it was spoken to at sittings of the Board at Calgary on the 2nd of July, 1926 (Vol. 467, pages 8380-8397); and at the final hearing on March 29, 1927, argument on this application was submitted by counsel for the province of Alberta (Vol. 505, pages 5716-5719).

In the written submission, and at the Calgary sittings, applicant alleged that the present rate is excessive and stated this was evidenced by the rate published by the Canadian Pacific Railway on eggs, in carloads, from Vancouver to Edmonton. In other words, the rate on eggs, last mentioned, was stated by applicant to be the basis of his allegation that the present rate on butter from Calgary to Vancouver is excessive.

In the Canadian Freight Classification, eggs are classified fourth class, carload minimum weight 24,000 pounds; butter is classified third class, carload minimum weight 20,000 pounds. The fourth class rate from Vancouver to Calgary is $1.10 per 100 pounds, and to Edmonton it is $1.25 per 100 pounds. The third class rate from Calgary to Vancouver is $1.45 per 100 pounds, but a commodity rate of $1.37 per 100 pounds is in force on butter, in carloads, from Calgary to Vancouver. The Canadian National Railway publish a number of competitive commodity rates from Vancouver to Edmonton and Calgary on the basis of the lower Vancouver-Calgary class rates on the same articles. Effective November 26, 1924, the Canadian National Railway published a competitive commodity rate of $1.10 per 100 pounds on eggs, in carloads, from Vancouver to Edmonton. The Canadian Pacific Railway met this competition by publishing the same rate. The situation is that, with respect to commodities moving in volume, there is a parity of rates maintained between Calgary and Edmonton, and Vancouver. The distance from Edmonton to Vancouver via Canadian National Railways is 766 Miles, and via Canadian Pacific Railway, 836 miles. From Calgary to Vancouver via Canadian Pacific Railway is 642 miles and via Canadian National Railways is 996 miles. The provisions of section 329 of the Railway Act enable the Canadian Pacific Railway to publish a competitive rate from Edmonton to Vancouver to meet that of the Canadian National Railways, without applying it to or from intermediate points; similarly, it permits the Canadian National Railways to publish via its longer mileage from Calgary to Vancouver, competitive rates on the same basis as established by the Canadian Pacific Railway between the same points.

The Railway Act specifically authorizes the establishment of competitive rates which shall not be subject to the long and short haul clause under the provisions of the Act and the Board has always held, and it is set out in numerous Judgments that have been issued from time to time, that such competitive rates, made under conditions which vary in almost every instance and are frequently very much below the normal basis, cannot properly be taken as a yardstick by which to measure the reasonableness of rates *per se*. If they could, then all the numerous higher normal rates in effect on commodities similarly classified could be immediately condemned and the result would make for a rigidity in the freight rate structure of the country that would be extremely detrimental to the shipping public.

While it was stated at the Calgary sittings (page 8383) that the application concerned solely the rate on butter between Calgary and Vancouver, and did not include points outside of Calgary, in the course of the argument it was suggested that the matter be considered from the standpoint of reducing the classification rating on butter, in carloads, from third to fourth class, or the same rating as applicable on eggs. This, of course, would make the reduction applicable throughout Canada, east and west. While some comparison was made between eggs and butter, with respect to value, the matter was not fully developed and the record furnishes nothing conclusive on this point. They are not commodities which compete with each other. Applicants expressed their willingness to have the carload minimum weight on butter in the Freight Classification increased to 24,000 pounds. With regard to this proposition of applicants, however, it may be stated that when Canadian Freight Classification No. 17 was before the Board for approval, a carload minimum weight of 24,000 pounds was proposed on butter by the carriers, but this met with much opposition both in Western and Eastern Canada and the 20,000 pounds minimum was continued; so that obviously applicants are not in agreement with many other shippers of butter with respect to the matter of carload minimum weight. The classification rating on butter was fully considered at that time and the present rating was held by the Board to be justified (see Judgment *re* proposed Canadian Freight Classification No. 17, Volume XV, Board's Judgments, Orders, Regulations and Rulings, at page 199).

On the record here, the Board would not be warranted in directing any change in either the classification rating, or the present commodity rate on butter from Calgary to Vancouver, it not having been shown that the latter is unreasonable *per se*.

File 34123.37.1

Submission of National Dairy Council of Canada for reduction in freight rates on Butter and Cheese.

The National Dairy Council of Canada filed with the Board a printed submission dated August 15, 1925, making application for a reduction in freight rates on butter and cheese. This application, so far as it relates to the rates on butter from points in the provinces of Manitoba, Saskatchewan and Alberta, was spoken to at sittings of the Board held in Winnipeg on June 14 and 15, 1926. The application was endorsed by counsel for the provinces of Manitoba, Saskatchewan and Alberta, also by the Canadian Council of Agriculture. Application for reduced rates on butter was included in the separate submissions filed by counsel for the three provinces named, which will be herein considered and dealt with along with the submission of the National Dairy Council. The submission of counsel for the province of Manitoba dated August 21, 1925, set out:—

> "That mixed farming has become a very important industry in Manitoba; that with the increased volume of business, lower rates outward should prevail on cattle, sheep, hogs and dairy produce of all kinds."

The supplementary submission of counsel for the Province of Saskatchewan dated May 3, 1926, read as follows with regard to butter:—

> "That prevailing rates on butter, eggs, poultry and poultry products moving from points in the Province of Saskatchewan for consumption in Canada and to Montreal and Vancouver for export are excessive having in mind the increased production and the volume of these commodities, the ever increasing exportable surplus, the lower prices obtaining in

domestic and export markets, the substantial increases in rates allowed during a period of falling prices, the competition of other countries in our own and export markets and the desirability as stated in Order in Council P.C. 886 of assisting the basic industry of agriculture.

The Government of the province of Saskatchewan asks:—

" (*a*) Lower commodity rates on butter, eggs, poultry and poultry products moving to Toronto, Montreal, and all points east for domestic consumption.

" (*b*) Special export rates lower than existing rates on butter, poultry and poultry products to Montreal and other eastern points for export.

" (*c*) A special commodity rate on butter from Saskatchewan stations to Pacific coast points for export to Japan and other Far Eastern points, and to Great Britain through the Panama canal.

" (*d*) That local rates on butter, eggs, poultry, and fresh meats east and west be equalized, the prevailing rates being from 6 per cent to 57 per cent higher in prairie than in eastern territory."

The printed submission of counsel for the province of Alberta asks:—

" 5. That in order to ensure the freest possible interchange of commodities between the provinces of Canada and the expansion of its trade, having due regard to the needs of the basic industry of agriculture, there should be made effective a special commodity rate on butter from Alberta shipping points to cover minimum car shipments of fifty thousand pounds and twenty-four thousand pounds to Montreal and other eastern Canadian points, and also to Pacific coast points, on such a basis as will enable the Alberta producer to compete favourably in these markets.

" 6. That in order to encourage the movement of traffic through Canadian seaports there should be made effective a lower rate on butter via Montreal and other Atlantic ports than at present exists and that a favourable export rate on butter via Pacific coast points should be established and made effective. Exhibit 12 shows what the export rate on butter would be to Vancouver based on the rate in effect on the same commodity from Toronto to Montreal for export."

Additional evidence on behalf of the province of Alberta was submitted at Calgary on July 2, 1926 (Vol. 467). The evidence of witness for the railway companies was given at Ottawa, March 10, 1927 (Vol. 502, p. 4680-4701). The argument of counsel for the province of Alberta is in Vol. 505, p. 5688-5697; that of counsel for the province of Saskatchewan in Vol. 506, p. 6191-6199; and that of counsel for the province of Manitoba in Vol. 507, p. 6491-2. In his argument at page 5688 (Vol. 505), counsel for the province of Alberta defined and confined the scope of his submission, as already above quoted, as follows:—

" Now, the next one that I am taking up is the rate on butter to Vancouver, and that will be found at Nos. 5 and 6 of the particular items of Alberta's Case, but I want to point out to the Board that I am confining, so far as this argument goes, my application to the rate to Vancouver on butter, although the language of sections 5 and 6 is somewhat broader than that."

Reference is made to the desirability of assisting the basic industry of agriculture and encouraging the movement of traffic through Canadian ports. A good deal of evidence was given, and a considerable number of exhibits were filed, showing the position and development of the dairy industry in the three

Prairie Provinces. Exhibits 8, 9, and 10, filed by the National Dairy Council, contain statistics showing the production of creamery butter, but do not show the value. The figures given below, showing the production and value of creamery butter for the three Prairie Provinces, are taken from the records of the Dominion Bureau of Statistics. With regard to the quantity of production in pounds, there are only a few very minor differences for some of the years between the figures in these exhibits and the records of the Bureau of Statistics:—

MANITOBA

Year	Creamery Butter		
	Lb.	$	Cents per lb.
1900	1,557,010	292,247	18·76
1907	1,561,398	388,427	24·87
1910	2,050,487	511,972	24·96
1915	5,839,667	1,693,503	28·99
1916	6,574,510	2,038,109	31·00
1917	7,050,921	2,595,472	36·80
1918	8,436,962	3,897,476	46·19
1919	8,268,342	4,350,693	52·61
1920	7,578,549	4,282,731	56·51
1921	8,541,095	3,253,057	38·08
1922	10,559,601	3,603,491	34·12
1923	10,730,060	3,662,444	34·13
1924	12,632,814	4,160,707	32·93
1925	13,663,312	4,909,958	35·93

SASKATCHEWAN

1900	143,645	29,362	20·44
1907	132,803	36,599	27·55
1910	1,548,696	381,809	24·65
1915	3,811,014	1,055,000	27·68
1916	4,310,699	1,338,180	31·04
1917	4,220,758	1,575,965	37·33
1918	5,009,016	2,221,403	44·34
1919	6,622,572	3,495,172	52·77
1920	6,638,656	3,727,140	56·14
1921	7,030,053	2,552,698	36·31
1922	8,901,144	3,066,573	34·45
1923	10,867,010	3,632,377	34·42
1924	13,543,001	4,378,106	32·32
1925	15,946,233	5,855,979	36·72

ALBERTA

1900	601,489	123,305	20·49
1907	1,507,697	362,782	24·06
1910	2,149,121	533,422	24·82
1915	7,544,148	2,021,448	26·79
1916	8,521,784	2,619,248	30·72
1917	8,943,971	3,414,541	38·17
1918	9,053,237	4,025,851	44·46
1919	11,822,890	6,132,733	51·87
1920	11,821,291	6,555,509	55·45
1921	13,048,493	4,543,007	34·81
1922	15,417,070	5,126,844	33·25
1923	17,868,853	5,891,186	32·96
1924	22,339,857	7,059,630	31·15
1925	19,630,101	6,959,059	35·45

Figures for 1926 are not available.

With regard to the province of Manitoba, Mr. L. A. Gibson, Dairy Commissioner, stated (Vol. 463, p. 6966) that, "This year the way it is going at the present time we will show a larger increase than in 1925, probably a million pounds more, probably fourteen and three-quarters or fifteen million pounds for 1926." Mr. Reid, Dairy Commissioner for the province of Saskatchewan, stated (Vol. 463, p. 6978):—

> "During the first five months of 1926 there were 5,109,809 pounds of butter manufactured. This is an increase of 31.3 per cent over the same period for 1925, and there is every indication of a large increase for the whole year, and we expect the total make for 1926 to be approximately 17,000,000."

Counsel for the National Dairy Council read into the record letter from the Dairy Commissioner of the province of Alberta, in which the following statement appears (Vol. 463, p. 6999):—

> "You will note that there was a temporary reduction in last year's output, but if the records that we have for the cream supplied to creameries during the month of May may be taken as an indication, we should this year have an increase of somewhere between twenty and thirty per cent in the creamery butter output for 1926 over that of the previous year."

Exhibit 4 shows exports of Canadian butter to Great Britain and value for the past six years as follows:—

Year ending Dec. 31—	lb.	$
1920	2,735,328	1,568,318
1921	4,705,564	1,915,012
1922	17,527,607	6,429,378
1923	4,365,597	1,519,849
1924	15,236,116	5,405,608
Fiscal year ending March 31, 1926	18,110,399	6,747,115

There is also shown exportation of Canadian butter from the port of Vancouver as follows:—

Year ending March 31—	lb.	$
1922	348,678	129,837
1923	483,264	190,681
1924	1,494,019	526,737
1925	1,847,854	646,291
1926	1,268,899	479,047

The exhibit further states:—

> "In dealing with the exportation of Canadian butter via Vancouver the development of a market in Japan is worthy of note. This is shown by the following figures from the Dominion Bureau of Statistics:—

EXPORTATION TO JAPAN

Year ending Dec. 31—	lb.	$
1920	448	270
1921	5,351	2,445
1922	219,270	90,986
1923	382,007	149,306
1924	566,708	207,901
Fiscal year ending March 31, 1926	306,308	126,529

The following is taken from exhibit 8 prepared by Dairy Commissioner Gibson of the Department of Agriculture, province of Manitoba.

> "The amount of creamery butter shipped out of the Province to points in Eastern Canada, the Old Country and a few shipments to Cal-

gary and Vancouver—400 fifty-six pound boxes to each car—is as follows:—

Year	Carloads	Year	Carloads
1915	50	1921	108
1916	68	1922	115
1917	96	1923	180
1918	175	1924	198
1919	153	1925	315
1920	134		

With regard to the province of Saskatchewan, the following is contained in exhibit 9:—

"A review of the above figures showing a substantial and regular increase from year to year in creamery output each year from 1920 to date must be accepted as conclusive evidence of the stability of the dairy industry in the province.

"During the first five months of 1926 there were 5,109,809 pounds of butter manufactured. This is an increase of 31.3 per cent over the same period for 1925 and there is every indication of a large increase for the whole year.

"A further evidence that dairying is not only here to stay but will assuredly continue to gain in favour and volume of production may be found in the increased number of farmers patronizing the creameries of the province from year to year. The following are the number of creamery patrons for the past six years:—

1920	20,000	1923	36,000
1921	22,000	1924	38,000
1922	28,000	1925	45,000

"The reports for the current year to date also show the industry in a strong position.

"Below is shown the amount of creamery butter shipped out from Saskatchewan 1916 to 1925 with the percentage increase and per cent of total make exported:—

PERCENTAGE OF TOTAL PRODUCTION EXPORTED

Year	Exported from Saskatchewan	Percentage of total make exported
1916	1,000,000	23·0
1917	1,500,000	35·6
1918	2,425,000	48·4
1919	2,600,000	39·2
1920	3,318,500	49·9
1921	3,830,000	54·4
1922	5,000,000	56·1
1923	7,000,000	64·4
1924	9,500,000	69·9
1925	12,357,744	77·4

Similar details are not on record for the province of Alberta, but it is stated (exhibit 10) that some 3,000,000 pounds were exported in 1925.

Exhibit 11 covers a statement of imports of butter as follows:—

STATEMENT OF IMPORTS OF BUTTER FROM THE UNITED STATES, AUSTRALIA AND NEW ZEALAND, ENTERED FOR CONSUMPTION IN CANADA DURING THE FISCAL YEARS ENDING MARCH, 1924, 1925 AND 1926

Fiscal Year	United States		Australia		New Zealand	
	Pound	Value	Pound	Value	Pound	Value
1924	165,801	$57,564	.....	.....	1,296,707	$512,888
1925	23,853	10,567	.....	.....	162,848	59,579
1926	73,930	29,118	2,485,502	$910,814	2,342,966	928,395

STATEMENT OF IMPORTS OF BUTTER FROM AUSTRALIA AND NEW ZEALAND ENTERED FOR CONSUMPTION IN CANADA FROM OCTOBER 1, 1925, TO APRIL 30, 1926

Country	Lb.	Value
Australia	2,863,998	$1,047,145
New Zealand	2,876,142	1,151,549

Reference was made to the curtailment of the exportation of butter to the United States on account of the Fordney Tariff, but detailed figures were not given. According to the Canada Year Book 1925, page 476, exports of butter from Canada to the United States, years 1922 to 1925, were as follows:—

Year	Lbs.
1922	3,032,939
1923	2,423,085
1924	6,394,927
1925	3,437,690

Reference was also made to the probable increase in importations from Australia and New Zealand as a result of the trade agreement brought into operation October 1, 1925, which reduces the duty from Australia from 4 cents to 1 cent per pound, and from New Zealand from 3 cents to 1 cent per pound. It was admitted, with regard to the importations from Australia and New Zealand, that this butter had entered Canada at the period of year when Canadian production was practically at a standstill and the prices usually high, and that a very negligible quantity was marketed in the Prairie Provinces. In his argument at page 6196, Vol. 506, counsel for the province of Saskatchewan stated: "There is no dangerous situation at present, I think, with regard to imports of Australian and New Zealand butter." Later returns covering importations of butter into Canada, as taken from monthly report of trade of Canada, are as follows:—

	From New Zealand lbs.	From Australia lbs.
January, 1927	729,288	.....
February, 1927	1,563,184	56,000
March, 1927	1,710,688	234,808
	4,003,160	290,808
Twelve months ending March, 1927	4,904,536	801,324

The volume of importation represents a small figure when compared with the total production of butter in Canada, which is given as 269,494,967 pounds for 1925.

Some data were submitted relating to cost of transportation of butter to Great Britain from other competitive butter producing countries, namely, Australia, New Zealand, Denmark, Argentine, Russia, Sweden and Netherlands, but there was some question as to the accuracy of some of the figures and they were not conclusive. In any event it transcends the functions and power of the Board to endeavour to adjust that portion of the through transportation represented by the rail freight rates in Canada, and change them from time to time, so that the Canadian producers' cost of transportation to Great Britain would not exceed that from competing countries; and, furthermore, the proposition would be impracticable, owing to the rates by water transportation from such countries being subject to constant fluctuation, as well as the wide variance as between different competing countries.

Dealing further with the position of the industry, Mr. Reid, Dairy Commissioner for Saskatchewan, and who is also Secretary of the Saskatchewan Dairy Association, stated (Vol. 463, p. 6978) that the figures showing a substantial and regular increase from year to year in creamery output must be

accepted as conclusive evidence of the stability of the dairy industry in the province. Again, p. 6992, Mr. Reid replied to inquiry of Deputy Chief Commissioner as follows:—

> "The Deputy Chief: Q. Would you say that the Dairy industry is a profitable industry as a whole, but that there might be instances of people who on account of conditions under which they operate or on account of their attitude towards it, lose money; but on the whole the Dairying Industry is a paying proposition, is it not?—A. I would say undoubtedly it is a paying proposition."

While the price of butter has declined considerably from its peak price, it is stated the cost of production has also been reduced. Mr. McKay, Manager of the Manitoba Co-operative Dairies, at page 7026, Vol. 463, stated: "He (the farmer) is receiving more to-day in proportion than he was at the high period, because at the high period operating costs were also high." He also stated at page 7025 that the cost of manufacture has decreased in the last four or five years.

With regard to that portion of the submission relating to "the encouragement of the movement of traffic through Canadian ports," it may be pointed out that in so far as this involves the question of adjusting rates so as to divert the export movement of butter through Canadian ports instead of through U.S. ports, there is no allegation or evidence that any of this export butter traffic moves through other than Canadian ports.

Taking typical shipping points, the situation with regard to the butter rates here in question may be summarized as follows:—

From	To Vancouver (Rates in cents per 100 lbs.)			
	1915	Peak, 1920	Present rate	
			Class	Com.
Calgary	91	154	145	137
Edmonton	91	154	166	137
Moose Jaw	142	231½	201	192½
Winnipeg	147	248½	251	221

From	To Montreal (Rates in cents per 100 lbs.)			
	1915	Peak, 1920	Present rate	
			Local	Export
Calgary	194	345	307½	246
Edmonton	194	345	307½	246
Moose Jaw	154	277½	247½	210
Winnipeg	108	200	178½	161

Generally speaking, in comparison with other traffic moving under class or commodity rates, butter has not been subjected to any greater increase and has received equal decreases since the peak in 1920. The very gratifying and marked development of the dairy industry in the three Prairie Provinces was pretty fully set out on the record by counsel for the applicants and above summarized. There was some discussion as to whether the development of the

industry had been hampered by the freight rates on butter. On this point the following excerpt from the record is quoted (Vol. 463, p. 7037 *et seq.*):—

> "The DEPUTY CHIEF: Mr. Scott, I wonder if you would follow me along this line, and if you do not I would like to invite your views on the subject. When the Order in Council ordered us to do our best to encourage the interchange of commodities, and the development of the agricultural industry, we received submissions from the various sections of the country, and particularly from the agricultural industry, contending that the rates are injurious to their welfare. In this instance we have received a submission, the first part of which exemplifies the wonderful developments that have taken place in the dairy industry in the west in recent years, and I invite your view on this point—the rate which is being charged by the transportation companies is in no way detrimental to the development of the industry, not only from the point of view of competition, but from the point of view of hindrance to further development of the industry as well. Therefore, so far as I can follow the argument, it would seem to me that the whole thing boils down to a question of the reasonableness of the rates in themselves as compared with the services rendered by the transportation companies, and in that respect I do not believe that the Order in Council helps us very much unless you can show that the rates in themselves at the present time hinder the development of the industry, or hamper it in its competition.
>
> "Mr. SCOTT: I cannot say that the rates that now exist are so high that they are preventing development, because that is not the fact. The dairying industry is growing very fast. Our reason for emphasizing that growth and that development is, because it is a recognized principle in rate making, that the greater the volume the lower the rate. If the rates were fair when we had a much less volume, now that the volume has increased as much as it has, we are entitled to lower rates.
>
> "The DEPUTY CHIEF: I follow you there. I think this exemplifies it so much more, that the problem boils itself down to a question of comparing rates enjoyed by the transportation companies on butter and other darying products, as compared with rates charged on other commodities. Is that not the case?
>
> "Mr. SCOTT: Yes.
>
> "The DEPUTY CHIEF: And that is fairly a question of the reasonableness of the rates, in itself?
>
> "Mr. SCOTT: Yes."

At page 7027, Vol. 463, Mr. McKay, Manager of the Manitoba Co-operative Dairies, being the witness, was asked by the counsel for the province of Manitoba whether the reduction made in freight rates on butter in 1922 had any effect, and the witness replied: "Well, that is a very difficult question to answer definitely."

In his printed submission, counsel for the National Dairy Council stated:—

> "According to the principles of rate making the volume of the commodity moving and the value of the commodity are two important elements to be considered in estimating the reasonableness of the rates charged by a railway company for hauling the commodity in question.
>
> "During the past few years the production, consumption in Canada, and the exportation from Canada of butter has greatly increased, therefore the volume of butter transported by the railways has also greatly increased.
>
> "During the same time the price of butter in Canada has been greatly reduced and the railway rates for hauling butter in Canada for both domestic consumption and export have been greatly increased."

It will be noted reference was made to increases in freight rates during the same period of time that the price of butter has been materially reduced. Similar reference is made in the submission of counsel for Saskatchewan. For example, basing on the wholesale price of butter per pound in Winnipeg, it was stated "the wholesale price to-day is 8 cents per pound less than it was in 1918 before any increases were put in effect by the railways" (Vol. 463, p. 6963). To take 1918 as the base for price comparison does not place the situation in proper perspective, for the reason that prices of commodities advanced very materially, and were in force a considerable period of time before freight rates were advanced. The first freight rate increase after 1914 took effect March 15, 1918, followed by further increases in August, 1918, and September, 1920, with reductions January 1, 1921, and December 1, 1921. There was a subsequent decrease in August, 1922, on a limited list of certain basic commodities, but this did not affect butter. The price movement, in the case of butter, is already shown herein in connection with the statistics as to production, but is reproduced below for ready reference:—

Year	Average value in cents per pound		
	Manitoba	Saskatchewan	Alberta
1915	28·99	27·68	26·79
1916	31·00	31·04	30·72
1917	36·80	37·33	38·17
1918	46·19	44·34	44·46
1919	52·61	52·77	51·87
1920	56·51	56·14	55·45
1921	38·08	36·31	34·81
1922	34·12	34·45	33·25
1923	34·13	34·42	32·96
1924	32·93	32·32	31·15
1925	35·93	36·72	35·45

Taking Manitoba, the price had advanced from 28.99 cents in 1915 to 46.19 cents in 1918 before there was an increase in freight rate; in the case of Saskatchewan the advance during the same period was from 27.68 to 44.34 cents; and in Alberta from 26.79 to 44.46 cents. The peak prices were reached in 1920.

Freight rates fixed to bear a relationship to the fluctuations in the price of commodities would have no permanency, nor would they necessarily have any relation to the cost of service, or other factors that are controlling in the establishment of rates, and this has never been accepted as a valid or proper principle of rate-making. The following excerpt from the Board's judgment in the complaint of the National Dairy Council of Canada on behalf of the Manufacturers's section of the Alberta Dairymens' Association *re* freight rates on butter east and west of Calgary and Edmonton (Vol. XII, Board's Judgments, Orders, Regulations and Rulings, p. 146) is particularly relevant on this point:—

> "The application was, in substance, the contention that because the selling price of butter had gone down since the rates were increased the rates should be accordingly reduced.
>
> "The principle of charging what the traffic will bear is one of the factors which has been recognized in connection with rate regulation. At the same time, it has not been accepted as the only factor. If a reduction in the price of a commodity is to automatically bring with it a reduction in the rate, it would logically follow that an increase in the price of a commodity would automatically carry with it an increase in the rate. This principle has not been accepted by the Board as valid. The

mere ability of an article to pay, aside from the question of whether the increase in revenue to be derived from the increased rate is justifiably necessary, is not a conclusive justification for an increase in rate. In the increase in rates which Canada has had to face, the increase in rates was not made at the same time as prices went up. A considerable period of time elapsed before the rates were increased, and the justification for the increase was the increased cost to which the railways were subjected. "

Exhibit 12 filed by the National Dairy Council shows export and domestic rates from prairie points to Montreal and Vancouver on a wide range of articles. This comparison does not provide the Board with anything determinative as to the reasonableness of the rates on butter. Generally speaking, there is no analogy whatever between the articles compared, which are widely different in character, take different classification ratings, and have a wide range in values, although the values were not shown. For example, obviously quite different factors would be considered in establishing commodity rates on such articles as returned empty carriers, scrap paper, scrap rubber, stone, potatoes, lumber, bags and bagging, iron or steel angles or bars, paper bags, cereals, and many others enumerated, than would be given weight in the fixation of rates on butter. The majority of the articles enumerated are not of a perishable nature and are handled in ordinary box car service. The conditions with regard to the handling of butter are quite dissimilar, as it is a commodity that must be handled in refrigerator cars that are specially cleaned for the purpose. A comparison with packing house products leaves out of consideration that the carload rating on the latter is 5th class as compared with 3rd class on butter. The present classification rating on butter was under consideration by the Board when Canadian Freight Classification No. 17 was before it for approval, and the Board found that the present rating was justified (Vol. XV, Board's Judgments, Orders, Regulations and Rulings, p. 199).

In exhibit 13 compiled by Mr. Shiels for the Western Canada Dairy Association, numerous computations and comparisons were shown, and there were set out statements of what it was alleged the rates on butter would be if based on the gross ton mile cost figures of the Canadian Pacific Railway, plus 50 per cent to provide for special equipment and profit. Under Mr. Shiels' method of calculation he produced rates very much below those now in force. Mr. Shiels stated that he had used the gross ton mile figures shown in statement produced by the Canadian Pacific Railway, pursuant to request of counsel for British Columbia (exhibit F.H. 98, p. 17); for the tare weight of the car a figure of 20 tons had been taken; and that nothing had been included to cover the return empty haul. The gross ton mile cost varies in the different railway operating districts and it developed that in computing the cost, say from Calgary to Montreal, Mr. Shiels had not used the operating district mileage of the railway for the various districts, and subsequently an amended exhibit was filed. Mr. Shiels stated the "plus 50 per cent" was allowed to cover railway operating costs which were not allocated between districts and, therefore, not included in the gross ton mile figures supplied by the Canadian Pacific Railway; profit; cost of special equipment; and "those items that I did not understand." Later, at the final hearing, a second amended exhibit was filed in which the calculation was based on a tare weight of 31 tons.

Counsel for the railway pointed out that when computing gross ton mile cost figures on any particular movement, they have to be applied first on the gross ton miles hauled in the loaded movement, and then there has to be added to this the gross ton mile cost for the tare weight of the car for the percentage relationship of empty to loaded freight car miles by districts. This is illustrated at page 57 of exhibit F.H.98, in conjunction with the data shown on

page 56 of the same exhibit. While a tare weight of 20 tons was first taken by Mr. Shiels, and later, a second amended exhibit was filed, based on tare weight of 31 tons, the railway stated the average tare weight of the refrigerator cars used in this butter traffic is 62,000 pounds, without ice, and 69,000 pounds with ice; further, that so far as this particular movement is concerned, returned empty car haul would represent approximately 75 per cent of the loaded car haul.

With regard, however, to the gross ton mile figures supplied counsel for British Columbia and used by Mr. Shiels in this exhibit, Mr. Lloyd, Assistant Comptroller of the Canadian Pacific Railway, under cross-examination by counsel for British Columbia, pointed out that these were not a proper measure of the actual cost of handling revenue freight traffic, or any basis for computing a freight rate, for the reason that they did not include certain items of operating expenses—some $12,000,000—that were not allocated as between districts and, consequently, not included in the gross ton mile figures shown in exhibit F.H. 98; that they included caboose gross ton miles, also the gross ton miles of the non-revenue freight handled, which is 15 per cent of the freight gross ton miles on western lines and 10 per cent on eastern lines, and which is an overhead on the revenue traffic; that they did not include anything for fixed charges, dividends, or any requirements over and above operating cost. On February 1, Vol. 495, p. 1490, exhibit F.H. 169 was filed by the Canadian Pacific Railway, showing that by making the necessary deductions, and to provide for net earnings at a rate of 5.75 per cent, the gross ton mile figures supplied counsel for British Columbia represented only 54.2 per cent of the requirements, or, as applied to freight traffic, it would be necessary to increase the total system gross ton mile cost figure for 1925 of .323 cents by 84.5 per cent.

Then, it must be further borne in mind that this is an "average" gross ton mile figure for all commodities ranging from sand to silk. Obviously, such average figure could not be used without modification, up and down, when applied to particular commodity movements. The proposed rates submitted by Mr. Shiels cannot, therefore, be given any weight, containing as they do so many elements of error. Counsel for the National Dairy Council stated he was not prepared to suggest that the rates should be those shown by Mr. Shiels (Vol. 463, p. 7116) nor did he say what he considered the rates should be. During the argument, counsel for the province of Saskatchewan was asked what he submitted the rates to Montreal should be, and he stated he was not prepared to answer that question, but he did suggest that consideration might be given to a reduction in the carload minimum weight of 50,000 pounds which applies under the commodity rates.

As already referred to herein, in his argument counsel for the province of Alberta confined his application to the rates on butter to Vancouver, and after alluding to the exhibits filed at Calgary, in which suggested rates were set out, asked the Board to direct its consideration to what he described as an alternative suggestion which he put forward, urging that it had much merit behind it. His proposition was as follows: Butter classifies 3rd class in carloads; the 3rd class standard mileage rate London to Montreal, 455 miles, produces a rate per ton per mile of 4.68 cents. The 3rd class standard mileage rate Calgary to Vancouver, 642 miles, produces a rate per ton per mile of 5.33 cents. He stated, "I am not making any point as to our being entitled to a less ton mile rate on account of our longer mileage; I am taking it as though they were the same mileage." 5.33 cents is 14 per cent higher than 4.68 cents, so that taking the standard mileage rates as a comparative basis, east and west, the ton mile basis in the west is 14 per cent higher than in the east, consequently the rate on butter from Calgary to Vancouver should not be higher

than 14 per cent more than the eastern rate per ton per mile. He next took what he described as the commodity rate on butter from London to Montreal which produced a rate of 2.94 cents per ton per mile, 14 per cent of which equals .41 of a cent; 2.94 cents plus .41 cent equals 3.35 cents, which rate per ton per mile would produce a rate from Calgary to Vancouver of $1.08 per 100 pounds, which is the rate applied for.

The London-Montreal calculation should have been based on 444 miles, instead of 455 miles, which would make the comparison 4.61 cents and 5.33 cents, the latter figure being 15½ per cent higher. Similarly, the butter rate, 2.94 cents, should be 3.02 cents, and 15½ per cent higher would produce a rate per ton per mile of 3.48 cents to make the rate Calgary to Vancouver $1.12 per 100 pounds instead of $1.08.

If this proposition is sound and logical, and a proper rate-making basis for constructing a rate on butter from Calgary to Vancouver, then the same principle would be equally sound and logical—and no doubt demanded—in constructing rates on other commodities, as well as class rates, consequently it seems necessary to ascertain what the effect of this proposition would be, if given a wider application. Without setting out the calculations in detail, it may be stated that taking the same standard mileage rate comparisons, east and west, as above illustrated for 3rd class, it is found that, expressed in cents per ton per mile, the situation is:—

	West higher than East
1st Class	29½%
2nd Class	23 %
3rd Class	15½%
4th Class	3 %
5th Class	17½%
6th Class	5½%
7th Class	1½%
	West lower than East
10th Class	11%

The same principle here urged, when applied to other commodities, will be found to produce some rather marked anomalies. For example, green hides are rated 5th class, while dry hides are provided in the classification with a rating one class higher, namely, 4th class. The present rates, and the rates that would be produced under the proposition here advanced, are as follows:—

FROM CALGARY TO VANCOUVER

Class	Dry hides 4th	Green hides 5th
Present rate	$ 1 10	98 cts.
Rate as per above proposition	68½	66 cts.

Instead of the rate on the higher classified article, namely, dry hides, being 12 per cent over that on green hides as at present, the difference would be reduced to 4 per cent; the proposition reduces the dry hides rate 38 per cent, while the reduction brought about in the case of green hides is 33 per cent. The reductions would not only be substantial, but also inconsistent.

The same proposition applied in the case of two articles taking the same classification rating works out as follows: Eggs and dry hides are both classified 4th class, in carloads; applying the same calculation as taken in the case of butter, and using the London to Montreal export rate as the base, the situation would be that whereas from Calgary to Vancouver the present rate on both eggs and dry hides is $1.10 per 100 pounds, the rate produced on dry hides would be 68½ cents per 100 pounds, and on eggs $1 per 100 pounds, so that while both

these commodities take the same classification rating, and at present the same rate per 100 pounds, from Calgary to Vancouver, the dry hides rate under the proposition here advanced would become only 68½ per cent of the rate on the other article similarly classified and at present taking the same rate. This result is brought about by reason of the difference existing between the export rates on eggs and dry hides, in carloads, from London to Montreal, which are 67 cents and 46 cents per 100 pounds, respectively, and used as the basis under the formula proposed by counsel for Alberta.

However, there is another anomaly, namely, that if the domestic, rather than the export, rate from London to Montreal is taken as the base, the same calculation would make the rate on both eggs and dry hides from Calgary to Vancouver 93 cents per 100 pounds. In the case of eggs this is 7 cents lower than the rate of $1 produced by taking the London-Montreal export rate as the base; while in the case of dry hides it is 24½ cents greater.

Therefore, to take the London to Montreal export rates as the basis for butter, and some other articles, it produces a lower rate from Calgary to Vancouver, than would be obtained by taking the London to Montreal domestic rate.

The same principle applied to the class rates, 1st to 7th class, from Calgary to Vancouver, would produce rates lower, except on 3rd and 7th class, than the prairie town tariff distributing class rates. The comparison follows:—

FROM CALGARY TO VANCOUVER

—	1	2	3	4	5	6	7
Present rate	2 19	1 83	1 45	1 10	98	84	59
Rate as per above proposition	1 67½	1 56	1 26	93	84½	71½	53½

PRAIRIE TOWN TARIFF

	1 89	1 58	1 26	95	86	72	50

The proposition here advanced, worked out in its wider application, would not only make drastic reductions in rates to Vancouver, but involve a reduction in rates between prairie points themselves. With regard to 10th class rates, the proposition would not work at all, because the western rate per ton per mile is actually 11 per cent lower than that of the east. It is not clear from the record why London to Montreal was taken as the basis for comparison. Exhibit 12 in printed submission of counsel for province of Alberta showed a rate based on the Toronto-Montreal rate, which was quite a different figure from that proposed in argument. It might have been advanced with equal force that Windsor to Montreal should have been taken as the basis for comparison, because it has a mileage of 555, which is more nearly comparable with 642 miles than the London figure of 444 miles. Taking Windsor, instead of London, it would produce quite different figures throughout, and on butter from Calgary to Vancouver would produce a rate of $1.04 per 100 pounds. The difficulty about this theory is that no two eastern basing points will produce the same results. Aside from the drastic reductions in rates and railway revenues that would result from the adoption of this proposition in its wider application, and the inconsistencies it would produce, as well as being impracticable of application to certain traffic, I do not see wherein it has any merit as a proper principle of rate-making. It is well known that the relationship between the classes under the eastern scale is different from that of the

west. What was described as a commodity rate on butter from London to Montreal is the 3rd class rate applying on export traffic, governed by the United States Official Classification. The export rates from Ontario points to Montreal are all of a competitive character and are built up on prescribed percentages of the Chicago-New York rate, which were directed by the Board in 1905 following a lengthy investigation—Orders 586 and 641 dated July 25 and September 4, 1905, respectively. So far as the domestic class rates from London to Montreal are concerned, these also are subject to special conditions which resulted in the scale of rates prescribed by the Board in 1907 in the so-called International Rates Case (Order 3258 dated July 6, 1907). I do not consider either the export or domestic class rate from London to Montreal, established under the conditions referred to, provide any proper basis for computing rates from Calgary to Vancouver.

Counsel for the National Dairy Council, also the province of Saskatchewan, submitted that the increased volume of the butter traffic warranted a reduction in rates; that the volume of the commodity moving is one element to be considered in estimating the reasonableness of rates. Volume is one of numerous elements, particularly on commodities moving in large quantity. While there has been an increased volume of butter traffic, relatively, the entire volume of the butter traffic is very small. In exhibit F.H. 98, pages 49, 50 and 51, there is shown originating freight by districts, on the Canadian Pacific Railway for the year 1924. The originating tons of butter and cheese were 3,282 in Manitoba, 3,194 in Saskatchewan, and 8,259 in Alberta. The total originating freight the same year in these districts amounted to 3,066,385 tons in Manitoba, 2,834,386 tons in Saskatchewan, and 4,006,181 tons in Alberta. The butter and cheese traffic represented a little less than $^{15}/_{100}$ of 1 per cent of the total originating tonnage in the three districts. Butter is not the only commodity in respect to which there has been increased tonnage handled by the railways in recent years. I do not consider that the increased volume of butter traffic warrants a revision of the rates thereon from that standpoint.

With reference to the carload minimum weight of 50,000 pounds applying in connection with export commodity rates to Montreal, it was suggested by counsel for Saskatchewan that if this were reduced to 40,000 pounds, it might enable some of the smaller creameries to take advantage of the rate who cannot do so now, but the matter was only touched upon in his argument without any additional details. Counsel for the National Dairy Council stated (Vol. 463, p. 7031) that they were not complaining about the 50,000 pounds minimum weight or contending that it was too high, but merely pointing out the carload earning on this weight as an argument that the rate should be lower. I do not consider the question of carload minimum weight was sufficiently developed to warrant a direction at this time that a change be made therein.

The classification rating on butter was considered and the present rating held to be justified in 1925 (Vol. XV, Board's Judgments, Orders, Regulations and Rulings, p. 199). The class rates are as prescribed by the Board. Rates lower than these normal rates are now in force on shipments to Vancouver, also to Montreal, for export. From the standpoint that the rates should properly be viewed, namely, other rates in the same territory, or between the same points, with due regard to differences in classification ratings and the character of the traffic, I do not consider that on the record a case has been made out warranting a direction for a reduction in the rates on butter from prairie points to Vancouver or Montreal and other eastern Canadian points.

While rates locally on butter in the West, also in Eastern Canada, were embraced in the broad wording of the submissions, this portion of the case was not developed in evidence or argument. The same remarks apply to cheese rates which were referred to in the printed submission of the National Dairy Council.

File No. 34123.38

Complaints of the Essex County Corn Improvement Association, the Essex County Development Association, the Essex County Livestock Improvement Association, Harrow Farmers' Co-operative Association, Township of Colchester South, Essex Board of Trade and Cottam Board of Commerce, alleging discrimination in freight rates on products of Essex County.

The submissions of the above-named organizations were in the form of resolutions requesting that the Board investigate alleged discriminatory freight rates at present in effect covering transportation of the products of Essex county, and grant such relief as might be necessary to enable shippers of Essex county to compete with products produced in other sections of the country. The submissions were no more definite in character than here outlined. The matter was set for hearing at Windsor, January 12, 1926, and counsel for Quality Canners stated that the various associations were interested only in so far as their connection with the canning business was concerned, and that their submissions should, therefore, be considered as supporting the complaint of the Quality Canners of Canada, Limited. The latter complaint is covered by file 34123.3.3 and fully considered and set out in report which has been made under that file.

File 34123.39

Prince Albert Board of Trade

The submissions of the Prince Albert Board of Trade support those of certain other Boards of Trade, etc., and are, therefore, covered by the decisions arrived at with regard to such submissions, consequently, it is unnecessary to report more specifically here on the submissions of the Prince Albert Board of Trade.

File No. 34123.42

Submission of Dominion Textile Company, Limited, Montreal, re rates on Cotton Piece Goods

By written submission dated August 24, 1925, the Dominion Textile Company, Limited, Montreal, pointed out that there are commodity rates in effect on cotton piece goods from Marysville and St. John, N.B., to various points in Quebec and Ontario, whereas on cotton piece goods shipped from Montreal, Magog and Quebec, Que., the class rates apply, there being no lower commodity rates in effect from the points last named, as in the case of Marysville and St. John, N.B. The Textile Company stated this appeared to them to be a discrimination in favour of Marysville and St. John, N.B. The matter was not further developed orally at the final hearing.

The Maritime Freight Rates Act, 1927, required a reduction effective July 1, 1927, in the existing rates from Marysville and St. John, N.B., to points in Quebec and Ontario, and section 8 of said Act reads:—

> "The purpose of this Act is to give statutory advantages in rates to persons and industries in the three provinces of New Brunswick, Nova Scotia and Prince Edward Island, and in addition upon the lines in the province of Quebec mentioned in section two (together hereinafter called "select territory"), accordingly the Board shall not approve nor allow

any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in such select territory."

In view of provisions of said Act, it is not apparent that any change can now be made in the rates from Magog, Quebec, or Montreal, without affecting the advantages created by the statutory rates, in favour of the shippers at Marysville and St. John.

File 34123.55

Canadian National Millers Association, Montreal, Que.

The written submissions of the Canadian National Millers Association dated March 1 and December 2, 1926, deal with the matter of rates on grain and grain products from Fort William to Montreal. No direction is being made by the Board at this time with regard to said rates.

File 34123.57

Application of Weyburn Bottling Works, Weyburn, Sask., et al., for reduction in rates on returned shipments of containers used in the transportation of non-intoxicating beverages.

This is an application submitted by counsel for the province of Saskatchewan in letter dated April 15, 1926, on behalf of the Weyburn Bottling Works, Weyburn, Sask., and a number of other bottling companies in Saskatchewan, and was spoken to at sittings of the Board in Regina, June 23, 1926, Vol. 465, pages 7813-7818. The matter is really one of classification, rather than rates.

The application relates to returned shipments of containers, consisting of glass bottles, in cases, which have been used in the transportation of non-intoxicating beverages. There is a substantial movement throughout the country of returned empty second-hand carriers; such as bags, barrels, kegs, drums, bottles, boxes of various kinds, egg cases; tinned biscuit, cracker and confectionery boxes, carboys, banana crates; acid, ammonia, carbide, gas and soda water cylinders, etc., and in respect to these returned empty second-hand containers, there is provision in the Canadian Freight Classification for a lower rating than applies on the same articles when shipped new. The regulations surrounding these returned shipments provide that when offered for shipment as returned empty packages they must have been used in the transportation of a regular consignment and are being returned to the consignors of the original filled packages via the same line over which they were originally shipped, otherwise they will be charged at the regular rates for new packages. Obviously, the cost of transporting these containers, when returned empty, is no less than when they are shipped new. The rating on new bottles of the character here under consideration is 3rd class, L.C.L., and the returned empties are provided for at the lower rating of 4th class, which is the lowest rating provided in the Canadian Freight Classification for any type of these empty carriers; a great many of the empty containers are provided for at 3rd class. The position of the railways has always been that the low rating on returned empties has been a voluntary concession on their part. In the revision of the classification, which was completed and resulted in the issuance of Classification No. 17 about two years ago, it had been the original intention of the railways to cancel the rating on returned carriers; that on all other articles or commodities no distinction is made between new and old, and they saw no good reason why the same rating should not apply on old containers as new containers. However, this proposition met with

considerable objection from some of the interested shippers and finally the provision for these empty carriers, as found on pages 68 and 69 of the classification, was agreed upon in conference between representatives of the railways and the shippers before the Special Classification Committee, which was, in itself, a joint committee composed of representatives of the railways and the shippers.

Request is made that provision be made for the return of the particular containers, described in this application, at one-half of the 4th class rates, it being alleged that a rate similar to that herein requested is in force between certain United States points in the states of Montana and Minnesota. It was stated that the outgoing shipment of soft drinks weighs about 75 pounds per case and the returned shipment of empties weighs practically two-thirds of the weight of the outgoing shipment, and a comparison was drawn between these and returned shipments of oil barrels or drums, it being stated that the latter were only approximately one-sixth of the outgoing weight as compared with returned empties here in question. Reference was also made to the return of drums used in shipping carbonic acid gas which weigh 150 pounds outward and 100 pounds when returned, and on the latter it was stated rates were accorded that were practically one-half of the 4th class rate. The foregoing represents practically all that was submitted on behalf of the applicants, so that it will be noted that the matter was not very fully developed.

As far as relates to the returned carbonic acid gas cylinders, the reduced rates referred to by applicants, and which were higher than one-half of the 4th class town tariff rates applying on applicants' shipments, were cancelled effective July 1, 1926, and they now pay the same rates as those charged on the containers used by the applicants. A comparison between the outward weight, and the weight of the returned empty package, is not, in itself, particularly relevant, as there are a great many varieties of returned empties, as already specified herein, and a considerable variation in the weights of the goods shipped therein. As against the comparison cited by applicants, it might be noted that gas cylinders weighing 109 pounds when shipped out full, weigh 99 pounds when returned empty, and another size weighs 220 pounds when full and 200 pounds when returned empty, and the 4th class rating is applicable on the returned movement.

With regard to the lower rates said to be in effect in the states of Minnesota and Montana, the tariffs, of course, are not on file with this Board, and there is nothing on the record indicating the territorial application of said rates or the articles they apply on. The Western Classification is in effect throughout the northern United States territory west of Chicago and in this classification new bottles are rated 3rd class, L.C.L., and old bottles 4th class, L.C.L. The lower rates said to be in effect in certain sections of this territory are, apparently, covered by some special tariff provision, the circumstances concerning which are not within the knowledge of the Board.

The provisions of the Canadian Freight Classification apply throughout Canada, and while there are no complaints from any other interested shippers outside the province of Saskatchewan, any change in the classification provision would have general application throughout the country, and could not be consistently confined to the specific containers covered by this application. The question at issue, therefore, is far-reaching in its effect and covers a greater volume of traffic in other sections of the country than in the Province where the application originates. No evidence whatever is on the record alleging that the present rating is in itself unreasonable, or that it imposes any hardship upon the industry. Evidence of this character would be very much more material than any of the submissions that were advanced in support of the request for reduced rates.

On what is before the Board on this record the applicants have not made out a case which would warrant any change being made.

File No. 34123.58

New Westminster Board of Trade

There were no written submissions filed by the New Westminster Board of Trade, their representations being made at sittings of the Board held in New Westminster on July 15, 1926 (Vol. 471, pages 11364 to 11451).

Speaking generally, the representations made at the hearing in question will be covered by the disposition of the case of the province of British Columbia.

There was an exhibit filed giving comparison of rates on various kinds of paper from New Westminster to Eastern Canada, as compared with rates on same commodity from Eastern Canada to New Westminster, and this showed some differences. For example, on wrapping paper, carloads, from New Westminster to Merritton, Ont., $1.47; Merritton to New Westminster, $1.20. With regard to tissue paper, not printed, it was stated the rate from New Westminster to Merritton is $2.81½ and Merritton to New Westminster $2.08½, but there was an error in this exhibit, as the rate New Westminster to Merriton is the same as in the opposite direction, namely, $2.08½. With regard to bond, writing, drawing and lithographed paper, the westbound rate is $1.20, and eastbound there is no commodity rate, the regular class rate of $2.81½ governing. There was discussion as to qualities of paper made by eastern manufacturers and those at the coast, also competition in prairie markets, although, as to the latter, the matter was not fully developed. There has never been any recognized parity of transcontinental rates, under which the rate eastbound has been exactly the same as that established westbound on the same commodity, or vice versa. The individual transcontinental commodity rates are governed by numerous and varied competitive conditions. If there is any westbound transcontinental rate on a commodity, that is alleged to be discriminatory against the shipper of the same commodity eastbound from the Pacific coast, it should be the subject of specific complaint, when the matter could be fully developed, as there is not sufficient on the record of proceedings here to enable the matter to be intelligently dealt with.

There were some references to express rates which are outside the scope of the present inquiry.

File No. 34123.60

Kamloops Board of Trade

There were no written submissions filed by the Kamloops Board of Trade, their representations being made at sittings in Kamloops on July 8, 1926 (Vol. 467, pages 8665 to 8725).

At pages 8667-8670, Mr. A. M. Tyrrell, representative of the Maple Leaf Milling Company, submitted that on account of the sparse settlement of that portion of the Canadian National Railways between Kamloops and Jasper, there should be established from Kamloops to stations on this portion of the Canadian National line L.C.L. rates that would represent a reduction of 50 per cent from the current rates, and give this portion of the line what might be called colonization or settlers' effects rates. A similar rate arrangement was not requested from Kamloops to stations on Canadian National Railways west thereof, nor from Kamloops, either east or west, to points on the Canadian Pacific Railway. At page 8671, Commissioner Oliver inquired as to the situation on the Canadian National Railways line from Redpass Junction to Prince George, and the answer was that distribution to this territory was made from Edmonton. A comparison as to the extent of population or development along

that portion of the line embraced in the application, as compared with other portions of the line, is not on the record. The request was not based on any allegation that the rates applied for would be no higher than would be proper and reasonable rates per se; they are asked for purely as a measure of assistance to settlers in that district. The position taken by counsel for the Canadian National Railways is set out at page 8675 as follows:—

> "Mr. Fraser: As I understand, what they want is a reduction in distributing rates L.C.L. from Kamloops and intermediate points up to Jasper. I would like to have a look at the record before answering. But generally speaking it would seem to be rather a novel departure, that on a newly constructed line we should have a lower basis of rates than when the line is older. Usually, quite the reverse is the case. My understanding is that these distributing rates are the ordinary distributing rates in effect in British Columbia. It would seem to be a difficult thing to work out a lower basis of rates from this particular section of the country than obtains in all the rest of British Columbia. You know of course what would happen, the day after they were made effective, Mr. McGreer would be right after us, saying, 'Here you are with your unjust discrimination, we must have the same basis of rates.'
>
> "It would seem to me practically speaking an impossibility under the Railway Act, but I would like to take the complete record and go carefully and sympathetically through it, and if necessary reply in detail later on."

In view of previous decisions of the Board as to its powers under the provisions of the Railway Act, I consider that the granting of an application on the basis here made, for a restricted territorial application of rates, transcends the jurisdiction of the Board in respect thereto.

At page 8677, Mr. C. F. Bickford, Manager of the Kamloops Canneries, Ltd., made a somewhat similar representation on behalf of shippers of berries by express from the Clearwater district, about 86 miles north of Kamloops on the North Thompson river, to British Columbia coast and prairie points. The Board has already ruled that express rates are not within the scope of the present General Freight Rates Investigation.

Mr. Bickford made reference to rates on canned goods, in carloads, from Kamloops to Vancouver. At page 8680 he asked that there be considered the difference between the present rate and what it was about three years ago, and stated "At that time we had a rate which, on the 60,000 pound car, was 7 cents better than our competitors in Kelowna. Recently, as you probably know, a zone rate was put in which took that 7 cent advantage away from Kamloops." A check of the tariffs fails to indicate that there has, at any time, been a difference of 7 cents between Kamloops and Kelowna with respect to rate on canned goods subject to carload minimum weight of 60,000 pounds. Prior to July 1, 1924, there was a commodity rate with carload minimum weight of 40,000 pounds, and the rates to Vancouver were, from Kamloops 53 cents and Kelowna 60 cents. Effective July 1, 1924, the tariff was amended, continuing the rates just named, subject to carload minimum weight of 40,000 pounds, but also establishing for the first time a new rate of 45 cents per 100 pounds from Kamloops, Kelowna, Vernon and Penticton, subject to carload minimum weight of 60,000 pounds. It will, therefore, be noted that from the inception of the commodity rate subject to carload minimum weight of 60,000 pounds, there was not a difference of 7 cents between Kamloops and Kelowna as stated by Mr. Bickford. With respect to commodity rates subject to 60,000 pounds minimum, the shipping territory seems, from the inception thereof, to have been blanketed at the same rate, and there is nothing on the record

here that would enable a conclusion to be formed as to whether or not this is an unreasonable arrangement. It is a situation that existed when the rates were first put in, and has since continued, and the matter would require to be more thoroughly developed before any intelligent or conclusive opinion as to the reasonableness thereof could be formed.

It is noted from the tariff that a grouping arrangement also exists with respect to canned goods rates eastbound to prairie points, under which Kamloops is in the same group as Armstrong, although there is a difference in mileage in favour of the latter, and it was stated that the greater proportion of shipments from the Kamloops plant were made to prairie points (page 8682).

Beginning at page 8685, Mr. Creighton Campbell made reference to the transcontinental rate situation, under which rates to coast points were lower than to intermediate territory, which included Kamloops. The decision of the Board on the general question of transcontinental rates obviates the necessity of the matter being separately discussed here.

Pages 8695 to 8710, Captain T. H. Worsnop made some representations as to passenger rates. This is a matter that is to be separately dealt with according to the reading of the record at page 8709.

At page 8711, rates on coal from a number of points to Kamloops were quoted, and it was pointed out that the rate per ton per mile was higher from the nearer points than from the points of origin that were a longer distance from Kamloops. It has always been a well recognized principle of rate-making that there is a tapering of the rate per ton per mile as the distance increases. Aside from pointing out that this tapering did exist, there was no specific complaint made as to the coal rates, and the matter was not sufficiently developed to be further dealt with here.

Commencing at page 8713, some reference was made to the rate on wool, carloads, from Kamloops to Weston, Ont., it being stated that there had formerly been a rate of $2.14 per 100 pounds and the present rate is $2.34. The matter was not specifically developed, but it is assumed that the representation could be considered in the light of an application to restore the lower rate, in order to benefit the wool grower. The representative of the railway company stated that a few years ago representations had been made that the sheep raisers were in a somewhat similar situation to the hog and cattle raisers on account of post-war deflation in prices, etc., and the carriers agreed to temporarily establish a reduced rate to assist the industry; that this reduced rate was put in effect at various periods extending over two or three years, and then had been dropped and the normal rate allowed to apply. Wool, in carloads, is rated 5th class, and the normal rate thereon from Kamloops to Toronto is $2.34. There is no allegation on the record that this rate is unreasonable *per se*, and on what is on the record I do not see that the Board would be warranted in making any direction. The Board has held in numerous judgments that, with regard to rates to develop traffic, the railway companies have a discretion and may voluntarily establish rates lower than could be justifiably directed or compelled by the Board.—Application of the Mount Royal Milling and Mfg. Co., Board's Judgments and Orders, Vol. XV, page 58. Application of District Board of Trade, Coalhurst, Alta., for station facilities, Board's Judgments and Orders, Vol. XIII, page 260. National Dairy Council of Canada, *re* freight rates on butter, Board's Judgments and Orders, Vol. XII, page 149-150. Red Deer Valley Coal Operators' Association, Board's Judgments and Orders, Vol. X, page 66-70.

File 34123.65

Canadian National Millers Association, Montreal

This submission, filed under date of July 15, 1926, dealing with milling-in-transit in connection with grain *ex* lake ports for milling at interior Ontario points, has been subsequently disposed of by issuance of the Board's Order No. 38264, dated October 15, 1926, on complaint of the Wolverton Flour Mills Company, St. Marys, Ont.

File 34123.66

Application of the Alberta Wholesale Implement Association, Calgary, for a commodity rate on binder twine to points in Alberta that does not exceed the transcontinental rate on twine to Vancouver; and that arrangements be made by the Railway Companies to permit a stop-over privilege on through cars of farm machinery shipped to small towns.

The matter of transcontinental rates is dealt with in the judgment of the Board.

Application was also made for a stop-over on carloads of machinery for partial unloading.

According to the submissions read into the evidence at the Calgary hearing on July 3, 1926, the stop-over would build up carload movement and more evenly distribute it and would give small towns a better implement service. It would also facilitate delivery of goods well in advance of the harvest and build up volume to the railway.

There could be no building up of carload movement since the intention is to divide carloads between two or more consignees. No evidence was offered, nor was it alleged, that the arrangement requested would increase sales and, therefore, I fail to understand how volume would be built up for the railway.

At page 8575, in reply to question of Mr. Commissioner Oliver, the service desired was illustrated as follows:—

> "For instance, a dealer in Bassano and a dealer in Gleichen, we will say, would each wish to take a carload of goods to be shipped from Fort William. The car would be billed to Gleichen with stop-over at Bassano. The Bassano dealer would take out his portion of the goods and the car would go on to Gleichen taking the through rate to Gleichen.

It was stated such an arrangement was at one time in effect in the United States and that a stop-over was charged. No tariff reference was given as authority for such an arrangement in the United States, nor was evidence offered as to the period effective. Complainant expressed the opinion that there should be one stop-off and that a charge of $5 would not be unreasonable.

At page 8581, Vol. 467, Mr. Flintoft brought out the point that in handling machinery in the manner suggested there would be two consignees located at different points and stated:—

> "One of the fundamentals of the contract of carriage is that you have a shipment consigned to one person at one place. He is asking to have a car consigned to two persons at two different places."

Partial unloading of carload freight in transit is not permitted on any commodity in any part of Canada. To establish the arrangement requested on farm machinery would have the effect of applying carload rates on less than carload movements and would lead to similar applications in connection with other commodities.

The present method of distributing farm machinery is to ship in carloads to wholesale centres and distribute in less than carloads to surrounding towns. It is claimed that to points distant from the wholesale centres the service is slow and expensive. It is not necessary to distribute from wholesale centres. If orders are secured along one line they may be distributed by paying the carload rate to the first destination, and L.C.L. rates for the balance, under new contract. Taking the example given by complainant, under the present tariff a carload of farm machinery may be shipped to Bassano at the carload rate to that point, a portion unloaded, and the balance forwarded in the same car to Gleichen at the L.C.L. rate and under a new contract.

The present movement for these points would probably be carloads to Calgary and back-haul at L.C.L. rates to Bassano and Gleichen.

I can see no reason for giving special treatment to farm machinery and recommend that this application be dismissed.

File No. 34123.68

Board of Trade of Prince Rupert, B.C.

There were no written submissions filed on behalf of the Board of Trade of Prince Rupert and their representations were made at sittings in Prince Rupert on July 30, 1926, Vol. 472, pages 11756-11782. At pages 11757 and 11761 it was set out that Prince Rupert, although further distant from Edmonton than is Vancouver, should be recognized as entitled to equality with the port of Vancouver, but just what necessitated this submission is not apparent, because with respect to import or export traffic through Prince Rupert, it is on an equality with Vancouver in the matter of rates. At pages 11759-11764-11778 reference was made to rates on fish, but the rates in question are express rates which are outside the scope of the present investigation. At pages 11768-69 reference is made to express rates on cream. At page 11763 reference is made to rates on potatoes, which is the matter dealt with and covered by report on file 34123.2.1. At page 11778 some fish rates were quoted, but the matter was not developed. It was indicated that the rate on frozen fresh fish from Prince Rupert to eastern Canadian points was higher than the rates on smoked fish from Maritime Province points to Prince Rupert, but the two commodities take different classification ratings and the conditions concerning their transportation would, in some respects, be dissimilar, and the record does not indicate what is being urged or alleged with regard to the rate comparisons given. There was a reference to the rate to New York being lower than to Toronto and Montreal, but these rates are subject to competitive influences under which the rate from Prince Rupert to New York is maintained on a parity with the rate from Seattle to New York.

At pages 11760-11766-11771 to 11776 reference was made to coal rates, and there is also on the file letter under date of November 16, 1926, from the Saunders Ridge Coal Co. Ltd., Mercoal, Alta., in this connection. The complaint here is against a rate of $4.40 per net ton in effect from Luscar and Cadomin, Alta., to Prince Rupert. It is pointed out that at one time the rate was $3.40 per net ton, but the present rate of $4.40 per net ton shows as having been in effect since May 23, 1923. The rate in question is published as a competitive rate which is not applicable as maximum from or to intermediate stations. The competition in Prince Rupert appears from the record as against movement by water from Vancouver island and the state of Washington. It is stated the coal is being barged into Prince Rupert by independent towing companies at a rate of $2 a long ton as compared with the rail rate of $4.40 on a short ton from Alberta. The rate of $4.40 was not in any way attacked on the ground that it was an

unreasonable rate per se, but the substance of the submission was that the railway could probably increase its coal traffic from Cadomin to Prince Rupert if the present rate were reduced $1 per ton. The rate of $4.40 per net ton from Cadomin to Prince Rupert, 876 miles, produces a rate of .502 cents per ton per mile, and as indicating that this rate, which, as already stated, is tariffed as a competitive rate, is on a low basis, it may be stated that the Pacific freight scale for this mileage would be $6.80 per net ton and the Prairie scale for the same distance would be $5.30 per net ton. It is not clear to me on what grounds the Board could direct a further reduction in a competitive rate of this character, which is already materially below the normal coal rates authorized for similar distances, particularly in the absence of any allegation on the record that the rate is unreasonable per se. The rate yields a very low figure per ton per mile.

Ottawa, September 12, 1927.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Canadian National Railways under sections 19 and 51 of the Railway Act for a rescission of Order No. 39349, dated July 14, 1927, with regard to publication by the Canadian Pacific Railway and Canadian National Railways of through rates via Saint John and Ste. Rosalie Gateways as they now have via their own lines direct.

File No. 34285

JUDGMENT

CHIEF COMMISSIONER MCKEOWN:

This is an application under section 51 of the Railway Act to rescind the Board's Order No. 39349 of date the 14th day of July, 1927, whereby the Canadian Pacific Railway Company and the Canadian National Railways were directed to publish forthwith joint tariffs naming rates to stations west of the Maritime Provinces via St. John and Ste. Rosalie Junction, the same as published between the same points via the Canadian National Railways direct, such tariffs to cover all traffic and to have the same territorial application as existed on June 30, 1927.

Instead of complying with the terms of the order, the Canadian National Railways have launched two applications, one before this Board for the rescission of the order, and the other for leave to appeal to the Supreme Court of Canada challenging the jurisdiction of the Board to make the order referred to. The grounds relied upon in support of the application to the Board are as follows:—

1. That the Canadian National Railways are most vitally affected by the said order in that our revenues will be most seriously affected and that the benefits that should accrue to the National Railways by reason of the expenditure by the Government of large sums of money in the construction of railways and railway facilities in the Maritimes will to a large extent be lost, and these benefits will be handed to the Canadian Pacific Railway Company without any corresponding benefit or advantage to the public.

At the time Order 38275 was issued, it is to be presumed the rates referred to and put into effect pursuant to that order were fair and reasonable rates and nothing has since occurred in our opinion to make these rates unreasonable.

The principle of the Railway Act has always been that the Board shall fix, determine and enforce just and reasonable rates, and all the

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important judgments of the Board on rate cases have expressed that just and reasonable rates must not only be fair from the standpoint of the public but from the standpoint of the railway corporations as well.

The Board has issued this order calling for a material reduction in rates without any hearing and without giving the National Railways an opportunity to argue that the proposed rates are not fair and reasonable.

2. The reduction referred to in the preceding paragraph has been brought about by the enactment of the Maritime Freight Rates Act since said Order 38275 was passed.

The Canadian National Railways claim that no argument as to other rates can be based upon the reduction in rates provided for in the Maritime Freight Rates Act of 1927 because these reduced rates are declared by sections 7 and 8 of that Act to be statutory and preferential rates and not based upon any principle of fair return to the railway company for services rendered in the carriage of traffic.

The movement of freight via St. John and Ste. Rosalie Junction gateways is not a "preferred movement" under the Maritime Freight Rates Act, and the Canadian National Railways submit that the operation of that Act should not be enlarged by the Board under General Powers conferred on the Board by the Railway Act.

3. At the time the said Order 38275 was passed there might have been some argument based upon the interest of the public in the maintenance of the St. John and Ste. Rosalie Junction gateways, but we maintain that no such reason now exists by reason of the fact that under tariffs recently filed in accordance with said Maritime Freight Rates Act, the Canadian National Railways have made provision for the absorption at destination of switching charges that formerly had to be borne by the shipper or consignee.

The question of the St. John and Ste. Rosalie gateways has been regarded by the eastern Maritime Provinces as one of great importance inasmuch as it provides a competitive route to the West, and from the time when the construction of the Canadian Pacific Railway gave rise to the advantages of such competition, or at any rate from the date on which this Board began to function, now over twenty-three years ago, rates have been continued under which such competition was possible. About seven years ago gradually the curtailment of such privilege began and has been followed up by the Canadian National Railways, until it has now culminated in a condition which is depriving the people of the three Maritime Provinces of a competitive route and the many advantages arising therefrom. The history of the course pursued by the Canadian National Railways in this regard may be summarized as follows:—

Late in 1925 the Canadian National Railways issued supplement to their Tariff C.G. Rys. C.R.C. No. 1364 applying on lumber and other forest products from points in the Maritime Provinces to stations in Quebec and Ontario, the effect of which was to eliminate the alternative routing via St. John and Ste. Rosalie Junction in so far as destinations common to, or in other words reached by, both the Canadian National and Canadian Pacific Railways.

A similar Supplement was issued to their Tariff C.G. Rys. C.R.C. 1352 naming class rates from maritime points to stations in Quebec and Ontario.

Upon complaints from various parties orders were issued suspending these proposed supplements pending hearing by the Board. Thereafter, the matter was heard at sittings of the Board held in Montreal, January 8, 1926, following which, Order No. 38275, dated October 19, 1926, issued disallowing the provisions of said Supplements in so far as they proposed to eliminate routings via St. John and Ste. Rosalie Junction.

The effect of this order was to restore the situation, as to these tariffs, as it had existed for a great many years, namely, that there was a parity of rates via the following routings: First, Canadian National Railways direct; Second, Canadian National to St. John thence Canadian Pacific; third, Canadian National to Ste. Rosalie and thence Canadian Pacific Railway.

In this connection it may be stated that there were also tariffs applying on traffic other than that above specified, from Maritime Province points to stations in Ontario, with respect to which the St. John and Ste. Rosalie gateways had been eliminated at varying periods as far back as January, 1921. No complaint had been made to the Board concerning such change in these tariffs prior to, or at the time of, the sittings of the Board in Montreal, January 8, 1926, which was followed by the issuance of Order 38275. Subsequent to issuance of order just named, complaint was received concerning the other tariffs referred to, and this matter has been standing for hearing by the Board.

With respect to traffic from Maritime Province points to stations in Western Canada, namely, Port Arthur, Ont., and west, for a great many years past, in fact ever since the creation of this Board in 1904, the rates applied via St. John and Ste. Rosalie gateways. Subsequent to the final co-ordination of the various lines now comprised in the Canadian National system, the situation prior to July 1, 1927, has been that the same rates applied to points in Western Canada via: First, Canadian National Railways direct; second, Canadian National, St. John, then Canadian Pacific; third, Canadian National to Ste. Rosalie Junction thence Canadian Pacific Railway. No attempt was made to change this situation—consequently, of course, no complaint was before the Board—until July 1, 1927, when in issuing tariffs purporting to be in compliance with the Maritime Freight Rates Act, the Canadian National Railways eliminated through rates from Maritime Province points to stations in Western Canada through the St. John gateway, and published rates through the Ste. Rosalie gateway that were higher than the rates via their own line direct.

With respect to the tariffs to Ontario points, set out in Order 38275, the change made on July 1, 1927, by the Canadian National Railways in alleged compliance with the Maritime Freight Rates Act, eliminated the St. John gateway, but continued rates through Ste. Rosalie Junction, thence Canadian Pacific Railway, which, with few exceptions, are the same as the rates published by the Canadian National lines direct.

The changes made on July 1, 1927, as above set out, were brought to the attention of the Board, and it was considered upon looking into the matter involved, that the tariffs filed were not in compliance with the Maritime Freight Rates Act, and consequently Order 39348, dated July 14, issued directing the Canadian National Railways to forthwith publish tariffs of through rates via St. John and Ste. Rosalie, from points in the Maritime Provinces to stations in Canada beyond eastern lines, said through rates to be those in existence between such points on June 30, 1927, less approximately twenty per cent, as provided in section 3, of chapter 44, 17, George V.

In this connection the Board also had in mind the contention and interpretation of the Canadian National Railways, as to the provisions of section 4, subsection 1, paragraph B, of the Maritime Freight Rates Act reading: "Traffic moving outward, westbound, all rail—From points on the eastern lines westbound to points in Canada beyond the limit of the eastern lines at Diamond Junction or Levis; for example, Moncton to Montreal—the twenty per cent reduction shall be based upon the Eastern lines proportion of the through rate or in this example upon the rate applicable from Moncton west as far as Diamond Junction or Levis." It was realized that in view of the wording of that portion of the Act above quoted, and the method of division of the through rate as between the Canadian National and Canadian Pacific Railways, questions would probably arise as to whether the rates that might be established in obed-

ience to Order 39348, were or were not in compliance with the Act, and considerable time might ensue before these issues could be finally disposed of.

It is not apparent that the Maritime Freight Rates Act contemplated any change in the tariff situation of long standing with regard to alternative routings through St. John and Ste. Rosalie Junction. The plain intention of the Board that these gateways, and parity of rates through them, should be maintained, is indicated by its Order 38275 and judgment in connection therewith, consequently Order 39349 was issued directing that the Canadian National Railways be directed to publish forthwith joint tariffs, naming through rates from points in the Maritime Provinces to stations west thereof, in Canada, via St. John and Ste. Rosalie Junction, which will be the same as published between the same points via the Canadian National Railways direct, such tariffs to cover all traffic and the same territorial application as existing June 30, 1927.

At the hearing on the 7th inst. a question was raised regarding last clause of Order 39349 reading: " such tariffs to cover all traffic and the same territorial application as existing June 30, 1927." It may be here stated that the order covers the traffic and the same territorial application as existing June 30, or in other words, the word " all " has the same meaning as here used as the word " same." Order 39349 has no application with respect to the tariffs to Ontario points, other than those referred to in Order 38275, which matter is still standing for hearing.

The argument is advanced by the Canadian National Railways that compliance with Order 39349 will necessitate their making a much greater reduction than 20 per cent in their eastern lines proportion, as stipulated by that portion of the Maritime Freight Rates Act which has already been quoted.

Illustrations given by a witness called on behalf of the Canadian National Railways, figured a reduction in one instance of over 38 per cent under the terms of the order and presented other instances much exceeding 20 per cent. The impropriety as well as the validity of the order was assailed for that reason. But these calculations so presented are without solid foundation. They rest firstly upon the supposition that the Canadian Pacific Railway Company will make no reduction in its portion of the haul—thereby compelling the full reduction upon the Canadian National's part thereof.

There is now, and for some years has been, on file with the Board a general concurrence by the Canadian Pacific Railway Company, No. W. 86, certifying that the Canadian Pacific Railway (lines Port Arthur, Ont., and west thereof) assents to and concurs in all joint tariffs and supplements that may be published and filed by the Canadian National Railways (lines Westfort, Ont., Armstrong, Ont., and east thereof) in which the Canadian Pacific Railway Company is named as a participant, in so far as such schedules contain rates or regulations which apply within Canada, to or via (not from) the latter company's points, thereby making itself a party to such joint tariffs and supplements and agreeing to be bound thereby. There is also on file with the Board the Canadian Pacific Railway Company's general concurrence, No. E. 85, certifying that the Canadian Pacific Railway Company (lines Westfort, Fort William, Ont., and east thereof) assents to and concurs in all joint tariffs and supplements thereto that may hereafter be published and filed by the Canadian National Railways (lines Westfort, Ont., Armstrong, Ont., and east thereof) in which it is named as a participant, in so far as such schedules contain rates or regulations which apply within Canada, to or via (not from) the Canadian Pacific Railway Company's points, and thereby making itself a party thereto and agreeing to be bound thereby.

We therefore have the expressed agreement of the Canadian Pacific Railway to participate in a joint tariff at the rates directed by Order 39349, and its plain and unqualified concurrence in the issuance of such joint tariffs, and, secondly, when counsel for the Canadian National Railways contended that

in the publication of joint tariffs such as directed by Order 39349 they would be compelled to make an appreciably greater reduction than 20 per cent in what they designate (following the expression used in the Maritime Freight Rates Act) as the eastern lines proportion of the through rate, they overlooked the fact that when through rates are modified, the divisions of same between carriers are also frequently modified. This argument was based on the assumption that there would be no modification in the through rates as between the carriers, which may or may not be so. Division of through ratings by the carriers is a matter primarily left for settlement between them, but in the event of the failure between the companies interested to agree as to the apportionment of a through rate on any joint traffic, the Board may apportion such rate between such companies. (Section 337, Railway Act, 1919, subsection 3.)

What is here involved is the question of joint or through rates from local points on the Canadian National Railways in the Maritime Provinces to stations on the line of the Canadian Pacific Railway. Such joint tariffs have been heretofore in effect between these two companies with routing via St. John or Ste. Rosalie Junction, or in other words the two points last named have been the point of interchange between these two companies with respect to this joint traffic. The Canadian Pacific Railway cannot of itself, and never could, publish joint rates from local points on the Canadian National Railways in the Maritime Provinces. Under the provisions of the Railway Act a joint tariff must always be issued and filed by the initial company, in this instance the Canadian National Railways, and the other company or companies parties to such joint tariff, in this instance the Canadian Pacific Railway Company, by general or specific concurrence filed with the Board signifies assent to and concurrence in such joint tariff. (Section 336, Railway Act, 1919.)

The concurrence of the Canadian Pacific Railway Company in the order complained of is, and has been, in full force ever since such order was made. From the above it seems clear that the apprehension shown by the Canadian National that the full incidence of the reduction will fall on its part of the line, is wholly groundless, for not only by the formal occurrences above mentioned now on file with this Board, but by assurances of counsel given in open court and of record before us, the Canadian Pacific Railway Company is obligated to bear its proportion of the reduction, and acquiesces in a joint tariff naming rates on the same basis as published by the Canadian National Railways via their own lines direct.

It is complained that the Board, without any right to do so, has included the Canadian Pacific in the order. Had it not been for the course taken by the Canadian National Railways, Order No. 39349 need never have been made. It is obvious that in describing the routing and directing the course of the movement, necessarily the order involves the Canadian Pacific Railway Company for its line is concerned in the haul. Its recorded concurrence in the subject matter of the order, and its acquiescence in the terms thereof, would seem to render inapt and ineffective any argument against either the propriety or the validity of the order based upon such inclusion.

Mr. Flintoft, who appeared for the Canadian Pacific Railway Company at the hearing, supported the contention of the Governments of the provinces of Nova Scotia and New Brunswick, that preferred rates should apply to joint traffic through St. John and Ste. Rosalie and advised that the Canadian Pacific Railway was prepared to meet its share of the reduction.

Objection is made to the order on the ground that it is unnecessary and that the Canadian National Railways can take care of all traffic within the territory involved at rates which will put the residents of those localities in no disadvantageous position. This is a matter of principle which concerns itself with the desirability of allowing tariffs which prevent competition, and the Board's view in this respect was indicated by the order of the 14th of October, 1926.

While the passage of the Maritime Freight Rates Act directed the cancellation of all existing tariffs within the select territory, it did not order any change in other traffic conditions, and did not in any way affect the standing or validity of the last mentioned Order No. 38275. When the Maritime Freight Rates Act became operative the order last mentioned continued in effect, with all the force and validity of a duly isued order of this Board. Without any application for its rescission, the Canadian National Railways by the tariffs which it filed ignored and contravened its provisions, and the effect of Order No. 39349 is to ensure that such provisions be caried out. It was stated during the argument that the latter order was made *ex parte*, as if some innovation were being then caused, or some rights invaded. The fact of the matter is, that the remedy sought by such order was necessitated because of the summary withdrawal by the Canadian National Railways, of privileges long enjoyed by the residents of the lower provinces and without notice set aside by the tariffs filed and suspended. The passage of the Maritime Freight Rates Act has not resulted in a change of conditions so as to necessitate a revision of the view entertained by the Board when it made Order 38275. From that standpoint nothing has been urged which would justify rescinding the order complained of. But it is further argued as a matter of interpretation of the Act in question that the provisions of subsection 4 above quoted, compel the construction that the preferred movement described by the Act is limited to traffic moving through Diamond Junction or Levis. I am not convinced that such construction is the necessary or proper one. As pointed out frequently during the argument, the purview and scope of the Act as revealed in the preamble, and specifically stated in section 8, seems to be wholly at variance with the idea that any advantage existing at the time of its passage in favour of the Maritime Provinces was to be abrogated or curtailed. The subsection in question speaks of traffic moving " from points on the eastern lines westbound to points in Canada beyond the limits of the eastern lines at Diamond Junction or Levis." The expression " beyond the limits of " can, and I think should be construed to mean a distance further than the distance over such lines to Diamond Junction or Levis. Such construction seems much more reasonable than to read it as confining the movement to carriage solely on the Canadian National Railway to the points indicated. The use of that expression is attributable to the fact that Diamond Junction and Levis are the mileage limits of the rate reduction upon movement over the Canadian National, but it is one thing to use that expression for the purpose of limiting the rate reduction upon such movement, and thereby to determine the quantum of such reduction; and it is quite another thing to say that the full benefits of such reduction, are to be confined to traffic passing through those points. The example given in the subsection is not necessarily to be read as confining the movement to the Canadian National Railway lines, for it is remembered that no other road is compelled to participate in the reduction. And where the concluding words of the subsection speak of "the rate applicable from Moncton West as far as Diamond Junction or Levis", it is to be noted that it does not say " from Moncton West *to* Diamond Junction or Levis " as would naturally be the wording if the reduction were to be confined to the lines of the Canadian National Railways. The expression " as far as " carries the obvious meaning of being equivalent in distance, and I therefore think that as a matter of law we are not bound to come to the conclusion that such movements are only those over the line of the Canadian National Railways.

I am consequently of the opinion that the applicants are not entitled to succeed in their motion to rescind this order, either by reason of any new facts developed since Order No. 39349 was issued by the Board, or on the ground that the preferred movement must be confined to the lines of the Canadian National Railways.

It was suggested during the argument that the interpretation of certain sections of the Act being disputed, leave to appeal to the Supreme Court of Canada from the Board's decision might be given by way of a stated case raising the questions of interpretation which were argued before the Board. I am not in favour of such course. The question of jurisdiction is here, as always open to appeal, but as to questions of law involved as apart from jurisdiction, I think the same might well be determined by this Board and that such determination should be conclusive, in accordance with section 11 of the Maritime Freight Rates Act.

There remains further the question of the jurisdiction of the Board to make the order complained of. This has been raised by motion for leave to appeal to the Supreme Court of Canada, and the same was to some degree dwelt upon at the hearing before the Board on the seventh instant.

It is apparent that if the Board should adopt the view that the reasons in support of the order which is now challenged have ceased to exist, and for that cause the order should be rescinded, the necessity for adjudicating upon the question of jurisdiction in regard thereto, would be removed. But the Board has not come to that conclusion. Any decision which the Board may make upon the question of jurisdiction is open to appeal to the Supreme Court of Canada, and proceedings are now pending to determine this important matter. In whatever way the Board might view its powers in this respect, an appeal by one party or the other to this dispute would likely be taken, in order that this may be conclusively determined. It therefore seems to be the proper course to leave this crucial question in all its phases to the Supreme Court of Canada for decision. If it should transpire that the passage of the Maritime Freight Rates Act has denuded the Board of the jurisdiction in this respect bestowed upon it by the Railway Act, its above pronouncement upon the other questions argued in this application becomes of no effect. On the other hand, if full jurisdiction still abides within the Board to dispose of this motion, decision to that effect by the Supreme Court makes further application to this Board unnecessary under present circumstances, since all other matters properly within the Board's jurisdiction touching this application are hereby determined.

The motion to rescind is dismissed.

September 12, 1927.

Deputy Chief Commissioner Vien and Commissioners Boyce and Lawrence concurred.

McLean, Assistant Chief Commissioner:

As set out in the reasons for judgment of the Chief Commissioner, Order No. 38275, of October 1, 1926, went after hearing and issuance of a considered judgment. This Order was in the names of the Chief Commissioner, the Deputy Chief Commissioner and Mr. Commissioner Boyce. This order had not been changed or modified when the Maritime Freight Rates Act became operative, nor was it modified or changed by the legislation in question.

The scope of Order No. 39349, of July 14, 1927, is set out in the reasons for judgment of the Chief Commissioner. This order went in the names of the Chief Commissioner, the Deputy Chief Commissioner and Mr. Commissioner Boyce. Briefly, Order No. 39349 may be taken, in my opinion, as reaffirming and implementing Order No. 38275. The principle of the original order not having been modified, it is not apparent why the order reaffirming it should be rescinded.

Order No. 39348, of July 14, 1927, deals with the interpretation to be given to the Maritime Freight Rates Act, in respect of the question whether the preferred movement described by the Act is limited to the Canadian National lines. The Chief Commissioner in his reasons for judgment holds that it is not so limited. This is a question of law on which his opinion prevails, under section 12, subsection 2 of the Railway Act.

September 9, 1927.

Commissioner Oliver:

The condition which is confirmed by Order No. 39349, and which was the subject of the appeal by the Canadian National Railways, is that traffic originating on the lines of the Canadian National Railway system in the Maritime Provinces and in Quebec east of Diamond Junction and Levis, and destined to points in Canada reached by Canadian Pacific Railway lines westward of the railway junctions mentioned (whether also reached by Canadian National Railways or not), may be routed on the order of the shipper and without additional cost to him, over the lines of the Canadian Pacific Railway from St. John, in New Brunswick, or from Ste. Rosalie, 38 miles from Montreal (points common to both Canadian National and Canadian Pacific Railways), to points of destination, instead of being carried by the Canadian National Railways all the way to destination on that system, or to the junction with the Canadian Pacific system nearest to the point of destination, if consigned to a point not reached by the Canadian National Railways.

In the interchange of traffic each railway gets its share of earnings from the total haul, based approximately on its proportion of the total mileage. It is the business of each railway to get as large a share as possible of the gross haul and therefore to have the point of interchange as far from the point of shipment and as near to that destination as possible. Order No. 39349 arbitrarily fixes St. John and Ste. Rosalie as points of traffic interchange between the two systems which serve the Maritime Provinces and give rail connection between those provinces and the rest of Canada.

The Canadian National, in order to be entirely on Canadian territory, is compelled to take the detour north of the state of Maine. For this reason both its lines are somewhat longer than the Canadian Pacific connection which cuts across the state of Maine from Megantic, Quebec, to McAdam, New Brunswick. From Moncton, New Brunswick, which is the point on which the National system in the three Maritime Provinces centres to say Toronto as a typical western point, is 946 and 980 miles respectively by the two Canadian National lines, while it is 900 miles by the Canadian National to St. John and thence by the Canadian Pacific, a difference in favour of the latter route of 80 and 46 miles respectively, as compared with the Canadian National lines. Although the haul is longer by the National lines, the shorter mileage by the Canadian Pacific governs the rate. Therefore, the extra haul over the National lines is, and always has been, at the cost of the railway, not of the shipper.

It may be that the compulsory interchange at St. John was established in the belief that because of the somewhat shorter haul a more prompt service would be given, although at the same rate. It does not appear to me that the possibility of a more prompt service, because of a haul shorter by between 40 and 80 miles in a total distance of 900 miles, could be justification for allowing the earnings which would otherwise come to the National being diverted to the Canadian Pacific, merely because that was the desire of the shipper. It would appear to me that to allow such diversion of traffic from the road upon which it originated under such circumstances, makes possible the introduction of considerations that do not properly pertain to the railway service, and cannot tend towards the maintenance or increase of efficiency in that service.

In the case of the interchange at Ste. Rosalie it will be observed that no question of greater promptitude of service because of shorter haul can arise.

In that case the Canadian National has hauled its Maritime Province freight over its longer line to a point from which it commands access on equal or more favourable terms as to mileage with the Canadian Pacific Railway to all points in and west of Montreal, whether in the central or western provinces. In Ontario the Canadian National serves a larger number of points than does the Canadian Pacific. There are very few points of importance in that province served by the Canadian Pacific that are not also served by the National. And yet, under Order No. 39349, the National may be compelled to turn over to the Canadian Pacific at Ste. Rosalie the freight which it has hauled to that point for delivery at all points west of Montreal touched by the Canadian Pacific. While the National, which originated the traffic, gets the earnings on the haul of, say, 650 miles from Moncton, the Canadian Pacific gets the earnings on the remainder of the haul of, say, 350 miles to Toronto, and an average of 100 miles more in southern Ontario beyond Toronto. At the same time, there can be no suggestion that the National is not equally well equipped in every particular to give the service required, and on that ground, and in accordance with usual railway practice, is entitled to the total haul and total earnings.

In the case of freight destined from the Maritime Provinces to the prairie west, under Order No. 39349 it may also be diverted at Ste. Rosalie from the National to the Canadian Pacific. In its connection with and in the west, the National is equipped to give the Maritime shipper as good service as the Canadian Pacific. From Halifax to Ste. Rosalie is 765 miles; from Sydney is 918 miles; from Moncton, 577 miles; and from Campbellton, 424 miles. From Ste. Rosalie to Winnipeg is 1,472 miles; to Saskatoon, 1,952 miles; to Edmonton, 2,321 miles; and to Calgary, 2,296 miles. So that while the National system upon which the traffic is originated gets the earnings on 765 miles of haul from Halifax to Ste. Rosalie, the Canadian Pacific gets the earnings on 1,472 miles from Ste. Rosalie to Winnipeg, on 1,952 miles from Ste. Rosalie to Saskatoon, on 2,321 miles to Edmonton, or 2,296 miles to Calgary. That is to say, on freight originating at Canadian National points in Nova Scotia and destined for prairie points, the Canadian Pacific Railway gets the earnings on approximately two miles of the total haul for each mile of haul by the Canadian National.

Not only is there no advantage to the shipper in a shortening of haul between Ste. Rosalie and Winnipeg by taking the Canadian Pacific Railway line at Ste. Rosalie, but in fact the all-Canadian National line from Moncton and therefore from all Nova Scotia and Prince Edward Island points and as well from New Brunswick points northwest of Moncton, is shorter to Winnipeg than the combination route by way of Ste. Rosalie. From Moncton to Winnipeg by the National line and the Quebec Bridge is 1,806 miles, while from Moncton by Canadian National to St. John and thence to Winnipeg by Canadian Pacific is 1,974 miles, or by way of Ste. Rosalie 2,047 miles. But by Order No. 39349 the shipper may order his freight by the longer route, the National losing the benefit of the haul for approximately two-thirds of the total distance. At a time when a compulsory reduction has been made on freight rates over the Canadian National lines within the Maritime Provinces (the burden of any possible resulting loss being laid upon the Dominion Treasury), it appears to me to be important that the railway should be permitted to earn all that it fairly and reasonably can by the service which it is equipped to give over the rest of its system to its patrons in those provinces.

The following is the mileage by which the Canadian National Railways and the Canadian Pacific Railway respectively give service to the Maritime Provinces:—

CANADIAN NATIONAL RAILWAYS

Nova Scotia	1,027 miles
Prince Edward Island	254 "
New Brunswick	1,309 "
Total	2,950 miles

In addition the Canadian National has 543 miles of line in Quebec east of Levis and Diamond Junction, a total of 3,133 miles.

CANADIAN PACIFIC RAILWAY

New Brunswick	666 miles
Nova Scotia	292 "
Total	958 miles

In New Brunswick the Canadian National has almost twice as much mileage as the Canadian Pacific and in Nova Scotia more than three times as much. If the two systems were on an approximate equality as to mileage in the provinces affected, and if the compulsory interchange of traffic at St. John and Ste. Rosalie applied equally to both, the condition would be as fair for one system as for the other. But, first, the respective mileages of the two systems are not approximate in equality and second, Order No. 39349 is directed only against the Canadian National. It does not require the Canadian Pacific to turn over traffic to the Canadian National on the order of the shipper.

The privilege of routing long haul traffic away from the railway upon which it originates is sometimes spoken of in connection with Order No. 39349 as a form of competition. I am unable to see how it constitutes competition in the accepted sense of the term, provided there is—as it must be supposed there is—efficient operation of the Canadian National Railways. Competition between railways occurs when both have the opportunity of rendering the same service. There is active competition between the two railway systems at St. John because St. John is served by both. Therefore St. John has no interest in Order No. 39349. The same is true of Fredericton, Woodstock, Grand Falls, Edmundston and other less important points touched by both railways.

Shippers at points served by the Canadian National and not reached by the Canadian Pacific Railway, are enabled by Order No. 39349 to route their long haul freight over the Canadian Pacific Railway from St. John or Ste. Rosalie, but it is difficult to see how that is going to react in greater efficiency in that part of the service for which, under existing conditions, they must be dependent on the Canadian National Railway system. It gives them a weapon by which the National may be injured, but I am unable to see how it provides an adequate remedy for inefficiency of service, if such exists.

In accordance with the foregoing statement of facts, as I understand them, I find myself unable to assent to Order No. 39542, which refuses the rescission of Order No. 39349, for the following reasons:—

1st. That the effect of Order No. 39542 is to continue and confirm a traffic condition which is contrary to the generally accepted principle that the railroad upon which traffic originates is entitled to the long haul earnings on that traffic.

2nd. That the traffic conditions imposed by Order No. 39349 are inherently and seriously detrimental to the earnings of the Canadian National Railway system.

3*rd.* That "The Maritime Freight Rates Act, 1927," has created a new traffic condition under which the burden of losses on operation of the Canadian National Railway system in the Maritime Provinces is placed directly upon the National Treasury, and therefore it becomes more necessary than before that the system as a whole shall be permitted to earn the maximum of which it is capable, and to that extent lighten the added burden imposed on the Dominion Treasury by "The Maritime Freight Rates Act, 1927."

4th That no substantial advantage accrues to the people dependent on the service of the Canadian National Railways in the Maritime Provinces because of the disabilities against that system continued and confirmed by the Board's Order No. 39542.

OTTAWA, September 14, 1927.

ORDER No. 39542

In the matter of the application of the Canadian National Railways, under Sections 19 and 51 of the Railway Act, 1919, for an order rescinding Order No. 39349, dated July 14, 1927, directing the Canadian Pacific Railway Company and the Canadian National Railways to publish forthwith, joint tariffs, naming through rates from points in the Maritime Provinces to stations west thereof, in Canada, via Saint John and Sainte Rosalie Junction, which will be the same as published between the same points via the Canadian National Railways direct; such tariffs to cover all traffic and the same territorial application as existing June 30, 1927:

MONDAY, the 12th day of September, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Ottawa, September 7, 1927, in the presence of counsel and representatives for the applicants, the Canadian Pacific Railway Company, the province of New Brunswick, the province of Nova Scotia, the Halifax Board of Trade, the Montreal Board of Trade, the Canadian Manufacturers' Association and the Canadian Lumbermen's Association, the evidence offered and what was alleged,—

The Board orders: That the application be, and it is hereby, dismissed.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39504

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant," for permission to reinstate, on less than statutory notice, mileage rates on lumber as described in Section 1, Group "A," of its tariff C.R.C. No. 817 on the same basis as formerly contained in tariff C.R.C. No. 737, when for furtherance to United States points.

File No. 34822.13

TUESDAY, the 30th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon its appearing that through clerical error the said mileage rates in Tariff C.R.C. No. 737 were not reissued in Tariff C.R.C. No. 817 applicable on traffic for furtherance to United States points,—

The Board orders: That the applicant be, and it is hereby, permitted to file Supplement to the said Tariff C.R.C. No. 817 to correct such error, upon three days notice; a reference to the number and date of this order to be shown on the title page of the supplement.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39509

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927:

File No. 34822.13

TUESDAY, the 30th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the Supplements to tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act, would have been effective in lieu of the tolls contained in the several, tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to C.R.C. 802	774
Supplement 3 to C.R.C. 812	779
Supplement 1 to C.R.C. 813	776

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39510

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927:

File No. 34822.9

TUESDAY, the 30th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Quebec Oriental Railway, Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
207	135, 166

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39511

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927:

File No. 34822.9

THURSDAY, the 30th day of August, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the supplements to tariffs filed by the Atlantic Quebec and Western Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act, would have been effective in lieu of the tolls contained in the several, tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to 193	183
Supplement 1 to 199	127, 173

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39534

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

Tuesday, the 30th day of August, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the supplements to tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in Column 1.

Schedule

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 3 to 596		433
Supplement 1 to 611	G. C. Ransom's	256

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39514

In the matter of the complaint of E. D. Smith & Sons, Limited, Winona, Ontario; Canadian Canners Limited, Hamilton, Ontario; Carnation Milk Products Company, Limited, et al, *against the proposed cancellation of G. C. Ransom's C.R.C. No. 343, covering rates on canned goods from Ontario points to Fort William and Port Arthur, Ontario.*

File 35457

Friday, the 2nd day of September, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*
C. Lawrence, *Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Upon consideration of the submissions by complainants and the reply of G. C. Ransom, of the Canadian Freight Association, and upon the report and recommendation of the Chief Traffic Officer,—

The Board orders: That Supplement No. 1 to G. C. Ransom's Tariff, C.R.C. No. 343, be, and the same is hereby, suspended, pending hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39533

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

FRIDAY, the 2nd day of September, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

That the supplements to the tariffs filed by the Temiscouata Railway Company under section 3 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

That the cancellations, under the provisions of section 3 of the said Act, of the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1, be, and they are hereby, approved, namely:—

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement No. 1 to 595		540
Supplement No. 1 to 614	G. C. Ransom's	110
Supplement No. 2 to 622		531

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39523

In the matter of the application of the Express Traffic Association of Canada, hereinafter called the "Applicant Company," for approval of the Express Classification for Canada No. 7, on file with the Board under file No. 4397.85:

SATURDAY, the 10th day of September, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon its appearing that the said Classification No. 7 is issued for the purpose of consolidation, without change in ratings from previous issue, and upon the report and recommendation of the Assistant Chief Traffic Officer,—

The Board orders: That the said Express Classification for Canada No. 7, be, and it is hereby, approved.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Re *inquiry by the Board of Railway Commissioners for Canada into the cost of transportation of coal from producing points in Western Canada to consuming points in Ontario, under P.C. 225, dated February 15, 1926.*

File No. 27425.90

REPORT

To His Excellency the Governor General in Council:

In compliance with the directions of Order in Council P.C. 225, of date the 13th day of February, 1926, advising that,—

> "the Board of Railway Commissioners for Canada be requested to immediately inquire and report to the Government upon the question of the cost of transportation of coal per ton in full capacity train-load quantities for such seasonal movement as above mentioned from producing points in Western Canada to consuming points in Ontario, such inquiry and report to show as nearly as practicable the particular cost of such movement, both exclusive and inclusive of the costs that would have to be incurred by the railways in any event and whether any extra or additional coal movement take place as the result of special rates or not, and both exclusive and inclusive of the element of profit to the transportation companies; to the end that the Government shall be informed as nearly as may be what rate or rates per ton for the transportation by railways of coal from producing points in Western Canada to consuming points in Ontario would pay the actual cost of the said movement (both exclusive and inclusive of overhead, superintendence, and allowance for operative profit) respectively (*a*) from an operating standpoint and eliminating the costs that would have to be incurred in any event as above mentioned, and (*b*) inclusive of the same."

The Board submits as follows:—

It was hoped that prompt co-operation would ensure quick disposition of this reference, and to facilitate the same, on the 19th day of February, 1926, the Board forwarded copies of the Order in Council to the Canadian National and the Canadian Pacific Railway Companies asking their submissions in

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respect thereto. Beyond formal acknowledgment no reply was made, and on the 24th day of February, 1926, this matter was spoken to by Mr. Woods, counsel for the province of Alberta, during the hearing of the General Freight Rate Investigation, and he formally submitted request for certain information to the railway counsel and was thereupon directed to file his submissions in writing and send them to the railway companies concerned.

On the 9th of March, 1926, Mr. Lawson, for the province of Ontario, applied to the Board for an order directing the Canadian National Railways and the Canadian Pacific Railway Company to furnish statistical information subdivided into fifteen heads, which application was set for hearing before the Board on the 30th day of March, 1926, thereby providing an interval during which it was expected that the data asked for would be under way. At the request of the province of Ontario this hearing was adjourned until the 16th day of April following, in order to give further time for preparation.

On the day last mentioned, the Board settled the particulars then asked for and in dispute, and directed that the railway companies supply the same by the 1st day of July then next, such date having been represented as the earliest possible period at which the data required could be collected, and after which it was directed that summary application be made to the Board to fix a date for hearing, which, if then applied for, and the parties been ready, could have been set, and the matter disposed of a year ago.

The Board after a period which to it seemed sufficient, namely on the 14th day of July, 1926, drew the attention of the railway companies to the fact that they were to supply information by the 1st day of July, after which formal application was to be made to fix a date for hearing, and as no such application has been made immediate attention to the matter was requested. Further information was supplied, but on the 10th day of September, no application to set the matter down for hearing having been presented, the auditors acting for the province of Ontario were asked by the Board to state whether all the information mentioned at the preliminary hearing on the 16th day of April, 1926, had been furnished, and when the province would be prepared to make application to the Board to fix a date for hearing. Thereupon the Board was notified by letter on the 17th day of September, 1926, that the province would not be in a position to take the matter up until the 1st of November then next. During the month of November, the Bell Telephone Case was being heard, and the final hearing in the General Freight Rates Investigation had been set for the 30th November.

It may be said that the railway companies in justification of delay on their part, urged that their expert traffic officers were busily and continuously engaged taking out data for the General Freight Rates Investigation and could not be withdrawn from that work. On being released from the larger hearing, they gave immediate attention to the data required for this inquiry.

But from all this, it is apparent that notwithstanding the parties at various times were urged by the Board to expedite preparation of their schedules, lack of information prevented them from bringing the matter before the Board for hearing prior to the commencement of the final hearing of the General Freight Rates Investigation, which began on the 30th November, 1926, and continued until the 30th April, 1927. During that hearing, namely on the 10th day of December, 1926, Mr. Woods made application to interrupt the proceedings for the purpose of taking up the Coal Inquiry, but in view of the fact that many counsel were present from all over Canada engaged in the former case, the importance of which demanded unbroken attention, it was deemed unwise to accede to such request.

Necessity for instant attention on the part of all the Board to the questions involved in the General Freight Rates Investigation, and their determination before the 1st of September instant, prevented decision in this matter until the former was disposed of.

The compelling necessity of hearing and promptly deciding the questions involved in the Telephone Inquiry and the General Freight Rates Investigation forced postponement of several matters of great importance to different localities, and on completion of the Telephone Inquiry and the Freight Rate Investigation, it was necessary to instantly assign three members to the disposition of such matters insistently demanding attention, while the remaining three members, namely the Chief Commissioner, the Assistant Chief Commissioner, and Mr. Commissioner Oliver, at once took up the reference from the Privy Council in its Order, P.C. No. 225.

On the 26th day of May, 1927, all parties in interest met at a hearing before the Board's Chief Traffic Officer, at which various details were presented and discussed, and the matter was finally presented to the Board on the 7th day of June last and completed on the 13th day of that month.

After full consideration and study of the evidence and exhibits placed before the Board, figures were arrived at which furnish the best answer the Board can give to the various phases of the inquiry submitted in the order. The opinion of the three members, however, is not unanimous. That of the Chief Commissioner and the Assistant Chief Commissioner sets—

The out of pocket cost at	$ 7 22 per ton
The inclusive cost at	10 07 per ton
Inclusive cost plus the element of profit, at	12 20 per ton

In the opinion of Mr. Commissioner Oliver the same are as follows—

The out of pocket cost at	$ 6 50 per ton
The inclusive cost at Inclusive cost plus profit	Unable to draw definite conclusion from evidence submitted.

Attached hereto are the detailed reasons and calculations upon which the above opinions are based.

Respectfully submitted,

(Sgd.) H. A. McKEOWN,
Chief Commissioner

(Sgd.) S. J. McLEAN,
Assistant Chief Commissioner.

(Sgd.) FRANK OLIVER,

Ottawa, September, 1927.

REASONS

The Chief Commissioner:
The Assistant Chief Commissioner:

In preparation for this inquiry, the Provincial Governments most particularly concerned, namely those of Ontario, Alberta and Saskatchewan, sought expert advice upon the question under investigation, and have submitted the testimony of Mr. George W. Oliver, whose evidence and the exhibits presented by him, are relied upon as conclusive in regard to the questions at issue. The railway companies rest upon the testimony of their traffic officers in support of figures in some respects considerably different from those presented on behalf of the provinces.

Their methods of calculation differ so materially that it is not feasible to compare them step by step, but nevertheless, certain basic items are comparable, and making every allowance for different data used, a figure can be arrived at, to which the calculations of each can be brought for consideration.

Order in Council P.C. 225 directs,—

(1) A report on the cost of transportation of coal in full capacity trainload quantities for the period of the year when the rolling stock of the railways is not mobilized for the transportation of the grain crop in Western Canada;

(2) the seasonal movement of coal is one spoken of as being from the producing points in Western Canada to the consuming points in Ontario;

(3) there is to be ascertained " as nearly as practicable " the " particular " cost (*a*) exclusive of the cost that would have to be incurred by the railway in any event; (*b*) inclusive of the cost that would have to be incurred by the railway in any event;

(4) and both exclusive and inclusive of the element of profit to the transportation companies.

In summary, what is asked for, as we understand it, is,—

(1) The out-of-pocket cost;

(2) The out-of-pocket cost plus the coal traffic's share of the cost incurred in any event, the latter cost being diluted by the added ton mileage resulting from the coal movement; and

(3) Also item (2) plus the element of profit.

In round numbers, the Canadian National has figured on 10,000 box cars being available for a seasonal movement between January 15 and July 15, and the carriage of approximately 1,000,000 (1,016,272) tons during that period.

Mr. Oliver, the expert witness for the province of Ontario, did not take into consideration any particular volume of coal. He intimated that he did not consider quantity was an important factor, and he dealt with coal in this movement as being traffic intermingled with other traffic and not with train-load movements. In evidence, at *p. 8842*, he said that coal would never be handled in exclusively solid trains. While the expert for the Canadian National assumed that 1,000,000 tons could be handled with the equipment available on the off peak movement, he testified that he could not be sure the equipment would be available to carry this amount every year.

In reporting on the question of cost, it must be noted that it is impossible to get at the exact cost of a particular movement in railway traffic. All that can be done is to approximate cost; and as emphasized by the experts in connection with the present investigation the element of opinion is very important.

Mr. Mallory, for the Canadian National, at *p. 9175*, stated that what was asked for in this case was " altogether unique in railroad experience, and that while the railway desired to do everything it could to assist in obtaining the information, its submissions were not to be understood to be advancing a method which will find the cost of any given commodity." At *p. 9174*, he sets out that the accounting rules prescribed for railways by regulative bodies in the United States and Canada apparently have not been formulated with the object of ascertaining such cost data as are here asked for. He states " other railway statistics so far developed have not made cost accounting possible to the extent that rates may be safely based on the results." Mr. Oliver, the expert for the province of Ontario, stated, at *p. 8994*, that it was not claimed that the exact cost had been ascertained in his studies, but that what had been done was to set forth information which would be helpful to the Board in determining the out-of-pocket costs. Mr. Oliver's studies were limited to out-of-pocket costs. At *p. 8898*, he stated, " In a study of this sort it is impossible to secure accurate results; all you can get is a range of costs."

It may be noted that in striking two bases of out-of-pocket comparison which he names " A " and " B ", and which are referred to later, there is a spread of 15 per cent between these two bases which were set forth as dealing with a maximum and a minimum. As bearing on the results set out in the provincial submissions as basis " A " and basis " B," some comments are necessary. Basis " B " which gives an out-of-pocket cost of $6.087 is based upon the idea that there will be 100 per cent empty mileage westbound. In submitting this basis " B ", Mr. Oliver queries this as being excessive, stating

"it is not altogether certain that additional coal business from Alberta to Ontario will result in 100 per cent empty movement."

In the interchange between Central and Western regions in 1926, 25,218 loads moved east and 17,541 moved west. The average loads per month east were 2,101; west, 1,450. If further analysis of the loads is made it will be found that in 1926 the months January, February, March and December took 13,171 loads. In 1926, of 10,211 empties moving westbound 7,322 moved in the months of April, June, July and August.

The Canadian National, whose figures are above set out, estimates 100 per cent empty car movement westbound. On conditions as they exist, and unless there is a change which has not yet so far taken place, the nature of the traffic to and from the west, being, in the main, bulk traffic out and higher valued less bulky traffic inbound, of necessity creates a disparity in terms of empty mileage; and there is no evidence which warrants the conclusion that for some time at least the coal movement eastbound will be offset by loaded car movements westbound.

Mr. Oliver, for the Provincial Governments, based his calculation upon a movement of coal from:—

(*a*) Drumheller to Toronto—1,991 miles.
(*b*) Edmonton to Toronto—2,002 miles.

In estimating the movement, Mr. Oliver takes a load of 36 tons. Mr. Mallory, for the Canadian National, takes a load of 33.4 tons. This average of 33.4 tons is worked out on the special movement of coal which actually took place in 1925-26. The use of 33.4 tons as a divisor in working out cost per ton instead of 36 tons makes a difference of about 8 per cent. The 30-ton box car has an axle load gross capacity of 51½ tons, the average tare of these 30-ton box cars being 17.5 tons. This leaves a maximum load of 34 tons for the so-called 30-ton box car.

It was testified that one reason why there was a preponderance of 30-ton cars used in the special movement above referred to was that the province of Alberta was desirous of getting smaller loads which would be more readily distributed; and it is intimated that there would be no difficulty now in getting heavier loads. This, again, is a matter of opinion on which no data are available. Pending development of traffic, the only safe measure of what will move per car is what has already moved in the special case referred to.

Mr. Oliver has confined himself to an estimate of out-of-pocket costs only, and has figured the problem in two ways.

Basis A.—Using the cost ascertained by his method of hauling the loaded car east, and the empty car west, as shown by his analysis, and,

Basis B.—Using the ascertained cost of hauling a loaded car east and assuming an equal hauling at equal cost for returning the empty car west.

Following the accepted method of railway accounting, he subdivides the major expenses of the operation into:—

A. Maintenance of way and structures.
B. Maintenance of equipment.
C. Transportation.
D. Taxes.

And taking every car of coal carried, he allots expenditures to each based upon the four major divisions immediately above noted, and arrives at results thus:—

—	2002		1991	
	Edmonton to Toronto		Drumheller to Toronto	
	Basis A.	Basis B.	Basis A.	Basis B.
	$ cts.	$ cts.	$ cts.	$ cts.
Maintenance of Way and Structures	30 85	30 85	30 68	30 68
Maintenance of Equipment	59 27	66 56	60 84	68 18
Transportation	88 84	111 30	95 47	118 15
Taxes	2 02	2 02	2 08	2 08
Totals (1 car)	180 98	210 73	189 07	219 09
Dividing each of the above totals by 36 (the number of tons in each car) he finds a tonnage cost of:—				
	5 03	5 85	5 25	6 08

The above is submitted on the part of the provinces of Ontario and Alberta as the out-of-pocket costs of the movement, exclusive of overhead, superintendence and operating profit. Mr. Oliver in his calculations makes use of statistics furnished by the Canadian National Railways for the year 1925, based on a division between freight and passenger expenses following formulae approved by the Interstate Commerce Commission, while Mr. Mallory calculates upon the ascertained operating statistics of the year 1926.

The opposing figures arrived at by Mr. Mallory as out-of-pocket costs are $7.52, per ton, including 26 cents per ton wage increase, as against Mr. Oliver's, $6.08.

The substantial dispute between them arises from costs assigned to Maintenance of Way and Structures, and Maintenance of Equipment, which in Mr. Mallory's computation work out to a figure of $4.09 per ton; while Mr. Oliver ascribes only $2.74 to those heads.

The first item of expenditure above alluded to, namely maintenance of way and structures, is divided into over thirty separate accounts. It is put forward that many of these items of subdivision are not affected by the volume of traffic passing over the road. In a cost study directed to out-of-pocket expenses incurred in a given movement, only such as are affected by user need be given attention. Those which are "constant" so-called, and not affected by the volume of traffic, do not influence the result, here sought.

In the science of railway accounting, formulæ have been worked out, and are now in current use, by which the primary expenses involved in each major account have been analyzed and their incidence properly classified. A careful investigation into the maintenance of way and structures expense of railways has been made by the American Engineering Association and has resulted in setting up what is known as the Yager formula, which is commonly accepted as a proper basis of calculation in this respect, and tables issued pursuant to such formula show each major account broken down into primary accounts, and the proportion whereby each primary account is affected by user.

The formula shows that fourteen of the thirty odd individual accounts into which the whole expense of maintenance of way and structures is divided, are unaffected by use. The other items are affected in varying percentages.

In the figures presented, Mr. Oliver has eliminated the item of superintendence, which under the formula is charged twenty per cent for use.

In sixteen of the several items under which, according to the formula, user must be calculated upon, Mr. Oliver has followed the percentages allotted in the formula, and figures that the full charge ascribable to the movement in question under this head should average 21.4 cents per 1,000 gross ton miles. To arrive at this result he takes as his basis a total expense of $11,789,393.97 furnished by the Canadian National Railways as the full charges to freight service on the movement involved, on the basis of overhead and profit; and the percentages, subtracted because user is not affected by the movement, reduce such total by $3,767,634.38, and thereby works out a resulting cost per thousand gross ton miles of 21.4 cents. The gross ton mileage made in transporting a car of coal from Edmonton to Toronto, 2,000 miles, based on a load of 36 tons and a tare weight of 18 tons, amounts to 108,108 gross ton miles, and a return empty haul on a tare weight of 18 tons amounts to 36,036 tons, giving a total of 144,144. Multiplying the last figure by 21.4 cents produces a cost of $30.85 per car as the proportion of maintenance of way and structures expenses chargeable to each car of coal transported from Edmonton to Toronto inclusive of 100 per cent empty haul, and at 36 tons a car, he puts it at .852 per ton.

And by the same method of calculation the movement from Drumheller to Toronto, and return, amounts to $30.68 attributable to this maintenance of way and structures account, showing again an expense of .85 per ton.

Mr. Mallory ascribes an expense of $1.12 under this head. He computes the number of shipping days from January 15 to July 15; the cars shipped per day; the average gross tons per car eastbound; the loaded freight car miles; the empty freight car miles; the total freight car miles; the revenue ton miles; the tare ton miles; and the gross ton miles including caboose mileage. His study is based upon the expenditures in 1926 on that part of the main line over which the coal will move, and combining the actual tonnage moved in 1926 with the new tonnage to be produced by the suggested movement, gives him a total of 11,289,964 tons, and a new total expense of $6,255,881, making the new cost per gross ton thousand of 55.4 cents, being in terms of the Yager formula, 29.8 cents constant and 25.6 cents variable, or affected by user.

Mr. Mallory gets his figure thus: —

From actual results, he takes the gross ton mileage moved over this portion of the road in 1926, which is 7,001,157,000 tons, and the actual cost of maintenance of that part of the line which was $5,157,947.12.

The above expense is by the formula, divided into constant 65.25 per cent, and variable 34.75 per cent, giving as follows:—

Constant	$3,365,560 50
Variable	1,792,386 62
Total	$5,157,947 12

To move the additional coal traffic involves both additional gross ton mileage and additional costs. The added revenue gross ton mileage on the coal movement is 4,288,807, and the actual cost (1926) of moving a thousand revenue gross ton miles over this portion of the road was 73.7 cents, of which there was:—

Percentage Constant	48.1
Percentage Variable	25.6
	73.7

Multiplying the additional revenue gross ton miles (4,288,807) by the percentage of variable cost above, namely 25.6, he gets the additional cost of $1,097,934 being out-of-pocket cost, and arrives at an inclusive cost of $2,375,999 by multiplying the above 4,288,807 by 55.4 new cost per revenue gross ton miles.

To this $1,097,934 as above, representing the additional, or out-of-pocket cost, under this head, attributable to the increased movement and to the inclusive costs as well, he adds terminal expenses of $34,729 and $94,848 making a complete expense under this head of:—

Additional	Inclusive
$1,097,934 00	$2,375,999 00
34,729 00	94,848 00
$1,132,663 00	$2,470,847 00

which figures divided by the number of tons to be moved (1,016,272) produce the additional or out-of-pocket cost of $1.12 per ton, and the inclusive cost of $2.43 per ton.

Mr. Oliver admits the superiority of Mr. Mallory's method of computation, but says that the maintenance figures included in the latter's study are based upon expenditures in 1926 on the main line, and show a higher cost than is stated. He points out that the part of the line over which the coal would move shows a lower cost per ton mile than does the entire western region.

It will be noticed that the calculations of the Canadian National Railways are based on the figures for the year 1926, while Mr. Oliver has used the figures for 1925 which were given to him by the Canadian National Railways.

Apart from these different data employed by the two experts, it is to be noted that as far as Mr. Oliver is concerned his calculations on the A and B basis above explained, estimates only out-of-pocket costs, whereas Mr. Mallory adopts a two-fold calculation which he terms "additional" and "inclusive".

By his first calculation termed "additional," he assumes simply the added cost of the railway result from the movement, while by his second calculation designated "inclusive," he augments the former estimate by the addition of the coal traffic's share of the general cost, in order to assist the Board to comply with the instructions of the Order in Council.

Continuing the comparison of the two methods, it is noticed that the grouping of the major accounts is the same in both instances, namely, A—Maintenance of Way and Structures, B—Maintenance of Equipment, C—Transportation, and D—Taxes.

From Mr. Mallory's calculations for the movement which he specifies from Drumheller to Rosedale, reduced to a per ton basis, are—

	Total Cost		Cost per Ton	
	Additional	Inclusive	Additional	Inclusive
	$	$	$ cts.	$ cts.
Maintenance of way and structures	1,132,663	2,470,847	1 12	2 43
Maintenance of equipment	3,019,612	3,150,754	2 97	3 10
Traffic	.....	283,389	.....	0 28
Transportation	3,143,104	3,795,497	3 09	3 73
General	.....	477,344	.....	0 47
Taxes	87,178	334,167	0 08	0 33
Wages adjustment	262,634	366,402	0 26	0 36
			7 52	11 70

The above figure, $7.52, mentioned as additional is comparable with basis B of Mr. Oliver, namely, $6.08.

To bring the comparison closer, Mr. Oliver's figures and those of Mr. Mallory may be placed side by side, using those of the latter as taken in basis B, and showing in terms of individual tons, as follows:—

	Mr. Mallory	Mr. Oliver
Maintenance of way and structures	$1 12	$0 85
Maintenance of equipment	2 97	1 89
Transportation	3 09	3 28
Taxes	0 08	0 06
	7 26	6 08

If the wages adjustment be added to Mr. Mallory's figure of $7.26 above, it gives $7.52 shown in his calculation. If such should materialize, Mr. Oliver's should be raised to $6.34 by such addition.

It is seen from the above that the difference in cost presented is involved in the two major accounts of maintenances of way and structures, and maintenance of equipment.

The above analysis of the two methods of dealing with the first of the above accounts leads to the conclusion that the course pursued by Mr. Mallory is the safer to follow. A difference of 27 cents per ton exists betweeen them.

The Canadian Pacific Railway Company's figures are based upon a million ton movement, but as its cars are large, it calculates on 26,316 cars with a content of 38 tons per car and a tare of 19 tons. It estimates an approximate 50 days round trip from the mine to Toronto and return, including loading, which is put at four days, and a return westbound empty movement. It computes the number of trains necessary to haul this load, and allots the expense of each train under its system of accounting, and arrives at a cost from Lethbridge to Toronto, 1,988 miles, and Knee Hill to Toronto, 2,126 miles, thus:—

From	Out of Pocket Costs	Total or Inclusive Costs
Lethbridge	$7 60	$16 24
Knee Hill	8 31	17 78

Included in the figure of $7.60 and $8.31 is an item reading, "Net Revenue Loss per ton account of replacement of U.S. coal 31." This should be at once dropped from the calculation, leaving the figures at $7.29 and $8 respectively. Also their itemized outlay involves two accounts as follows:—

Miscellaneous transportation items	$555,887
Non revenue service costs	825,291
	$1,381,178

In discussing the freight car mileage repairs, a theory was advanced by Mr. Oliver based on studies he had made in the United States railway statistics. Taking a freight car mile repair cost of 1.40 cents on the Canadian National, he held that the 1.40 cents would apply, on the average, to about 328 miles, and that beyond there would be a rate of .07 cents per car mile. This is based on the theory that damages to cars are much greater in terminals than in road hauls and that there is a tapering on the road hauls. On the other hand, Mr. Mallory took the position that damages to cars were greater on the road hauls. The average haul on the Canadian National in Western Canada is 596 miles. Applying the 1.40 cents per car mile to the haul of 328 miles and of .07 cents to the item of 268 miles, which makes up the balance of the 596 mile haul, there is thus worked out an average of 1.09 cents per car mile.

The actual freight car mile repair costs on western lines amounted to $5,684,393. The total car miles on western lines amounted to 465,220,864, and this at 1.09 cents would give a total of $5,070,907. This is 11 per cent below

the total expenses; and the allowance made per car mile by Mr. Oliver should, therefore, be corrected by at least 11 per cent.

The figures used by Mr. Oliver were those of 1925. The Canadian National figures were those of 1926. It was contended by the railway that the 1926 figures, in addition to being the latest available, gave a fairer presentation of cost. Mr. Oliver stated he did not think that the 1926 figures would make much difference in the results arrived at. Mr. Mallory estimated there would be about 5 per cent difference. This may be applied to the figures set out in Mr. Oliver's tabular summary.

The item of Wage Adjustment, which was disputed, appears to be the one which may reasonably be included in the total.

As already pointed out, the nature of the subject matter involved of necessity places a great deal of dependence upon the varying factor of individual judgment. Various items which are admitted to have a bearing on cost must remain in the opinion stage.

O.C.S. (On Company's Service) material will be affected to some extent by the proposed coal movement, while this is conceded, it is contended that the effect cannot be measured exactly. In the Yager formula, the item of Superintendence is estimated as being 20 per cent, variable with use. In Mr. Oliver's computation, this factor is not taken as being applicable to the Alberta coal movement. He stated, however, in evidence (pp. 9035-36), that if a million tons were moving this would change the situation and something should be added to superintendence.

It is contended by the Canadian National that the item of freight repairs per car mile is vitally affected by the nature of the car equipment, whether wooden box cars predominate, etc. Mr. Oliver, in evidence (p. 8960), recognized that box car repairs were higher than on other freight cars. He said this was a matter of judgment, and he did not offer any opinion as to how much higher the cost was in the case of box cars. Obviously, in comparisons with freight car repair costs in the United States, the nature of the rolling stock affects the results arrived at. The effect of box car equipment is an important one on the Canadian National.

In dealing with the method of applying freight car mile repair costs, Mr. Oliver, at *p. 9621*, while strongly upholding this method which he used, stated that the degree of difference between short and long hauls was not established, and it was also undecided as to what was the proportion properly assignable to terminal and road haul.

In further explanation there are attached table "A" showing the Canadian National computations as well as Mr. Oliver's computations on Basis "A" and Basis " B ", and table " B "—a revise of Mr. Oliver's Basis " B ". The reasons for the revisions are shown in the text as well as in the footnotes to table " B ".

TABLE "A"

—	Canadian National per ton	Provinces	
		Basis "A"	Basis "B"
	$ cts.	$ cts.	$ cts.
Maintenance of way and structures	1 12	0·852	0·852
Maintenance of equipment	2 97	1·690	1·894
Transportation	3 09	2·654	3·283
	7 18		
Wages adjustment	0 26		
	7 44		
Taxes	0 08	·058	·058
	7 52	5·254	6·087

TABLE "B"—Revisions as indicated

	Basis "B" revised
Maintenance of way and structures	$ ·90 (a)
Maintenance of equipment	2·04 (a)
	·099 (b)
Transportation	3·537 (a)
Summary	$ 6·576
Add taxes	·058
Add wage adjustment	·26
Add 5% (c)	·328
	$ 7·222

Foot-Notes to Table "B"—

(a) Loading of 33·4 tons as a divisor.

(b) Included in the item of maintenance of equipment as submitted in the analysis for the Province, is the figure ·902 for freight car repairs. As already pointed out, this should be increased by 11% or ·099c.

(c) The additional 5% is to place the 1925 figures on a comparable basis with those of 1926. See statement given above.

Total operating expense per ton, as figured by the Canadian National Railway under out-of-pocket cost is $7.44. The item of Taxes brings this up to $7.52. In addition to this, it claims that the following items should be included in out-of-pocket costs:

	Per ton
(*a*) Interest and depreciation on equipment	$0 07
(*b*) Loss on imported coal traffic due to displacement of Alberta product	1 37
(*c*) Profit on operating cost to provide all income charges and reserve.	3 18

These do not, in our opinion, come within the scope of the out-of-pocket costs to which the Board's attention is directed.

There is no formula measuring the necessary and proper relation between out-of-pocket costs and operating costs. The only information which the Board has before it is that supplied by the railway. Consequently, it would appear to be justifiable to make use of the ratio between out-of-pocket, or additional cost and inclusive cost, which the railway itself presents in the figures submitted.

The grand total of "additional" cost is $10.62 per ton as compared with $14.82 per ton in the case of the "inclusive" cost. This is a differential of 39.5 per cent. Taking the figure of $7.22, as shown, and adding thereto 39.5 per cent, the result is $10.07.

In connection with the element of profit, evidence was given by Mr. Oliver in regard to applying the operating ratio. This is to be applied to the "inclusive" cost (evidence Oliver, p. 9159). Reference was made to the $5\frac{3}{4}$ per cent return in the United States. Mr. Oliver stated it was necessary to have a 70 per cent to 75 per cent ratio. He stated that if such an operating ratio were applied to operating expenses, it would produce a rate which would yield a sufficient amount to pay the operating expenses and taxes, and yield a fair return on value. (Evid. pp. 9156-58).

The witness stated that in the Lake Cargo Coal Rate Case in the United States, he applied a 60 per cent ratio. Generally, he said, the ratio was the only quickly available way of working out a rate which would yield a degree of profit.

The Canadian National has suggested a 70 per cent ratio. If the 70 per cent ratio were applied to the "inclusive" rate of $10.07 in order to obtain an element of profit, the result would be $14.38 per ton. It appears justifiable to take the operating ratio of the Canadian National for 1926, viz. $82\frac{1}{2}$ per cent. Applying this to the computed "inclusive" cost of $10.07, the result is $12.20 per ton.

SUMMARY

The computations submitted by the undersigned in response to the directions of the Order in Council are as follows:—

(1) Out of pocket cost	$ 7 22 per ton
(2) "Inclusive" cost	10 07 per ton
(3) "Inclusive" cost, plus the element of profit	12 20 per ton

(Sgd.) H. A. McKEOWN,
Chief Commissioner,

(Sgd.) S J. McLEAN,
Assistant Chief Commissioner.

September 9, 1927.

COMMISSIONER OLIVER:

By Order in Council (P.C. 225) dated February 13, 1926, the Railway Board was instructed to hold an inquiry and report to the Government upon the cost of transportation of coal per ton in full capacity train load quantities during the period of year when the rolling stock of the railways is not mobilized for the transportation of the grain crop of Western Canada;

> "To the end that the Government shall be informed as nearly as may be what rate or rates per ton for the transportation by railways of coal from producing points in western Canada to consuming points in Ontario would pay the actual cost of the said movement (both exclusive and inclusive of overhead, superintendence and allowance for operating profit), respectively, (*a*) from an operating standpoint and eliminating the costs that would have to be incurred in any event as above mentioned; and (*b*) inclusive of the same."

Pursuant to orders of the Board the Canadian Pacific and Canadian National Railways submitted detailed estimates of costs of transportation of coal from Alberta points to Toronto. The Canadian Pacific statement showed separately the "Direct or out-of-pocket costs" and also the "Total or inclusive costs" of transportation from the Knee Hill and also from the Lethbridge mines. The Canadian National statement showed "Total costs," with "Additional" and "Inclusive" costs stated separately, for transportation from Drumheller to Toronto.

An estimate of "Out-of-pocket cost" of transporting coal from Drumheller and also from Edmonton over the Canadian National Railway system to Toronto was submitted jointly by the Provinces of Ontario and Alberta. It was on the application of these provinces for a special rate on domestic coal that the inquiry was ordered. E. P. Mallory, Director of the Bureau of Statistics for the Canadian National Railways, S. W. J. Liddy, Chief Statistician for the Canadian Pacific Railway, and G. W. Oliver of Chicago, rate expert for the provinces of Ontario and Alberta, gave evidence at the public hearing by the Board in regard to the statements severally submitted by them, and were subjected to cross examination by the several counsel engaged in the enquiry.

The total "Additional cost" of transporting a ton of coal from Drumheller to Toronto is given by the Canadian National Railways as $10.62. The total "Direct or out-of-pocket" costs of transporting a ton of coal from Knee Hill to Toronto is given by the Canadian Pacific Railway as $8.31. The total "out-of-pocket expenses" of transporting a ton of coal from Drumheller to Toronto by the Canadian National Railway lines is estimated by the expert for the Provinces of Ontario and Alberta as $6.08.

The Canadian Pacific calculation is based on an assumed movement of 1,000,000 tons of coal from Knee Hill to Toronto, 2,127 miles in 26,315 carloads,

averaging 38 tons, and having an average tare (weight of empty car) of 19 tons. The Canadian National calculation is based on a movement from Drumheller to Toronto, 1,991 miles, of 1,016,272 tons of coal in 30,400 carloads, averaging 33.43 tons and having an average tare of 18.7 tons. The estimate of the Provincial expert is based on individual car performance, with an average 36 ton load and 18 tons tare, and is derived from information received from the railways as to 1925 operations. The statements of the railways are based on the operations of 1926. Drumheller and Knee Hill are the names of the principal stations of the Canadian National and Canadian Pacific railway systems in the same coal field. In all three estimtes the cost of returning the empty cars to point of loading at Drumheller and Knee Hill respectively is included.

In order to arrive at a fair understanding of the cost estimates of the railways and the provinces it is necessary to compare them by using the figures which purport to show the transportation costs from and to the same points. As the haul from the Drumheller field (which includes Knee Hill) to Toronto is the only one in regard to which all three of the parties—that is both railways and the applicant provinces—have submitted estimates of transportation costs, it offers the best basis of comparison. The difference in length of haul to Toronto from the Drumheller, Edmonton and Lethbridge fields is not important.

OUT-OF-POCKET COSTS

In the Canadian Pacific Railway statement submitted to the Board the "Direct or Out-of-pocket costs" per ton from Knee Hill to Toronto are itemized as follows:—

	Cents per ton
Maintenance of way and structures	.702
Maintenance of work equipment	.047
Maintenance of locomotives	.659
Maintenance freight train cars	1.580
Yard transportation expenses	.517
Trainmen's wages	.523
Enginemen's wages	.481
Road fuel	1.062
Water for road locomotives	.062
Lubricants, supplies and engine house expenses for locomotives	.180
Train supplies and expenses	.152
Coal door expense	.028
Miscellaneous transportation items	.648
Superintendence, printing, stationery, and general	.136
Wage rate increase	.227
Non revenue service cost	.907
Taxes, revenue, Manitoba and Saskatchewan	.078
Net revenue loss, per ton account replacement of United States coal	.310
	$8.31

The Canadian National Railways itemized the "Additional cost" per ton of the proposed coal movement as follows:—

Maintenance of way and structures:—	
Road	1.081
Terminal	.034
Maintenance of equipment:—	
Locomotive repairs	.849
Freight car repairs	2.122
Transportation:—	
Wages of enginemen	.475
Wages of trainmen	.491
Fuel	1.035
Other locomotive supplies	.091
Train supplies and expenses	.237
Yard expenses	.390
Other transportation expenses	.371
Wages adjustment	.258
Taxes, revenue, Manitoba and Saskatchewan	.085
Interest and depreciation on equipment	.074
Loss on imported coal traffic due to displacement by Alberta product	1.37
Profit on operating cost to provide all income charges and revenue	3.18
	10.62

The per ton cost of coal transportation from Drumheller to Toronto is given by the rate expert for the provinces itemized as follows:—

Maintenance of way and structures	.852
Steam locomotive repairs	.809
Freight train car repairs	.902
Shop machinery, work equipment, injuries to persons	.183
Yard expenses	.419
Enginemen and trainmen—wages	.930
Fuel	1.293
Water	.083
Lubricants, supplies and engine house expenses	.210
Train supplies and expenses	.219
Casualty expenses	.129
Taxes	.058
Total	6.087

The list of accounts submitted by the Canadian National Railways comprises much the same items as that of the Canadian Pacific Railway, and the calculations are on the same general bases, but the grouping of the details differs in several instances.

The expert for the provinces made his calculation on a per car basis, with a view of approximating as closely as possible to the actual per ton cost of the coal to be moved, whether the volume were large or small. His grouping of accounts was mainly in accord with that of the railways, but did not include all the charges made by them. Accounting methods approved by the Interstate Commerce Commission of the United States were accepted as standard by all three experts. They were followed throughout by the rate expert of the provinces, but not in all instances by the railways.

Both railways give in detail the power required to move trains over the several divisions of each system with the tonnage per train, the mileage in which pushers are required and the movement of empties westward after the coal season has closed. For the movement from Fort William east, the Canadian Pacific Railway divides the six months coal movement into two parts, winter from mid-January to mid-March, and summer from mid-March to mid-July. Heavier loading is calculated for the summer than for the winter season. From Langdon, Alberta, to Fort William the Canadian Pacific loading per train varies from 2,013 to 3,894 tons. From the mines at Knee Hill to Langdon on the main line, the load is 1,215 tons. East of Fort William the summer load ranges from 1,329 to 2,070 tons per train. The winter tonnages over the same line range from 1,095 to 1,899 tons. The Canadian National estimates an average train load of 1,926 gross tons between Drumheller and Armstrong, and 1,738 tons between Armstrong and Toronto. It will be noted that the Canadian Pacific Railway estimate differs from that of the Canadian National Railways in that, because of heavier loadings, fewer trains are required to remove the same volume of coal. Therefore gross train costs are proportionately less. The Canadian Pacific Railway haul from Knee Hill to Toronto is 136 miles longer than that of the Canadian National Railways from Drumheller to Toronto.

The Canadian Pacific gives the cost of coal for road fuel by districts as follows: Alberta, $3.96 to $3.78; Saskatchewan, $3.78; Manitoba, $4.12; Algoma, $5.03; Ontario, $5.02 per ton. The Canadian National gives the cost of coal as $4.17 in the Western region (west of Armstrong) and $5.05 in the Eastern region. The cost of haul from the mine is not included in these figures in either case.

In the provincial estimate the cost of coal is placed at $5.12 per ton west of Armstrong and $5.55 east of Armstrong. This is the ratio of enginemen's estimates to Fuel Department's figures for the year 1925 as reported by Canadian National Railways for that year.

In dealing with the numbers of accounts and masses of figures necessary to correctly estimate the per ton cost of a 2,000 mile movement of coal, there is room for very considerable divergence of view as to what should or should

not be considered as "out-of-pocket costs." Also as to the grouping of accounts that should be made for purposes of calculation. In the form of accounts submitted and in the evidence of their experts, it was, in my opinion, made quite clear that there was a serious misunderstanding on the part of both railways in regard to the enquiry as it had been ordered. The order was passed nearly sixteen months before the hearing of the Board began on June 7th of this year. Therefore there was ample time for full consideration of, and compliance with, its purposes.

Instead of submitting properly checked cost accounts of actual services during a stated period, as a basis of estimate and comparison for the consideration of the Board, the railways—except in the case of engine and trainmen's wages and fuel costs—submitted estimates, which generally speaking were the assessment of a proportion—arrived at by various methods of calculation—of the gross cost of each particular service employed in the coal movement, against that movement.

I am unable to consider this course as conforming to the terms of order P.C. 225, which expressly asks for a report that would "show as nearly as practicable the particular cost of such movement."

The order says: "There appears, however, to be good reason to believe that so far at all events as the movement of coal from producing points in Western Canada to consuming points in Ontario is concerned, the cost of the same would be very considerably reduced if this movement takes place at a time of the year when the rolling stock of the railways is not mobilized for the transportation of the grain crop of Western Canada, and it appears desirable that the cost of transportation thereof for seasonal movement as above mentioned should be ascertained." The order as above quoted, sets out plainly that the movement upon which an estimate of cost is desired is a special movement taking place under special circumstances and conditions. Therefore unless these special circumstances and conditions are considered in arriving at the estimate, the intent of the order has not been fulfilled.

An estimate of railroad costs is of necessity a very technical matter in regard to which only the accounting department of the railways themselves have information. The Board is therefore confined to a consideration of the figures submitted by the railways and by the rate expert of the provinces, in reaching its conclusions.

The Canadian Pacific Railway statement of "out-of-pocket costs" as submitted, comprised eighteen items. In the case of twelve of these items the estimates of the two railways and of the provincial expert were not far apart. Accepting these twelve estimates for purposes of calculation and comparison, they stand as follows:—

ESTIMATES COMPARED AND TENTATIVELY ACCEPTED

Respective estimates of train movement costs in cents per ton:—

—	Canadian Pacific Railway	Canadian National Railways	Ontario and Alberta
	$ cts.	$ cts.	$ cts.
Trainmen's wages	0.523	0.491	
Enginemen's wages	0.481	0.475	0.93
Road fuel	1.062	1.035	1.293
Water	0.062	0.000	0.083
Lubricants, etc	0.180	0.091	0.210
Train supplies and Expenses (cost of coal doors excluded)	0.152	0.184	0.219
Yard expenses	0.515	0.390	0.419
Maintenance of work equipment	0.047	0.000	0.183
Maintenance of locomotives	0.659	0.849	0.809
Wage increases	0.227	0.260	
Coal doors	0.028	0.053	0.000
Taxes (Revenue)	0.078	0.080	0.058
	4.014	3.908	4.204

The foregoing estimates based on the calculation that an increased traffic of approximately 30,000 carloads distributed over a six months period, would require additions to the working forces at station and terminal yards and in repair shops in proportion to that increase in volume of traffic. If the inquiry were directed to the period of the year when all the railway forces are working to capacity, that method of calculation would be more nearly correct. But in this instance the inquiry is directed to the cost of increasing the traffic during the period when owing to shortage of traffic and therefore of employment, it is necessary to reduce the working forces as much as possible. In order that there may be efficient operation, under present traffic conditions, a working force must be employed at all stations and yards affected by through traffic. While this force is increased or decreased with the rise or fall of traffic, there is a permanent establishment that cannot be dispensed with if the railway is to be operated. Clearly no part of the cost of this permanent establishment of station or yard employees is properly chargeable to the additional traffic of the suggested coal movement. But in the estimate submitted by both railways the coal movement is charged with a full share of the total annual cost, with the cost of the special movement added. For " Yard transportation expenses " the Canadian Pacific assesses 51.5 cents against the coal movement. Details of these costs are given as to wages of switch tenders and yard crews per hour; engine hours for movement; cost of fuel per hour and other yard expenses, together with salaries of additional yardmasters, clerks, checkers and call boys rendered necessary by a million ton movement in six months.

Wage increases following upon negotiations between the railways and their several classes of employees, and chargeable to the coal movement are estimated by the Canadian Pacific Railway at 22.7 cents per ton. The Canadian National estimate is 26 cents per ton. The difference between the two estimates is probably the amount already allowed for by the Canadian Pacific Railway in their estimate of trainmen's wages. As the several wages negotiations were not concluded at the date of the hearing by the Board, information as to the actual amount of the several wage increases is not in hand or available. But as wage increases necessarily become part of the transportation costs, so far as made they must ultimately be included. For purposes of calculation the estimate by the railways of wage increases may be accepted as part of the transportation cost, subject to the same considerations and limitations as above mentioned in regard to station and yard expenses.

The Canadian Pacific charges 6.2 cents per ton for cost of water. This charge for water for locomotives employed in the coal movement is not based on quantity of water actually supplied or its actual cost. In the accepted system of railway accounting a percentage upon the fuel cost is assessed as cost of water. This is no doubt entirely proper in fairly apportioning the total cost to the various services, but does not relate even remotely to the out-of-pocket cost of supplying water to locomotives engaged in a particular service. In actual practice it is not conceivable that within the capacity of the means of supply there is an appreciable added cost because of water needed by the locomotives hauling up to 30,000 coal cars during six months over and above the ordinary traffic. The fuel cost of pumping the additional water must be the whole out-of-pocket cost. The Canadian National Railways includes "water" with " other locomotive supplies ".

Coal door expense and taxes on earnings are two items of cost chargeable solely to the suggested coal movement. Coal doors are strong squares of rough boards necessary in the case of box cars loaded with coal to block the doorway inside the car on each side and so protect the actual door of the car.

The Canadian Pacific states the cost of coal doors at $1.10 for each of 26,316 cars or $28,948 which on an estimated shipment of one million tons would be .0289 of a cent a ton. The National states the cost of doors as $1.80 per set of

three. To equip the 30,400 cars necessary to ship 1,016,272 tons of coal with coal doors would cost $54,720 or .0538 of a cent a ton.

The provinces do not make any separate allowance for coal doors.

Both railways base their calculations regarding the coal movement on a six months period from January 15 to July 15. The Canadian Pacific estimates the time taken on the round trip including loading and unloading at fifty days. The Canadian National estimates sixty days. Coal cars would be expected to make three round trips in the coal service. Therefore the number of coal doors required should not be the number of carloads hauled but the number of cars employed, which would be one-third of the number of loads in each case. The cost of coal doors is therefore over-estimated.

As no additional equipment is proposed in connection with the special coal movement, there would be no added property taxation. But the provinces of Manitoba and Saskatchewan each levy a tax upon railway revenues. In Manitoba the cost is 2 per cent of the gross earnings, and in Saskatchewan 3 per cent. The Canadian Pacific estimate of taxes by the two provinces, based on earnings of $9 per ton on the proposed million ton movement is $78,750 or .078 of a cent per ton. The National estimate is .08 of a cent per ton, practically the same. The estimate of the Provinces is based on earning of $6 per ton and is .058 of a cent per ton.

ESTIMATES ACCEPTED IN PART

Five additional items, headed respectively "Miscellaneous Transportation," "Superintendence, Printing and Stationery," "Non-Revenue Services," "Maintenance of Freight cars," and "Maintenance of Way and Structures," appear in the Canadian Pacific Railway statement as part of the out-of-pocket cost. The Canadian National Railway statement includes "Other Transportation Expenses." This includes the same details as the "Miscellaneous Transportation Items," and "Superintendence, Printing and Stationery" of the Canadian Pacific Railway, with a number of others besides. There is no item of "Non-Revenue Services" in the Canadian National Railway statement, but it includes "Maintenance of Freight Cars" and "Maintenance of Way and Structures."

The Canadian Pacific Railway assesses 64.8 cents per ton against the coal movement under the heading "Miscellaneous Transportation items." These items include (1) Payment of additional help for despatching trains; (2) Additions to number of station employees; (3) Additional station supplies and expenses; (4) Signal and interlocking operation; (5) Crossing protection; (6) Telegraph and telephone operation; (7) Clearing wrecks; (8) Damage to property; (9) Damage to live stock on railways; (10) Loss and damage to freight; (11) Injuries to persons. The assessment appears to be on a train mile basis. The total cost of each item of expense is divided by the total number of train miles on the system. The amount of expense per train mile is then charged against the train miles of the coal movement and the result is given as the out-of-pocket cost of these several expenses properly assessable against that movement. The Order under which the coal enquiry is being held contains the following definition of its purpose: —

> "Such inquiry and report to show as nearly as practicable the particular cost of such movement.....(both exclusive and inclusive of overhead, superintendence, and allowance for operating profit)."

It is quite clear that an assessment of a share of the total cost of the services mentioned based on the train miles necessary in the coal movement does not show the "particular cost of such movement." No evidence whatever was offered by the railways as to actual increase in the cost of the several items

covered by the heading " Miscellaneous transportation items" to result from the coal movement. In regard to the first six items in the list it would seem entirely reasonable that as these services are now and must continue to be fully provided for, the business of operating an average of say four additional through trains a day each way for a six months period would not add appreciably to these several costs. Charging these items of account against a special service is one of the instances of departure from the methods of the Interstate Commerce Commission. Mr. Liddy, expert for the Canadian Pacific Railway, stated in his evidence that by the I.C.C. "station employees are put in as an overhead"; they would therefore be excluded from the estimate of out-of-pocket costs by the terms of the order for the enquiry.

In the Canadian National Railway statement, the most nearly corresponding item is entitled "Other Transportation Expenses." It includes the following particulars; (1) Superintendence; (2) Despatching Trains; (3) Station Employees; (4) Weighing, Inspection and Demurrage Bureau; (5) Station Supplies and Expenses; (6) Engine House Expenses—Train; (7) Signal and Interlocker Operation; (8) Crossing Protection; (9) Drawbridge Operation; (10) Stationery and Printing; (11) Other Expenses; (12) Operating Joint Tracks and Facilities—Dr.; (13) Operating Joint Tracks and Facilities—Cr.; (14) Insurance; (15) Clearing Wrecks; (16) Damage to Property; (17) Damage to Live Stock on Right of Way; (18) Loss and Damage—Freight; (19) Injuries to Persons.

It will be observed that this list specifically includes all the particulars contained in the Canadian Pacific Railway item and a number of others besides. It also includes " Superintendence, Printing and Stationery," which appear as a separate charge in the Canadian Pacific Railway list. Notwithstanding the greater number of items included, the Canadian National Railways charge against the coal traffic in respect of this item is 37.1 cents per ton.

The five latter items in the lists of both the Canadian National Railways and Canadian Pacific Railways which relate to casualties of various kinds, are radically different in character from the preceding items, which relate only to station expenses. The cost of clearing wrecks, damage to property, loss and damage to freight and injuries to persons would be properly chargeable against the traffic which caused the losses. They are absolutely ascertainable after the event, but not before. An estimate of costs under these headings may properly be made; but in making it the damage caused by or resulting to through trainloads of coal cannot be figured on the same basis as that occurring to average traffic. A thirty-eight ton carload of coal is worth say $133 at the mines. That is the measure of possible claim by the shipper in case it were lost by derailment or otherwise. A car of grain would be worth to the shipper anywhere from $1,000 to $1,800 while merchandise might run into many thousands. To charge the coal traffic with the same average costs of damage as cars containing all kinds of goods is certainly unwarranted.

The estimate of the provinces contains an item entitled " Casualty Expenses." This item assumes to provide for the costs that may be expected to be incurred because of casualties to cars, engines or persons and is assessed against the proposed coal movement at 12.9 cents per ton.

Under the heading " Superintendence, Stationery and Printing," the Canadian Pacific Railway makes a charge of 13.6 cents a ton against the coal movement. As already stated the Canadian National Railways specifically includes these items in its charge for " Other Transportation expenses" against which is charged a total of 37.1 cents per ton, as compared with the Canadian Pacific Railway charge for a shorter list of similar expenditures of 64.8 cents per ton. In view of the fact that the Canadian National Railways charge which included these items is so much less than that of the Canadian Pacific which did not include them, it would not seem that the Canadian Pacific Railway charge 78.4

cents per ton under the two headings, "Miscellaneous Transportation Items," and "Superintence, Station, Printing, Traffic and General," as compared with 37.1 cents per ton by the Canadian National Railways, for a longer list while including the same items, can be justified.

The item of "Non-Revenue Service Cost" appears in the Canadian Pacific Railway list as a charge of 90.7 cents a ton against the proposed coal movement. It does not appear as a separate item in the estimates submitted by the Canadian National Railways, or the provinces. The Canadian Pacific Railway expert stated that this charge included the cost (not otherwise charged) of transporting coal from the mine to the point at which it was used. As the cost at the mine of the coal to be used in the proposed movement, and the quantity as well, was given by both railways it would seem that there could have been no serious difficulty in getting a sufficiently accurate estimate of the actual cost of moving the necessary fuel required for the movement from the mine to the points of use. Instead of this being done a maze of involved calculations was submitted to the Board. While no doubt these calculations were in themselves mathematically accurate, in the result they purported to show that while the cost of the coal necessary to move the trains that would carry one million tons from Knee Hill to Toronto, and return them empty to Knee Hill, would be $1.06\frac{1}{5}$ per ton of coal moved, the cost of hauling from the mine the coal used as fuel in moving these trains, plus the small amount necessarily used in the various yards, would be $0.907 cents for each ton of coal moved, or only $15\frac{1}{2}$ cents per ton less than the first cost of the coal used. Under the accepted system of railway accounting the movement of fuel coal is an overhead charge. It is in the same class as the transfer movement of passenger cars, gravel for road ballast, and railway material of all kinds. It is charged as O.C.S., "On Company's Service."

In the estimate of the provinces the fuel cost is given as at the point of use—that is, including the O.C.S. cost—as $1.293 per ton of coal moved. The Canadian Pacific Railway fuel charge is $1.062 giving the cost of coal at the mine. As the calculations of the provincial expert were based on figures given him by the Canadian National Railways, and as his estimate was the cost at point of use, it would seem to be fair to allow the Canadian Pacific Railway the difference between their cost at the mine and his cost in the tender as the proper O.C.S. charge in respect of the necessary fuel haulage. This would reduce the Canadian Pacific Railway charge of 90.7 cents a ton for "Non-Revenue Service Cost" to 23.1 cents a ton.

The Canadian National Railway does not list an item of "Non-Revenue Service Cost" against the coal movement presumably because the proper proportion is included in other costs assessed against that movement.

Maintenance of freight cars to be used in the coal movement is charged by the Canadian Pacific Railway at 158 cents, by the Cnadian National Railways at 212.2 cents, and by Ontario and Alberta at 90.2 cents per ton.

It will be observed that the difference in estimate of cost of maintenance of freight cars between the two railway systems and between them and the provinces is greater than in the case of any other cost item. The Canadian National Railways figure is 56.2 cents per ton above that of the Canadian Pacific Railway, and $1.22 per ton above that of the provinces.

The only charge proper to be made against the coal movement in respect of freight cars under the terms of the enquiry is the cost of repairing damage suffered while engaged in moving coal eastward or in being returned empty westward. Neither the statements submitted by the railways nor the evidence of their experts purported to give an estimate of the actual cost of repairs to be made because of damage which might reasonably be expected to be so suffered. It is the business of a railway to keep its rolling stock in a state of efficiency and therefore it must be reconditioned from time to time so far as that is

economically advisable. The costs that have been incurred in reconditioning freight cars is included in their estimated costs by both systems. There is no means of finding how much of the total cost is actual repairs and how much is cost of reconditioning; but there is no doubt that the greater amount of reconditioning necessary because of the age and service of a large part of its equipment handed over by the former owners to the National, is the chief reason for the difference in car maintenance cost as between the Canadian Pacific Railway and the Canadian National Railway.

In cross examination the Canadian National Railway expert said that the National System had more wooden frame box cars than all the class 1 railroads in the United States put together. He stated further, on page 9460 of the evidence, that owing to "certain regulations imposed by the American Railway Association governing the interchange of cars between railroads and in connection with safety appliance standards, the draft gear on box cars, in fact all kinds of cars, have to be up to a certain standard." He said: "We still have a certain number of cars that have to be adjusted to conform to those standards, which come into effect sometime late next year or early in the year following." He stated that 28,127 wooden box cars had already been equipped with metal draft arms, and that 6,000 still remained to be equipped within the time limit of about a year and a half. He further said that in the assignment of all freight car repairs he distributed the cost of such repairs on a car mile basis irrespective of the distance of the haul, or variance in distance of haul. This evidence would seem to establish beyond question that the cost basis of freight car repairs taken by the Canadian National Railway includes so much more than actual wear and tear, loss or damage likely to be suffered by freight cars in the proposed special coal movement, that in fact the estimate does not conform even remotely to the conditions expressed in the Order for the inquiry, and, therefore, cannot properly be accepted by the Board.

The Canadian Pacific Railway estimate of "Maintenance Expenses of Freight Cars" is on the same basis as that of the Canadian National Railway. The total cost assigned to maintenance and repairs of freight cars is divided by the number of freight car miles travelled throughout the system. The coal movement is charged with the proportion of the total cost that its mileage bears to the total freight car mileage. Clearly that method of calculation does not conform to the terms of the Order for the enquiry, and leaves the Board without the means of arriving at the actual out-of-pocket cost for the special coal movement. The order does not ask for the average cost of car repairs throughout the system. It asks for a finding of the actual cost of a long haul movement in train load quantities, chiefly during the summer season, of a class of freight of very low first cost and of minimum liability either to give or receive damage.

It was argued strongly by the expert for the provinces that freight cars were more subject to damage when engaged in short haul than in long haul work, and that damage was less likely to occur when empty than when loaded. As the coal movement would be in through trains on a two thousand mile haul, there would be a minimum of shunting, which he held was a very important, if not the chief, cause of damage to freight cars; also, that, as half the movement would be returning empty, the probability of damage would be still further reduced. This view was not accepted by the experts of the railways; but the fact remains that it is a definite principle of railroading that the longer the haul the lower the per mile rate. It is not conceivable that this principle would be so fully accepted if there were not some substantial operating advantage in the long haul; to which the enquiry was specifically directed. The fuel, wage, and maintenance of way costs per mile do not decrease as length of haul increases. Therefore the saving in cost on the long haul must be in other expenses, of which freight car repairs is by far the greatest.

Box cars carrying coal do not need to be kept in the perfect interior condition that is necessary in the case of the grain traffic. That is, a car that might be absolutely unfitted for use in hauling wheat might be perfectly good for hauling coal. In view of the class of traffic and the conditions under which it would move, it is obvious that repair costs of freight cars engaged in the coal movement could not possibly be equal to the average on the system. The expert for the Provinces assigned 90.2 cents per ton as the fair cost of freight car repairs in the coal movement. As the estimates of the railways are obviously not on a basis that is in accord with the terms of the Order for the enquiry it seems to me that the estimate of the expert for the provinces may fairly be accepted as the nearest approximation to the fact.

To the account "Maintenance of way and Structures" the Canadian Pacific Railway charges 70.2 cents, the Canadian National Railway 111 cents, and the provinces 85.2 cents per ton. This amount covers cost of keeping roadway, track, bridges and buildings in good condition for service. Costs of conditioning, improving, extending or enlarging are also included. While a share of the cost of maintenance proportioned to actual wear and tear caused by the passage of say 100 loaded and 100 empty trains a month for a six-months period is properly chargeable against the proposed coal traffic, it is quite clear that costs which provide for a reconditioning, improving, extending or enlarging —and which might be properly chargeable against the coal movement if it were being considered as a part of the general traffic—are not properly chargeable against it as out-of-pocket costs when it is being treated as special traffic. Owing to the constantly increasing weight of locomotives and railway cars, both freight and passenger, there is an extra burden of cost for reconditioning of track and road bed laid upon the railways. This cannot fairly be charged as Maintenance of Way costs against the coal traffic, as these expenditures would have to be made whether there was coal traffic or not.

The details submitted by the railways do not show to what extent the costs of reconditioning, extending, enlarging, or improving are included in their estimate. Therefore, sufficient information is not available from them to the Board to warrant a definite conclusion as to what the charge under that heading should properly be.

The expert acting for the provinces of Ontario and Alberta offers the basis of calculation of costs of wear and tear from use contained in the 1923 report of the American Railway Engineering Association as a suitable method of arriving at the share of the total cost of maintenance of way and structures proper to be assigned to actual use by the proposed coal movement. In view of the fact that it is the policy of both systems to improve the condition of their respective roads as thoroughly and as rapidly as may be found practicable, it is not possible to accept in full the figures of the Canadian National Railway—so largely in excess of those of the Canadian Pacific Railway—as being properly chargeable to out-of-pocket costs of the coal movement.

As the estimate of the expert of the provinces is above that of the Canadian Pacific Railway and below that of the Canadian National Railway, it would seem reasonable to accept his figures as a fair estimate of the out-of-pocket cost of road maintenance properly chargeable to the coal movement.

For the reasons above given the foregoing five items of the estimates submitted by the railways in my opinion cannot, in accordance with the terms of the order for the inquiry, be accepted in full. They are as follows:—

	C.P.R.	C.N.R.	O. & A.
1. Miscellaneous transport items.....	64.8	37.1	12.9
2. Superintendence, printing, etc.....	13.6	00	00
3. Non revenue service.....	90.7	00	00
4. Maintenance freight cars.....	1.58.0	2.12.2	90.2
5. Maintenance of way and structures.....	70.2	1.11	85.2
	3.97.3	3.60.3	1.88.3

In respect of No. 1 of these items, in my opinion it would be proper to allow the Canadian National Railways estimate of 37.1 cents which covers items Nos. 1 and 2 of the Canadian Pacific Railway estimate. In the case of No. 3 I would substitute for the Canadian Pacific Railway estimate—there being no corresponding Canadian National Railways estimate—the amount of the difference between the coal cost as given at the mine by the Canadian Pacific Railway, and in the tender of the locomotive as given by the expert of the provinces, 23.1 cents a ton. In the case of Nos. 3 and 4 I would accept the estimate of the expert of the provinces as conforming most nearly to the terms of the inquiry as ordered.

If the railway estimates of these five items were amended as suggested they would stand as follows:—

	C.P.R.	C.N.R.	O. & A.
1. Miscellaneous transport items.....	37.1	37.1	12.9
2. Superintendence, printing, etc.....	00	00	00
3. Non revenue service.....	23.1	00	00
4. Maintenance freight cars.....	90.2	90.2	90.2
5. Maintenance of way and structures.....	85.2	85.2	85.2
	2.35.6	2.12.5	1.88.3
Total of cost items as tentatively accepted.	4.01.4	3.90.7	4.20.4
Total out of pocket cost.....	6.37.0	6.03.2	6.08.7

ESTIMATES NOT ACCEPTED

The Canadian National Railways estimate contains an item of 7 cents a ton for "Interest and Depreciation on Equipment". As no additional equipment is required in the proposed coal movement it is not apparent that this item can be properly chargeable. Interest accrues without regard to use, and the same is true of depreciation by lapse of time. As repairs and renewals are amply provided for in the items for repairs and maintenance it does not appear that the claim for a further allowance for interest and depreciation as an out-of-pocket cost against the proposed coal movement can be successfully supported. No corresponding item appears in the estimate of out-of-pocket costs of the Canadian Pacific Railway or of that of the provinces.

The Canadian National Railways estimate of "Additional Costs" to the railway of the proposed coal movement concludes with an item "Profit on Operating Cost to Provide all Income Charges and Reserve, $3.18 per ton". While this might be a proper charge against any movement considered as a part of the general traffic of the system, it was not made clear during the hearing upon what ground it was charged as an out-of-pocket cost against the special coal movement which was the subject of the inquiry. I am of opinion that it should not be considered in connection with a finding as to out-of-pocket costs.

The Canadian Pacific Railway statement contains an item; "Net Revenue Loss per ton Account Replacement of United States Coal, 31 cents per ton". The Canadian National Railways has a corresponding item; "Loss on Imported Coal traffic due to Displacement by Alberta Product, $1.37 cents a ton".

It was stated by the Canadian Pacific Railway expert that the railway earned an average of 98 cents a ton on its haul of United States anthracite to Ontario points, that the rate per ton per mile was 1.12 cents, and that the average profit on the haul of each ton was 31 cents, which was ten per cent above the average net profit per ton on the freight traffic of the system.

It was stated by the Canadian National Railways expert that the earning of that system on United States anthracite was $1.58 per ton. The average haul was 136.63 miles. The average haul on Alberta coal distributed from

Toronto would be 93.02 miles. The gross loss of earnings on the displacement of 1,016,272 tons of United States coal would be $1,609,775, which would be reduced to $1,388,080 by the saving because of the shorter distribution haul of Alberta coal. No estimate was given of the profit to the railway on the present earning of $1.58 per ton on United States coal. Obviously these figures have no relation to the cost of transporting coal from Alberta to Ontario, and do not even purport to show the net loss to the railway from transporting Alberta instead of United States coal.

It was not made clear by what process of reasoning the railways arrived at the conclusion that the displacement of United States anthracite in Ontario by Alberta domestic coal became part of the out-of-pocket costs of transporting Alberta coal to Ontario. While it is a matter entirely proper for the consideration of the railways themselves, it does not seem to me to have any part in the inquiry as ordered. If the railways in opposing the application of the provinces for such reductions in the coal rate from Alberta as would enable coal to be moved, are entitled to set up the possible results of the partial or total exclusion of United States coal resulting from the movement, the interested provinces would seem to be as fully entitled to set up the increased disbursements to Canadian railway employees that would follow the movement; the general benefit to Canada in improvement of her balance of trade; the employment of additional miners in Canada, with greater wage disbursements and consequently increased purchasing power tending to improve the traffic of the railways themselves in its most desirable features. But the inquiry was directed to matters of fact only, while these—together with the question of loss to the railways from the exclusion of United States anthracite—can only be matters of argument so far as the inquiry was concerned.

For the reasons given I am unable to accept as proper subjects for consideration in this inquiry the estimates submited by the railways as follows:—

1. Interest and Depreciation on Equipment (7 cents per ton) by Canadian National Railways only;
2. " Profit on Operating Cost to Provide all Income Charges and Reserve ($3.18) by Canadian National Railways only, and
3. " Loss on Imported Coal Traffic due to Displacement by Alberta Product ", 31 cents by Canadian Pacific Railway, and $1.37 by Canadian National Railways.

RECOMMENDATION

The order for the inquiry asked for a report on the cost of transporting coal from Alberta mines to Ontario consuming points. The estimates submitted by the railways and by the experts of the provinces only dealt with costs of transportation from the mines to Toronto. There were no estimates of the cost of distribution to other points. Toronto is of necessity the chief point of distribution for what may be called southwestern Ontario, as Ottawa would be for southeastern Ontario. The haul to Ottawa would be approximately 40 miles longer than to Toronto. In northern Ontario there are a number of important consuming points situated on the lines of one or other, or both, of the two railway systems, and therefore available to be served by a haul from the mines much shorter than that to Toronto or Ottawa. Sudbury on the Canadian Pacific Railway is 260 miles nearer the mines than Toronto; North Bay on both roads is nearly 200; Cobalt, Haileybury, and New Liskeard on the Temiskaming and Northern Ontario are nearly 300, and Cochrane on the Canadian National Railway is 440 miles nearer the mines than Toronto. There are a number of other important consuming points in northern Ontario at approximately similar distances from the mines.

It was suggested on the part of the provinces that a blanket rate should be fixed covering the several groups of Alberta mines which produce domestic coal, and all consuming points throughout Ontario. Such a rate would mean that Cochrane, Sudbury and similarly situated points, notwithstanding their much shorter haul, would pay the same rate as Toronto and Ottawa, while those cities would pay the same rate as more distant points throughout southern Ontario.

As the demand for coal at points beyond Toronto or Ottawa in the more densely populated part of Ontario must of necessity be greater than that in the shorter haul territory of Northern Ontario, the blanket rate would properly be higher than the minimum Toronto rate. No suggestion was offered as to what the proposed blanket rate should be. Assuming that it is desirable to apply such a rate, the Board lacks direct evidence on which to base a finding. But, in support of the claim made by the Canadian Pacific Railway in respect of loss on United States coal that might be displaced by the proposed movement, it was stated that their average earnings on coal hauled from the United States boundary to points throughout Ontario was 98 cents a ton, of which 31 cents was profit. In default of means of finding what proportion of the remaining 67 cents of earnings was out-of-pocket costs and how much overhead, for purposes of calculation an equal division might be made. If 34 cents a ton paid the out-of-pocket costs of distributing United States coal from points on the boundary throughout Ontario, it should equally pay the like costs on Alberta coal distributed from Toronto and Ottawa. In the summing up herein of admitted out-of-pocket costs the Canadian Pacific Railway rate from Knee Hill to Toronto is placed at $6.37 per ton; which for the actual haul of 2,127 miles is equal to a shade under 30 cents a ton per 100 miles. The Canadian National Railway Rate from Drumheller to Toronto is placed at $6.03 a ton. The average of the rates of the two systems, therefore, would be $6.20. Adding 30 cents a ton for the additional haul necessary to reach all Ontario points, Nipigon, Nakina and easterly—would give a blanket rate of $6.50 a ton. This rate should in my opinion also cover points in Quebec within 100 rail miles from Ottawa; and also points on the National Transcontinental and branches in northern Quebec eastward to, end including, La Tuque.

As Montreal, the principal coal consuming point in the province of Quebec, is a very short distance beyond the suggested range of distribution from Ottawa under the blanket rate, and as Quebec city, the second greatest coal consuming point in the province, is no further by rail from the coal mines than Montreal, an additional 25 cents a ton might in my opinion be made to cover that part of the province of Quebec not covered by the $6.50 rate, to extend as far eastward as, and including, Levis and Diamond Junction.

REGARDING INCLUSIVE COSTS

By the terms of Order in Council (P.C. 225), the Board was directed to find the actual cost of the proposed coal movement both exclusive and inclusive of overhead, superintendence, and allowance for operating profit; (*a*) eliminating the costs that would have to be incurred in any event, and (*b*) inclusive of the same.

In their estimate, as submitted, the Canadian Pacific Railway placed their " inclusive " costs at $17.78 cents a ton. The Canadian National Railway placed theirs at $14.82. The difference of estimate between the two railways is so wide that they cannot in themselves lead to any clear conclusion. The expert who appeared for the Applicant Provinces was able to render a measure of useful service to the Board in checking the railway estimates; but his attention had been centred on the question of out-of-pocket costs to such an extent that he was unable to give consideration to the figures of inclusive costs submitted by the railways.

The fact that no coal moves from Alberta mines to Southern Ontario points under the present rate of $12.70 a ton, would seem to leave even the lower figures of "inclusive" costs as estimated by the Canadian National Railway without practical value in relation to any possible coal movement from Alberta to Ontario.

The out-of-pocket cost of a special movement under specially favourable conditions must be less than the corresponding cost of an ordinary freight movement of equal volume under ordinary conditions. It does not appear, however, that in the case of the coal estimates any allowance was made for the specially favourable conditions under which the movement would take place. The Canadian Pacific Railway estimated that the "out-of-pocket" and "inclusive costs" were the same in (1) Engine and Trainmen's Wages; (2) Road Fuel; (3) Water; (4) Train Supplies and Expenses; (5) Coal Door Expense, and (6) Revenue Taxes, a total of $2.38 a ton. In (1) Maintenance of Work Equipment, (2) Yard Transportation Expenses, and (3) Lubricants, Supplies and Engine House Expenses for Locomotives the total out-of-pocket costs was placed at 76.8 cents a ton and the inclusive costs at 81.6 cents. On a total out-of-pocket cost of $3.14 per ton covering nine items which included all the principal direct transportation expenses, except freight car repairs, the inclusive cost was only 4.8 cents a ton greater. So far as these nine items of cost are concerned it must be considered to be established that there was no special reduction in the figures because of the special conditions that would surround the coal movement, and therefore it may fairly be assumed that there was no reduction in the other figures submitted for that or any other reason. It must also be assumed that should a coal movement be established as a special traffic and should it increase so that it became a part of the general business of the railways, the estimate of cost of the nine items mentioned would not thereby be increased.

The remaining items of the C.P.R. Statement, directly connected with transportation are:—

	Out of pocket	Inclusive
Maintenance of locomotives	$ 659,546	$ 803,256
Maintenance of freight cars	1,580,805	1,859,634
Maintenance of way and structures	702,167	2,006,190
Miscellaneous	648,800	879,825
Superintendcene, printing, etc	136,935	891,861
Non revenue service	907,290	1,279,515
Wage increases	227,272	320,513
	$4,862,851	$8,840,794

In the case of Maintenance of Locomotives, Maintenance of Way and Structures, and Wage Increases the out-of-pocket costs given above have been tentatively accepted in the calculation herein made, but exception was taken to the estimate of out-of-pocket costs in the other four items, for reasons already given. Further consideration of these particular inclusive cost figures would not seem to be likely to lead to conclusions of serious value without more detailed information than is at present available as to the complete basis upon which they are founded.

INCLUSIVE COSTS ARE NOT ALWAYS EARNED

While there are wide differences between out-of-pocket costs of transportation and maintenance, and overhead costs including superintendence, there is no sharp dividing line between, which enables them to be separated with absolute uniformity. Regarding a considerable portion of railway expenditure it must always be a matter of policy as to what items of cost shall be charged to each service. Superintendence and all forms of overhead, including bond interest, must be paid for as well as out-of-pocket cost before there can be any net return. If railway rate making were a mere matter of dividing the gross cost including

superintendence, maintenance, interest and all other factors of overhead amongst the number of tons carried or expected to be carried per mile it would be a very simple matter. The fact is, however, that railway rates are not and cannot be calculated in that way.

The difference in value of any commodity at two separated points is the reason for its movement from one point to the other. If the cost of moving is greater than the difference in value, the commodity cannot and does not move. On articles of manufacture in producing which skilled labour forms a large part of the cost the difference in value between the points of production and consumption is usually very considerable, and a comparatively high transportation rate can be paid. On the other hand the raw materials upon which skilled labour is employed and the food, fuel and other prime human necessities required by that labour are of comparatively low initial values in proportion to tonnage; and the lower their cost when they reach the point of consumption the better the opportunity that is offered for the successful employment of skilled labour. If the railroads charged the same rates on hides and wool or on flour and coal as are willingly paid on boots and blankets the hides and wool would have cost too much to be made into boots and blankets, there would be no workers to buy and use flour and coal, and consequently no traffic for the railway. Therefore railway rates are not and cannot be based on a uniform per ton per mile cost. In fixing the rate to be charged for transporting any particular commodity between any two points there must always be a question of judgment, first, as to what are the out-of-pocket costs to be covered, and, second, how much of the overhead, that is, superintendence, maintenance, general expenses, etc., should be covered by that particular traffic over and above the out-of-pocket costs. If a certain traffic can pay more than its per ton share of the gross overhead it may fairly be required to do so. On the other hand if a certain movement is for good and sufficient reasons desirable the fact that the rate which will allow it to be moved is not sufficient to bear its full per ton share of the gross overhead does not debar such a rate from being installed. This is the principle upon which railway freight rates are classified and numbered from one to ten. It is the chief reason why certain commodities pay double the first-class rate while other articles are carried at what is called a "commodity rate" which may be less than that of the lowest or 10th class. Tenth class freight pays approximately one quarter as much per ton for a haul of the same mileage as first class, and 5th class approximately half as much.

In the course of the General Rates enquiry it was stated by Mr. Watson in his evidence for both the Canadian National Railways and Canadian Pacific Railway that the through rates on numerous commodities from Montreal to Vancouver were only expected to pay part of the gross overhead. During the same enquiry Mr. Mallory for the Canadian National Railways gave figures showing that lumber was hauled from Vancouver to Montreal at a rate per ton considerably below the gross per mile cost. During both the General Rates Enquiry and the Coal Enquiry it was stated by witnesses for the Canadian Pacific Railway and reaffirmed by the solicitor appearing for the company, that the passenger and allied services of that system did not pay any part of the net revenue. No figures were available to show whether these services did or did not in fact earn their per ton per mile share of the gross cost. During the General Rates Enquiry Mr. Mallory, director of statistics for the Canadian National Railways, at page 4207, volume 501 of the record, said that in the year 1925 the passenger, sleeper, diner, mail, express, baggage and milk services of that system had shown a loss over eight million dollars. That is, they had earned eight millions less than their per ton per mile share of the gross cost. The fact that the through rates Montreal to Vancouver or Vancouver to Montreal, or that the passenger and allied services on both systems do not earn their

equal per ton per mile share of the gross cost of operation and up-keep of the system is not held to be a reason why they should be discontinued. On the contrary the fact that their surplus earnings over net cost of operation help to pay the cost of supervision, maintenance and overhead generally, is a good reason why they should be efficiently maintained in the public service which they render; always with the view of increasing the proportion of their contribution to overhead charges, as that becomes economically practicable. It would not better the financial position of either railway system if its passenger services were allowed to be seriously reduced in efficiency with a view of making that service carry its full share of the overhead, for that would be the surest way to reduce earnings and make the financial position worse. Or, on the other hand, if the charges were increased so that the services now rendered could, or would, not be as fully used as at present the earnings would thereby be reduced, and the losses correspondingly increased.

The capital investment in the railroads and their equipment has been made. It is considered better to have that equipment fully employed in productive and constructive traffic even at rates that do not in themselves show a profit, rather than let it be idle or partly idle because of lack of productive traffic that cannot move because the rate will not permit.

EARNINGS ON GROSS INVESTMENT

The Canadian Pacific Railway estimates of "Inclusive Costs" in respect of the movement of one million tons of coal from Knee Hill to Toronto is $11,281,276 or $11.28 per ton. To this "inclusive" cost the following is added:—

Profit—Actual Revenue Basis (46.69 per cent)	$5,267,228
Profit—Fair Return Additional (10.93 per cent)	1,233,043

The accompanying explanation is as follows:—

> "If it be assumed that passenger traffic just pays its way, and that net earnings are 100 per cent attributable to freight, it follows that since in 1926 the freight earnings were $141,205,619 and the net earnings $44,945,127 that an allowance to the total costs of 46.69 per cent must be made to provide an earning equivalent to the average received from all traffic. For the year 1926 the company produced but 4,660 per cent rate of return on investment. If the rate of return of 5¾ as adjudged fair in the United States be taken in calculating the allowance for profit, an additional allowance of 10.93 per cent to costs is necessary."

Whether the term "operating profit" used in the order for the enquiry can be considered as referring only to the $11.28 per ton given as the "inclusive costs" without any special allowance for profit, or to the $17.78 which is the rate the coal traffic would have to bear if the stated objective of the company as to profit is to be realized, there is no question as to the definite assertion of a claim as of right to a rate that will give 5¾ per cent profit on the company's gross investment—that is, on the total value of the company's property.

Foundation for this claim is sought in the action of the United States Interstate Commerce Commission in setting up 5¾ per cent as the standard limiting the profits of United States railways. In regard to the application of this standard to Canadian railways I desire to express the opinion, first, that railroad conditions in Canada both as to financing and system of operation differ so radically from those in the United States that an effective comparison cannot be made; second, that so far as has been established, no railroad in the United States has yet earned that measure of profit; and third, that the rate of profit, as stated, was to be based on an independent valuation of the property of the railways that has not yet been, and in all probability never will be, made.

As to the latter point: Five and three quarters per cent is substantially above the present day value of money. The net earnings of a railway are what give its value to the property. If the net earnings are above normal the value of the investment will be correspondingly above normal. Under those circumstances obviously investment value will increase as net earnings increase and no matter how much the net earnings are increased they can never overtake the investment value on a $5\frac{3}{4}$ per cent basis. Clearly if the standard of profits set by the Interstate Commerce Commission is to mean anything in the regulation of rates—as has been assumed—its valuation of the property on which the railways are to be permitted to earn up to $5\frac{3}{4}$ per cent interest cannot be based on earnings. Some other basis must be arbitrarily arrived at. This has not yet been done. Until it has been done the reference of the United States Interstate Commerce Commission to $5\frac{3}{4}$ per cent earning offers no foundation for the suggestion that Canadian railways should be permitted to earn $5\frac{3}{4}$ per cent on their own valuation of their own property.

The rates necessary to produce any fixed return on the investment value of a railway must depend in large measure upon what properties or classes of property are considered railway investment within the meaning of the order which assumes to set up a percentage limit of earnings. On the same subject during the general rates inquiry the solicitor for the railway argued that whatever was the fair value of the property owned by the company of whatever kind or however acquired was the amount upon which it was entitled to earn the ideal $5\frac{3}{4}$ per cent profit. That is, that the company was entitled to earn its profit on property, whether land, money or completed railway, that it had received as bonus, and as well upon the increase in value that for convenience is called "unearned increment," together with the surplus of earnings over operating costs and dividends paid, that had been "ploughed back into capital." In the general rates inquiry the total book value of the property of the Canadian Pacific Railway was placed at over 900 million dollars, but Mr. Lloyd who gave evidence as the financial expert of the company stated that he estimated the actual value at $1,500,000. In other words that the "unearned increment" not shown by the books amounted to two-thirds more than the book value. As considerable amounts of "unearned increment" are included in the book values upon which the company claims the right to earn $5\frac{3}{4}$ per cent there seems to be no logical reason why on the same principle from time to time the book values might not fairly be increased to take in a part, or the whole, of the 600 millions of stated values not now shown in the books, as the sum upon which the company would be entitled to earn a return of $5\frac{3}{4}$ per cent.

In discussion on this point during the general rates inquiry it was pointed out on behalf of the railway that the surplus earnings "ploughed back into capital," were absolutely the property of the company, to be disposed of at its discretion, and that the company might have distributed these surpluses in dividends had they seen fit. Having turned the money back into the company it was not less their property, and therefore they were entitled to earn dividends on it. All this will be freely admitted. There must of course be general commendation for the course of the company in using its surplus in building up its property instead of increasing the dividends to its shareholders beyond a reasonable return on their money. If the railway were a private business enterprise it would be free to make its choice as to the disposition of its surplus earnings. But it is a public utility, financed in considerable measure from the public funds, and subject to public control as to its rates and in other matters. Had the surplus earnings of the past been distributed in dividends to shareholders there would have been insistent demands for rate reductions that could not have been ignored. That the value of the company's property is so much greater than the total investment in its bonds and stocks does not appear to me

to be a sound argument in support of such rates as will give a return of 5¾ per cent as contended by the company, whether on the gross valuation as shown in the books or on a still greater estimated value.

FINANCIAL IMPORTANCE OF COAL MOVEMENT

Canada imported from the United States in 1926 2,584,000 tons of anthracite at a cost of $20,852,000, if the figures of the Canada Year Book are correct. The cost at point of purchase was roughly $8 a ton. To this must be added the average cost of transportation to the Canadian boundary. Of the total amount of anthracite imported from the United States not less than two million tons found its market in Southern Ontario and in the city of Montreal.

Alberta has coal in unlimited quantity and of a quality particularly well suited for the domestic needs that are now supplied by anthracite. No coal moves, or can move, from Alberta to Ontario to compete with United States anthracite at present rail rates. The railroads agree that they have equipment now idle during six months of every year to enable each to haul a million tons of coal from Alberta to Ontario within the six months period. Assuming that Montreal and Southern Ontario take two million tons of United States anthracite a year and that the Canadian railroads get an verage of $1.50 per ton for hauling it, their total earning is $3,000,000. Canadians of Southern Ontario and Montreal pay to United States miners 16 million dollars for 2 million tons of anthracite coal, plus the cost of haul to the boundary, and then pay Canadian railroads, say, 3 million dollars for distributing it.

At an average f.o.b. cost at the mine in Alberta of say $3.50 per ton with a rail rate of $6.50 there would be a distribution of $20,000,000 of Canadian money amongst Canadians for the same service.

Having the necessary equipment on hand to move the coal, the railways could not fail to benefit both directly and indirectly from the movement even though the rate did not pay the per ton per mile share of overhead of either of the two systems. There would seem to be at least as good reason for hauling domestic coal from Alberta to Ontario at a rate that would yield less than "inclusive" costs, as there is for hauling passenger, express and mail trains over the same tracks under similar conditions.

While the importation of anthracite coal from the United States was less in 1926 than in 1925 by 1¼ million tons, the importation of bituminous increased by over 1¾ million tons in the same period. How far this indicates that bituminous has replaced anthracite for domestic use in Canada does not appear from the records, but there can be no doubt that there has been considerable such replacement.

It does not appear likely that coal from Alberta can ever compete with United States bituminous in the Central provinces for industrial use because of the low cost of mining in the United States and the short rail haul to those provinces. The high cost of mining anthracite and the diminishing supply are the conditions that create the possibility of developing a traffic in domestic coal between Alberta and Ontario. Although Alberta domestic coal is lower in heat units and therefore in theoretical per ton value than anthracite, the absence of soot and low percentage of smoke which occur in its consumption put it in a different class from bituminous and constitute it a competitor with anthracite for household use.

Ottawa, September 9, 1927.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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GENERAL ORDER No. 449

In the matter of the consideration of the question of a uniform code of regulations governing the testing of hearing and eyesight of railway employees required to take such tests; and the General Order of the Board No. 94, dated July 24, 1912, made herein.

File No. 1750.17

THURSDAY, the 8th day of September, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

In pursuance of the powers vested in it under section 287 of the Railway Act, 1919, and of all other powers possessed by the Board in that behalf; and upon reading the submissions filed on behalf of the Railway Association of Canada, the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Railroad Trainmen, the Order of Railroad Telegraphers, the Order of Railway Conductors; and upon the report and recommendation of its Chief Operating Officer,—

The Board orders: That the railway companies subject to the jurisdiction of the Board adopt and put into force, not later than the first day of December, 1927, the rules set forth in the schedule hereto annexed, under the heading, "Uniform Rules Governing the Determination of Visual Acuity, Colour Perception, and Hearing of Railway Employees"; and that the said General Order No. 94, and General Orders Nos. 103, 240, 378, and 387, dated respectively July 24, 1912; April 9, 1913; June 21, 1918; April 13, 1923; and January 8, 1924, made herein, be rescinded.

H. A. McKEOWN,
Chief Commissioner.

UNIFORM RULES GOVERNING THE DETERMINATION OF VISUAL ACUITY, COLOUR PERCEPTION, AND HEARING OF RAILWAY EMPLOYEES

1. Each person selected to make examinations must first pass the examination under an oculist or optometrist designated by the company, such oculist or optometrist then to instruct candidate on the use of the instruments requisite for such examination and certify to candidate's qualifications as an examiner.

2. Each examiner shall be provided with—

(*a*) a set of Snellens test types, with at least three cards of each size of letters shown in different combinations (a single line on each card) for testing acuteness of vision;

(*b*) an American Railway Association standard reading card for testing near vision;

(*c*) a Holmgren or Thompson colour-selection test and instructions for use of same;

(*d*) a "Williams" lantern, or one similarly constructed, and instructions for use of same;

(*e*) a pair of spectacles or shade for testing each eye separately;

(*f*) a triple-grooved trial frame, with one pair of plus two diopter lenses, one pair of plus one diopter lenses, and one pair of plane glass roundels; and

(*g*) blank forms for examinations and certificates.

3. Examinations shall be conducted in a well-lighted room or car in which a distance of twenty feet can be measured from test type, or face of lantern, to candidate. Shades or curtains shall be provided in order to darken room or car for lantern test.

4. In testing vision, colour perception, and hearing only those concerned in such test, other than the examiner and candidate, shall be permitted to be present.

5. (*a*) The result of each examination must be shown on a prescribed form, one copy to be preserved for reference by the examiner, and other copies as required to be forwarded to officers concerned for inspection, record, and file.

(*b*) Officers concerned must keep proper check, to ensure re-examination of all employees when due, must see that all employees who should be examined by an oculist or optometrist under the rules are required to take such examinations promptly, and that glasses provided are approved by those designated under clause 13.

(*c*) Examiners will, upon request of candidate, issue to each person who passes a satisfactory examination a certificate to that effect, and will if desired furnish employees who fail to pass, a written statement of their rating and cause of failure.

(*d*) Local officers must report to the.....(each railway to fill in officer to whom report shall be made) all cases wherein an employee appears to be disqualified, giving full information as to result of examination.

(*e*) Oculists or optometrists will report result of their examinations to the officers concerned.

6. All applicants for entrance to service under the standards specified, except for classes E and F, must take such examination without the use of glasses for distant vision.

7. With the exception of applicants for entrance to service under classes A, B, and C, glasses for near vision may be used by all those undergoing examination for entrance to service, promotion, and re-examination.

8. When the distant vision of an employee can be improved appreciably by the aid of glasses, he must wear them while on duty.

9. All employees who are required to wear glasses to bring distant vision up to the standards specified must wear them at all times while on duty, and must carry a duplicate pair for use in emergency, and will be examined with each pair.

10. All employees, excepting those indoors, who are required to wear glasses for distant vision while on duty must use the spectacle or automobile goggle form, and those indoors should preferably use the spectacle form.

11. Automobile goggles, fitted with glass which will not injuriously affect either acuteness of vision or colour perception, may be used by employees in engine or freight train service for the protection of the eyes, but the use of amber glasses by firemen while firing locomotive, as a guard against temporary fire blindness, shall be permitted and should be encouraged.

12. Glasses required to bring either near or distant vision up to standards specified must be approved by the oculist, optometrist, or examiner designated by the company.

13. Applicants having a squint, or who are cross-eyed, shall not be accepted. Examiners who suspect a case of double vision should use some simple test to determine its presence.

14. Enginemen and motormen who have less than 20-40 vision in either eye without glasses must be examined by an oculist or optometrist designated by the company.

15. Enginemen and motormen failing to pass indoor tests for acuteness of vision shall, upon request, be examined by a committee of two appointed by the General Superintendent, such committee to recommend the service to which they may be assigned.

16. Where promotion standard is not specified, employees applying for transfer from one kind of service to another, or being promoted, must pass entrance examination of class they desire to enter, except that those who have been injured in service, or who have been in continuous service for at least two years, may be transferred to positions of switch tenders and occupations under class F; also from one position to another under class E, upon passing the respective re-examination standards.

17. Employees who revert from class D to class C by direction or consent of the company will be re-examined under class D standard.

18. The test type should be in good light, the bottom of the card about on a level with the eye. Place the candidate twenty feet from the card, and ask him to read the type with both eyes open, then cover one of his eyes with a card or shade held firmly against the nose, taking care not to let it press against the eyeball, and instruct him to read with the other eye such type as may be indicated. Each eye shall be tested separately.

(*a*) Examiners are reminded that the normal-eyed should read the twenty-foot (or 6-metre) letters at 20 feet, in which case the visual power should be expressed by the fraction 20-20. Should a candidate be unable to read the twenty-foot letters at 20 feet, but be able to read the thirty-foot letters, the result should be indicated by the fraction 20-30. If he can only read the forty-foot letters, record should be 20-40, etc.

(*b*) The candidate, as provided in rule No. 7, must be able to read the print in paragraph No. 2 of the Standard Card at a distance of from fourteen to eighteen inches to pass the test. Further tests should be made by having the candidate read written train orders.

19. Applicants for entrance to service in classes A and C will undergo additional test to ascertain if far-sighted to the extent of two diopters. Examiners will use combinations in trial frames representing plane and convex lenses, varying the test so that the candidate's former experience or knowledge obtained from others may be valueless. If an applicant reads without difficulty the twenty-foot letters at 20 feet through convex lenses of 2D he will not be considered satisfactory.

20. Examiners shall adhere to instructions laid down by Holmgren or Thompson in using colour-selection test, and shall examine the colour sense of each eye separately. Further examination shall be made with Williams lantern, or one similarly constructed, in the manner specified by Dr. Williams.

21. (*a*) Applicants who have defective colour sense shall not be accepted into the service in any of the classes specified in following standards.

(*b*) Employees who have defective colour sense shall not be retained in any of the classes specified in the following standards, except in positions to be designated by the company where they will not be required to use or determine the colour of signals.

22. No employee shall be disqualified from service by reason of defective colour sense without an examination by an oculist designated by the company.

23. In examination of hearing (which shall be with human voice) each ear shall be tested separately, and the candidate should not see the movement of the examiner's lips.

24. Applicants for entrance to service must be able to hear and repeat an ordinary conversation, or names and numbers, spoken in a conversational tone, at a distance of 20 feet, in which case the hearing should be expressed by the fraction 20-20. When conversation can be heard at only 10 feet, the hearing should be expressed by the fraction 10-20.

25. Employees will not be retained in any of the classes specified if hearing is less than 15-20 in one ear and 5-20 in the other, or less than 10-20 in each ear, except in positions to be designated by the company, where the defect will not prevent the proper and safe performance of their duties.

26. Employees included in the standards of vision must be re-examined as follows:—

(*a*) all classes as nearly as possible within two years after the last previous examination;

(*b*) employees in engine, train, or yard service who are required to wear glasses to bring distant vision to standards specified, and all employees who have less than 20-70 vision in either eye without glasses, must be re-examined annually;

(*c*) after any accident in which they are concerned, which may have been caused by defective vision, colour sense, or hearing;

(*d*) after any serious accident or illness, or severe inflammation of the eye or eyelids;

(*e*) before promotion. This does not mean that a freight conductor should be examined previous to his appointment as passenger conductor, or an engineman in freight service previous to appointment in passenger service, but that freight brakemen shall be examined before being promoted to freight conductor, and firemen being promoted to engineer;

(*f*) employees with hearing less than 20-20 in either ear must be examined annually, or more frequently if deemed necessary; and

(*g*) for an individual employee at such periods as may be designated by the company's Chief Medical Officer.

27. (*a*) Employees in classes A and B who are examined by a committee shall be given an outside or field test. A bracket pole with two dolls, or two straight poles (spaced the same distance as dolls on the standard bracket pole), carrying four standard semaphore arms and lights, will be used. A clear sky background, tests to be made standing.

(*b*) In making the tests candidates shall approach the signals from a point where they are unable to see them, and not be credited with being able to read signals unless they can promptly call changes as made in position of arms and colour of lights.

(*c*) The tests with and without glasses shall be made at distances varying from 5,000 to 200 feet.

(*d*) Committee to record the different distances at which the employees being examined can promptly see the signals, and shall forward this information, together with their recommendations as to the service to which he may be assigned, to the General Superintendent.

Standards of Visual Acuity

INDOOR TESTS

Class A

Enginemen, Motormen, Firemen, Motormen's Helpers, Road Service.

Entrance to Service.—Not less than 20-20 in each eye tested separately without glasses. Must not accept a plus 2D lens, nor use glasses for near vision.

Promotion.—Not less than 20-30 in one eye and not less than 20-40 in the other without glasses.

Re-examination.—Not less than 20-30 in one eye and not less than 20-40 in the other with or without glasses.

Class B

Enginemen, Motormen, Firemen, Motormen's Helpers, Yard or other service designated by the company.

Entrance to Service.—Same standard as for class A.

Promotion.—Same standard as for class A.

Re-examination.—20-30 in one eye, regardless of vision in the other, with or without glasses.

Class C

Brakemen in passenger, freight, or yard service, Yard Helpers, Switch Tenders.

Entrance to Service.—Not less than 20-20 in each eye tested separately without glasses. Must not accept a plus 2D lens, nor use glasses for near vision.

Promotion.—Not less than 20-30 in one eye and not less than 20-40 in the other without glasses. (From class C to class D.)

Re-examination.—Not less than 20-30 in one eye, and not less than 20-40 in the other, with or without glasses; or 20-20 in one eye regardless of vision in the other, with or without glasses.

Class D

Conductors in passenger, freight, or yard service, Yardmasters, Yard Foremen, Train Baggagemen.

Entrance to Service.—Not less than 20-30 in each eye without glasses.

Re-examination.—Not less than 20-40 in one eye and not less than 20-50 in the other, with or without glasses; or 20-30 in one eye and not less than 20-70 in the other, with or without glasses; or 20-20 in one eye, regardless of vision in the other, with or without glasses.

CLASS E

Station Agents and Telegraph and Telephone Operators concerned with the movement of trains, Signal Foremen and Maintainers, Signalmen, Bridge and Track Foremen, Drawbridge Tenders, Car Inspectors.

Entrance to Service.—Not less than 20-30 in one eye, and not less than 20-40 in the other, with or without glasses.

Re-examination.—Not less than 20-40 in one eye and not less than 20-70 in the other, with or without glasses; or 20-30 in one eye regardless of vision in the other, with or without glasses.

CLASS F

Crossing Flagmen, Watchmen, Gatemen.

Entrance to Service.—Not less than 20-40 in each eye, with or without glasses.

Re-examination.—Not less than 20-50 in one eye and not less than 20-70 in the other eye with or without glasses; or 20-30 in one eye regardless of vision in the other, with or without glasses.

FIELD TESTS

Class	Without Glasses	—	With Glasses
CLASS A			
Enginemen, Road Service	By day, sunlight	200, 400 and 2,600 feet	200, 400 and 5,000 feet
	Or by day, if cloudy with clear atmosphere	200, 400 and 2,000 feet	200, 400 and 4,000 feet
	By night	200, 400 and 2,000 feet	200, 400 and 4,000 feet
CLASS B			
Enginemen, Yard Service	By day or night	200, 400 and 800 feet	200, 400 and 2,600 feet

ORDER No. 39556

In the matter of the complaints of the Pacific Terminal Elevator Company, Limited, the Council of the Grain Exchange Division of Vancouver Merchants' Exchange, the Vancouver Board of Trade, Calgary Grain Exchange, Calgary Board of Trade, and the Province of Alberta against proposed Special Tariff C.R.C. No. 71 of the Canadian Freight Association, in so far as the same affects rules and charges for car demurrage on bulk grain consigned to public terminal elevators at Vancouver.

File No. 35476

THURSDAY, the 15th day of September, A.D. 1927.

Hon. H. A. MCKEOWN, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed in support of the complaints and on behalf of the Canadian Freight Association,—

The Board orders: That Agent Thompson's Tariff C.R.C. No. 71 be, and it is hereby, suspended in so far as the same affects rules and charges for car demurrage on bulk grain consigned to public terminal elevators at Vancouver, pending a hearing by the Board.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39584

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.13

Wednesday, the 14th day of September, A.D. 1927.

S. J. McLean, *Assistant Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*

The Board orders:

1. That the tariff filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

Schedule

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 974	725

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39585

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

Wednesday, the 14th day of September, A.D. 1927.

S. J. McLean, *Assistant Chief Commissioner.*
A. C. Boyce, K.C., *Commissioner.*

The Board orders:

1. That the tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to 606	462, 593
Supplement 2 to 620	531
Supplement 2 to 621	531
623	492

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39586

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.9

WEDNESDAY, the 14th day of September, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The Board orders:

1. That the tariff filed by the Atlantic, Quebec and Western Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to 194	162

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39607

In the matter of the application of the Michigan Central Railroad Company, hereinafter called the "Applicant Company", under Section 323 of the Railway Act, 1919, for approval of By-law passed at a meeting of the Finance Committee of the Board of Directors of the Applicant Company, on September 7, 1927, authorizing O. R. Bromley, Traffic Manager, in respect of both passenger and freight traffic; L. W. Landman, Passenger Traffic Manager, or James W. Switzer, General Passenger Agent in respect of passenger traffic; Edward W. Brunck, Assistant Freight Traffic Manager, and E. F. Leuchtmann, Chief of Tariff Bureau, in respect of freight traffic, from time to time to prepare and issue tariffs of the tolls to be charged in respect of the Applicant Company's railway; and also authorizing the said O. R. Bromley, Traffic Manager, to issue from time to time, on behalf of the Applicant Company, powers of attorney appointing agents other than officials of the Applicant Company to file tariffs of freight and passenger tolls in the form prescribed in General Order of the Board No. 14, dated July 30, 1908.

Case No. 3276

TUESDAY, the 20th day of September, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The Board orders: That the said by-law be, and it is hereby, approved; and that Order No. 31250, dated July 11, 1921, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39609

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927.

File No. 34822.12

WEDNESDAY, the 21st day of September, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The Board orders:

1. That the tariff filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 2 to E-4318	G. C. Ransom's	110, 340

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39614

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927.

File No. 34822.13

WEDNESDAY, the 21st day of September, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The Board orders:

1. That the tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 3 to 806		744
Supplement 2 to 824	G. C. Ransom's	110

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39619

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

WEDNESDAY, the 21st day of September, A.D. 1927

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The Board orders:

1. That the tariff filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 2 to 607	G. C. Ransom's	110

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39622

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.15

WEDNESDAY, the 21st day of September, A.D. 1927

S. J. McLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The Board orders:

1. That the tariff filed by the Fredericton and Grand Lake Coal and Railway, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 2 to 163	G. C. Ransom's	110

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39624

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.16

WEDNESDAY, the 21st day of September, A.D. 1927

S. J. MCLEAN, *Assistant Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The Board orders:

1. That the tariff filed by the New Brunswick Coal and Railway, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 2 to 128	G. C. Ransom's	110

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39632

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.9

TUESDAY, the 20th day of September, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the supplements to tariffs filed by the Atlantic, Quebec and Western Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to 193	 183
199	127, 173

3. And the Board orders that Order No. 39511, dated August 30, 1927, made herein, be rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, October 15, 1927 No. 17

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Application of the Canadian Canners Limited, of Grafton, Ontario, for an order under Section 185 of the Railway Act, for an order directing the Canadian National Railways to construct a spur line to serve their warehouse on Lot 22, Concession A, Township of Haldimand, just north of the old Canadian National right-of-way.

File 26825.62

Heard at Ottawa on Tuesday, December 1, 1925.

JUDGMENT

COMMISSIONER BOYCE:

The applicants have a cannery, a warehouse, on lot 22, concession "A", township of Haldimand, close to what was Grafton Station, on the line of the Canadian Northern Ontario Railway, between Cobourg and Brighton. They acquired the property from The Grafton Canning Company, Limited, and that company, under the terms of an agreement dated October 1, 1912, with the Canadian Northern Ontario Railway Company, had a siding constructed from the main line of the railway to, and serving the premises of the Grafton Canning Company. The applicants took title to the premises since, and subject to the siding agreement above referred to. The agreement is on file.

It may be important to note the terms of the agreement, which are, substantially, as follows: viz.:—

(*a*) The licensee (Grafton Canning Company, Limited) may construct a siding connecting with the railway, as shewn on plan, and the railway will furnish to the Licensee, the requisite rails, fastenings, spikes, and switch materials, which shall remain the property of the company;

(*b*) The licensee, under the supervision, and to the satisfaction of the Railway, agrees to perform all work requisite for such construction, including grading, ditching, cattle guards, culverts, bridging, fencing, and ballasting, and furnish all ties, stop and safety blocks and other things necessary, except the equipment, and lay the track on the siding from the junction point over its entire length, and pay all expenses connected there-

with except cost of equipment. The company agrees to do this work at licensee's request, if the licensee deposits estimated cost thereof plus 10 per cent subject to accounting as to balance when actual cost is ascertained;

(*c*) The licensee, during the continuance of the agreement, pays rental for the use of the equipment and for services of the company's employees on the siding, at the rate of one dollar per year, and pays all expenses to the company of signals, safety appliances, signalmen, and other like expenses occasioned to the company, by reason of the existence of the siding; and a further sum (clause 6- (*a*)) to cover a portion of the cost of the perishable material and labour, expended by the company in the work of constructing the siding, which sum the company shall re-pay to the licensee by an allowance of one dollar per car for each and every car shipped inwards and outwards over said siding, and upon which the earnings of the Company shall exceed $10 per car exclusive of any switching charge, and upon which all freight and other charges have been paid, until the aggregate of such allowances of one dollar per car shall be sufficient to repay the licensee the sum of $300, which it is required to deposit, in advance, without interest, but no longer, and not otherwise;

(*d*) The licensee to secure the right of way required for siding outside of the right of way of the Company, and indemnify the Company against all claims for compensation, damages, or depreciation, by the construction, or operation, of the siding, made by the owners or occupiers of the land, or other lands, and agrees to pay and indemnify the Company against taxes, rates, and assessments, connected with the siding, and the property required therefor;

(*e*) The licensee agrees to route freight shipped to or from, any part of its premises, and destined to, or coming from any point reached by the Company's railway or connections, to be shipped over the Company's railway;

(*f*) The company's officials to control the terms and manner of using the siding, subject to non-interference, with the proper use thereof, in the licensee's business;

(*g*) The company may extend the siding to reach other industries, and may use the siding when not required by licensee's traffic, free of charge, and upon compensation fixed by the Company, and paid to the licensee permit other parties to use it, provided such user does not interfere with the licensee's traffic;

(*h*) The licensee to observe all rules and regulations of the company respecting the use of the siding as therein set out;

(*i*) Should the use of the siding, or part thereof, be, at any time obstructed, or destroyed, on which there may be any loss to buildings, goods, or other things of the licensee, or injury thereto, by reason of the operation, repair, or construction of the company's railway, whether by negligence or not, the licensee would have no remedy against the company or its agents;

(*j*) The licensee to indemnify the company against all claims, etc., (and waives all personal claims) of whatsoever description, arising out of, or incidental to the user of the siding, or the construction, maintenance, or operation thereof;

(*k*) The licensee not to transfer, or sublet, any rights or privileges, except with the written consent of the company's general manager, or superintendent;

(*l*) Provision for remedy in case of non-payment of rental;

(*m*) Agreement to continue in force for one year, and thereafter at the will of the parties. Termination by either party on giving to the other two calendar months' notice;

(*n*) Upon the termination of the agreement, all material and works on the company's land connected with the siding shall remain the property of the company, with incidental provisions;

(*o*) Provision for service of notice under the agreement;

The agreement is, to all intents and purposes, in the form of the standard agreement used for spur facilities applied for under Section 181—with variations to suit particular conditions.

After the Grand Trunk Railway lines, *inter alia,* those of the Canadian Northern Railway System, were amalgamated with and became part of the Canadian National Railway System, the siding referred to was operated by the Canadian National Railways, which had then, in consequence of such amalgamation, two lines of railway nearly parallelling one another at Grafton, viz: the Grand Trunk Railway line to the south, and the line of the Canadian Northern Ontario to the north. The distances between the two lines of railway being approximately 1,500 feet. The estimate of cost of construction of the siding asked for, including cost of right of way, incidental expenses and land damages, as found by the Board's engineer, is $8,320. One of the natural consequences of the amalgamation of the two railway lines into one system and under the management of one directorate was the inauguration of a policy of avoidance, where possible, and in the interests of economy, of duplicating lines, and the abandonment of those portions of parallel lines which it was found unnecessary to maintain. In the year 1923, the Canadian National Railway System decided to abandon, and did abandon, railway service on the part of the old Canadian Northern Ontario line on which Grafton Station was located, between Cobourg and Brighton, and as a consequence left applicants without siding facilities.

A statement filed by the railway company shows that it effected a saving of $30,739 annually by the retirement of track between Cobourg and Brighton.

The application now before the Board, is in the form of a letter from the late Mr. D'Arcy Scott, counsel for the applicants, dated August 4, 1925, and is in the following form:—

"Ottawa, August 4, 1925.

"A. D. Cartwright, Esq.,
Secretary, Railway Commission,
Ottawa, Ontario.

"Re Canadian Canners Ltd., C.N.R. Spur, Grafton, Ontario

"Dear Sir,—My clients, the Canadian Canners, Limited, have a warehouse on lot 22, concession "A", township of Haldimand, county of Northumberland, just north of the old Canadian National Railways right of way. This warehouse has been the property of my clients, or the predecessors in title, for many years. At one time it was served by a spur from the old track of the Canadian National Railways, but that track was lifted some years ago, and the Southern or Grand Trunk Railway track has since been used for all trains. By the lifting of the Canadian National Railways track, my clients are left without the railway facilities they used to enjoy. I beg to enclose a plan, in triplicate, showing the old right of way, the present track, and a spur line, which we want constructed from the existing track to our warehouse at Grafton. I, therefore, beg to apply, under section 185 of the Railway Act, for an order directing the Canadian National Railway to construct this spur line, as shown on the enclosed plan.

"I am sending a copy of this letter to Mr. Fraser, counsel for the Canadian National Railways.

"I might say that we have failed in our efforts to get the Railway Company to build this spur line for us at its own expense, as I submit, under the circumstances, it should do.

"Yours very truly,
"(Sgd.) D'ARCY SCOTT."

The railway company's answer to the application, is as follows, viz.:—

"MONTREAL, September 16, 1925.

"A. D. CARTWRIGHT, Esq.,
Secretary, B.R.C.,
Ottawa, Ontario.

"DEAR SIR:

"File No. 26825.62; Application of the Canadian Canners, Limited, Grafton, Ontario

"Replying to the above application; we made an offer to the Canadian Canners in the usual terms, which were that if they would provide the necessary right of way and bear the cost of grading, we would supply the switch, rail, fastenings, and ties and lay the same, charging therefor the very nominal rental of $5 per annum, and assuming the cost of future maintenance and repairs.

"If this is not satisfactory, an order for its construction under section 185 can be made, upon the applicants depositing the estimated cost of all the facilities, which will be rebated in the usual way, after which the railway will own the right of way on which the spur is constructed.

"I am sending a copy of this letter to Mr. Scott.

"Yours truly,
"(Sgd.) A. FRASER."

This answer of the railway company having been duly served upon counsel for the applicants, he replies, under date September 24, 1925, as follows:—

"I have received from Mr. Fraser a copy of his letter to the Board of the 16th instant. I note that Mr. Fraser is willing that an order should go under section 185, provided my clients deposit a sum equal to the estimated costs of supplying the facilities. If this were a new facility the terms suggested by Mr. Fraser might be considered reasonable, but under the conditions respecting this matter, which are set out in my letter of August 4th last, I submit the railway company should be ordered to provide the spur at its own expense. We had satisfactory facilities before the Canadian National Railways was lifted. The company, having seen fit of its own volition to take away the railway line which served our factory, it should, at its own expense, provide a new line connecting our factory with its present tracks, which are old Grand Trunk Railway tracks. This facility can be supplied by building the spur line shown on the plan filed with my letter of August 4th.

"The Board has power to order an industrial spur under section 185, under whatever terms it deems just. Under present circumstances, it would not be just to put any of the expense upon the Canning Company, or to call for a deposit from that company to cover the cost of the construction of the spur.

"Unless the Board is prepared to grant us the order applied for, on the facts submitted, I ask that this matter be set down for hearing, at Ottawa, at the earliest possible moment, in order that it may be discussed before the Board.

"I am sending a copy of this letter to Mr. Fraser."

Mr. Scott's reply being brought to the attention of the railway company, Mr. Fraser rejoined, under date October 5, 1925, as follows (referring to Mr. Scott's answer, just quoted):

"We will construct a spur on the usual terms, provided his (Mr. Scott's) clients will sign the spur track agreement, and, if not, and he wishes to proceed under section 185, we will ask the Board to follow its usual custom, have an estimate made by the Board of the work, and have the amount deposited by the Canning Company."

A copy of that rejoinder was sent to Mr. Scott.

Upon these formal presentations, the application came before the Board for hearing.

The prerequisites of the jurisdiction of the Board to make any order, under section 185 of the Railway Act, are the following, viz.:—

(*a*) The industry established, or to be established, is within six miles of the railway.

(*b*) The owner thereof desires to obtain railway facilities in connection therewith, but

(*c*) Cannot agree with the company as to the construction and operation of a spur or branch line from the railway thereto; and,

(*d*) the Board being satisfied of the necessity for such spur or branch line in the interests of trade;

It was strongly urged by Mr. Scott that because the applicants had enjoyed siding accommodation from the Canadian Northern Line—the predecessor in title of the Canadian National Railways—(which does not appear to be in any way bound by the agreement) the latter should, when it took up the track with which that siding was connected, substitute another siding, at its own expense, connecting applicant's warehouse with the southern, or old Grand Trunk tracks, now Canadan National, and he invoked section 185 for this purpose.

Mr. Scott, however, admitted (Record Vol. 445, p. 2446) that the railway company had, in law, the right to take up its tracks and discontinue the service at any time, and this Board has so ruled.

Rossland Board of Trade v. Great Northern Ry. (Red Mountain Case), 28 C.R.C., 24.

Again, in the same case (Board's Judgments, etc., XV, p. 126).

If there were enforceable conditions in the spur agreement with the Grafton Company, to which I have referred, which involve any such liability (and I have been unable to find any) such would be the basis of an action in the courts sounding in damages for breach of the agreement, and this Board would still be without jurisdiction for the reasons stated in the cases cited.

Another difficulty that confronts applicants as regards such contention is that contained in a clause of the agreement, which reads as follows (Siding Agreement, October 1, 1912):—

"Clause 9:

"Should the use of the siding or any part thereof be at any time or times obstructed or destroyed, or should any buildings, goods, or other things of the licensee, or other parties placed thereon, be in any manner

injured or lost by reason of the operation, repair, or reconstruction of the company's railway, either by the negligence of the company, or its servants, or otherwise, the licensee shall not, by reason thereof, have any claim or demand against the company, or its agents."

It is clear that the use of the siding contemplated by the agreement was destroyed by the fact of change in operation of the company's railway, to wit: the cessation of the operation with which the spur connected, and, if this agreement is binding upon the present parties, this clause would appear to specially exempt the railway company from any liability for the cessation of the operation of the spur.

Mr. Fraser, for the railway company, argued that the "inability to agree" alleged by Mr. Scott, in his application, was not as to ordinary terms of agreement under section 181, but resulted from the refusal of the applicants to consider or accept *any* agreement, other than that the railway company should build and maintain the proposed new spur *entirely* at its own expense- thus giving applicants a new spur, free of cost to applicants as to construction and maintenance. This was Mr. Scott's contention, in his original application and throughout his argument.

Mr. Fraser also argued that the meaning of the words "cannot agree" in section 185 was either that the railway company would not agree to construct a spur at all, or would only do so on terms both unreasonable and unfair, and that because neither of these elements are present in the present case, it cannot be said that the industry "*cannot agree with the company*" and, therefore, the Board should not entertain an application under section 185. He further submitted that the Board must be satisfied that the spur is "an absolute necessity", i.e. "that the industry is unable to carry on its business without the spur". He contends that the question of convenience, or saving of cartage charges, or making it easier for the industry, are not factors in determining the necessity for the spur under the section invoked; that it must be apparent that there is "a real necessity" before the Board can or should act. He points to the fact, as supporting his contention, that the absence of the spur, after it had become useless by abandonment of the main line with which it was connected, cost the industry but $700 for teaming for one year; that the industry has been conducting the business for nearly three years without a spur, which, he agreed, indicated that the business could reasonably be conducted without a spur, and, consequently, there was no necessity therefor. Mr. Fraser submits that the application should be dismissed on these grounds.

The position and rights of the applicants quoad the spur facility theretofore enjoyed by them as successors of the Grafton Canning Company under the Siding Agreement quoted, with the Canadian Northern Ontario Railway Company, which had ceased to operate, and whose property had been taken over by the Canadian National Railways, should now be considered. The old Siding Agreement had expired. Both the industrial concern (licensee) and the railway company, parties to it, had passed out of existence, and the agreement itself had expired. There was no agreement between applicants and the present railway company for the operation of the siding. That the railway company (Canadian National) had the right, in law, to abandon the line with which the spur had formerly been connected is beyond dispute. Counsel for applicants admits it. Therefore, the situation, at the time of the abandonment, at that time, by the Canadian National Railways, was that the applicants were without spur facilities, and there was no obligation, express or implied, upon the railway company, when operating its southern line (the old Grand Trunk Railway) to furnish it. The position was as if there had been no siding quoad the Canadian National, and the applicants were left to exercise their remedies, under section 181, by agreement, *de novo*, with the company, or, failing agreement, under section 185, by application to this Board, if they were in a position to make such application under the latter section.

Under the circumstances I have set out there was, in fact and in law, no right existing in applicants, to any siding accommodation, when the old railway line had been taken up. The applicants must have recognized this. Their conduct, as shown by the evidence, indicated that they did. Before the connection was severed, there was, first, verbal notice from the railway company to the vice-president and chief eastern operating manager (Mr. Sam Nesbitt) of the Grafton Canning Company, to the effect that the operation of the spur would be discontinued for the reasons stated, and there is evidence that Mr. Nesbitt concurred in the suggestion as a sound one. Then, after connection with the spur had been severed, and by telegram dated August 16, 1923, the applicants protested against the removal of the spur. The applicants took no further steps to endeavour to assert before this Board, or anywhere else, any rights they might have thought they had, to judge from the wording of their application now before us. I refer, in passing, to remedies such as those provided under sections 33 or 35 of the Railway Act, which, had there been any such right as that now asserted, were available to applicants. The spur was removed in August, 1923, and, without further complaint, and without taking any proceedings whatever, the applicants teamed to and from their warehouse to the southern track, with which they now seek spur connection, and that teaming arrangement applicants have enjoyed as a connection with the railway ever since—a period of two years—before their application to this Board of August 4, 1925, and for nearly two years since that date.

I think it is clear, upon the evidence, that the application to this Board stated to be under section 185, was for an entirely new facility, by a new industry (as to owner) by a new party, and for connection with an entirely new railway. As regards the railway company, the applicants, in applying to the Canadian National for such siding accommodation, were in the same position as any other new industry applying for the like facility, and, because of that, they could not expect, and could not receive, any different treatment, than could, under the Railway Act be accorded by this Board to the hundreds of new industries in the same position as to needing siding accommodation. If section 316 (*a*), (5), (6), and (7) means anything, it prohibits, as an undue or unreasonable preference, the granting of just what the applicant asks for in his application. If the Board, on these facts, acceded to applicant's request, it would, by its order, give to the applicant, an undue and unreasonable preference over the hundreds of industries making applications for siding accommodation.

Extended comments as to the necessity for the spur does not seem to be important in view of the railway company's offer to provide it on terms, certainly not unreasonable, and in many respects less onerous than the original agreement as to the spur on the Canadian Northern line.

The original spur track was built under an agreement to which the Canadian National was not a party. It provided spur connection with another railway and it did not assume the obligations of its predecessor—the Canadian Northern—and the Canadian National having the right, in law, to discontinue the operation of the northern line, when it acquired it, and having, after notice, abandoned it, that abandonment of that line effected a termination of the agreement, and left the applicants without any right to obtain, free of expense to it, siding connection with the southern line. That remedy is what the applicant insists upon, and invokes, section 185, for that purpose, and its failure to agree with the railway company was its failure only to get the railway company to accede to that contention and construct a new spur, and operate it, free of any expense to the applicant, who refused to accept any of the terms. The parties have never, it seems, negotiated as to terms and never failed to agree on terms. The applicant, in effect, says to the railway company "you took up your tracks, disconnected our spur, leaving us without facilities, and you must

give us, free of expense, entirely a new siding connecting with a new line which you have acquired." That means that there is no agreement possible, as to construction and operation of the spur asked for, and there never were any negotiations for any such an agreement, in which the parties failed to agree. The applicants merely insisted, and before the Board still insist on what they conceived were their rights, to have spur connection with the southern track, free of expense to their institution, for the former facility, as to the northern line, which had been discontinued. It is, clearly, no function of the Board to make an agreement for the parties; neither is it a part of its functions to determine that one negotiating party, or another, is unreasonable in its views as to terms, or in its lack of elasticity in meeting the counter proposals of the other. But, that is not the case here. The applicant invokes section 185 for the purpose of endeavouring to avoid *any* agreement, which is just what that section does not contemplate. The applicant further insists, under this section, that the Board shall exercise—or assume—a jurisdiction under that section to give applicants an unjust and unreasonable preference as to facilities within the mischief legislated against in section 316 of the Railway Act. Its allegation that it "cannot agree" with the railway company, means nothing more, in the circumstances, than that it is unable to get the railway company, by agreement, to transgress the provision of section 316, by getting the railway company to agree to furnish facilities to its industry, upon terms, which it is not required to furnish to any other industry. The failure to get the railway company to agree to such an arrangement does not, I am convinced, put either party in a position where they can come to this Board, invoke section 185 of the Railway Act, and, if successful, put this Board in the invidious position of ordering the Railway Company to supply facilities contrary to the Railway Act, as to *undue and unreasonable preference in the granting of* facilities. The claim of the applicants that they have a *right* to spur connection with the southern line, because the northern line was abandoned, cannot be justified in law or in fact. I think their remedies, so far as the jurisdiction of this Board extends to them, are confined to that section which they have invoked. They have either made out a case for relief under that section, or their application fails.

In the light of the evidence and arguments of counsel at the hearing, the position taken by applicants, as above set forth, is made clear. I quote from the record, Vol. 445, pp. 2445-6:—

> "Commissioner Boyce: By reason of the change, in the amalgamation of the two roads, the Canadian Northern ceased to be used?
>
> "Mr. Scott: Yes.
>
> "Commissioner Boyce: And you then wanted the spur connection with the old Grand Trunk?
>
> "Mr. Scott: Yes.
>
> "The Deputy Chief Commissioner: That is because you are unable to agree?
>
> "Mr. Scott: Yes.
>
> "Commissioner Boyce: You are unable to renew the agreement?
>
> "Mr. Scott: This is no good to us, because there is no track there.
>
> "Commissioner Boyce: You want a similar agreement?
>
> "Mr. Scott: We do not think we should have a similar agreement. I think they would give us a similar agreement if we would pay for the construction of the line, but our point is that we have not had the service there, and they having removed the main line over which we had the service, and substituted another new line, *it is their duty to give us facilities down to that new line.*

"Commissioner Boyce: You would not expect to get better terms over the substituted spur than you got over that for which you made the agreement?

Mr. Scott: Well, we come to the Board because we want the facilities, and we say that under these conditions we should not be made to pay for it. We had the facilities on their main line track, and they removed that track.

"The Assistant Chief Commissioner: Which they had the legal right to do.

"Mr. Scott: Yes, as a result of that we are left up in the air, and we ask that they put us back in the condition we were in before, by giving us a spur line from the main line."

And, at pages 2447-8;

"Commissioner Boyce: You had an agreement with the railroad and they discontinued their operations on the main line, as they had a right to do. Now then, they gave you facilities on the other line, did they?

"Mr. Scott: No, we have not got facilities on the new line.

"Commissioner Boyce: You haul?

"Mr. Scott: Yes.

"Commissioner Boyce: Now you want the facilities?

"Mr. Scott: Yes.

"Commissioner Boyce: It is a question of terms?

"Mr. Scott: Here is a plan shewing the situation. They are now using this line and we have to team down to this station. We want a siding put in, and we say that because of the change being due entirely to their convenience, they should put us back to where we were and give us the service without cost of construction to us.

"The Deputy Chief Commissioner: How much a year did you pay for the old siding?

Mr. Caldwell: A dollar a year.

"The Deputy Chief Commissioner: Were there any switching charges?

"Mr. Scott: I do not think so.

"Mr. Caldwell: No; a dollar a year and no switching charges.

"Mr. Scott: We will be very glad to do that, if they will construct it for us."

And, at pp. 2452-3:

"The Assistant Chief Commissioner: As to the terms, I think you agree with me that the siding, after it has been constructed, was in the same position, qua the company's right at law, as the track connected with it.

"Mr. Scott: I think so. I think it became part of the company's track.

"The Assistant Chief Commissioner: So far as the portion of the track on the land of the Canadian Canning Company is concerned, it is simply an easement.

"Mr. Scott: Yes.

"The Deputy Chief Commissioner: Did you try to reach an agreement with the railway?

"Mr. Scott: Well, we did in this way; that we said we would like this built and we would like them to pay for it, and they said they would build it if we would pay for it."

PP. 2454-5:

"Commissioner Boyce: You make this application because you are unable to agree with the company?

"Mr. Scott: Yes; because we do not agree with the company; we are unable to agree with the company.

"The Deputy Chief Commissioner: That is, that you cannot agree —not that you will not agree?

"Does the Act say you can come to the Board in such case?

"Mr. Scott: We are unable to agree. We say, 'we want you to build it for us,' and we are unable to agree.

"The Assistant Chief Commissioner: The terms of the agreement are the terms upon which you have had connection with the railway, or spur facilities in the past. Those are the terms upon which the railway company says they are willing to give you facilities; but you say you will not agree to those terms.

"Mr. Scott: We are unable to agree. We do not think it is right under the conditions, that we should be asked to pay for it.

"Commissioner Boyce: Why do you say that? Your attitude is that, because you had spur facilities with a railway which has gone out of existence and is no more use to you—the successor of that railway, or the railway into which that railway with which you had connection has become absorbed, should give you free spur facilities; is it that?

"Mr. Scott: You say it has gone out of business?

"Commissioner Boyce: It has been absorbed.

"Mr. Scott: It has been absorbed. It is part of the Canadian National—for their own benefit and for the saving of money to themselves they have made a certain change. It was no good to us, and we say 'If you are making this change for your own benefit, and are going to save money out of it, you should put back this spur.'

"Commissioner Boyce: It is a claim for a substitution. By reason of the absorption of the Canadian Northern by the Canadian Nationals, you say they should give you the facilities on the Canadian Nationals, which you formerly had on the Canadian Northern.

"Mr. Scott: Yes, that is the reason why we are asking the Board under the Branch Lines Clause, *to depart from the usual practice* and put all the expenses on them, because we say these are special circumstances, and it is not like the case of a new line to be built."

P. 2463:

"Mr. Fraser: I said in my reply that an order should be made under section 185, upon the usual terms, but I am not going to suggest to the Board that section 185 should not properly be invoked in a case of this kind. The history of section 185—and I have it from the gentleman who drew the section—is this: in the old days the railways were very lax about granting applications from industries for spur lines. They were all built in the old days under agreement prior to section 185 being passed, and it created a great deal of trouble, and Mr. Blair, then Minister of Railways, requested that a section be drafted to give the Board power to compel the railways to put in spur tracks and to stop the deliberate refusals, without giving reasons, which had become prevalent at that time, and section 185 was drafted. I think I am entitled to say

now that the intention of that section was to just about balance the conditions which were common in spur track agreements."

In its letter of September 24, 1925, quoted herein, Mr. Scott, counsel for applicants, said:—

"I note that Mr. Fraser is willing that an order should go under section 185, provided my clients deposit a sum equal to the estimated costs of supplying the facilities. If this were a new facility the terms suggested by Mr. Fraser might be considered reasonable, but under the conditions respecting this matter, which are set out in my letter of August 4 last, I submit the railway company should be ordered to provide the spur at its own expense. We had satisfactory facilities before the Canadian National Railway was lifted."

* * * * *

"Under present circumstances, it would not be just to put any of the expense upon the Canning Company or to call for a deposit from that company to cover the cost of the construction of the spur."

And, throughout the hearing counsel for applicants took the same position, as shown by the citations from the record, the effect being, as I have before stated, to refuse *any* agreement and to ask this Board, under section 185, to make an order compelling the railway company—without any deposit, or other terms imposed, to construct and operate the new siding asked for, at its own expense. I see no such power under section 185, nor does it appear that section 185 was put into the Railway Act to make possible any such Order. It is quite a novel interpretation which is sought to be put upon the section, as was stated by the Chairman (the Assistant Chief Commissioner) at the conclusion of the hearing, in the following language; p. 2473:—

"The Assistant Chief Commissioner: Mr. Scott has raised a new question in connection with section 185—it is new as far as my recollection goes—namely that, having had an application for an Order under that section for forced construction, the cost would be on the railway.

"My recollection of the general procedure is otherwise, but a number of points have been raised which will have to be given consideration."

Mr. Scott admitted, p. 2455, that the applicants are asking the Board, under section 185, "*to depart from the* "usual practice" and put all the expense upon the railway company for the reasons he gave in his letter quoted, and at the hearing.

What is asked by the applicants is a remedy, under section 185, which this Board, in exactly similar circumstances, has found itself unable to grant for want of jurisdiction.

Re Hunter Bros. Ltd. and G.N.R. XV Board's Judgments, p. 126.

It would scarcely be consistent, or proper, for this Board to refuse the one application, because it had no power to grant it, and by applying section 185 in this case, find a way to do, indirectly, what it has ruled it cannot do directly. We were asked at the hearing, by counsel for applicants (p. 2455) "*to depart from the usual practice*" in order to grant the relief asked under what are "special circumstances," but which "special circumstances" are almost identical, if not quite identical, with those in the case above cited, where the Board refused the application for relief.

I do not think that section 185, of the Railway Act was, by its language, intended to be invoked for any such purpose. Its intention is clearly, I think,

to aid the Board's jurisdiction to maintain, as it is required to do, under section 316, equality as regards facilities and to clothe it with power to prevent any undue or unreasonable preference such as is prohibited by that section. Prior to the passing of the 1903 Railway Act there was no such section. Railways could put in spur tracks, or sidings, as they wished, or grant such facility to one industry and refuse it to another, and there were, as is natural, many complaints as to the abuse of a discretion left wholly to the railways. Had section 185 (section 226 of the old Act) not been enacted, this Board would have been crippled in the important function I have referred to.

If effect were now to be given to the application before us the result would be that the applicants would be granted, in the circumstances shown (if I have correctly assimilated them) by the Board "undue and unreasonable preference" contrary to the spirit, if not the letter of section 316.

I think that the jurisdiction of the Board, under section 185, should, in every case, be very cautiously exercised to guard against the possible abuse of its intention. All the circumstances under which the section is invoked should, in every case, be most rigidly and critically examined, and relief should only be granted under it where, after a careful sifting of the circumstances it is found that all the prerequisites of the section, hereinbefore set forth, are present, and, in addition to that, that the application is one in which, according to the true intent, meaning and spirit of the section, and to correct abuse, or remedy unfair and unequal treatment, the permissive and discretionary and auxiliary jurisdiction thereby granted to the Board, ought properly to be exercised. It was enacted as a remedy against unjust, over-bearing, and unequal treatment in the matter of granting or placing of facilities by railways. Its promiscuous or indiscriminate application may work out to entire opposite results. For instance, as is alleged in this case, a spur or siding may be ordered under the section; the applicants depositing the money required by the order and the facility put in. The investment of the applicants is repaid under the terms of the order under this section, on a wheelage basis, by the railway company who is then the owner of the spur. The industry is then shut up, either by insolvency or, as is alleged in the evidence, to be the practice, or necessity of the applicants in the course of their business, and to legitimately advance it, is bought up and closed down to remove competition, and the railway is left with a spur—long or short—on its hands, which it has paid for out of its tolls, and those tolls not being only confined to those payable directly from the operation of the spur. (Hepworth Silica Brick Co. v. G.T.R. 18 C.R.C. 9; affirmed by the Supreme Court, 19 C.R.C. p. 365.) If, as is reasonably possible, this happens in the case of 100 or more sidings, the loss to the railway will be enormous; to the industry nothing. Again, as is referred to in the argument, (p. 2467) the exercise generally and indiscriminately, of jurisdiction under section 185, may make it profitable to industries operating under agreements, to cancel those agreements and come to the Board under this section, and, in the result I have instanced, in the end get the spur facilities at the expense of the railway company. It was plainly told us by counsel for the railway company that the applicants had intimated to the railway company that it would do that very thing if order be made under section 185, and this statement met with no denial from applicants, their counsel merely observing "We can deal with that when it arises." Further, p. 2467, the same matter was referred to as follows:—

> "The Deputy Chief Commissioner: You mean in cases where they have made an agreement, that there is a possibility of their opening the door, and that the Canners may cancel the agreements under which the spurs have been operated and apply to the Board for forced construction?

"Mr. Fraser: Yes.

"Mr. Scott: That can be dealt with when the question arises.

"The Deputy Chief Commissioner: Then, if we make an Order we open the door.

"Mr. Scott: But, you have it in your hands to control each individual case, if there is any subsequent application of that kind, of which I know nothing.

"The Assistant Chief Commissioner: We can deal with each individual case on its own merits."

Another result that would follow the making of an order under section 185, in these circumstances, would be that where ever sidings had existed on lines absorbed into the Canadian National Railways System, the operation of which had been discontinued by the railway company, or wherever and whenever any other railway company abandoned a portion of its line as part of its policy of operation, or for other reasons, it would be open to all industries on the lines so abandoned, to make similar applications, upon the same state of facts, and would, in that event, be entitled to similar orders, or, those industries would be discriminated against, and accorded different treatment. In the first instance the Board's judgment in the Hunter Case would be over-ridden by itself, and in the alternative case, there would be a contravention of section 316, permitted by the Board. If, in such instances, such industries had already made the usual siding agreements on the new line, it would be hard for the Board to refuse their claim for similar treatment, if they cancelled those agreements and applied to the Board under section 185.

My view is that section 185 is, because of the circumstances, and for the reasons given, not applicable to the conditions, and that no order should be made under it on the facts presented in this application. Such conditions were, I think, clearly not contemplated by the section, which is entirely discretionary as to its application. Can the Board find, as a fact, that the applicant "cannot agree with the company" as to the construction and operation of the facility referred to? In the face of the facts admitted, and by the written statement of applicants' counsel, before cited, that "if this was a new facility the terms suggested by Mr. Fraser might be considered reasonable . . . but under the conditions . . . set out in my letter of August 4 last, I submit the Railway Company should be ordered to provide the spur at its own expense" and that (same letter) "under present circumstances, it would not be just to put *any* of the expense upon the Canning Company, or to call for a deposit from that company to cover the construction of the spur," coupled with the statement of counsel of the applicants (p. 2455) that "We are asking the Board under the Branch Line Clauses, *to depart from the usual practice,*" in making the order asked for; having regard to the Board's decision in the Hunter Case, and to the strict observance by the Board of the provisions of section 316, it seems to me that the Board would be stretching section 185 beyond its intent, spirit and meaning, if it found, in what took place, that "the parties cannot agree as to construction and operation". The applicants based their application upon a misconception of their rights. Quoad the Southern line—and under the ruling in the Red Mountain and Hunter Cases, this *was* a "new application," and, therefore, they admit that the terms suggested by counsel for the railway company "might be considered reasonable." That, I think, disposes of the Board's discretionary power under section 185. In the face of it I think it cannot find that the applicant "cannot agree" with the company, and if it cannot find that, there is wanting a prerequisite to the exercise of any jurisdiction under section 185. The applicant clearly *can* agree—because the applicant so plainly states, but

will not agree, or consider any agreement because it declines to recede from a contention, which I think is erroneous, in fact and law, and which has prevented it from attempting to agree to terms, which but for such erroneous impression it admits "might be considered reasonable", and, I think, would have been agreed to without much question. I think that the terms offered by the railway company were and are reasonable, in the circumstances. In the light of disillusionment as to what the applicant erroneously conceived to be its rights (and I do not suggest that the applicant did not honestly believe in them), there seems to be no disagreement between the parties at all, and it follows that no case has been made out for relief under the section under which the application is made, notwithstanding that the railway company, in its answer, suggests that application should be made under section 185. The Board must decide whether that section may properly be invoked, and one of the important prerequisites to the exercise of the discretionary powers conferred by the section, viz.: the fact that the parties cannot agree, being absent, no order can properly be made under it.

The application fails and must be dismissed.

Ottawa, September 28, 1927.

The Deputy Chief Commissioner and Commissioner Lawrence concurred.

McLean, Assistant Chief Commissioner:

Application was made for construction under section 185, said construction to be at the expense of the railway; that is to say, an attempt was made to have the application placed under section 185, while at the same time rendering it free from the provisions of the section in respect of deposit, etc. Wider considerations were, it is true, raised as to the obligations alleged to be involved. These have been given a most careful and acute analysis in the reasons for judgment of Mr. Commissioner Boyce.

Without the slightest disparagement of the reasoning set out, I have to say that I do not, at the present juncture at least, find it necessary either to concur in or dissent therefrom. As I read section 185 and as I refer to what has been, I understand, the Board's uniform practice under the section—which practice is important as making clear the interpretation of the Board—the application to have the construction at the railway's expense has no standing under section 185, and I, therefore, agree that the application should be dismissed.

September 1, 1927.

In the matter of the application of the City of Owen Sound and the Great Lakes Elevator Company for a revision of the apportionment of the cost of construction; and also for a reapportionment of the cost of maintenance of the interswitching facilities between the Canadian Pacific Railway and the Canadian National Railways, at Owen Sound, Ont.

File 6713.23

JUDGMENT

The Chief Commissioner:

This is an application presented by the city of Owen Sound and the Great Lakes Elevator Company for a revision of the apportionment of the costs of construction and a reapportionment of the cost of maintenance made under the Board's Orders numbers 33594 and 38116, having to do with the establishment of interswitching connections between the Canadian National Railways and the Canadian Pacific Railway Company at Owen Sound by means of a bridge across the Sydenham River, and the necessary alteration of, and addition to, trackage occasioned by such orders.

By the Board's Order No. 33594 of date the 27th day of April, 1923, interswitching facilities were directed, and as regards the costs occasioned by the operations, which is the matter here discussed, the order provides thus,—

"3. That the cost of constructing the said interchange tracks be borne and paid one-third by the applicant and one-third by the Canadian National Railway Company; the Canadian Pacific Railway Company and the Owen Sound Elevator Company each to pay one-sixth of the cost thereof.

"4. That the Canadian Pacific Railway Company maintain that portion of the tracks lying on the eastern side of the harbour, up to the southern side of Tenth street; all other track maintenance, including the maintenance and rebuilding when necessary of the trestle bridge across the harbour, to be borne equally by the applicant and the Canadian National Railway Company; and the maintenance, and the present or future protection of the crossing of Tenth street to be borne by the applicant.

"5. That the cost of adjacent or abuttal land damages, if any, be borne equally by the applicant and the Canadian National Railway Company."

Reference to the order discloses that the interchange was directed to take place on the western side of the harbour according to plans filed with the Board, and involved building 3,700 feet of trackage facilities. On the 18th day of October, 1925, an application was made by the city council of Owen Sound and the Board of Trade of that city, for a change in the interswitching order, No. 33594, asking that the location of the interchange track be changed to the eastern side of the river. Such application was listed for hearing and the matter developed at a sitting of the Board held at Owen Sound on the 3rd of December, 1925, attended by counsel for the city of Owen Sound, the Canadian Pacific and Canadian National Railways, the Dominion Transportation Company, the Great Lakes Elevator Company Limited, and certain property owners on the western side of Second avenue. No opposition was offered to the proposal to change the interswitching operations to the eastern side of the river, which was understood to involve trackage amounting to 6,000 feet, absorbing 1,160 feet of Canadian Pacific Railway Company's tracks for that purpose, which necessitated building new team tracks and loading facilities in substitution for what was taken from the Canadian Pacific for the common use, as well as a further extension of 220 feet of track for siding and loading purposes.

Thereupon Order No. 37156, dated December 28, 1925, was made in amendment of the original Order No. 33594, so as to permit of the change of location of the interchange tracks from the west to the east side of the river, and to approve the location as submitted, as well as to authorize the construction of certain team tracks by the Canadian Pacific Railway Company to meet the changed situation. Paragraph 3 of such Order 37156 reads as follows:—

"3. That the Canadian Pacific Railway Company be, and it is hereby, authorized to construct team tracks on Marsh street (First avenue East) as shown in red on plan O.B. 878 dated 28th November, 1925, filed; the cost of such tracks to be kept separate from the cost of the interchange facilities, and to be paid for by the Canadian Pacific Railway Company and the city of Owen Sound, as they may agree. Any dispute between the parties to be referred to the Board for settlement."

Order No. 37156 did not purport to deal with the general costs of the undertaking apart from what is set out in paragraph 3 above quoted.

When the matter was called for hearing, counsel on behalf of the Canadian Pacific Railway Company agreed to the change providing no extra cost was

imposed upon that company, and remarked that it was their view that they should not be called upon to contribute to any extent to the cost of the work, but being assessed under the former order they were not now raising any objections thereto, and after conference with the city, they had outlined the terms on which their assent to the change had been given.

Counsel for the Canadian National Railways said that they were quite prepared to fall in with the views of the city that interchange tracks be on the eastern side of the river, but opposed any suggestion that they should be called upon as part of the scheme to bear any portion of the cost of providing the Canadian Pacific Railway with facilities at the other end of the yard. At the conclusion of the argument the Board announced that the order for the change would go at once and as far as the question of costs was concerned it would be settled with as little delay as possible.

The following extract from the record of the proceedings before the Board may be noted:—

> "Mr. Birnie: On behalf of the elevator company I would just like to explain our interest in the present hearing. The original order was made largely in contemplation of the elevator being erected. When that order was made the elevator was gone ahead with, it has been erected and is now full of grain. The crying need we at present have is for interchange facilities; we are losing business every day by the delay in this matter. We are perfectly satisfied with the original order and have no desire in any way to change it. On the other hand, we have absolutely no objection to the proposed change, on one condition, that it does not unduly delay the actual construction of the interswitching. I should like to impress upon the Commission the absolute necessity for immediate interchange facilities for our elevator."
>
> (Vol. 445—p. 2504)
>
> "Mr. Cameron (for city): Before you adjourn it is understood that the order goes and the railway companies can commence the construction of the bridge at once?
>
> "Chief Commissioner: To-morrow morning if they want to.
>
> "Commissioner Lawrence: They may commence this afternoon."

Order No. 37156 followed such hearing directing as above detailed. Subsequently by application to the Board on January 20, 1926, the Canadian Pacific Railway Company, requested that Order No. 37156 be amended to provide that the cost of construction of new team tracks and lead, which it had to provide in substitution for the trackage which became part of the interchange works be included as part of the general cost of the work. It will be remembered by the provisions of Order No. 33594 the work was to be paid as follows: One-third by the city of Owen Sound, one-third by the Canadian National Railways, and the remaining third equally between the Canadian Pacific Railway Company and the Owen Sound Elevator Company. The Canadian Pacific Railway Company's application was submitted to the city solicitor of Owen Sound and to counsel for the Canadian National Railways, inviting their submissions, which were duly filed of record, and thereafter further Order No. 38116, dated September 16, 1926, was made, directing that Order No. 37156, of date the 12th of December, 1925, be amended by striking out the third paragraph thereof, and substituting therefor the following:—

> "3. That the Canadian Pacific Railway Company be, and it is hereby, authorized to construct the team tracks and lead thereto on First avenue East (Marsh street) between 11th street East and 13th street East, as shown in red on plan O-B-878 dated November 28th, 1925,

on file with the Board under file No. 6713.23; the cost thereof, less the cost of 220 feet of track, and the value of its existing team track on First avenue East, south of 11th street East to form part of the general cost of the work provided for under the said Order No. 33594 and this order."

And the following was added to said Order No. 37156 as section 5 thereof:—

"5. That the Canadian Pacific Railway Company maintain at its own expense the new tracks which it is authorized to construct under paragraph 3 hereof, and that the Canadian National Railways maintain the interchange and connecting tracks on First avenue East, south of 11th street East, and also the track connecting with the Canadian National Railways on the west side of the river, including the bridge over the same; the expense of such maintenance to be borne and paid in equal shares by the Canadian National Railways and the city of Owen Sound, save and except the expenses of maintenance and operation of any present or future protection at the said crossing to be borne by the city."

After the issuance of said last mentioned order, and on the 20th day of October following, the city of Owen Sound through its solicitor alleged that no notice was received by the city of Owen Sound or by himself that any application for the change in Order No. 37156 was to be made, and contended that it should have had notice and opportunity of stating its position in regard to the matter; and further advised that the city of Owen Sound was emphatically opposed to clause 5 above quoted. Following such protest, further representation was received from the Great Lakes Elevator Company Limited regarding the last mentioned orders, alleging unfairness had been done to the city and also to itself, and asking that further investigation be made. After the matter had been developed by further correspondence, and due notice been given, it was brought on for hearing at the city of Ottawa on the 12th day of July last, at which time and place representatives of all parties were heard. Mr. McCarthy, K.C., appeared for the city of Owen Sound and for the Great Lakes Elevator Company in support of a motion to alter the terms of apportionment of the cost of construction, as well as of maintenance. As regards the elevator company, he contended that it should not be burdened with any of the costs of the Canadian Pacific Railway Company's team track, even if contributing to any of the costs of the interchange facilities. He argued that the jurisdiction of the Board to impose any burden upon the elevator company under an order of this nature is in doubt, and referred to the judgment of Chief Commissioner Carvell as expressing doubt in that particular. As far as this branch of this application is concerned, it may be said at once that section 253 of the Railway Act empowers the Board to determine what company or companies, or other corporations, or persons, and in what proportion the cost of making any such connections as are here ordered shall be borne, and thus seems to settle this question conclusively. The practice of the Board has been in conformity with the terms of the present order, and I think no serious question can arise in that particular. (See also section 39 of the Railway Act.)

As to the fairness of such order, from the correspondence on file, the observation of Chief Commissioner Carvell in his judgment, that the Owen Sound Elevator Company is the moving spirit behind the application, is completely justified, and Mr. McCarthy's observation that " as far as the city of Owen Sound is concerned being the Applicant, that the Board is without jurisdiction to saddle them with any portion of the cost " in the light of the judgments of

the Board, must be negatived. It being clear that the Board has full jurisdiction to deal with the matter as indicated in the Order, the only question that remains is the justice and fairness of the apportionment made by the original order, and as subsequently amended.

All interests have benefited by these works. A perusal of the record shows that without the interswitching facilities the elevator would never have been erected—or so it is stated. Under the original order, 3,709 feet of track including the present, were to be constructed. Under the revision consequent upon changing the switching from the western to the eastern side of the river, 6,000 feet of track including the bridge track, had to be built, and of this amount 2,300 feet were necessary to provide the Canadian Pacific Railway Company with team tracks in lieu of the tracks given up by that company. The new arrangement resulted in giving to the Canadian Pacific railway company 220 feet more team trackage than it gave up, and the order requires that this 220 feet be constructed by the Canadian Pacific Railway Company at its own expense, leaving 2,080 feet to be added to the general scheme. It is fully established that the city was aware of the change which was being made in the Canadian Pacific Railway Company's trackage and facilities. It made no protest in regard to the division of costs specified in the original order, nor did it ask that the increase in the trackage made necessary by the arrangement between the city and the Canadian Pacific Railway Company to move the interchange from west to east, and the expense of providing a new location for the company's team tracks should alter the proportional liability as allocated between the city and the Canadian Pacific Railway Company. It is, I think, reasonable that the cost of construction of team trackage necessary to put the latter company in the same position as it was prior to the interchange facilities being ordered, be made a part of the general cost of the work. Having regard to the change of location it would seem that no unnecessary changes in the incidence of construction or maintenance costs are made.

By the original Order No. 33594 of April 27, 1923, the construction costs are allotted—one-third to the city, one-third to the Canadian National Railways, and the other third equally between the Canadian Pacific Railway and the Elevator Company.

By the order appealed from, No. 38116 of September 16, 1926, construction costs remain under the same allotment and the expense of construction of facilities necessary for the Canadian Pacific Railway Company to replace what is taken from it, for interswitching purposes, is put into the general cost of the work—and only to the extent of trackage so built—a further construction of 220 feet is to be paid for by the Canadian Pacific Railway Company.

And so far as the costs of maintenance are concerned, no change has been made. Under both orders the Canadian Pacific Railway Company was, and is, obliged to maintain its own trackage, and the Canadian National Railways and the city are to bear equally the cost of all other maintenance, except that of the 10th street crossing and its protection, which both orders have placed upon the city.

Regarding the whole situation, I do not think any fairer allotment can be made than that which is set out in the orders under review. Statistics were filed showing the number of cars handled through the interchange for the respective companies. They show that more cars were switched for the Canadian Pacific Railway Company than for the Canadian National Railways, but it is difficult to judge from that fact which line derives the greatest benefit. Statements were put in showing the number of cars received from the Canadian National Railways, by the Canadian Pacific Railway Company for Canadian Pacific haul; also cars interswitched to the Canadian National Railways by the Canadian Pacific Railway Company for Canadian National haul; also cars handled via the Canadian National to Owen Sound and interswitched for

placing in Owen Sound, as well as cars hauled via the Canadian Pacific Railway to Owen Sound and interswitched to the Canadian National Railways for placing in Owen Sound; and in all of these it appears that the Canadian Pacific Railway Company has a numerical advantage. It is contended by the Canadian Pacific Railway Company that a large amount of traffic formerly tributary to its line has, through interswitching, been diverted to the Canadian National Railways, but that little traffic is received from the latter which would not have been enjoyed by the Canadian Pacific Railway Company in any event, and as to elevator traffic, it is pointed out that of a total of over 900 cars received up to the end of last October by the Canadian Pacific Railway Company from the elevator, over 450 cars were for export and not quite 350 for local points. The Canadian Pacific Railway Company claims that if the elevator had not been constructed, undoubtedly it would have received the haul on most of the grain traffic from either Port McNicoll or Goderich, as the shippers would have filled their requirements out of the grain stored in elevators on Canadian Pacific tracks, routing by the Canadian Pacific line; and it also points out the fact that out of 346 local cars, 316 were for Canadian Pacific points.

It is difficult to weigh the disadvantages or advantages in connection with interswitching in evenly balanced scales, but on the whole I think it is not shown that the orders made are unjust or unfair in any respect, nor that the same should be rescinded or varied, and the application is dismissed.

Ottawa, September 30, 1927.

The Assistant Chief Commissioner and Deputy Chief Commissioner concurred.

ORDER No. 39677

In the matter of the application of the City of Owen Sound, in the Province of Ontario, and the Great Lakes Elevator Company, hereinafter called the "Applicants", for an Order amending the Order of the Board No. 38116, dated September 16, 1926, in respect of the apportionment of the cost of constructing interchange tracks between the Canadian National Railways and the Canadian Pacific Railway at Owen Sound, by means of a bridge across the Sydenham River, as well as a reapportionment of the cost of maintenance.

File No. 6713.23

Thursday, the 6th day of October, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, July 12, 1927, in the presence of counsel for the applicants and the railway companies, and what was alleged,—

The Board orders: That the application be, and it is hereby, refused.

H. A. McKEOWN,
Chief Commissioner.

Application of Guy G. Porter Co., Limited, Perth, N.B., re *clear bill of lading of shipments of sacked potatoes from C.P.R. and C.N.R. points in the Maritime Provinces to domestic and foreign points.*

File No. 16453.4

The application in this case as set out in the applicant company's letter is as follows:—

"We are making large shipments of sacked potatoes from Canadian Pacific Railway and Canadian National Railways points in the Maritime Provinces to domestic and foreign points. We have considerable trouble with claims by the consignees regarding shortages or discrepancies between the number of sacks loaded and unloaded.

"It would be a decided advantage for us to obtain clear bills of lading from the railway, specifying the number of sacks of potatoes loaded in each car. We presume this would necessarily cause the railway to check contents of car as loaded. Under such conditions where a shortage occurred, we would like to have a clear bill of lading, and the consignee would, of course, have the option of filing a claim against the carrier.

"We understand that C.P.R. circular E1B, second revised page 22, under bills of lading section No. 20, provides as follows:—

'Shippers loading carload shipments of package freight direct to car on public team tracks at other than flag stations, are entitled to clear bills of lading without notations as to "shipper's count more or less", etc.'

"We have several potato warehouses situated at C.P.R. and C.N.R. loading points, where there are station agents, and we have been trying to obtain a clear bill of lading for shipments from such points. Our warehouses at these points are on a continuation of a team track; i.e., there is a public loading wharf, and the track is continued to the warehouse. When the car is loaded, it is placed alongside of the warehouse, and loaded direct through the loading door into the car. We don't pay any annual rental or charges on the track at our houses, except in one instance where the track is on our own land.

"Under the above conditions, we requested the C.P.R. last spring to give us a clear bill of lading specifying the number of sacks in each car. We received advice from the C.P.R. and note from their reply as follows:—

'When potatoes are loaded from a potato warehouse served by a public team track, same will be regarded as if loaded from warehouse situated at a private siding and the same conditions would apply on public team track or private siding located at flag station.'

"We would like to know definitely if we are entitled to clear bills of lading as we requested, under the circumstances given above. We also have warehouses at flag stations, but presume we would not be entitled to clear bills of lading from them.

"We thought this would be a matter on which you could enlighten us as there must be a definite ruling on it."

Copies of the application were sent to the Canadian National Railways, and the Canadian Pacific Railway Company, with a request to advise the Board what stands in the way of consummation of an arrangement whereby shippers may be furnished with clear bills of lading under the terms of the agreement between the carriers and various shippers' organizations which was arrived at in 1916, and in respect to which the Board, under date of January

17, 1917, was furnished by Chairman Ransom (under his file No. 724) with copy of circular No. 121, issued by the Canadian Manufacturers' Association to its members, dated December 26, 1916, outlining the arrangement arrived at in this connection.

The answer of the Canadian National Railways is as follows:—

"I note that these people in the first and fifth paragraphs of their letter to the Board, cite the fact that they ship potatoes from Canadian Pacific Railway and Canadian National Railways points. By paragraph 6 I would infer that their trouble is with the Canadian Pacific.

"We furnished these people last May with seals and when they applied same to cars we would issue clean bills of lading, as outlined in Canadian Freight Association circular No. 121, December 26, 1916, and copy of circular to shippers dated January 1, 1917, which have been further qualified under Freight Association minute 13132 of April last. Copies of all communications are attached, including a copy of the docket which again brought this matter before the Freight Association.

"It is my opinion that the only satisfactory way of giving shippers of potatoes clean receipts is by the use of the railway's or private seals by the shippers. In some cases potatoes are teamed to the railway cars and loaded on team tracks, but as a general rule they are loaded through the private warehouses of the owner, which may be adjacent to private sidings located on the lessee's land, or in some cases on railway land, and again they may be adjacent to siding, a portion of which is used for team tracks.

"You will, therefore, see the difficulty of checking cars under these circumstances. I would strongly urge the adoption of the shipper sealing the cars.

"For your information, however, I would like to refer to the Board's Order 23990, C.F.A. 617, dated July 16, 1915, wherein the Dominion Atlantic Railway was ordered to furnish clean receipts for apples loaded at warehouses within 100 yards of an agency station. Potatoes, however, are more of a rural commodity than apples, which are assembled to a large extent at central points, while potatoes are shipped, to a fairly large extent at least, from non-agency points, and it is most desirable, both from a railway and a shipper's point of view, to have a uniform practice. It is on that account that we recommend sealing by the shippers, and clean bills of lading signed by the railway."

Circular No. 121, Canadian Manufacturers Association (Incorporated), Toronto, December 26, 1916:—

"Notice to Shippers and Consignees

"The railways in Eastern Canada will discontinue the practice of checking freight on private sidings on and after January 1, 1917. In consequence of this, shippers who have private sidings may make the following arrangements:—

"A. The railway will give clean bills of lading for cars loaded on private sidings under the following conditions:

"B. Claims under these bills of lading will be investigated and dealt with exactly in the same manner as they are at present.

"C. Shippers may use their own seals that are satisfactory to the railways, or will be furnished by the railways seals consecutively numbered. These seals are to be applied by shippers to all sides and end doors as soon as loading is completed, and a record kept thereof for

comparison with seal record at destination. Instructions should be sent to consignee to take record of all seals on cars on arrival, so that they may be compared with the seal record at loading point in event of claims for shortage.

"D. Lake and rail inland traffic will be checked by the railways at port of delivery to the boat lines, and if a shortage is discovered the shipper will be notified at once so that records may be compared and responsibility placed. If freight checks in full to the boat lines, where a clear bill of lading has been given and a shortage develops between port of delivery to boat lines and destination, the railway will assume the responsibility.

"E. Lake and rail export traffic will be checked by the railways at port of delivery to boat lines, and if a shortage is discovered the shipper will be notified at once, so that records may be compared and responsibility placed. If freight checks in full to the boat lines, where a clear bill of lading has been given and a shortage develops between port of delivery to boat lines and the seaboard, the railways will assume the responsibility.

"F. All export traffic will be checked by the railways at seaboard, and if a shortage is discovered the shipper will be notified at once, so that records may be compared and responsibility placed. If freight checks in full to the steamship company, the responsibility of the inland carriers ceases. In case of shortage at destination the matter will be one for adjustment between the owner, steamship and insurance companies.

"G. The railways will, on request of consignees, promptly send a representative to certify as to condition of goods received in damaged condition.

"H. The railways will, in case of claims for shortage, send a representative to check shipper's and (or) consignee's records.

"I. If a defect is found in a seal record, or if on completion of the unloading of any car a discrepancy is found, goods checking over short or damaged, consignees must notify the local freight agent of the carrier railway at once, in order that steps may be taken to investigate same.

"J. The railways will continue, as at present, to check the loading or unloading of merchandise traffic on team tracks.

"K. If railway seals are used, application for additional seals should be made to the local agent at least ten days before supply is exhausted."

Extract from Minutes of Freight Committee Meeting, Canadian Freight Association, Toronto, Ont., April 28-29, 1926:—

"13132. Bill of lading, clear, Issuance of, on Traffic Loaded on Private Sidings (See Minute 12973, etc.).

"Sub-Committee appointed under Minute 13055, recommend that, effective June 1, 1926, carriers decline to furnish clear bills of lading for shipments loaded on private sidings, except where the shipper executes the following agreement:—

'In consideration of your company giving us clear bills of lading for shipments loaded on our private siding, we agree to be responsible for any shortage on shipments forwarded under the seals supplied us, provided the cars are delivered with such seals unbroken.

'This agreement does not relieve the railways from conducting investigation and dealing with any shortage on the same basis as would govern on shipments receipted by the railways shippers load and count.'

"The above agreement will also apply where shippers supply their own seals if clear bills of lading are desired.

"Recommendation adopted and lines interested announced that they would immediately circularize their agents in accordance therewith, sending copy of circular to Chairman Ransom."

The Canadian Pacific Railway Company referred the application to the Canadian Freight Association and stated that reply would be made by Mr. G. C. Ransom, chairman of that association.

Under date of March 28, 1927, Mr. Ransom advised the Board,—

"That the railways are prepared to carry out the agreement made with the Canadian Manufacturers' Association whereby shippers may be furnished with clear bills of lading under the terms of the agreement between the carriers and various shippers' organizations, as furnished the Board in letter referred to in your communication",—

to which the applicant company replied that,—

"This application was not for potatoes loaded on our private warehouse sidings. In our letter to the Railway Board dated January 10, 1927, we pointed out that our warehouses were located on public team tracks, that is, the track was continued by the public team wharf to our warehouse. There was one exception to this where the track was on our own land.

"We are not familiar with the agreement with the Canadian Manufacturers' Association referred to in your letter.

"Would you kindly give us particulars of this agreement, particularly as it would apply to potato shipments in packages in carload lots, loaded from our warehouses."

On the 13th of May, 1927, Mr. Ransom sent to the applicant company a copy of the Canadian Manufacturers Association's circular No. 121.

Under date of July 16, 1927, Mr. Ransom filed with the Board a copy of his letter of July 13, 1927, to the applicant company which is as follows:—

"In reference to yours of May 18, wherein you advise the main point to decide is just what constitutes a private siding. The railways have always taken the position that warehouses located as is yours are, in reality, private sidings and they have always been treated as such. The Board of Railway Commissioners in their General Order No. 230, placed warehouses or elevators abutting on team tracks, in the same category as private sidings. There are many warehouses located along the railways throughout Canada in the same position as yours, and they have always been and are now being treated as private sidings insofar as concerns switching of cars and issuance of bills of lading for traffic loaded or unloaded thereon."

The matter was referred to the Traffic Department of the Board and the following is a copy of its interim report of July 23, 1927, which was communicated to the applicant company with a statement that the Board would be pleased to receive written exceptions, if any, taken by the applicant company; the same to be filed within fifteen days from the 20th of August, 1927:—

"Report

"It is stated by complainant that his warehouse is located on an extension of the team track. The space opposite his warehouse is therefore for his particular use and would not be used by other parties as a

team track. Such being the case, the location of the warehouse must, I think, be considered as being on an industrial track, which in interswitching, car service, etc., is treated as a private siding.

"In my opinion the shipper is not entitled to have loading checked by the agent and should make use of seals in accordance with the arrangement made between the railways and shippers and covered by Canadian Manufacturers' Association, Circular No. 121, dated December, 26, 1916."

RULING

No exceptions having been filed, the Board has directed that the report of the Traffic Department issue as its ruling in the matter.

OTTAWA, September 30, 1927.

GENERAL ORDER No. 451

In the matter of the consideration of the question of lowering crossing signs so that they may be more readily illuminated by the lights of approaching motor cars and, therefore, more readily visible.

File No. 30245

WEDNESDAY, the 21st day of September, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Railway Association of Canada, the Pere Marquette, Canadian Pacific, and Canadian National Railway Companies, the Department of Public Works of the provinces of Prince Edward Island, New Brunswick, Manitoba, Alberta, and British Columbia, the Department of Highways of the provinces of Nova Scotia, Quebec, Ontario, and Saskatchewan, the Michigan Central Railroad Company, Great Northern Railway Company, and Industrial Accident Prevention Associations, Incorporated; and upon the report and recommendation of its Chief Engineer,—

The Board orders: That "The Standard Regulations of the Board Affecting Highway Crossing Signs, as amended May 4, 1910," be, and they are hereby, further amended by adding the following section, namely:—

"10. (*a*) Signs shall be painted white with black letters; shall generally be placed not more than 15 feet from the track, with the edge of the sign as close to the travelled portion of the highway as possible; and shall be at right angles to the highway, facing approaching vehicles.

"(*b*) On straight level approaches, highway crossing signs shall be not less than five feet, nor more than six feet six inches, above the travelled portion of the highway, the said distance to be measured to the low part of the sign, as shown on the diagram dated September 1, 1927. Under other conditions, the same may be varied as necessary to give the best possible aspect from approaching vehicles both night and day.

"(*c*) Where there are grades and curves on the approaches, the line of sight and illumination shall be the first consideration, and highway crossing signs shall be so placed as to be readily illuminated and visible from both sides of the track when users of the highway are a reasonable distance away."

And it is further ordered: That the new standard be substituted for the existing work as and when replacements of crossing signs are necessary.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 450

In the matter of the General Order of the Board No. 151, dated November 8, 1915, approving the Regulations Governing Baggage Car Traffic in Canada; and the application to amend the said Order to make such regulations applicable to Canadian Government Railways.

File No. 23328

SATURDAY, the 24th day of September, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application and what is alleged in support thereof,—

The Board orders: That the said General Order No. 151, dated November 8, 1915, be amended by striking out the words "other than Government Railways", in paragraph 1 of the operative part of the said order, making the same and subsequent orders dealing with such traffic applicable to Canadian Government Railways.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39655

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "Applicant Company," for permission to make correction in proportionate rates to Truro, Nova Scotia, published in its tariff C.R.C. No. 813, to provide that the rates are competitive and are not applicable between intermediate points.

THURSDAY, the 29th day of September, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon its appearing that an error has been made in the applicant company's tariff C.R.C. No. 813 in not showing proportionate rates in Item 10 of the said tariff as being competitive, which would tend to make rates lower than applying via Canadian National Railways,—

The Board orders: That the applicant company be, and it is hereby, permitted to publish and file, on three days' notice, a supplement to its tariff C.R.C. No. 813, providing that rates shown in Item No. 10 of the said tariff are competitive and not applicable between intermediate points.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Jas. McDonnell Company, Limited, Montreal, Que., for ruling that hay shipped to Canadian ports for cattle feed on board ocean liners should receive the same privileges as export hay.

File No. 26776.3

REPORT OF W. E. CAMPBELL, CHIEF TRAFFIC OFFICER OF THE BOARD, DATED JULY 28, 1927

There was some ambiguity in the development of this application. Applicants' letter of January 26, which initially brought the matter to the attention of the Board, referred to hay intended to be used for cattle feed as entitled to the same "privilege" as export hay. In further letter of March 18 applicants set out "that the domestic and export rates are identical to nearly all winter ports in Canada from the different shipping points, so we have no complaint". At the hearing in Montreal on May 12 (Vol. 513), counsel for the applicants stated at page 8711: "There is no question of rate"; this was repeated at page 8712. My understanding of what is involved, therefore, is the question of free time allowed for unloading cars of hay intended for feeding cattle on board ship and the demurrage charge made after expiration of such free time.

At the present time the Canadian Car Demurrage Rules, as published in Agent Collins' Tariff C.R.C. No. 4, are being applied. These rules allow 48 hours for unloading and after the expiration of the free time allowed the demurrage charge is $1 for each of the first two days or fraction thereof of a day, and $5 for the third or each succeeding day. There is an exception under which five days' free time shall be allowed at Montreal and all tide-water ports for unloading lumber and hay for export, but this exception has not been applied as this hay is not looked upon by the carriers as being export traffic in the usual application of that term under the railway tariffs.

As distinct from the demurrage rules in the tariff referred to, there are published car demurrage regulations on carload traffic at tide-water ports, also Montreal; for example, in Canadian National Railways Tariff C.R.C. No. E-1205, item 467, it is set out:—

> "On carload traffic for export to British and foreign countries, including Newfoundland, but excepting the United States, which originates

on the Canadian National Railways and connections within 400 miles of seaport, and on which the Canadian National Railways has received a road haul, 10 days' free time will be allowed from date of arrival (see Notes 1 and 3). On traffic originating on the Canadian National Railways or connections over 400 miles from seaport and on which the Canadian National Railways has received a road haul, 15 days' free time will be allowed from date of arrival. (See Notes 2 and 3.)

" On carload traffic for furtherance by water to ports in New Brunswick, Nova Scotia, Prince Edward Island, or the United States which originates on the Canadian National Railways or connections, and on which the Canadian National Railways has received a road haul, 5 days' free time will be allowed from date of arrival. (See Notes 1 and 3.)

"NOTE 1.—Free time to be computed from first 7 a.m. following date on which notice of arrival is sent or given party to be notified. After expiration of free period named, car demurrage will be charged at the rate of $1 per car per day or fraction thereof. Sundays and full legal holidays (Dominion, provincial or municipal) will be excluded when computing free and car demurrage periods.

"NOTE 2.—Free time to be computed from first 7 a.m. following date on which notice of arrival is sent or given party to be notified. After expiration of free period named, car demurrage will be charged at the rate of $2 per car per day or fraction thereof. Sundays and full legal holidays (Dominion, provincial or municipal) will be excluded when computing free and car demurrage periods.

" NOTE 3.—Barrels, boxes, or other containers in carloads used for packing export shipments at seaports, also bunker coal in carloads which originates on the Canadian National Railways or connections, and on which the Canadian National Railways has received a road haul, ten days' free time from date of arrival will be allowed when for export to British and foreign countries (see Note 2) and 5 days' free time from date of arrival when for furtherance by water to ports in New Brunswick, Nova Scotia, Prince Edward Island, or the United States. (See Note 1.)"

It was stated that the car demurrage regulations above quoted were made effective on account of the uncertainty of the ship's sailing as well as uncertainty in transportation to the port, and on this account the free time allowances, as set out in the tariff provision, were provided. The applicants point out that the difficulties just mentioned surrounding the movement of export hay and as a result of which the special consideration is given equally attach to the transportation of hay used for feeding cattle on these ocean steamers, that is to say, there is just as much uncertainty with regard to the time in transportation to the port and equally, of course, as much uncertainty as to the date of sailing of the steamer, with the result that this hay for feeding cattle on ocean steamers is subjected to exactly the same circumstances, as far as delay is concerned, as export hay. While I do not feel that this hay should, in an ordinary sense, be considered as export traffic, at the same time, for the purpose of delay and assessment of car demurrage, I feel there is great force in the parallel drawn by applicants, and that hay billed to the Canadian ports for feeding cattle on ocean steamers should be accorded the same car demurrage regulations as provided for export traffic, and that direction to the carriers issue accordingly.

This report is issuing as the judgment of the Board in this matter.

OTTAWA, October 21. 1927.

GENERAL ORDER No. 453

In the matter of the application of Jas. McDonnell Company, Limited, of Montreal, Quebec, for a ruling that hay shipped to Canadian ports for cattle feed on board ocean liners should receive the same privileges as export hay.

File No. 26776.3

FRIDAY, the 21st day of October, A.D. 1927.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, May 12, 1927, in the presence of counsel for the applicant company and representatives of the Canadian Freight Association and the Canadian National Railways, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board declares: That hay billed to Canadian ports for feeding cattle on ocean steamers should be accorded the same car demurrage regulations as provided for export traffic.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39696

In the matter of the application of the Canadian Canners, Limited, of Grafton, in the Province of Ontario, hereinafter called the "Applicants", under Section 185 of the Railway Act, 1919, for an Order directing the Canadian National Railways to construct a spur line to serve their warehouse on Lot 22, Concession A, of the Township of Haldimand, in the Province of Ontario, just north of the old Canadian National right of way.

File No. 26825.62

MONDAY, the 3rd day of October, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, December 1, 1925, in the presence of counsel for the applicants and the railway company, and what was alleged; and upon reading the further written submissions filed,—

The Board orders: That the application be, and it is hereby, refused.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39705

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its St. Paul Southeasterly Branch from the junction with the Coronado Subdivision of the Canadian Northern Western Railway Company at mileage 120.85, St. Paul, Alberta, to the present end of steel at mileage 141.73 at Elk Point, Alberta, a distance of 20.88 miles.

File No. 11929.49

TUESDAY, the 11th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its St. Paul Southeasterly Branch from the junction with the Coronado Subdivision of the Canadian Northern Western Railway Company at mileage 120.85, St. Paul, Alberta, to the present end of steel at mileage 141.73 at Elk Point, Alberta, a distance of 20.88 miles.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39709

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.23

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariff filed by the Canada and Gulf Terminal Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the tariff approved hereunder, are the tolls contained in the tariff set out in column 2 of the said schedule, opposite the corresponding tariff mentioned in column 1.

SCHEDULE

Column 1	Column 2
C.R.C. No.	C.R.C. No.
Supplement 2 to 32	25

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39725

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.13

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 3 to 813	776
Supplement 1 to 820	777
Supplement 1 to 825	490, 491, 780

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39726

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.5

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Inverness Railway and Coal Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several

tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 3 to 22	17
Supplement 4 to 22	17

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39727

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927.

File No. 34822.12

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to E-4308	E-3219
Supplement 1 to E-4312	E-4250
Supplement 1 to E-4324	E-3219 E-3221 E-3224 E-3990
E-4335	E-3992
E-4336	E-4558

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39728

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.14

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 3 to 594	580
Supplement 2 to 595	540
Supplement 1 to 615	263, 264, 522
Supplement 3 to 622	531
624	509
625	313
Supplement 1 to 625	313

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39729

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.15

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column No. 1	Column No. 2
Supplement 2 to C.R.C. No. 157	C.R.C. No. 152
Supplement 1 to C.R.C. No. 159	153
Supplement 1 to C.R.C. No. 168	42, 43, 119
C.R.C. No. 169	117

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39730

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927

File No. 34822.16

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the New Brunswick Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927 (17 George V, chapter 44), and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 121	115
Supplement 1 to 124	116
Supplement 1 to 133	29, 30,85
134	83

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39734

In the matter of Tariffs, and Supplements to Tariffs, filed under the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.9

WEDNESDAY, the 12th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That tariff C.R.C. No. 209 filed by the Quebec Oriental Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the said tariff C.R.C. No. 209, are the tolls contained in tariff C.R.C. No. 208.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39724

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement 1 to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.86.

THURSDAY, the 13th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Supplement 1 to the Express Classification for Canada No. 6, on file with the Board under file No. 4397.86, be, and it is hereby, approved, subject to and upon the condition that the following package requirements in connection with radio instruments and parts, on page 4 of the supplement, be eliminated, namely:—

"(Boxes other than wooden, exceeding 65 inches outside dimensions, must be reinforced with a framework of wooden strips.)"

The proposed supplement to be published as Supplement No. 1 to the Express Classification for Canada No. 7.

H. A. McKEOWN,
Chief Commissioner.

GENERAL ORDER No. 452

In the matter of the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight, prescribed and approved by General Orders Nos. 203, 204, and 206, dated respectively August 11 and September 7, 1917;

And in the matter of the application of the Canadian Explosives, Limited, for an Order amending paragraph 7 of Shipping Container Specification No. 13.

File No. 1717.44

TUESDAY, the 18th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer, and reading what is filed in support of the application,—

The Board orders: That the said paragraph 7 of Shipping Container Specification No. 13 be, and it is hereby, amended by adding the following paragraph, namely:—

"(*d*) A triple disc-closing device, consisting of one steel disc not less than 0.016 inch thick between two felt paper discs not less than 0.055 inch thick each, of $2\frac{1}{8}$ inches in diameter, secured in a circular depression in the head of not less than $2\frac{1}{8}$ inches in diameter and $\frac{1}{8}$ inch deep, by means of two semi-circular flaps sheared within this depression in such a manner as to be leak-proof."

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39754

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

WEDNESDAY, the 19th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement 2 to the Dominion Atlantic Railway Company's Tariff C.R.C. No. 823, filed under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of the tolls contained in the said Supplement 2 to Tariff C.R.C. No. 823, approved herein, are the tolls contained in G. C. Ransom's Tariff C.R.C. No. 111.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39755

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

WEDNESDAY, the 19th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement 2 to Tariff C.R.C. No. 609, filed by the Temiscouata Railway under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of the tolls contained in the said Supplement 2 to C.R.C. No. 609, are the tolls contained in G. C. Ransom's Tariff C.R.C. No. 111.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39756

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

WEDNESDAY, the 19th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement 2 to Tariff C.R.C. No. E-4319, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of the tolls contained in the said Supplement 2 to Tariff C.R.C. No. E-4319, are the tolls contained in G. C. Ransom's Tariffs C.R.C. Nos. 111 and 340.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39757

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.15

WEDNESDAY, the 19th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement 2 to Tariff C.R.C. No. 164, filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of the tolls contained in the said Supplement 2 to C.R.C. No. 164, are the tolls contained in G. C. Ransom's Tariff C.R.C. No. 111.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39758

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.16

WEDNESDAY, the 19th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariff filed by the New Brunswick Coal and Railway Company, namely, Supplement 2 to C.R.C. No. 129, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of the tolls contained in the said Supplement 2 to C.R.C. No. 129, are the tolls contained in G. C. Ransom's Tariff C.R.C. No. 111.

H. A. McKEOWN,
Chief Commissioner.

RESOLUTION OF THE MANITOBA LEGISLATURE *RE* PLACING OF SIGNALS AT LEVEL RAILROAD CROSSINGS

File No. 27214

I, John William Fleming, Clerk of the Legislative Assembly of Manitoba, do hereby certify that on the 20th day of April, A.D. 1926, the following Resolution was passed by the Legislative Assembly of Manitoba:—

"Whereas, a large number of accidents are taking place at railroad crossings involving a serious loss of life; and

"Whereas, much of this could be avoided by an effective system of signals set at said railway crossings;

"Therefore Be It Resolved, that this House is of the opinion that the time has come for the placing of signals at level railroad crossings, and that the Railway Commission be petitioned on this question, requesting them to require the railroad company to establish an effective system of signals at such crossings and public highways; and

"Be It Further Resolved, that the Attorney General or someone representing him, should as soon as possible make representation to the Board of Railway Commissioners at one of their sittings on this question."

WINNIPEG, MAN., April 27, 1926.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, November 15, 1927 No. 19

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 39818

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.23

WEDNESDAY, the 19th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Tariff C.R.C. No. 31 and Supplement 1 to the said tariff, filed by the Canada and Gulf Terminal Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the said tariffs approved herein, are the tolls contained in the Tariff C.R.C. No. 27.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39783

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

WEDNESDAY, the 26th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.		Column 2 C.R.C. No.
Supplement 2 to E-4312		E-4250
Supplement 3 to E-4320	G. C. Ransom's	256 287
Supplement 3 to E-4324		E-3219 E-3221 E-3224 E-3990

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39784

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.16

WEDNESDAY, the 26th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the New Brunswick Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 124	116
Supplement 2 to 133	29 30 85

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39785

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

WEDNESDAY, the 26th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 4 to 812	779
Supplement 2 to 820	777
Supplement 2 to 822 G. C. Ransom's	256
Supplement 2 to 825	490 491 780

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39786

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.15

WEDNESDAY, the 26th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 159	153
Supplement 2 to 168	42 43 119

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39787

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

WEDNESDAY, the 26th day of October, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 615	263 264 522

THOMAS VIEN,
Deputy Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Township of Russell, Ontario, that Cambridge Station on the New York Central Railroad be restored as a regular agency,

and

Consideration of complaints against the agent of the New York Central Railroad Company at St. Albert Station, Ont.

File No. 4205.405

JUDGMENT

Chief Commissioner McKeown:

By application dated the 8th day of April, 1925, the New York Central Railroad Company and the Ottawa and New York Railway Company asked from this Board permission to establish a freight and passenger agency station, to be known as St. Albert, at a point on the Ottawa and New York Railway about midway between Chrysler and Cambridge stations, and approval of plans of the location of said station and of the proposed buildings: and by Order No. 36337, dated May 1, 1925, the Board approved the location and details of the applicant companies' proposed station at St. Albert.

On the 24th of April, 1925, the said railway companies made further application to the Board for permission to withdraw their agent from Cambridge station and to place him at the proposed new station at St. Albert, and to make Cambridge a non-agency station. Accompanying such request was a statement of the freight and passenger revenue for Cambridge station for the years 1922, 1923, and 1924, showing as follows:—

Year	Passenger	Freight	Total
1922..	$1,531 75	$2,561 52	$4,093 27
1923..	1,196 72	5,099 80	6,296 52
1924..	1,159 06	7,968 85	9,127 91

There also accompanied the application a letter from Messrs. Ewart, Scott, Kelley & Kelley, solicitors for the railway companies, addressed to the Assistant Secretary of the Board and reading as follows:—

> "We duly received your letter of April 9, your file 33958, relating to the application dated April 8 of the New York Central Railroad Company and the Ottawa and New York Railway Company for permission to open a new station at St. Albert on the Ottawa and New York Railway.

"We are now instructed that, as part of the proposed new arrangement, the company desires to withdraw the agent at present at Cambridge station, which is only 1.44 miles north of the new proposed station of St. Albert, and to place this agent at St. Albert, leaving Cambridge station a non-agency station. We enclose herewith application for this purpose, together with statement of freight and passenger returns at Cambridge for 1922, 1923, and 1924.

"We are instructed that the change has been undertaken at the earnest request of the township authorities and that the opening of the new station will be a convenience in general to the people of the township.

"We are forwarding a copy of this letter and of the enclosed application to Mr. Meilleur, the township clerk."

In supposed compliance with the regulations of the Board concerning the closing of agency stations, a copy of the application was sent to Mr. J. P. Meilleur, the township clerk of the municipality of Cambridge, as stated in the letter just quoted, and Mr. Meilleur replied thereto acknowledging receipt of the application to withdraw the agent then employed at Cambridge station and to place him at the proposed new station at St. Albert, adding:—

"I must say that on account of the present condition of things, the views of the company are receiving the greatest approval as it is evident that this change will be of the greatest advantage to both the company and the public at large."

With these documents on file, the Board made its order, No. 36355, dated May 6, 1925, granting leave to withdraw the agent then employed at Cambridge station and to place him at the proposed new station at St. Albert. On July 29, 1925, the Board was notified by the solicitors for the railway company that, as a result of a request by persons resident in the vicinity of Cambridge station, from which station the company was recently permitted to withdraw its agent, the company has appointed a caretaker, who will be constantly at the station for the convenience of those who continue to ship from that point.

Early in the year 1926 difficulties arose, involving shipments from the two stations, claim being made that certain commodities shipped at Cambridge were unfairly credited to St. Albert, and other complaints were also made which, for the purposes of this case, it is unnecessary to detail.

As a result of representations made to the Board, one of its inspectors visited the locality and gathered details from which it was learned that when Cambridge was closed as an agency station, Mr. Albert Foucher was employed as caretaker at a salary of $25 per month, to look after the cleaning, heating, and lighting of the station, and in conversation with Mr. Bordeau, clerk of the township of Russell, it appeared that the closing of Cambridge station as a regular agency was effected, as he alleged, without consulting or advising any person at Cambridge station, or the authorities of the township of Russell, wherein Cambridge station is located.

From the records of the Board, this is the first intimation of any irregularity in procedure as regards closing Cambridge as an agency station, but it now is admitted that what was alleged by Mr. Bordeau, the clerk of the township of Russell, is true, and that the notice of closing which should have been sent to him was in error sent to Mr. Meilleur, clerk of the adjoining township in which the new station of St. Albert is located, whose ready acquiescence in the suggested change is on record.

The present situation is that Cambridge is maintained as a non-agency station with a caretaker, as above stated, and the new St. Albert station, 1.44 miles north of Cambridge, is maintained as an agency station.

From the communications on file, as well as from what took place before the Board at the hearing on October 4 last, it is apparent that a great deal of feeling has been aroused over the situation, and representatives from both localities are insisting that their rights be protected and enforced. It is contended with considerable show of reason that the move has been a satisfactory one for the railway company. It has filed a summary comparative statement of the receipts at St. Albert and Cambridge stations as follows:—

SUMMARY COMPARATIVE STATEMENT

Freight

July 1925 to July 1927:			
St. Albert—			
Forwarded	$27,741 57		
Received	11,650 16		
		$39,391 73	
Cambridge—			
Forwarded	$ 8,490 75		
Received	7,083 11		
		$15,573 86	
Excess at St. Albert			$23,817 87
Total of both stations		$54,965 59	
July 1923 to June 1925:			
Cambridge—			
Forwarded	$12,861 14		
Received	3,318 00		
Total		$16,179 14	
Increase since the change			38,786 45

Passenger

July 1925 to June 1927:			
St. Albert	$2,683 29		
Cambridge, to May, 1926	1,072 52		
Excess at St. Albert	$1,610 77		
Total of both stations		$3,755 81	
Cambridge 2 yrs. before change		2,242.31	
Increase since the change			$1,513 50

From the above, it seems that the total income of both stations is not sufficient to justify an agent at each place, having regard to the revenue requirements laid down by the Board's General Order No. 54, but it is evident that a large increase in business has ensued during the last two years. It is not the policy of the Board to direct stations to be established within two miles of each other, but there is no objection on that ground to a railway company establishing agency stations as close to each other as it may deem expedient. If an application be made to close either one of these stations, it will be dealt with on its merits, having regard to all the facts disclosed, and to the general practice of the Board. But General Order No. 119 is specific in directing that—

> "whenever a railway company, subject to the jurisdiction of the Board, intends to remove a regular station agent, it shall first notify the local municipality or Board of Trade of its intention to apply to the Board for an order permitting such removal. Such application and notice shall state the grounds on which such removal is sought to be justified and shall, in each instance, show the gross earnings at the station in question from passenger as well as freight traffic and express business during the previous year.
>
> "And it is further ordered that no regular station agent shall be removed until such removal be first authorized by the Board."

Admittedly, the requirements of this order have not been carried out, and in the circumstances it is impossible for the Board to justify the closing of Cam-

bridge as an agency station. It is to be noted that while the application of the companies of April 24, 1925, was for permission to withdraw the agent then employed at Cambridge, and to place him at the proposed new station at St. Albert, and for permission to make Cambridge a non-agency station, yet Order No. 36355, made on such application, is confined to granting leave to withdraw the agent then employed at Cambridge station but says nothing about making Cambridge a non-agency station.

It might be argued that leave so granted to withdraw the agent then employed at Cambridge station involves the closing of Cambridge as an agency station, and even if everything else were regular and the only difficulty in connection with the matter concerned the wording of the order, No. 36355, this could be easily remedied but in view of what is stated above, if the order be construed to mean permission for permanent withdrawal of the agent at Cambridge, such interpretation cannot be supported.

Under Order No. 36355 it is open to the companies to withdraw the agent then at Cambridge and place him at St. Albert, but at the present time at any rate, the effect of such order must be confined within those limits. It is not necessary, nor advisable, to withdraw permission to transfer the agent from Cambridge station to St. Albert and, therefore, Order No. 36355 stands. But on this application the order of the Board must be that Cambridge be continued as an agency station, and that an agent be forthwith appointed thereat.

Ottawa, November 8, 1927.

Assistant Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioner Lawrence concurred.

Complaint of the Dominion Shuttle Company, Limited, of Lachute Mills, P.Q., with regard to freight rates on crossarms from the West to eastern points.

File No. 34180

JUDGMENT

Chief Commissioner McKeown:

The Dominion Shuttle Company, Limited, has submitted a complaint relative to freight charges on shipments of crossarms from British Columbia to eastern points. It is set out that as crossarms are made from British Columbia fir, the eastern manufacturer has to bring his raw material from the latter province, for which a lumber rate prevails, and when shipping the manufactured product from his factory he pays freight upon same according to class rates, as more fully explained below.

Contrasted with this, and as a concession to western shippers and manufacturers, crossarms, both plain and creosoted, are now shipped eastward under a commodity rate which is the same as the lumber rate above referred to. It is consequently put forward by the complainant that the effect of the above concession is to preclude that company from competing with the western manufacturer in supplying the eastern Canadian market, as the western manufacturer ships manufactured crossarms under a commodity rate and complainant is compelled to pay a class rate when shipping the same articles from Lachute, at which point its mills are established. It is suggested in the complaint that all crossarms, both treated and plain, be placed under a class rate.

As the case developed under written submissions, it was asserted that very little of such traffic moved from the west under the conditions detailed, but it

was shown that from thirty to forty cars move from the west to the east yearly over the Canadian Pacific Railway Company's line, and with reference to the movement Mr. Flintoft stated as follows:—

> "However, the present rate basis from British Columbia is a competitive one. If the Board should order the removal of crossarms from the list of articles taking lumber rates from British Columbia points to Eastern Canada, the United States transcontinental tariffs from Seattle and other shipping points on the Pacific coast in the United States to Eastern Canada would still remain in effect. This would place the manufacturers in British Columbia at a disadvantage and would not be of any particular benefit to the complainants."

And in a letter to the Board in general answer to the complaint, Mr. Flintoft submitted that—

> "There can be no question as to the reasonableness of the rates from Lachute, which are on the basis fixed by the Board in its various decisions, commencing with the Eastern Rates Case. This being the case, if there is unjust discrimination, the only way in which it can properly be removed is by the raising of the rates from British Columbia points. However, as pointed out in my previous letter, these latter rates are on a competitive basis and cannot be disturbed without driving the traffic into American channels."

A further answer filed by the British Columbia Lumber and Shingle Manufacturers, Limited, sets out that the basis of rate making on lumber and other forest products of the west has been the result of numerous conferences over a long period of time between the railway companies and the lumber associations, and the classifications, generally speaking, with one or two exceptions, have been concurred in both by the Canadian and the American railways which move forest products from northwest producing districts; that such classifications or groupings are not only national but international in scope, and, if the application of the Dominion Shuttle Company be concurred in, it would completely upset the whole basis of rate making on forest products from Pacific coast points; and that from an economic standpoint the principle of manufacturing the product at the source of supply effects a considerable saving to all interested. They challenged the statement that crossarms are a further manufactured product, alleging that they require no more expensive process than is the case with many other clear lumber products, the rates on which are not attacked.

Upon the issue as thus joined, the matter was given a hearing, first at Montreal on January 7, 1926, before the Chief Commissioner, the Deputy Chief Commissioner, and Mr. Commissioner Boyce. Mr. Wynne, who appeared for the complainant, amplified the complaint by stating that not only do the crossarms come from the west under a commodity rate, but the western manufacturer is allowed to ship them in mixed carloads with other lumber, and the benefit of the commodity rate is preserved to him under such conditions, whereas the eastern manufacturer is not given that advantage. He claimed that the commodity rate eastward was originally a concession made to the western manufacturer to encourage an infant industry, and now the tariff should revert to the basis from which that concession was made. It was emphasized that crossarms are nearly all made from British Columbia fir, that the western manufacturer because he can send mixed carloads under commodity rates, can ship them in small quantities and put them upon the eastern market at a lower rate than complainant can furnish them in practically close proximity to its factory, as it has to pay class rates on its output, in addition to the expense of bringing the raw material from British Columbia.

In answer to the Deputy Chief Commissioner, Mr. Wynne said that the commodity rate under which the western manufacturer ships his product eastward is 90 cents per 100 pounds, whereas the class rate which complainant has to pay is $1.48½ per 100 pounds.

The commodity rate eastward applies from British Columbia to destinations Winnipeg and east, and it has been in effect from the year 1906, since which time several tentative suggestions have been made to the railways concerning this situation, but without avail.

Mr. Flintoft in reply emphasized the competitive nature of the rate as against the American railways, and after hearing thus far, the matter was adjourned until the Board's session in Vancouver, whereupon it was resumed at the latter city on July 14, 1926, before the Chief Commissioner, the Deputy Chief Commissioner, and Mr. Commissioner Oliver.

Mr. Giles, who appeared thereat for the Dominion Shuttle Company, continued the criticism of the commodity rate, claiming that the British Columbia manufacturers should be subject to the same tariff as eastern manufacturers as regards crossarms, and that the latter should be given the proper classification to which they rightly belong. He stated that the ordinary price of crossarm lumber in Vancouver, best grade, is about $32 per thousand, board measurement, and when manufactured into crossarms they are sold at $50 per thousand, making a difference of $18, or 25 per cent, higher than the ordinary price of lumber which carries a commodity rate. He contended that crossarms are a part of pole line equipment and should be put on that rate basis, which is much higher than the commodity rate accorded to crossarms, emphasizing the impropriety of the present commodity rate and claiming it to be injustice that crossarms manufactured in British Columbia should move under such rate, while the same article manufactured in the east is compelled to pay the class rate.

He pointed out that the rates on pole line equipment, L.C.L., Vancouver to Lachute, which is the seat of the complainant's factory for crossarms, is $2.81½, 4th class, and in carloads $1.48½, 10th class, and yet the British Columbia arm manufacturers are given the privilege of shipping manufactured crossarms at the 90-cent commodity rate, as against the rate from the east to Vancouver of $1.32; and top pins or insulating pins from the Atlantic to the Pacific carry a classification on which $1.46 per carload is payable, and $2.81½ L.C.L. lots; that the British Columbia shipper is privileged to send mixed carloads of crossarms and lumber to eastern points, and then reship at L.C.L. rates giving the instance of a mixed carload to Montreal, at which point crossarms could be taken out and reshipped on the following rates:—

> To Montreal, under a commodity rate of 90 cents; and from Montreal, L.C.L., to Lachute, for instance, 27½ cents, 4th class, making a total of $1.17½;

whereas L.C.L., 4th class, from Vancouver to Montreal has an established rate of $2.81½, which, however, he has no use for, as under the present commodity rate he can reduce the cost to $1.17½ as above illustrated.

Mr. Flintoft explained that the reason for putting crossarms in the latter list was to put the British Columbia manufacturer on a relative equality with American competition, and showed that the same rate prevails from Oregon to Montreal, and Vancouver to Montreal, namely 90 cents.

The question which is before the Board for decision is, whether under all the circumstances detailed the commodity rate of 90 cents should be considered unjust and discriminatory in view of the conditions above outlined, and of the fact that the higher class rate is imposed upon the same article shipped from eastern factories. The whole defence of the commodity rate rests upon the fact that the 90-cent rate from the west must be considered in the light of

competition with the American railways which, as already stated, quote a 90-cent rate. If the complaint of the Dominion Shuttle Company be acceded to, it seems to me that it could have no other effect than to transfer the carriage of this commodity from Canadian railways to the lines running through American territory, and this, I think, the Dominion Shuttle Company itself would deprecate.

If the situation presented itself without this disturbing feature, equable dealing between the eastern and the western manufacturers might influence the Board to acquiesce in the remedy here sought. But it is clear that such remedy would not in any degree relieve the situation complained of, inasmuch as the crossarms would continue to move into eastern territory at the rate complained of, but carried by American railways. The situation presents itself as an instance in which competitive rates must be allowed if the traffic is to be conserved to the Canadian carrier. Compliance with the submissions embodied in complainant's presentation would not, in the view of the Board, in any way change the relative situation between the eastern and the western crossarm manufacturers, but would only result in diverting the traffic in the way above indicated.

In its submission the complainant company stated as follows:—

> "The members of the Commission will note that we do not apply for any reduction in rates; our appeal is that the fundamental principle of rating be upheld, which we understand to be, that where raw material has been subject to a manufacturing process it becomes enhanced in value and is necessarily and justly subject to a higher freight rate than would apply on the raw material, and that it should no longer be classified as subject to the commodity rate."

For the reasons above indicated, I think this application must be dismissed.

Ottawa, November 17, 1927.

Deputy Chief Commissioner Vien and Commissioner Oliver concurred.

Application of Mr. George Brassard, of Atlee, Alberta, for an outlet from his buildings to the road diversion between Sections 4 and 5, Township 22, Range 7, West 4th Meridian, Province of Alberta, on Bassano-Empress line of the Canadian Pacific Railway Company.

File No. 18863.51

JUDGMENT

Chief Commissioner McKeown:

By Order of the Board No. 27008, made the 12th day of February, 1918, permission was given to the Canadian Pacific Railway Company to divert the road allowance at the eastern boundary of the northeast quarter of section 5, township 22, range 7, west 4th meridian, in the province of Alberta, and to construct at grade the said road diversion across its tracks at mileage 44.4, Bassano Subdivision; and to close within the limits of its right of way the diverted portion of the said road allowance, as shown on the plan and profile on file with the Board.

This application was assented to by the Department of Public Works of the province of Alberta, and such diversion was accordingly carried out.

The applicant, George Brassard, is now, and at the time the order referred to was made, the owner of certain property adjoining such road allowance, and

his farm buildings were then situate at a point north of where the road allowance so diverted joined the road as originally laid out, so that such diversion had no effect upon his access to the road in question.

In August, 1925, Mr. Brassard made application to the Board for an outlet to the main road as diverted, from the place where his farm buildings are now located. It appears that between the time of the diversion and the date of such application, Mr. Brassard moved to the south of where he then lived and much nearer the railway track, and now asks that a road be furnished to give him access to the highway, crossing the lands of an adjoining proprietor, Mr. Hovey, who is now living in the United States, and with whom the applicant has had some negotiation for that purpose. It is no part of Mr. Brassard's claim that the diversion of the road has compelled the move on his part, but that it has been occasioned by the present lack of water at the place where his buildings were originally located, thereby compelling him to move to the vicinity of a slough where he has been fortunate enough to find water in sufficient quantity. If this move were necessitated by the diversion of the road, which was done at the request of the railway company as above described, then I think there would be some basis for applicant's claim, but such is not the case, and it therefore cannot be sustained upon that ground.

From the record it does not appear that any complaint was made by him at the time of the diversion, but apparently it was satisfactory to him, and as above expressed, the present situation which he now complains of arises because of his recent rearrangement of farm buildings.

It is undoubtely the fact that the diversion was made in compliance with the law, and that the responsible department of the province of Alberta was a consenting party to such change.

The matter was listed for hearing at Calgary and due notice was sent to Mr. Brassard, as well as to the railway company, but at the hearing no one appeared on behalf of the applicant. His lack of representation at the hearing made it necessary for the members of the Board of their own motion to more carefully scrutinize all the circumstances connected with the alteration. Mr. Walker, K.C., appeared for the Canadian Pacific Railway Company, but it cannot be said that anything further was added to the information than obtainable from the files of the Board.

From the plans filed, it appears that Mr. Brassard's dwelling-house at the time the order was made was close to the highway and north of the point where the diversion joins such highway as originally laid out. Now, however, inasmuch as he has changed his dwelling-place considerably to the south, for the purpose before indicated, he finds himself at a distance from the diverted highway, and the fact is that between the location of his present dwelling and such diverted road another property intervenes. But it is also the fact that if the road had followed the original road allowance, he would still have easy access thereto, and it is to connect the road allowance as originally laid out with the road as diverted that this application is made.

I cannot see upon what principle the Board could move in granting this application. It is of course the circumstance of the road allowance being diverted that gives colour to the claim. But at the time no disability or inconvenience attached to the location of Mr. Brassard's farm buildings from the fact of the road being diverted. For reasons, not by any means attributable to the railway company, he has been compelled to move his building. So far as I know, the Board has never been asked to grant relief for that reason, and I think the application must be dismissed.

Ottawa, November 18, 1927.

Deputy Chief Commissioner Vien and Commissioner Oliver concurred.

ORDER No. 39847

In the matter of the application of the Grand Trunk Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its rehabilitated main line from a point near Obed, Alberta, at mileage 35.13, Brule Subdivision, westerly to a point near Dyke, a distance of 25.97 miles; and also its new connection, 3.97 miles long, to a point on the Canadian Northern Alberta Railway, near Solomon, Alberta—a total distance of 29.94 miles.

File No. 33483.2

FRIDAY, the 11th day of November, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its rehabilitated main line from a point near Obed, Alberta, at mileage 35.13 Brule Subdivision, westerly to a point near Dyke, a distance of 25.97 miles; and also its new connection, 3.97 miles long, to a point on the Canadian Northern Alberta Railway, near Solomon, Alberta—a total distance of 29.94 miles.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 39853

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.16

SATURDAY, the 12th day of November, A.D. 1927.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That Supplement 1 to Tariff C.R.C. No. 132, filed by the New Brunswick Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement 1 to Tariff C.R.C. No. 132, are the tolls contained in Tariffs C.R.C. Nos. 109 and 112.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39859

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

SATURDAY, the 12th day of November, A.D. 1927.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tariffs filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 4 to 806	744
Supplement 3 to 817	737
Supplement 4 to 817	737
Supplement 5 to 817	737

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39860

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

SATURDAY, the 12th day of November, A.D. 1927.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That Supplement No. 3 to Tariff C.R.C. No. 621, filed by the Temiscouta Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 3 to Tariff C.R.C. No. 621, approved herein, are the tolls contained in Tariff C.R.C. No. 531.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39861

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.15

Saturday, the 12th day of November, A.D. 1927.

Thomas Vien, K.C., *Deputy Chief Commissioner.*
C. Lawrence, *Commissioner.*

The Board orders:

1. That Supplement 1 to Tariff C.R.C. No. 167, filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement 1 to Tariff C.R.C. No. 167, approved herein, are the tolls contained in Tariffs C.R.C. No. 147 and 149.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39862

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

Saturday, the 12th day of November, A.D. 1927.

Thomas Vien, K.C., *Deputy Chief Commissioner.*
C. Lawrence, *Commissioner.*

The Board orders:

1. That the tariffs filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

Schedule

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 1 to E-4304	E-4175
Supplement 1 to E-4322	E-4134 E-4203

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39879

In the matter of the application of the Toronto Terminals Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its high level main lines between Berkeley Street and Logan Avenue, in the City of Toronto and Province of Ontario.

File No. 588.51

MONDAY, the 14th day of November, A.D. 1927.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of the revised location of the Toronto Viaduct east of the Don, in the city of Toronto and province of Ontario, and from Berkeley street, mileage 1.13, to Logan avenue, mileage 2.7.

THOMAS VIEN,
Deputy Chief Commissioner.

ORDER No. 39881

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic the extension of its line of railway from Cheminis, mileage 32.3, in the Township of McGarry, District of Temiskaming, and Province of Ontario, to Rouyn, mileage 58.7, in the Township of Rouyn, County of Temiscamingue, and Province of Quebec.

File 11014.25

FRIDAY, the 18th day of November, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the extension of its line of railway from Cheminis, mileage 32.3, in the township of McGarry, in the district of Temiskaming, and province of Ontario, to Rouyn, mileage 58.7, in the township of Rouyn, in the county of Temiscamingue, and province of Quebec.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39904

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line from St. Felicien to Dolbeau.

File No. 14953.42

TUESDAY, the 22nd day of November, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway from St. Felicien to Dolbeau, in the county of Lake St. John and province of Quebec, mileage 0 to 26.6.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Queens Central Agricultural Society No. 70, N.B., for an Order of the Board directing that switching charges made by the Canadian Pacific Railway Company from East St. John to West St. John, N.B., be reduced from three cents per one hundred pounds to one cent per one hundred pounds.

File No. 23414.22

JUDGMENT

CHIEF COMMISSIONER MCKEOWN:

The Central Agricultural Society No. 70, of Queens county, N.B., has petitioned the Board that the switching charge imposed by the Canadian Pacific Railway Company for transferring export freight from East St. John to West St. John, a distance of approximately 5½ miles, be reduced from three cents per 100 pounds to one cent per 100 pounds; and further complain that the rate of 7½ cents per 100 pounds imposed upon the same movement of hay for feeding cattle, shipped from West St. John, is excessive.

The first ground of such complaint is joined in by the Prince Edward Island Potato Growers' Association, and is also joined in by the Bathurst Company, Limited, and representatives of all these bodies, as well as of the railways, appeared before the Board at a hearing held in St. John, N.B.

Freight destined for export through West St. John, originating in Prince Edward Island and at eastern points on the Canadian National Railways, is delivered by such railway company to the Canadian Pacific Railway Company at East St. John and carried by the latter company to West St. John, where it is handed over to the various steamship lines.

The case presented on behalf of the two latter petitioners concerns the movement of potatoes from Prince Edward Island, and forest products from the plant of the Bathurst Company, Limited, at Bathurst, N.B. Comparison was made between the switching charge of three cents per 100 pounds here complained of, and the switching charge for like service at Halifax, and this phase of the subject is dealt with later. It developed that the potato consignments from Prince Edward Island were handled by Mr. Clark, who explained that when he started buying potatoes he purchased them on terms f.o.b. West St. John, for at that time there were no proper facilities at East St. John for handling traffic of that nature. But at present there is no difficulty in handling potatoes through east side warehouses under the control of the Canadian

National Railways, which would avoid transference to the Canadian Pacific Railway Company and the switching charge complained of. But as he bought f.o.b. West St. John, he was in a position to take the same to that point if shipments there were more expeditious, or if any other good reason presented itself, but if unloaded on the east side there was that much more in it for him, for the switching charge was not exacted. This feature of the discussion concerned the propriety of imposing the charge against the association when the cars were unloaded at the East St. John warehouse, but Mr. Clark contended that as he bought them f.o.b. West St. John it was his privilege to take them wherever he pleased after purchasing.

Mr. Dewar, who appeared for the Potato Growers' Association, complained of the charge, especially when the goods are unloaded at East St. John. That, however, seems to be a matter of arrangement between consignor and consignee, with which the Board is not called upon to deal.

The Bathurst Company, Limited, contended that the Canadian National Railways should absorb the switching charges on pulp and paper from East to West St. John, and asserted that there is discrimination against the Maritime Provinces by the Canadian National Railways in refusing to absorb the switching and handling charges on export and import traffic at St. John, N.B., in face of the fact that such switching and handling charges on export and import traffic originating at or destined to stations Quebec and west are not assessed against the shipper. As a result of this presentation, the question is submitted in two different aspects—first, from the standpoint of the discrimination so alleged, and secondly, the alleged excessiveness of the charge, which the applicants support by a comparison with the charge for the same service at Halifax.

It was alleged by Mr. Waldon, of the Canadian National Railways, that the export rate on the Bathurst Company's products from Bathurst to West St. John is in proper relationship with that from Bathurst to Halifax and Montreal, and with rates west of Montreal or Quebec to the latter ports, and he said that in naming the rates on pulp and paper they had in mind the additional charge necessary for switching, and endeavouring to line up the rates with that in view. He brought to the attention of the Board the fact that the Canadian National Railways are compelled to pay 3½ cents per 100 pounds to the Canadian Pacific Railway Company for unloading traffic from the cars to the sheds at West St. John, and if compelled to absorb the switching charge it would mean an outlay of 6½ cents out of a 14½ and 15½ cent rate on pulp and paper respectively, from Bathurst to West St. John. He did not deny that the charge is pretty steep, especially for unloading traffic from the car to the shed, but his company is compelled to pay it, and it could not consider any reduction, pointing out that the Canadian Pacific Railway Company receives for its 5½-mile haul, and unloading, 6½ cents, against 11½ or 10½ cents to the Canadian National Railways for the 214-mile haul from Bathurst to East St. John.

As regards the question of discrimination, based upon an absorption of handling and switching charges west of Quebec, he pointed out that competition compels such action on the part of the Canadian National Railways, that where such competition exists it is allowed to meet the same, and must meet it, to hold the traffic. The tariff in the latter locality is built up on the assumption that the whole territory west of Quebec is a competitive area, and no distinction can be made between manufacturers located at strictly competitive points and one who would be at some distance from that point. It does not seem that the complainants have established their case from the standpoint of discrimination.

In regard to the comparison between switching costs at Halifax and St. John, it was shown that the switching movement at the latter city is a particularly expensive one involving a haul up a 1.7 per cent grade, the heaviest in

the New Brunswick district, necessitating a limit load per engine of 499 tons. The movement is also over a bridge which cost $878,000, and there are movements involving three or four terminals in the operation.

Without a parity of circumstances being shown, it is inconclusive to rely upon a variance in rates in different localities in proof of unjust or unreasonable treatment, and this holds with reference to interswitching as well as in regard to other movements. At Halifax, the Canadian National Railways have two ocean shipping terminals: one at North street, about a couple of hundred yards from the interchange point between the Canadian National Railways and the Dominion Atlantic Railway, and the second on the other side of the city, beyond the four-mile switching limit, and known as the Ocean terminal.

The Board's Order No. 35457 of August, 1924, provides that the charge by the Canadian National Railways for switching ex-water, or for furtherance by water, to and from the Dominion Atlantic Railway, between Halifax yard and the North street deep-water terminal, should be one cent per 100 pounds, or not less than $3 per car on 7th, 8th, and 10th class commodities, and $5 per car on all other traffic, and that the Dominion Atlantic Railway Company should absorb half of such charge.

In the opinion of the Canadian National Railways it became necessary to put in the same rate to its ocean terminal, a distance of over four miles, as that which prevailed in regard to interswitching and handling of its freight between the Dominion Atlantic Railway and the deep-water terminal at North street, for the reason that otherwise none of the freight so plentifully delivered by the Dominion Atlantic Railway to the Canadian National Railways would find its way to the ocean terminal, but all would be delivered at the North street terminal at the very small switching cost there prevailing. The Board gave no direction as to the amount chargeable for interswitching at the ocean terminal, beyond the four-mile interswitching limit, but provided that, if an equality was made by the railway between the switching charge as regards the two terminals, and upon publication by the Canadian National Railways of the same switching charge throughout as prevails in regard to the nearer terminal, the Dominion Atlantic Railway Company should make the same absorption as previously referred to. But it did not direct the Canadian National Railways to put in the one-cent charge.

It is therefore apparent that no real comparison can be instituted between the three-cent charge in St. John and the one-cent charge to the ocean terminal at Halifax. If any comparison prevails, it is between the charge as regards the North street deep-water terminal at Halifax, which is 200 yards distant from the interswitching point, and the West St. John situation. Regarding it, however, from the latter standpoint, there does not appear to be ground for alleging discrimination, in view of the very dissimilar circumstances attaching to the several movements.

From what is known as the Island yard at East St. John, where most of the interchanging takes place, there is a distance of 6.99 miles to West St. John, while from Mill Street station the distance is 5.60 miles. A record put in for the year 1925 shows that there were interchanged at Mill street outward, 4,540 cars, and inward, 5,738 cars; and at the Island yard the interchange outward was 13,900 cars, and inward 10,635 cars. It is thus seen that most of the freight is hauled a distance of almost seven miles.

Special conditions, which need not be further elaborated here, such as the difficulty of the up grade, the numerous terminal movements, and the difficulties attending upon deliveries at ocean steamers, seem to me to justify the three cent per 100 pounds charge, for it will be noted that the local switching rate established in 1919, for switching within a single terminal, has a minimum of 4½ cents on the 8th class traffic, to which potatoes belong.

I think this portion of the petition must be dismissed.

There remains, however, the further question of the charge of 7½ cents per 100 pounds imposed upon a like movement of hay for feeding cattle, exported at West St. John. This complaint is also pressed upon our attention by the Central Agricultural Society of Queens county, and I think it has reason for so doing. In support of the 7½-cent rate, a distinction was drawn by the railway company between hay for feeding purposes and hay for export. Nevertheless, I think it should not exceed the 10th class switching rate of 4½ cents established in 1919. While it is true that this rate was published for a single terminal, I am, however, of opinion that such rate, even with the number of terminals involved, cannot be said to be out of the way.

It was contended by the Agricultural Society that the movement of traffic from the St. John River district to West St. John could be simplified by making the interchange at Fairville, thereby avoiding the haul into St. John and a return haul to Fairville and thence to West St. John. It will be remembered that the traffic involved originates on the line of the Canadian National Railways along the St. John river, which latter company has running rights from Westfield to St. John over the Canadian Pacific Railway Company's line. The agreement between the two companies when such rights were given cannot be wholly ignored. It was therein specifically provided that their interchange of such traffic be made at St. John. Physical difficulties now present themselves to interchanging the same at Fairville, arising from the limitations and frequently congested condition of the yard. It may be that increasing business will compel a rearrangement in this particular, but the facts now before the Board would not justify an order compelling the change necessary to meet the situation complained of.

It is common knowledge that within a few months the harbour of St. John has now become nationalized and is now under the control of a commission which, undoubtedly, will take cognizance of all shipping charges and be in a position to make representations concerning them, with a full knowledge of everything involved. If any of the questions here dealt with should again be brought to the attention of the Board, further consideration will be given them.

The application to reduce the interswitching charge from East St. John to West St. John, on export traffic, must be dismissed.

The switching charge of 7½ cents per 100 pounds for the above-described movement of hay for feeding cattle, shipped from West St. John, should be reduced to 4½ cents per 100 pounds.

Assistant Chief Commissioner McLean:

I agreed in the dispositions set out in the reasons for judgment of the Chief Commissioner.

Ottawa, November 19, 1927.

Application of the Department of Highways of the Province of Nova Scotia for an order directing payment out of the Railway Grade Crossing Fund of 40 per cent of the actual cost of the work of erecting advance warning signs at a distance of three hundred feet from railway crossings in the province at some three hundred crossings.

File No. 27214.15

The Department of Highways of the province of Nova Scotia, through its Chief Engineer of Highways, advised the Board that the department had under consideration the erection of warning signs at a distance of three hundred feet from all railway crossings and filed a blue-print showing the proposed sign. It

was stated that the signs were estimated to cost $6 each or $12 per crossing in place; that there would be some three hundred crossings taken care of in the province; and the department applied for 40 per cent of the actual cost of the work.

RULING

The application was carefully considered by the Board and the Secretary was instructed to write the Chief Engineer, Department of Highways, Nova Scotia, as follows:—

> "Referring to your letter of August 16 last in connection with the application of the Department of Highways for the province of Nova Scotia for a contribution from the Grade Crossing Fund in aid of the instalment of advance warning signs. In this connection I am directed to point out that the question arises as to the Board's power in regard to the instalment of advance warning signs which are outside the right of way and on the highway.
>
> "The Board's understanding is that it has no jurisdiction to order the railway company to erect signs outside the right of way, and, consequently the erection of advance warning signs three hundred (300) feet from the railway crossing is something within the scope either of provincial or municipal jurisdiction.
>
> "Under date of April 27, 1921 (Board's file 27214.1), the Secretary-Treasurer of the Ontario Motor League asked for information on various points in connection with protection at crossings. Reference was made in this connection to a sitting of the Board at which this matter was discussed in Toronto, especially from the standpoint of motor traffic. The query was placed before the Board, and subsequently a letter was sent to the Secretary of the Ontario Motor League by the Board, under date of May 14, 1921, in which the following language was used: 'The Board has so far not been advised of the action taken by the other provinces in respect of the matter of a standard protective sign. Since the signs would have to be placed upon the highway, outside the right of way of the railway, the Board would have no jurisdiction to deal with them, the highway falling within either the jurisdiction of the municipality or the province.'
>
> "Under date of September 12, 1923 (Board's file 27214.3) a letter was written to the Board by the Ontario Motor League in which a request was made that the Board should obtain an amendment to the Railway Act giving power to the railway companies to place their warning signs at a distance of approximately three hundred (300) feet from railroad-highway crossings. At a meeting of the Board in the Chief Commissioner's office on September 20, 1923, the matter was discussed and the following decision arrived at:—
>
> > 'That the Secretary should write the Ontario Motor League in reply to its application, stating that the Board has grave doubts as to its jurisdiction to order the placing of railway crossing signs beyond the limits of the railway right of way, to which limits the Board has always been of opinion that its jurisdiction under the Railway Act is confined. It should be suggested to the applicants that they take the matter up with the Department of Justice at Ottawa, with a view to amending legislation, as a change in the law would, in the opinion of the Board, be necessary to confer such jurisdiction upon it.'

"On the Board's file 26782.18, which dealt with the question of protection at Loretteville, P.Q., under the Board's direction the applicants were written to on April 29, 1924, and informed that the highway warning signs are not upon the right of way or within the jurisdiction of the Board and therefore application was to be made to the authorities controlling the highways, for the erection of the signs.

"I am further directed to state that the Board, not having power to direct the erection on the highway of a protective device, outside the limits of the railway right of way, it follows that it has no power to direct a contribution to be made to it, when it is voluntarily undertaken by provincial or municipal authority."

To which the Chief Engineer, Department of Highways, replied:—

"I note that it is not possible for the Board of Railway Commissioners to make a contribution. My understanding is that, under the present laws, railway companies are bound to erect a warning sign within the right of way. As traffic conditions on highways have so changed in recent years as to make this warning practically useless, it would seem to me that the law should be amended so as to compel railways to erect warning signs which will properly advise the traffic which the highways are now carrying."

In a subsequent letter he states:—

"I would like to point out that where the grade crossing has not been eliminated, the advance warning signs which we are erecting will, without doubt, prevent many accidents, and while the cost is small, they will add greatly to the safety of the travelling public. We, therefore, believe that if it is at all possible your Board would be justified in making a contribution towards the cost.

"If I may, without presuming to dictate, I would like to point out that in the case of many grade crossing eliminations by using either subways or overhead crossings, a considerable portion of the work is very often outside the right of way of the railway, and you are, therefore, making contributions towards the cost of work done outside the right of way.

"We would like your Board to give this matter further consideration, as we believe there is merit in our claim."

The matter was given further consideration by the Board, the result of which was communicated by the Secretary to the Chief Engineer, Department of Highways, as follows:—

"I am directed to state that 'crossing' as defined in the grade crossing section of the Railway Act (Sec. 262) expressly provides for the elimination of rail level crossings by the elevation or depression of the railway or highway, as the case may be, a considerable portion of which work no doubt is very often outside the right of way of the railway, as you state. This distinguishes subways or overhead crossings, by means of which rail level crossings are eliminated, from the erection of warning signs constructed on the highway some three hundred feet from the right of way. The statute authorizes a contribution for 'any other work ordered by the Board to be provided as one work of protection, safety, and convenience for the public . . . '; and I am directed to state that these warning signs certainly tend to the protection, safety, and convenience of the public at crossings where installed, and are, therefore, within that part of the wording of the Act.

"I am further directed to state that the difficulty is that it must be a work ordered by the Board to be provided, and consequently, until the Board modifies its former ruling that it has no power to order the erection of these warning signs, it would seem to follow, as pointed out in the Board's letter to you of the 3rd inst., that it is also without power to direct or authorize a contribution from the fund towards the cost of constructing such signs."

OTTAWA, October 31, 1927.

ORDER No. 39913

In the matter of the Order of the Board No. 39556, dated September 15, 1927, suspending, pending a hearing by the Board, Agent Thompson's Tariff C.R.C. No. 71, in so far as the same affects rules and charges for car demurrage on bulk grain consigned to public terminal elevators at Vancouver. File No. 35476

THURSDAY, the 17th day of November, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Vancouver on the 19th of October, 1927, in the presence of representatives of the Vancouver Harbour Commissioners, Vancouver Grain Exchange, Vancouver Board of Trade, province of Alberta, Calgary Board of Trade, and Canadian Freight Association; and its being stated that interested parties have reached an agreement as to a substituted rule to take the place of that under suspension by Order No. 39556,—

The Board orders: That the said Order No. 39556, dated September 15, 1927, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39911

In the matter of the complaint of Woodwards, Limited, and the Retail Merchants' Association of Canada against the proposed advance in rate on perfumes in Canadian Freight Association Tariff C.R.C. No. 256;

And in the matter of the Order of the Board No. 37540, dated April 20, 1926, suspending the said amendment to tariff pending a hearing by the Board. File No. 34439

MONDAY, the 21st day of November, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Vancouver, October 19, 1927, in the presence of representatives of the Retail Merchants' Association of Canada and the Canadian Freight Association (Western Lines), and what was alleged; the reissue of Item 300-A of the said tariff as originally published being consented to on behalf of the complainants, provided the word "perfume" be used instead of "perfumery",—

The Board orders: That the said Order No. 37540, dated April 20, 1926, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39914

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for authority to close the station at Kipp, in the Province of Alberta.

File No. 24141

THURSDAY, the 24th day of November, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Lethbridge, October 27, 1927, in the presence of counsel for and representatives of the applicant company, the District Board of Trade of Coalhurst, the village of Coalhurst, and residents of Kipp and district adjacent thereto, and what was alleged; and upon the report and recommendation of the Chief Operating Officer of the Board and its Division Engineer,—

The Board orders: That the applicant company be, and it is hereby, authorized to close the station at Kipp, Alta., as an agency station, and to erect a passenger shelter to accommodate local passengers; and that the applicant company be required to maintain at Kipp the business track, to serve the elevator, stock yards, and grain loading platform, and to handle carload traffic; local passenger trains to stop on flag for the accommodation of passengers.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39966

In the matter of the Order of the Board No. 37173, dated December 18, 1925, authorizing the Canadian National Railway Company to carry traffic over that portion of its Loverna Westerly Branch from mileage 104.06 westerly to Hemaruka, a distance of fifty miles: provided trains operated over the said line be restricted to a rate of speed not exceeding twelve miles an hour.

File No. 15832.24

WEDNESDAY, the 30th day of November, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Loverna Westerly Branch from mileage 104.06, Dodsland Subdivision of the Grand Trunk Pacific Branch Lines Company, to Hemaruka, Alta., mileage 154.06, a distance of fifty miles.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39963

In the matter of Tariffs and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act (17 George V, Chapter 44).

File No. 34822.16

THURSDAY, the 1st day of December, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement No. 3 to Tariff C.R.C. No. 124, filed by the New Brunswick Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 3 to Tariff C.R.C. No. 124, approved herein, are the tolls contained in Tariff C.R.C. No. 116.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39964

In the matter of Tariffs and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.15

THURSDAY, the 1st day of December, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement No. 3 to Tariff C.R.C. No. 159, filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 3 to Tariff C.R.C. No. 159, approved herein, are the tolls contained in Tariff C.R.C. No. 153.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39969

In the matter of Tariffs and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

THURSDAY, the 1st day of December, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tariffs filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 2 to 601	433 438
Supplement 3 to 601	433 438

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39970

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

THURSDAY, the 1st day of December, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement No. 3 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement 3 to C.R.C. No. E-4312, approved herein, are the tolls contained in Tariff C.R.C. No. E-4250.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39971

In the matter of Tariffs, and Supplements to Tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

THURSDAY, the 1st day of December, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That Supplement 3 to Tariff C.R.C. No. 820, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement 3 to Tariff C.R.C. No. 820, approved herein, are the tolls contained in Tariff C.R.C. No. 777.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 39974

In the matter of the application of the Express Traffic Association of Canada for approval of Supplement No. 6 to Tariff C.R.C. No. E.T. 694, covering regulations for the transportation of acids and other dangerous articles by express, on file with the Board under file No. 1717.12.

FRIDAY, the 2nd day of December, A.D. 1927.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the said Supplement No. 6 to Tariff C.R.C. No. E.T. 694, filed by C. N. Ham, Chairman, Express Traffic Association, covering regulations for the transportation of acids and other dangerous articles by express, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, January 2, 1928 No. 22

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Application of Balfour, Guthrie Warehouse Co. Ltd., Vancouver, B.C., re absorption of unloading charges over applicant Company's dock at Vancouver, B.C., C.N. Rys., and C.P.R. Co.

File 33564.4.

JUDGMENT

McLean, Assistant Chief Commissioner:

Complaint was made by the Balfour, Guthrie Warehouse Co., Ltd., of Vancouver, B.C., in the following terms:—

"We should be obliged if you would inform us if the interpretation of their tariff by the Canadian Pacific and Canadian National Railways is correct in the following instance:—

"As a wharf company, we have been handling shipments of flour to the Orient for some years and until September, 1925, had no trouble in collecting unloading charges from the railways. In August, 1925, we understand that the Trans Pacific Westbound Conference, which is composed of the principal steamship lines running to the Orient, made a ruling that they would only absorb handling charges (from dock to ship) at certain wharves and for some reason the wharf we operate was omitted.

"We continued to handle flour by these steamers and have been trying to get our wharf reinstated as a terminal wharf, so far without success; and have been unable to collect handling charges on a large tonnage of flour. The railways also have declined to pay full unloading charges, and it is this point we are anxious to clear up.

"According to clause B, subsection D, section 3 of Canadian Pacific Railway Company's Tariff No. W 5297, the railway company will absorb unloading charges of 40 cents per 2,000 pounds on Grain and Grain Products. This tariff was changed; but by your Order No. 36108, dated February 19, 1925, the change was suspended until further notice; and in Supplement No. 33 to Canadian Pacific Railway Tariff No. W 5297, clause C, subsection D, it states the railway company will absorb unloading charges at Vancouver not in excess of 40 cents per 2,000 pounds.

"Upon presentation of our accounts for unloading cars, the Canadian Pacific Railway declined to pay 40 cents per 2,000 pounds as per

tariff, and would only pay 20 cents per 2,000 pounds, stating that as the steamship company had refused to pay the wharf charges they were supposed to absorb, the railway company would only pay 50 per cent of their absorption.

"We enclose copy of letter from J. G. McNab, Foreign Freight Agent, Canadian Pacific Railway, to the Canada Grain Export Company, the shippers of most of the flour we have handled, which gives the railway company's views; and it is on this point that we are asking for your ruling;

"Is the charge of 40 cents per 2,000 pounds correct, or can the railway companies decide for themselves what amount they will pay?"

Informal correspondence and discussion took place between the Board's officers and the railways in an endeavour to arrive at a settlement of the matter. Thereafter, the railways were written to by the Board as follows:—

"I beg to enclose you herewith, under direction of the Board, a copy of a letter dated September 28th, 1926, from the Balfour-Guthrie Warehouse Company, Ltd., Vancouver, which has reference to the question of absorption of unloading charges at Vancouver under the terms of your companies' tariffs, namely, Canadian Pacific Railway C.R.C. No. W-2788, and C.R.C. No. W-2755; Canadian National Railways C.R.C. No. W-432 and C.R.C. No. W-434. This matter has been the subject of informal correspondence and discussion between the Board's Chief Traffic Officer and Messrs. Kirkpatrick and Foreman.

"Reference is made by the Balfour-Guthrie Warehouse Company to a change in the practice of the railway companies in September, 1925. So far as the terms of your companies' tariff are concerned, there was no change made therein on or about the date in question; they were the same then, since and for some time previously.

"The Board's understanding of the matter is as follows: Previous to 1925, the steamship lines were absorbing the handling charges of the various dock companies and the railway companies were absorbing the unloading charges made by the dock companies. The actual cost of unloading was not ascertained and made in each case, but through agreement between the dock companies and the railway companies the latter accepted bills covering a uniform unloading charge of 40 cents per ton, on grain products.

"Some time in 1925, the steamship lines refused to continue the absorption of handling charges except in the case of declared home docks. The Balfour-Guthrie Warehouse Company's dock is not included as a home dock. The service performed by the Balfour-Guthrie Company is in no way changed, but because their total charge has been altered—apparently a forced condition—the railway companies, without any change whatever in their tariff provisions, are now refusing to absorb in excess of 20 cents per ton on traffic handled direct from cars to ship's sling over the Balfour-Guthrie Warehouse Company's dock, which is 50 per cent of the amount that was formerly absorbed under the terms of exactly the same tariff provisions. The situation is understood to be as follows:—

"In the case of so-called home docks, the railway companies are absorbing unloading charge of 40 cents per ton in all cases whether (1) the cargo is handled from car to place of rest on wharf and subsequently from said place of rest to ship's sling, or (2) handled direct from cars to ship's side without being deposited at place of rest on wharf.

"In the case of the Balfour-Guthrie Warehouse Company's dock, the railway companies are absorbing unloading charge of 40 cents per ton where the traffic is handled from car to place of rest on wharf and subsequently from said place of rest to ship's sling; but absorbing only 20 cents per ton when the traffic is handled direct from cars to ship's side without being deposited at place of rest on wharf.

"As stated, the absorption of 40 cents per ton has been a flat allowance heretofore. In the case of the Balfour-Guthrie Warehouse Company, the railway companies' position now seems to be that that absorption must be contingent upon the fulfilment of certain conditions by the dock company, namely, the assessment of a separate handling charge.

"I am instructed to advise you that in the view of the Board no such distinction or qualification with respect to the absorption of unloading charge is justified, nor is it sanctioned by tariff, and the difference in treatment is considered as constituting an unjust discrimination on the part of the railway companies. I am further directed to ask whether, in view of the Board's views as expressed herein, instructions will be issued placing the Balfour-Guthrie Warehouse Company's docks as from September, 1925, in the same position as other dock companies with respect to the matter of absorption of unloading charges?

"I am further directed by the Board to ask you for your company's reply within one week from the date hereof."

Further representations were made by the railways who asked that if the views they set out were not accepted by the Board they should have an opportunity of presenting their position before the Board in formal hearing. In view of the provisions of section 19, subsection 2, of the Railway Act, the matter was set down for hearing.

The railways contended, in substance, that the tariff concerned had to be construed in the light of practices and agreements existing. The question of the practice of steamship companies in regard to the arrangements existing does not appear to be one which it is necessary to go into in the present application. The provisions of the tariffs must speak for themselves.

Further, the contention of the railways that the applicant was not performing the entire work necessary in order to obtain the absorption of 40 cents, therefore, the railways were justified in limiting the absorption to 20 cents per ton of 2,000 pounds, is not a tenable position, unless the tariff provides for this.

The sum involved, represented by the difference between the absorption of 20 cents per ton of 2,000 pounds, and the 40 cents which it is contended should be absorbed, amounts, according to an exhibit filed by counsel for the applicants, to the following figures:

Canadian Pacific Railway	$3,286 62
Canadian National Railways	427 21

The matter is entirely one of the legal rate provided for in the tariff. The evidence submitted has been considered, and the tariff has been subjected to further analysis and consideration. The only conclusion at which I am able to arrive is that the legal rate was 40 cents; and I am, therefore, of opinion that a declaratory order should issue accordingly.

December 1, 1927.

Commissioners Oliver and Lawrence concurred.

Application of the Township of East York and the Corporation of the Town of Leaside, for a contribution from the Railway Grade Crossing Fund towards the cost of the construction of the subway authorized to be constructed under the Canadian Pacific Railway tracks at Leaside, Ont., by Order of the Board No. 38443, dated November 22, 1926, and that the Canadian Pacific and Canadian National Railway Companies contribute to the cost of the proposed subway.

File No. 34833

JUDGMENT

Chief Commissioner McKeown:

By Order of the Board No. 38443, dated November 22, 1926, authority was given to the township of East York and the corporation of the town of Leaside to construct and maintain a highway, known as the East York-Leaside viaduct, crossing the Canadian National Railways by the East York-Leaside bridge, and also the Canadian Pacific Railway by means of a subway under its tracks, as shown on the plans thereof filed with the Board. Leave was reserved under said order for the applicants to move for an order directing the two railway companies above named to contribute to the cost of the said viaduct, and also to move that payment of part of such cost be ordered from the Railway Grade Crossing Fund.

Pursuant to such leave, application was made to the Board for contributions from the railways, as well as from the Railway Grade Crossing Fund, and the matter was listed for hearing at Toronto on November 14, 1927, and upon being called applicants stated that, with the permission of the Board, they would proceed only under the application for a contribution from the Railway Grade Crossing Fund.

Proof was directed by applicants to establish that in respect of the crossing in question at rail level, the same was in existence as part of a public highway prior to the construction of said viaduct, and prior to the 1st April, 1909. Various plans and conveyances were submitted to the Board to establish this contention, and such evidence was supplemented by oral testimony on the part of municipal officials and others in a position to speak of the conditions of such crossing prior to the date last above mentioned.

The application for contribution by the railways was the subject of discussion between counsel representing the corporations and the applicants, with the result that this feature of the application to the Board was withdrawn. No one appeared to contravene or criticize the testimony submitted on behalf of the application for contribution from the Railway Grade Crossing Fund. It appeared from the testimony and by the plans submitted, that the line of the Ontario and Quebec Railway Company, whose rights are now merged in the Canadian Pacific Railway Company, ran over lots 12 and 13 in the third concession east from Toronto bay, in the township of York, through property previously owned by William Lea and John Lea, and it is upon the dividing line between such lots that the crossing in question is located. The evidence discloses that a farm lane had for years existed, crossing over the point in question as a part of the line of travel from Don Mills road to Bayview avenue. It was called Lea's lane, and was of varying width, and at the hearing before the Board the burden of proving that such lane was a public highway was assumed by the applicants.

In support of such contention, there was put in evidence an agreement bearing date November 15, 1892, to which the owners of the land through which the lane passed were parties, and to which the Ontario and Quebec Railway Company aforesaid was also a party.

The substance of the agreement as far as respects the present application was that the last-named company covenanted and agreed with the owners of the property that it would, prior to the 31st day of December, 1893, establish a station (to be named and known as Leaside Junction) within certain limits plainly indicated on a sketch attached to the agreement, and a little to the west of the crossing in question where the line of railway ran through the lands owned by William Lea. The agreement contained certain other provisions agreed to by the railway company, not necessary to be detailed here, in favour of the inhabitants of the locality immediately interested.

Following such covenants on the part of the railway company, the then owners of the land over which such line passed bound themselves by such agreement to,—

> "to permit and allow the general public to use the said level crossing over the railway at the point marked 'A' on the said sketch and also the lane along the north side of the said lot No. 12, as at present laid out as well as any extension thereof which may be made by the said tenant or trustees or any person or persons whomsoever claiming title by, through or under them or any of them either north or south of the right of way of the said railway in any direction through the property of the said tenant or trustees or any other property controlled by him or them as such trustees for the purposes of a roadway to and from the said proposed station and grounds adjacent thereof so that the public shall have the free and uninterrupted right at all times hereafter to travel upon the said lane with or without horses, carriages or other vehicles to and from the said proposed stations and grounds adjacent thereto. Provided always that the said tenant and trustees shall not be bound under this agreement to give such access to the general public over that portion of the said lane above referred to lying on the southerly side of the blue line shown on said sketch and marked with the letter 'B' until after the expiration of three years from the date hereof".

Reference to the plans filed and put in as evidence shows that "the said level crossing over the railway at the point marked 'A' on the said sketch" is the crossing which applicants contend is a public crossing within the meaning of the Railway Act.

Further conveyances were submitted amplifying the situation above described, but the agreement above mentioned is the foundation for applicants' claim that the lane in question was dedicated to the public. From the terms of such agreement it cannot be questioned that the owners of the land at the time agreed and covenanted in the most formal manner possible, to dedicate, and did thereby dedicate, to the public the lane in question.

In further proof testimony was submitted showing a large volume of travel over such lane and crossing immediately subsequent to such dedication and continuously thereafter. It was further shown that the railway station known as Leaside Junction was erected according to promise by the railway company, that the lane and crossing were used by the general public going to and from said station, that the town of Leaside expended from $800 to $1,000 annually on the lane or road, including the crossing, as upon any other road in the municipality; that Leaside, although not a large town, has industrial plants employing from 1,500 to 3,000 people, and that hundreds of them use the road in question going to and returning from work day by day. That the use of the road by automobiles is open and continuous. That the public money was expended on said lane, including the crossing, the same as on all other streets in Leaside, and to give egress and ingress from and to the station for freight and express and traffic of all kinds, and that no objection had ever been heard in regard to anybody using the road who desired to do so, but that it was used with the full acquiescence of the previous owners.

While from the nature of the application no one has appeared before the Board to adduce proof contradicting the statements made by witnesses, or to contest the inference drawn from the documents submitted, yet it is apparent, I think, that the documentary evidence and verbal testimony before the Board satisfactorily establishes the fact that the crossing in question was a public crossing and in existence prior to the 1st day of April, 1909, as part of a public highway, and consequently that applicants are entitled to a contribution from the Railway Grade Crossing Fund according to its terms.

Under existing statutory provisions, the Board is justified in directing contribution to an amount not exceeding 40 per cent of the cost of actual construction in providing for the protection, safety, and convenience of the public at such crossing, and not exceeding the sum of $25,000.

The viaduct in question is a very expensive one, having regard to the statutory limitation, no close calculation is necessary to estimate the amount which the Board is justified in allotting. Features of special difficulty presented themselves in the work, the cost of the whole scheme including the subway being placed at $975,000, but as far as this feature of the application is concerned the following testimony seems conclusive:—

> "The Assistant Chief Commissioner: What I want to get at is this: If we see fit to make a grant, what would be the basis for it?—A. I think I can answer your question completely in this way, Mr. Vice-Chairman. The cost I have given you, except for the last four items, takes care of the subway only, between the north and south part of it. That is, $148,525. But I think it would be proper to at least include the grade from the north down to the subway as part of the subway cost. That is always done in subway work.
>
> "Q. All I meant was that if a percentage were granted, the amount over the $148,000 would not help us.—A. The part to the north would cost $148,000."

Assuming the sum of $148,000 to be the amount which can be considered by the Board as the cost of the actual construction of the work contemplated by the Act, it is apparent that legal sanction exists for the payment of $25,000 to the applicants as a contribution from the Railway Grade Crossing Fund appropriation, and I am of opinion that an order should issue to that effect.

Ottawa, December 19, 1927.

Assistant Chief Commissioner McLean concurred.

ORDER No. 39999

In the matter of the application of the Balfour-Guthrie Warehouse Company, Limited, of Vancouver, British Columbia, for ruling of the Board as to the interpretation of the provisions of Canadian National Railways Tariffs C.R.C. No. W-432 and C.R.C. No. W-434, and Canadian Pacific Railway Company's Tariffs C.R.C. No. W-2788 and C.R.C. No. W-2755, with respect to the absorption of unloading charges on flour exported over the Applicant Company's dock at Vancouver.

File No. 33564.4.

Tuesday, the 6th day of December, A.D. 1927.

S. J. McLean, *Assistant Chief Commissioner.*
C. Lawrence, *Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, October 19, 1927, in the presence of representatives of the applicant company and the railway companies, and what was alleged,—

The Board declares: That, under the provisions contained in Canadian National Railways Tariffs C.R.C. No. W-432 and C.R.C. No. W-434, and Canadian Pacific Railway Company's Tariffs C.R.C. No. W-2788 and C.R.C. No. W-2755, the absorption of unloading charges which should have been made by the said railway companies with respect to flour exported over the applicant company's dock at Vancouver, British Columbia, was 40 cents per 2,000 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 454

In the matter of the application of The Railway Association of Canada, on behalf of Member Lines, for extension of authority under Section 345 of the Railway Act, 1919, to permit the granting of free transportation over all lines in Canada to the Lieutenant-Governors and Members of the Provincial Cabinets of the various Provinces.

File No. 496.26.7.

WEDNESDAY, the 14th day of December, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading the application and what has been filed in support thereof,—

The Board orders: That the railway companies subject to the jurisdiction of the Board be, and they are hereby, permitted, until further order, to issue free transportation in the following instances, namely: Over all lines in Canada, to the lieutenant-governors and members of the provincial cabinets of the various provinces.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40050

In the matter of the application of the Canadian Northern Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its Acadia Valley Branch from mileage zero, at the junction with the Mantario Subdivision at mileage 136.3, to Acadia Valley, a distance of 24.60 miles; also the west leg of the wye at the said junction, a distance of 0.23 of a mile.

File No. 29460.10

WEDNESDAY, the 21st day of December, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Acadia Valley

Branch from mileage zero, at the junction with the Mantario Subdivision at mileage 136.3, to Acadia Valley, a distance of 24.60 miles; also the west leg of the wye at the said junction, a distance of 0.23 of a mile.

H. A. McKEOWN,
Chief Commissioner.

December 12, 1927.

DEAR SIR:—

File 35618

Referring to attached Circular No. 215, I am directed to ask the railway companies to state forthwith what steps they are taking and are prepared to take to prevent a recurrence of accidents of this nature.

Yours truly,

A. D. CARTWRIGHT,
Secretary, B.R.C.

December 12, 1927.

CIRCULAR No. 215

Re Head-on Collisions

I am directed to call your company's attention to two very serious accidents that have occurred recently, a head-on collision in each case, at the meeting point, which was arranged by train order, Form A, there being an instruction issued in each case that the train in the superior direction take the passing track.

The Board is of the opinion that railway companies would be well advised to seriously consider placing very severe restrictions on the issuance of orders reversing the right to track of trains at the meeting point.

By order of the Board,

A. D. CARTWRIGHT,
Secretary, B.R.C.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, January 15, 1928 No. 23

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Application of Dominion Sugar Company, Limited, Chatham, Ont., for an adjustment of rates on Sugar Beets, in carloads, to Chatham and Wallaceburg, Ont., so as to remove alleged discrimination in favour of Raymond, Alta.

File No. 29996.15

REPORT OF CHIEF TRAFFIC OFFICER

This report is issuing as the

JUDGMENT OF THE BOARD IN THIS MATTER

The matter was developed by written submissions filed by the applicant and the carriers, and thereafter the applicant stated it had nothing further to add and requested that after reviewing the material filed the Board render a decision without a hearing. The matter stood for consideration after the Judgment of the Board, *re* General Freight Rates Investigation.

Some years ago a sugar factory was constructed at Raymond, Alta., and operated for a time, but was afterwards dismantled as the enterprise turned out to be a failure. In 1925 the Utah-Idaho Sugar Company established a plant at Raymond operated in the name of the Canadian Sugar Factories, Limited, and effective September 25, 1925, the Canadian Pacific Railway published specific rates on sugar beets, in carloads, from various stations on its line to Raymond. Rates are published to Raymond from some 48 points. These are on the same basis as the mileage scale of rates applying on sugar beets from Ontario points to Chatham and Wallaceburg, except in the case of nine shipping points located 20 miles or less from Raymond from which the rates in effect are lower than the Eastern Canadian scale. For movements up to 20 miles the comparison between the Eastern Canadian scale and the rates established by the C.P.R. to Raymond is as follows:—

—	Eastern Canadian Scale	To Raymond Alta.
	Rates in cents per 100 pounds	
Not over 12 miles	4½	2½
Over 12 and not over 15 miles	4½	3
Over 15 and not over 20 miles	4½	3½

The carload minimum weight applicable with respect to the Eastern Canadian rates is 40,000 pounds; the rates to Raymond are subject to a carload minimum weight of 50,000 pounds.

Shortly after the publication by the C.P.R. of these rates to Raymond, the applicant filed its initial submission with the Board making application for an adjustment of rates on sugar beets to Chatham and Wallaceburg, Ont., so as to remove the present alleged discrimination in favour of Raymond, Alta. It is only with respect to the hauls 20 miles and less that discrimination is alleged; for hauls exceeding that distance the rates are the same to Raymond, Chatham and Wallaceburg.

It is unnecessary, for the determination of this case, to deal with the question of the reasonableness of the rates applicable for the movement of sugar beets in Eastern Canada, for the reason that this is a matter which has already been considered by the Board. Upon an application made by the Dominion Sugar Company in 1920 for a reduction in the rates charged on sugar beets, the Board issued judgment dated October 25, 1921 (Vol. XI, Board's Judgments, Orders, Regulations and Rulings, p. 289) and by Order No. 31709, of same date, prescribed a scale of mileage rates which the carriers were directed to publish in lieu of the rates then in force. Subsequently, as a part of the General Freight Rates Investigation, the present applicant applied for a reduction in the rates established pursuant to Order 31709. This application was heard at Windsor, Ont., January 12, 1926, and was dismissed for the reasons set out in the report of the Chief Traffic Officer, whose conclusions were concurred in by the Board (Vol. XVII, Board's Judgments, Orders, Regulations and Rulings, p. 375).

It is alleged by applicant that with respect to hauls up to 20 miles the rates into Raymond are unjustly discriminatory against Chatham and Wallaceburg and unduly preferential to Raymond. Shipments of sugar beets to Wallaceburg move over the lines of the P.M. and C.W. and L.E. Railways; the C.P.R. has no line to this point. Chatham is served by the lines of the C.P.R., C.N., P.M. and C.W. and L.E. Railways. The only line reaching Raymond is the C.P.R. Obviously there can be no charge of unjust discrimination in the rates charged sustained with respect to the movement over the lines of the P.M. and C.W. and L.E. Railways into Wallaceburg, nor with regard to the movement into Chatham over the lines of the C.N., P.M. and C.W. and L.E. Railways, for the reason that these carriers do not publish or participate in rates lower than applied to the movement to Wallaceburg and Chatham. It is no evidence of discrimination on the part of these carriers to point to the fact that the C.P.R. publishes a different rate into Raymond. This point has been considered and ruled upon by the Board in a number of cases.

In 1917, there was before the Board for consideration, complaint of the Dominion Millers' Association alleging that mills in Ontario were discriminated against in connection with the milling in transit stop-off charge of 2 cents per 100 pounds made in Eastern Canada by the Grand Trunk and Canadian Pacific Railways, on grain ex-lake, whereas the charge in certain parts of Ontario and the Canadian Northwest was 1 cent per 100 pounds. For reasons fully set out in the judgment (Vol. VII, Board's Judgments, Orders, Regulations and Rulings, p. 290), the Board found there was discrimination on the part of the Canadian Pacific Railway; that, with regard to the Grand Trunk Railway, there was no discrimination, and in its judgment, the Board stated:—

> "It is contended by the Grand Trunk that as it does not charge the 1-cent rate, no allegation of discrimination against it can be maintained. The Grand Trunk was a participating carrier in G.T.P. tariff No. 63, C.R.C. No. 122, effective December 6, 1915. This tariff is concerned with a movement over Grand Trunk Pacific, Canadian Government

Railways, and Transcontinental Railway to points in Ontario, Quebec, and Maritime Provinces, on grain and grain products, and carries the provision for 1 cent milling-in-transit from the West. This tariff which was effective December 6, 1915, was cancelled by supplement, September 1, 1917, whereby instead of the through rate the rate is the combination of the rates on Armstrong. However, this is noted as carrying with it no changes in rates.

"The Board has, however, both in its decisions in the Eastern Rates Case and in the Western Rates Case recognized the Grand Trunk Pacific as being distinct from the Grand Trunk Railway. This being so, the charge for milling-in-transit on the Grand Trunk Pacific is not a measure of alleged discrimination on the Grand Trunk."

In Judgment of the Board dated December 17, 1921 (Vol. XI, Board's Judgments, Orders, Regulations and Rulings, p. 389), the question of milling-in-transit arrangement on grain was further dealt with, and in said judgment the Chief Commissioner made the following reference to the above cited case:—

"In the month of February, 1917, application was made by the Dominion Millers' Association and others asking that the rate in Eastern Canada on grain milled for domestic use be reduced to 1 cent per 100 pounds, the same as that charged in Western Canada, my understanding being that the rate for export was 1 cent per 100 pounds both in the East and in the West. After very lengthy hearings and argument, the Board delivered judgment on the 3rd day of October, 1917, directing the Canadian Pacific Railway Company to reduce the rate in the East to 1 cent per 100 pounds, as there was discrimination under the then existing conditions, holding that, as the Grand Trunk had no railway in the West (the Grand Trunk Pacific being in law a separate entity), the charge of 2 cents by that company was not discriminatory and no order was made with respect to that railway."

Later in the same judgment, the Chief Commissioner states:—

"I entirely concur in the principles enunciated by this Board in its judgment of October 3, 1917, hereinbefore referred to, viz., that, as the Grand Trunk Railway Company did not operate in Western Canada, the charge of 2 cents made by it in the East was not discriminatory, and I also agree with the Board that, because one railway may charge a different rate from a competitor, it is no evidence of discrimination."

In the case of the Hagersville Crushed Stone Company vs. the Michigan Central Railroad (Board's Judgments, Orders, Regulations and Rulings, Vol. VI, p. 417) it is stated in the Board's judgment:—

"The Board has more than once ruled that the rate charged by one railway is not necessarily a measure of what another railway should charge."

In the Board's ruling in the application of the Department of Public Highways, Ontario, *re* rate on stone from Hagersville to Fletcher and Tilbury, Ont., over the line of the Michigan Central Railroad (Vol. XIV, Board's Judgments, Orders, Regulations and Rulings, p. 321), it is stated:—

"It is noted that reference is made to a rate of 90 cents per ton, charged by the Canadian Pacific Railway for a somewhat similar distance. The rate charged on one railway is not necessarily the measure of the rate to be charged on another railway."

In complaint of the National Dairy Council of Canada, *re* rates on butter (Vol. XII, Board's Judgments, Orders, Regulations and Rulings, p. 144), the judgment sets out:—

> "A toll obtaining on one railway cannot be claimed to be unjustly discriminatory simply because a toll on another, which is put into effect for competitive reasons, is lower, it being within the discretion of the carrier whether it shall meet competition or not."

Even with regard to rates on the same line of railway, a difference in rates on different parts of the line does not necessarily constitute unjust discrimination, and to carry the illustration further, there may be, without unjust discrimination, over the same portion of the same line, a difference in rates where the movements are in the opposite direction.

As the result of various freight rate investigations by the Board, particularly the Western Rates Case in 1914; *re* Freight Tolls, 1922; and the General Freight Rates Investigation, in respect to which judgment issued in September, 1927, it is a matter of general knowledge that there are differences in the rates on the same traffic for similar distances in different parts of the country, and that this does not constitute unjust discrimination of the character forbidden by the Railway Act. The following citation from Vol. XVII, Board's Judgments, Orders, Regulations and Rulings, p. 323, is pertinent in this connection:—

> "The Board has recognized that differing conditions, competitive conditions, etc., have brought about differing rates and rules in different sections.
>
> "In speaking of rate adjustments in the West, it has been said that particular facts of the section in which the rate adjustment is made must be considered, and it does not follow that the arrangement operative in the West would be a criterion of discrimination in connection with a complaint as to a different rate adjustment east of the Lakes. *Re* Freight Tolls, 27 Can. Ry. Cas. 153, at p. 174. Manifestly, the same principle applies when the comparison is concerned with a rate or practice existing in Eastern Canada. Board's Printed Judgments and Orders, Vol. XIII, No. 18, at p. 245."

However, in the case of the C.P.R., there is a difference in rates as above set out, and where it is alleged, as here, that there is unjust discrimination, the matter requires consideration from the standpoint as to whether the difference amounts to an unjust rate discrimination. If it does, then I consider the Board should order the discrimination removed by increasing the rates into Raymond, rather than directing a reduction in the rates in Eastern Canada which, in the case of the other carriers already named, are not in any sense discriminatory, and, further, were prescribed by the Board and subsequently recently reviewed and held to be reasonable. The C.W. and L.E. Railway, for example, points out that it handles three times the volume of sugar beet traffic to that of the C.P.R. in the east; that the sugar beet traffic represents approximately 40 per cent of its total tonnage; that for several years the company has not been able to pay the interest on its bonds, nor to pay taxes and interest on floating debt.

With regard to the rates into Raymond, the Canadian Pacific Railway, in its reply to the submissions of applicant, states:—

> "The contention of the railway companies is that the conditions are not substantially similar in the two cases. It is difficult to understand in what respect the present applicants can be regarded as being unduly prejudiced by the fact that from certain points into Raymond,

Alberta, there is a somewhat lower basis of rates than from points of similar mileages into Chatham, Ontario—the two territories being over 2,000 miles apart.

"It is obvious that industrial development in Western Canada is in the public interest, and further that the establishment of a sugar beet industry at Raymond will prove an important factor in furthering the development and prosperity of the agricultural community in southern Alberta. Moreover, such development in Alberta has numerous difficulties to combat as compared with southern Ontario. The range of agricultural development is limited by prevailing climatic conditions and the absence of industrial markets, such as consume practically the entire agricultural products of Ontario. Irrigation must be resorted to in southern Alberta to insure a crop, whereas the natural moisture is ample for the purpose in the Chatham district.

"Under these circumstances it is submitted that, as has been held by the Board in numerous cases, the railway company is justified in putting into effect a basis of rates to assist in the development of this Alberta industry.

"Moreover, it may be pointed out that Chatham has a lower rate basis applicable upon its out-bound products than for similar mileages from Raymond. This is shown by the following table:—

From Chatham, Ont. To	Miles	Rate	From Raymond, Alta. Rate	(For same distance) Difference favor Chatham
Toronto	176	34½	39	4½
Kingston	339	47	56	9
Ottawa	423	52½	65	12½
Montreal	510	54	74	20
St. John, N.B.	985	70½	111	41½

"The applicant is able to market the greater portion of its product in the large wholesale and industrial centres of the east, which are not open to the refinery at Raymond, which caters to a much more sparsely settled community."

With regard to the nine points from which the rates into Raymond are lower than the eastern scale, the railway states:—

"All these points are on the prairie, in a dry district where roads are always passable and the railway is subject to motor competition. For the longer distances where this condition does not exist, the rates are the same as in the east."

The applicant states it markets approximately 20 per cent of its refined sugar at points Winnipeg and as far west thereof as Regina. With reference to its Wallaceburg factory, applicant states:—

"The fact is that this plant, located at an advantageous shipping point on the Great Lakes, would be able to compete with the product of the Raymond refinery quite successfully at Winnipeg, itself a very important distributing centre, and more or less successfully at several of the other points west of Winnipeg, if the *rates given the Raymond refinery on sugar beets were not unjustly discriminatory.* The Board has more than once enunciated the principle that geographical advantages or disadvantages should not be eliminated through the medium of unfavourable or favourable freight rates. The Raymond rate schedule on sugar beets is a clear instance of the entire elimination, as far as affects the western markets, of the geographical advantage hitherto possessed by the Wallaceburg refinery."

To illustrate this disadvantage, applicant filed exhibit "D" comparing the combined rates on the raw material and the refined product to western points from Raymond with those from Chatham and Wallaceburg. Quite a number of the points shown in this exhibit are west of Regina, which applicant states is practically the westerly limit of its shipments, so that as far as these points are concerned the comparison is merely a " paper " one. Winnipeg is the important market in the west so far as applicant is concerned, and it is sufficient for this record to confine the comparisons to that point. The comparison of applicant is as follows:—

—	From Raymond, Alta.			From Chatham & Wallaceburg		
	Beet Rate (A)	Refined Sugar Rate	Total Rate	Beet Rate (B)	Refined Sugar Rate	Total Rate
	Per Cwt.	Per Cwt.	Per Cwt.	Per Cwt.	Per Cwt.	Per Cwt.
Winnipeg	.25	$1.11	$1.36	.45	$1.14	$1.59

(A) Based on minimum beet rate of 2½c per cwt. or 50c per ton with an extraction of 200 lbs. of refined sugar per ton of beets.
(B) Based on minimum beet rate of 4½c per cwt. or 90c per ton with an extraction of 200 lbs. of refined sugar per ton of beets.

The refined sugar rate of $1.14 shown from Chatham and Wallaceburg to Winnipeg is the all-rail rate. It is asserted in the submission of the C.W. and L.E. Railway that from Wallaceburg the great bulk of the sugar moves by water to the head of the lakes; that the all-rail movement is negligible. The published rate via water from Wallaceburg to the head of the lakes is given as 32 cents. In connection with applicant's exhibit, it is noted that the rate of $1.11 shown from Raymond to Winnipeg is not that now in force, which is 93 cents. The comparison set out by the railway company is as follows:—

FROM RAYMOND, ALTA.

To	Rail Mileage from Raymond, Alta.	Beet Rate (A) Per cwt.	Refined Sugar Rate Per cwt.	Total Rate Per cwt.
Winnipeg	783	.25	.93	$1.18

FROM WALLACEBURG, ONT.

To	Rail Mileage from Wallaceburg, Ont.	Beet Rate (B) Per cwt.	Lake Rate to Fort William	Rail Rate beyond Fort William Per cwt.	Total Rate Per cwt.
Winnipeg	1419	.45	.32	.57	$1.34

(A) Based on minimum beet rate of 2½c per cwt. or 50c per ton with an extraction of 200 lbs. of refined sugar per ton of beets.
(B) Based on minimum beet rate of 4½c per cwt. or 90c per ton with an extraction of 200 lbs. of refined sugar per ton of beets.

There is an error in the mileages given, the correct figures being 1,421 miles from Wallaceburg and 759 miles from Raymond.

I do not consider a comparison of this character, of the combined rates on the raw and refined products, furnishes evidence of unjust discrimination in rates. I do not think a case could be found where the average freight rate on all the raw material brought in by one factory would be exactly the same as to some other factory engaged in manufacturing the same product. The applicant estimated that approximately 50 per cent of the 1925 crop would be moved by rail, the balance being trucked. Applicant estimated that approximately 65 per cent of the beets they use are grown within a 20-mile radius of their nearest plant.

With regard to the raw material rate based on an extraction of 200 pounds of refined sugar per ton of beets, the figure used to Raymond is based on the rate applying for distances not over 12 miles, while the figure used to Chatham and Wallaceburg is based on the rate applying for distances up to 25 miles. Assuming that exactly the same mileage scale governed into Raymond as to Chatham and Wallaceburg, the average rate on the raw material would not be the same into the three points unless each plant received exactly an equal tonnage from points taking the same rate. If the average haul to one plant was 25 miles and to another 35 miles, there would be inequality in the total average inward rate on the raw material, consequently, under the argument and contention of applicant, as set out in this exhibit, there would be discrimination in the rates against that plant which paid the highest average rate on its raw material, although the scale of rates in force was exactly the same in each case.

If the difference in rates here complained of constitutes unjust discrimination, then the logic of the applicant would, it seems to me, point to an unjust discrimination against Raymond and undue preference in favour of Chatham and Wallaceburg, with regard to the rates on their outbound product. The rates on refined sugar from Raymond are on a higher scale than from Wallaceburg and Chatham, owing to differences between the rate structures in the two territories, which have been dealt with by the judgments of the Board in the Western Rates Case; *re* Freight Tolls, 1922; and the recent General Freight Rates Investigation.

There is nothing on record showing the percentage of beets moving into Raymond by rail for hauls under 20 miles, as compared with the percentage hauled over that distance. Applicant stresses the preponderance of its movement from the short haul points. The situation into Raymond may, or may not, be quite different, but as to this the record contains no data.

As developed by applicant, the question involves alleged discrimination only with respect to that territory in which these companies compete in the marketing of the refined sugar, namely, between Winnipeg and Regina, inclusive. The applicant's principal markets are in Eastern Canada, to which territory it is stated Raymond does not ship, and, again, in the West, there is not competition in all the territory. There is nothing on the record as to the volume of refined sugar shipped from Raymond into the territory between Winnipeg and Regina. From the standpoint of discrimination, as developed by applicant, there would be involved only the question of rates on raw material, the product of which is marketed in competing territory, whereas the application is for an adjustment of all the rates on sugar beets in the east for distances up to 20 miles, and which applicant states represents the preponderance of its sugar beet traffic. There is no discrimination with respect to the bulk of the territory in which applicant markets approximately 80 per cent of its product.

The exhibit of applicant shows a combined rate of $1.59 from Wallaceburg to Winnipeg, which represents a rate per ton per mile of 2.16 cents. The combined rate from Raymond is $1.18, or a rate per ton per mile of 3.90 cents.

The combined rate from Wallaceburg, per ton per mile, is 55 per cent of the combined rate per ton per mile from Raymond. As indicating that the Wallaceburg rate is on an appreciably lower basis, even allowing for tapering of the rate per ton per mile on account of increased distances, it may be pointed out that the 5th class rate, per ton per mile, under the standard mileage tariff in Western Canada, is 2.92 cents for 759 miles, as compared with 2.35 cents for 1,421 miles. Under the standard mileage tariff in the West the tapering of the rate produces a ton mile figure for 1,421 miles which is 80 per cent of that for 759 miles, while, under the comparison of applicant, its rate is only 55 per cent.

The all-rail rate on sugar from Wallaceburg to Winnipeg produces a rate per ton per mile of 1.60 cents, as compared with 2.45 cents per ton per mile from Raymond; in other words, the Wallaceburg rate per ton per mile is 65 per cent of that from Raymond, as compared with 80 per cent under the standard mileage scale in the West for corresponding mileages. While the foregoing figures show that with regard to the all-rail rates on refined sugar from Wallaceburg and Chatham to Winnipeg, they are on a basis which is lower than in effect from Raymond, this leaves entirely out of consideration the much lower rate available by water from Wallaceburg, on which, it is stated, the bulk of the traffic moves to the West, and which, as properly pointed out by applicant in that portion of its submission previously quoted herein, is due to its advantageous location as a shipping point by water to destination on the Great Lakes.

I do not consider applicants have proven that the difference in rates constitutes unjust discrimination, and, therefore, recommend that the application be dismissed.

W. E. CAMPBELL,,
Chief Traffic Officer.

Ottawa, December 6, 1927.

Application of the Canadian National Railways for an Order recommending to the Governor in Council the abandonment of operation of that portion of the Sutton Subdivision of their railway, between Stouffville Junction and Mount Albert, where it crosses the Bala Subdivision, a distance of 15.29 miles.

File No. 34992

JUDGMENT

Chief Commissioner McKeown:

This is an application under section 19 of chapter 13 of the Statutes 9-10, George V, incorporating the Canadian National Railway Company and respecting Canadian National Railways. The section in question provides:—

> "19. (1) With the approval of the Governor General in Council, and upon the recommendation of the Board of Railway Commissioners, the company may abandon the operation of any lines, or parts of lines, of railway and incidental works, the operation or continued maintenance whereof has, in the opinion of the Board, become unnecessary or inexpedient through duplication or other economical considerations; and with the consent of a majority in value of the registered security holders affected may dismantle or dispose of the lines of railway or works so abandoned."

The Board is asked to approve the abandonment of the operation of a part of what is known as the Sutton Subdivision of the Canadian National Railway Company, which runs from Stouffville, a junction point on the Uxbridge Subdivision, northward to Sutton and Jackson's Point, a distance of 26.91 miles, involving the total abandonment of such subdivision from Stouffville aforesaid to the point where the Sutton Subdivision crosses the Bala Subdivision of the company's lines, a distance of 15.29 miles, and an alteration in the service from the last-named point northward to the end of the line as described hereafter.

The service at present from Stouffville throughout the subdivision, namely from Stouffville to Sutton, is a tri-weekly mixed train provided for freight and passenger service, which runs northward from Stouffville on Tuesday, Thursday, and Saturday of each week, returning the same day. In addition to involving a complete discontinuance of operation from Stouffville to Mount Albert, a point about 2½ miles south of the crossing of the lines of the two subdivisions, the passenger service is wholly withdrawn from operation on the northern section, namely, from the point of such crossing to Sutton aforesaid.

The proposal contemplates a continuation of the freight service southward from the point of crossing to Mount Albert, for the accommodation of the merchants of the last-named place, under which arrangement the rails from the junction point to Mount Albert will be treated as a spur line to the latter place; and northward from such point of crossing to Sutton, a tri-weekly freight service will be afforded to Toronto over the Bala Subdivision.

It thus appears that passenger service is to be wholly withdrawn from the localities along the entire line of the Sutton Subdivision, and freight service reasonably sufficient continued from Mount Albert north to Sutton, while south of Mount Albert no such service is to be provided.

It is pointed out in support of the application that the proposed abandonment and rearrangement of service will effect an annual saving of about $14,000.

Dealing first with the northern portion of the subdivision, over which freight service is to be continued, it may be said that notwithstanding a somewhat longer distance is involved in routing freight over the Bala Subdivision than by the present direct line to Stouffville, nevertheless the tri-weekly service to be continued provides reasonable accommodation for that branch of the public need, and no lessening of the present service is contemplated or will be put into force; but the tri-weekly passenger service now afforded on the northern portion of the line is to be wholly withdrawn. As far as concerns Sutton and Jackson's Point, it is noted that both these localities are immediately served by a radial line over which there is satisfactory daily service to Toronto.

The withdrawal of the above passenger service will affect two stations on this part of the subdivision, namely, Baldwin, a distance of 3½ miles from Sutton, and Brownhill and Zepher crossing, which stations are less than 2½ miles from stations on the Bala Subdivision over which passenger service is afforded.

From the above, it appears that carrying out the proposal embodied in this application has practically no effect upon the freight service over the northern portion of the subdivision, namely, from Mount Albert to Sutton and Jackson's Point, and very little effect upon the passenger service over that part of the line.

Turning now to the southern portion of the subdivision, the operation of which is to be wholly discontinued if this application is given effect, it may be said that the present service is, as above remarked, a tri-weekly mixed train, passenger and freight, northward from Stouffville on Tuesday, Thursday, and Saturday of each week, returning the same days; and the distance from Stouff-

ville Junction to where it crosses the Bala Subdivision is 15.29 miles. Within that distance there are non-agency stations as follows:—

Ballantrae, with annual earnings of about $4,000.
Vivian, the revenue of which is less than $1,000.
Powells, a stopping place for passengers.

This part of the Sutton Subdivision runs through a farming community and is a connecting link between the Uxbridge Subdivision at Stouffville and the Bala Subdivision, the connection with which is about 2½ miles north of Mount Albert.

Ballantrae is 5½ miles from Stouffville Junction and about 6½ miles from Vandorf, a station on the Bala Subdivision, and the withdrawal contemplated will necessitate travel to either one of these last-named places to secure railway service. It is at this point that the greatest inconvenience occurs. Northward from Ballantrae the lines of the Sutton and Bala Subdivisions converge, so that at Vivian not over 2½ miles separate it from Pine Orchard, a station on the Bala Subdivision. The distances from these stations to be abandoned to the Uxbridge Subdivision on the one hand, and the Bala Subdivision on the other, are reasonable distances for hauling produce to a steam railway. It is said that during 1926 the company handled from Ballantrae and Vivian combined, nine cars of vegetables, a material decrease from former years because of the competition of motor traffic.

Evidence was given as to the convenience of railway service to Musselman's Lake and the Eaton Club Farm, but both of these places are reasonably accessible from Stouffville Junction and are easily reached by motor travel.

Mr. Morgan Baker, reeve of the township of Whitchurch, in which Ballantrae is situate, while opposing the withdrawal, questioned whether it would affect any industry at the present time, but was of opinion that in the years to come business might suffer. Ballantrae is said to have a population of less than one hundred, with annual earnings to the railway company of about $3,500.

It was also urged that the work of the Toronto and North York Roads Commission would be interfered with by the withdrawal of the service, as the broken stone necessary for macadamizing could not be carried to the point where the work is now being done. But the volume of traffic involved, spoken of as from five to six hundred cars within the next three years, is not from a railway standpoint of serious import; and while, naturally, all of the inhabitants of the localities concerned are opposed to the abandonment of any part of the service, nevertheless neither from the standpoint of personal inconvenience, nor from the standpoint of revenue accruing to the railway company, can any effective opposition be urged by comparison with other sections of the country similarly circumstanced.

Assuming that it is right for the Board to acquiesce in applications of this kind when demanded, because of economical considerations, there appears to be no reason here disclosed why the recommendation sought for should not be made in the present case.

During the hearing, it was urged that certain financial assistance had been given to the road in question when the same was under construction by the Lake Simcoe Junction Railway Company. Evidence on the part of witnesses for the different townships was so indefinite that no undertaking to continue operation by the railway company, or its successors, could be inferred. A copy of an agreement between the last-named company and the township of Whitchurch, in the form of a bond from the former to the latter, has been filed by counsel for the last-named township. The only provision contained in such bond bearing upon the matter at issue is as follows:—

> " and further that the said company will, as soon as the said railway is completed, establish a station within two miles of the present site of the Ballantrae post office ".

Apart altogether from the question of the binding force of this obligation upon the Canadian National Railway Company, it cannot be affirmed that abandonment of the service such as is here proposed, is a breach of this bond, and from that standpoint nothing seems to stand in the way of the present application.

Having regard to all the circumstances involved, both as regards the railway company and the localities, and the convenience of all parties interested, I am of opinion that the operation of that portion of the Sutton Subdivision of the applicants' railway between Stouffville Junction and Mount Albert, where it crosses the Bala Subdivision, a distance of 15.29 miles, has become unnecessary and inexpedient by reason of the economical considerations involved, and that its abandonment be recommended to the Governor in Council.

Ottawa, December 22, 1927.

Assistant Chief Commissioner McLean concurred.

ORDER No. 40071

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants" under Section 19 of the Statutes of Canada, 9-10 George V, Chapter 13, for an Order recommending to the Governor in Council the abandonment of operation of that portion of the Sutton Subdivision of their railway, between Stouffville Junction and Mount Albert, where the same crosses the Bala Subdivision, a distance of 15.29 miles.

File No. 34992

Friday, the 23rd day of December, A.D. 1927.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, November 14, 1927, in the presence of counsel for the township of East Gwillimbury, the township of North Gwillimbury and Georgina, the township of Whitchurch, and the applicants, and what was alleged,—

The Board orders: That the abandonment of operation of that portion of the Sutton Subdivision of the applicants, between Stouffville Junction and Mount Albert, where the same crosses the Bala Subdivision, a distance of 15.29 miles, be, and it is hereby, recommended to the Governor in Council for approval.

H. A. McKEOWN,
Chief Commissioner.

Application of the Canadian National Railways under Sections 39 and 51 of the Railway Act, that the Board review the question of allocation of the cost of construction and maintenance of the overhead bridge authorized to be constructed by Order No. 29923, at Main street, Toronto, and direct that such portions as the Board may deem proper be borne by the City of Toronto and the Toronto Transportation Commission.

File No. 24822

JUDGMENT

Chief Commissioner McKeown:

By the Board's Order No. 29923, dated the 3rd day of July, 1920, the Grand Trunk Railway Company was required to reconstruct a bridge over its tracks at Main street, in the city of Toronto, and to construct the approaches

to such bridge in the manner set out in the order. Apart from the cost of surfacing said bridge and its approaches, and the necessary curbing, the expense of the undertaking was imposed upon the railway company. Such bridge and approaches were required to take the place of the bridge then existing at that point, and which had been built by the railway company under a certain agreement between the township of York and the said railway company of date June 25, 1884.

The bridge built under the agreement above referred to, eliminated a level crossing over what was known as Dawes road, in the township of York, by the rails of the Grand Trunk Railway Company, and the said road or highway was then diverted and straightened so as to form a more direct line of travel from the township of York to the city of Toronto. By subsequent extension of boundaries, the bridge and road in question are now within the limits of the city of Toronto. The bridge which was so replaced had been built prior to the creation of this Board, and it carried a width of 25 feet, of which 5 feet constituted a sidewalk.

Order No. 29923 was made upon the application of the city of Toronto. The condition of affairs which rendered the erection of a bridge necessary in 1884 was, because of the inconvenience and danger to the public of a level crossing at the point in question, in view of existing and increasing traffic. The reconstructed bridge, as it at present stands, carries a very large volume of pedestrian and vehicular traffic and is used also by the street car lines of the Toronto Transportation Commission. By Order of the Board No. 32956, dated October 10, 1922, the last-named company was granted temporary permission to cross with its street railway the line of the Grand Trunk Railway Company, upon said highway—that is, upon the bridge in question. Such Order, No. 32956, was made "pending decision of the Board upon all matters involved in the application of the railway company herein, that the Board review the question of the allocation of the cost of the bridge at Main street aforesaid".

As stated in the order immediately above referred to, the Grand Trunk Railway Company made application to the Board under sections 51 and 39 of the Railway Act, that the Board review the question of the allocation of the cost of the bridge as settled by such order.

The bridge erected under the agreement of 1884 was not intended to carry, and did not provide for the carriage of street car traffic, but it is clear from the evidence taken at the hearing in the year 1919, preceding Order No. 29923, that the probability of the street cars being operated over the new bridge was not lost sight of.

As above pointed out, the bridge now carries the tracks of the Toronto street railway, and under these conditions, as well as for other reasons, the railway company (now the Canadian National Railways) asks for reallocation of the cost of construction as determined by Order No. 29923 which, it will be remembered, imposed upon the railway company the whole expense of reconstruction.

After the lapse of considerable time, namely, on March 19, 1925, the application for review of the allocation of costs was heard before the Board comprising the present Chief Commissioner, the Assistant Chief Commissioner, Mr. Commissioner Boyce and Mr. Commissioner Lawrence who, after consideration, were unanimously of opinion that the application for such rehearing should be allowed, for reasons set out in the judgments delivered pursuant to such application.

The judgment of a majority of the Board, written by Mr. Commissioner Boyce, reported in the Board's Orders and Judgments, etc., Vol. 15, p. 413, sets out with clearness the reasons which have influenced the Board to grant the rehearing, and inasmuch as the same are already of record, it is unnecessary in disposing of this application to restate the same any further than is required

for an understanding of the conditions under which the Order of the Board, No. 29923, following the judgment of the then Chief Commissioner, was issued. The portions of the judgment of the late Chief Commissioner extracted by Mr. Commissioner Boyce, as well as by the present Chief Commissioner in a separate judgment written by him, indicate that in the allocation of costs now complained of, conditions were taken for granted which a closer examination of the facts proves to have been misunderstood. Following such judgment and the Board's Order No. 29923, rehearing was allowed and listed for the November, 1927, sittings in Toronto, and the application was there heard before the Chief Commissioner and the Assistant Chief Commissioner.

As the matter now presents itself to the Board, I think it must be looked upon *de novo* from the standpoint of the allocation of the cost of a bridge built in substitution for the one previously existing which, by reason of the increased volume of travel, had become inadequate to meet the traffic requirements of the present day.

As already stated, the entire cost of the new structure, apart from its approaches, and provisions for widening same, was imposed upon the railway company. When a matter of this kind is disposed of by a considered judgment, one is reluctant to reopen the same for further argument, especially after the lapse of the period which intervenes between the date of the order and the present time. But while this is so, it will be noted that request for opportunity to move for a review of such allocation was made by the Canadian National Railways as early as June, 1922. Various reasons have interfered with the progress of the motion, but one is not for that cause debarred from giving consideration to the matter.

Coming then to the merits of the case, the governing facts are these: Under its agreement with the township of York, the railway company built a bridge which was accepted as being in compliance with the terms of the agreement dated June 25, 1884. Such bridge eliminated the theretofore existing level crossing substituting an overhead therefor, and simultaneously the line of the street was altered for reasons unnecessary to be amplified. Until increased travel had taken place to a very large degree, and methods thereof had materially changed, the bridge so erected under such agreement stood as a satisfactory solution of the traffic problem at that point, but under changed conditions the city of Toronto, whose extended boundaries include the bridge in question, appeared before the Board and for good and sufficient reasons secured Order No. 29923 directing that the then existing bridge be replaced by a new one to be constructed under the terms and specifications set out therein, and it is to be noted that the bridge at that time in place, under the finding the late Chief Commissioner Carvell, " while physically solid and capable of carrying whatever traffic may be offered, on account of being only 25 feet wide, 5 feet of which is taken up with sidewalk, has not the necessary capacity to take care of the traffic offering ".

It is shown by the judgment of the learned Chief Commissioner, reported in the Board's Orders and Judgments, etc., Vol. 10, p. 245, and succinctly pointed out in the judgments allowing the rehearing, that the Board considered itself bound by the judgment in the Hamilton case so frequently referred to in the previous judgments, or at least that such judgment indicated the policy of the Board and, as a matter of principle, should be followed. In its material part it is proved that the facts in this case, supposed to be identical with those of the Hamilton case, were misconceived, and the judgment cannot be supported upon that ground. It is not necessary to question the principle of the Hamilton judgment, which is to the effect that where a street is severed obligation rests upon the railway company effecting such severance to make the same good in all particulars, but that is not the point that arises here. What concerns the Board at present is the proper allocation of costs of an overhead bridge, origin-

ally built under circumstances above alluded to as a separation of grades, perfectly sound in all parts and well equipped for the conditions under which it was built, having become through increased volume of travel unable to cope with traffic conditions of the present time and for that reason imperatively requiring enlargement. I cannot think that under such conditions the whole cost of reconstruction should rest upon the railway company. It is increased traffic pertaining to the street, not to the railway, which necessitated reconstruction of the bridge, and under such conditions it is in my view improper to say that the full incidence of the cost occasioned by measures necessary to take care of such increase should be placed upon the railway company.

Argument against the present allocation was presented on behalf of the Canadian National Railways, founded upon the agreement of 1884 between the township of York and the Grand Trunk Railway Company by which the first bridge was constructed, the pertinent section of which reads as follows:—

> " That they will build and maintain an overhead bridge for the public use at the point, also shown on the said plan and profile the length and width of the bridge, the grades of the approaches and their width and the protection to be made shall all be such as is also mentioned in said specification and profile annexed hereto and signed as aforesaid.
>
> " That the road shall be made as provided in said specification plan and profile.
>
> " That the company will keep the roadway except at the bridge in repair for a period of four years from the date hereof, the bridge, its embankment, approaches and guards they will always maintain and keep in good order repair—that is, so long as the new road is used as a public highway ".

It was contended under the authority of Sharpness New Docks, etc., vs. Attorney-General *et al*, A.C. 1915, p. 654, that the railway company, to use the expression of the late Chief Commissioner Carvell in his judgment, " had discharged its liability when built up to the requirements and had passed the inspection of the Commissioners appointed to look after it, and that all they could be called upon to do in the future was to support, maintain and keep in sufficient repair the bridge which they had been ordered to construct ".

The effect of the Privy Council's judgment in this case was discussed in the Hamilton judgment at pp. 32, 33, 34, and 35 of the Board's Orders and Judgments, etc., of the year 1920. Attention was directed to section 39 of the Railway Act, and it was pointed out that there is no corresponding section in the railway law of England. I am in accord with the position taken by the Board in that particular and, for the reasons there outlined, in view of the provisions of the last-named section of the Railway Act, I think this Board is free to allocate the costs of the present structure as it may think proper under the provisions of the Railway Act, unhindered by the judgment of the Privy Council referred to.

In view of the fact that the sums appropriated and set aside by Parliament to aid actual construction work for the protection, safety, and convenience of the public, in respect of highway crossings of railways at rail level, are limited to those in existence on the 1st day of April, 1909, it is not open to the Board to order any contribution from the Railway Grade Crossing Fund in assistance of this undertaking, the full expense whereof must be borne by the parties immediately in interest, namely, the Canadian National Railways, the city of Toronto, and by the Toronto Transportation Commission which makes use of the bridge in question for its street railway tracks.

I think the proper allocation of costs should be that sixty per cent thereof should be borne by the Canadian National Railways, thirty per cent by the city of Toronto, and ten per cent by the Toronto Transportation Commission. December 24, 1927.

Assistant Chief Commissioner McLean concurred.

OBSERVANCE BY CARRIERS OF DIRECTIONS GIVEN ON BILLS OF LADING BY SHIPPERS AS TO THE ROUTING OF TRAFFIC

Complaints of the Office Specialty Manufacturing Company, Limited, Newmarket, Ont., the Dominion Atlantic Railway Company, the Acadia Sugar Refining Co., Limited, Halifax, N.S., et al, against the Canadian National Railways.

File No. 26602.66

This question originated with communications from the Office Specialty Manufacturing Company, Limited, Newmarket, Ont., who complained that the Canadian National Railways had ignored routing instructions endorsed by them on shipping bills and bills of lading, said routing instructions being in accordance with provisions as to routing published in applicable tariffs. The complainants desired the Board to issue direction to the carriers to honour their specified routing in every case. They stated that all they were asking was a confirmation of the right which they had enjoyed for many years, it being set out that it was only within a comparatively recent period that the railway company had ignored, and were continuing to ignore, their routing instructions.

After consideration, the Office Specialty Manufacturing Company were advised that the specific question raised had not been brought to the Board's attention before as a subject for formal adjudication; that the matter would appear to be of general importance and had not been sufficiently developed to place it in shape for a ruling by the Board; and that the railway companies generally would have the right to be heard before final disposition by the Board. It was further pointed out that, if the complainant company desired to have the matter submitted for hearing, they should make application, setting out in what way they were being detrimentally affected by the action complained of. Subsequently the complainants filed formal complaint which was served upon the Canadian National Railways and the Canadian Pacific Railway Company.

The Canadian National Railways, in their reply, raised a number of issues, amongst others, that shippers were not damaged in the sense that there was any difference in rate by reason of failure to carry out routing instructions, and that traffic which originates at local stations on their lines and can be handled as cheaply and expeditiously, by the line originating the traffic, should pay that line the maximum revenue which can be earned through the employment of the maximum line haul of the line originating the business.

The power of the Board to deal with the matter complained of was also raised in the reply from the Canadian National Railways.

In the reply of the Canadian Pacific Railway Company it was stated that it was quite in accord with the contention that full regard should be given to the shipper's routing instructions.

At a later date representations were also made to the Board by other parties concerning failure of carriers to honour routing instructions endorsed on bills of lading. The Dominion Atlantic Railway Company complained of its loss to the Canadian National Railways of traffic routed via their line which that company did not turn over to them.

The Canadian Manufacturers' Association stated the matter was one that had come to their attention on a number of occasions recently and also had been the subject of some correspondence with the Canadian National Railways.

The Canadian Industrial Traffic League referred to the complaint of the Office Specialty Manufacturing Company and pointed out that they had knowledge of other instances of noncompliance of carriers with shippers' routing instructions and that the matter had been receiving their attention for some time.

Communications along similar lines were received from the Acadia Sugar Refining Company, Ltd., Halifax, N.S., and Moirs Limited, Halifax, N.S.

On May 9, 1927, the Board issued to railway companies under its jurisdiction, Circular No. 212, reading as follows:—

> "Railway Companies under the jurisdiction of the Board are directed to show cause why a general order should not issue requiring all such Railway Companies to observe and perform the directions given on bills of lading by shippers, as to the routing of traffic, when routing is open under the traffic in force.
>
> "I am further directed to state that all railway companies are required to file, within twenty days, their respective submissions showing cause against such an Order, after filing of which the matter will be set down for hearing at a convenient date."

Replies were received from numerous carriers to the effect that it had always been their practice to protect routing instructions given on bills of lading by shippers and that they had no objection to issuance of proposed order. No company filed representations objecting to the proposed order.

Chairman Ransom of the Canadian Freight Association, Montreal, replying to the Board's circular on August 3, 1927, on behalf of the carriers, members of that association, which covers the majority of the Canadian railways, stated:—

> "Our committee, on investigating, find that all railways are now observing routing instructions on shipping orders and bills of lading where traffic moves over two or more lines, when such instructions provide routing via junctions shown in carriers' tariffs. In regard to what we term local traffic, that is shipments moving between stations on one line, we must seriously object to an order being issued directing the carriers to handle traffic via any circuitous route that the shipper may see fit to select. As an illustration, the rates between Montreal and Toronto are based on the direct line mileage, and we contend that it is manifestly unfair to the Railways to ask them to handle traffic between these two cities via North Bay and Ottawa at the established rates, without an additional charge for the extra service performed, should the shipper for any reason of his own desire traffic to move via such circuitous route.
>
> "We trust that on due consideration of what is said herein, the Board will conclude that no order is necessary."

On August 11, 1927, the Dominion Atlantic Railway Company stated that in that territory the Canadian National Railways were continuing to ignore routing instructions, resulting in loss of revenue to that company, such situation being in conflict with Mr. Ransom's representation to the Board that the railways were observing routing instructions on shipping orders and bills of lading. The Dominion Atlantic Railway Company were requested to send a copy of their communication to Mr. Ransom for the further consideration of the matter by his committee, and, under date of December 13, 1927, Mr. Ransom wrote the Board as follows:—

> "In further reference to yours of December 1, file 26602.66, *re* Board's Circular No. 212. The representatives of the Canadian Railways have instructions that they must observe shippers routing orders on bills of lading and shipping orders where traffic moves over two or more lines. These instructions, however, are occasionally not carried out and in that manner they are no different than many other instructions which, through error, are sometimes not observed. These diversions we assure you are not intentionally made and when through error or oversight a diversion is made of a shipment that deprives one line of revenue that they would have received had the routing instructions been carried out, the carrier responsible for the error attempts to adjust the matter with their

connection by giving them an unrouted car to make good the loss. This particular case which has been brought up by Mr. Comeau has been referred to the traffic officers of the Canadian National Railways for their attention."

RULING

In view of the foregoing, the Board is of opinion that the instructions issued by the carriers, as contained in the representations made by Mr. Ransom, do not appear to need to be implemented by an order of the Board.

OTTAWA, December 30, 1927.

GENERAL ORDER No. 455

In the matter of the application of the Bureau of Explosives for an Order amending the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight, in so far as they affect the construction of wirebound boxes for the transportation of matches, as prescribed by General Orders Nos. 203, 204, and 206.

File No. 1717.35

TUESDAY, the 20th day of December, A.D. 1927.

Hon. H. A. MCKEOWN, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed on behalf of the Bureau of Explosives, the Railway Association of Canada consenting,—

The Board orders: That paragraph 1836 (*c*) of the Regulations for the Transportation of Explosives and Other Dangerous Articles by Freight be struck out and the following substituted therefor, namely:—

"1836. (*c*) All individual containers must be placed in outside packages complying with specification 6 *or 6A*. Such outside containers shall have plainly marked thereon the words "Strike Anywhere Matches," and in addition shall show the name of the manufacturer and the brand or trade mark under which such matches are manufactured and distributed to the trade. If the matches are manufactured in a foreign country, the name of the foreign manufacturer shall be printed in English."

2. And the Board further orders that the following specifications be, and they are hereby, approved, namely:—

SHIPPING CONTAINER SPECIFICATION No. 6A

WOODEN BOXES, WIREBOUND

For provisions and restrictions governing the use of these containers, see packing requirements in freight regulations.

Effective January 1, 1928

GENERAL REGULATIONS

1. Boxes constructed for use under this or any supplementary specification must be in full compliance therewith.

2. All inside containers authorized in the regulations to be packed in these boxes must conform with all requirements prescribed, and be packed or cushioned to prevent loss or damage.

MATERIAL

3. (*a*) All lumber used in the manufacture of boxes under this specification must be well seasoned and commercially dry.

(*b*) This lumber, also, must be reasonably sound, free from decay, dote, large knots, slanting shakes, and cross grain. All defects that materially lessen the strength, expose contents to damage, or interfere with proper assembly of parts of container must be eliminated.

(*c*) Cleats and battens must be free from objectionable knots and also free from cross grain which runs across the piece within one-half the length of itself.

(*d*) Binding wires must be annealed steel, and of gauge not less than specified.

GROUPING OF WOODS

4. The principal woods used for boxes are classed for the purpose of these specifications in four groups:—

Group 1

White pine	Chestnut	White fir
Norway pine	Sugar pine	Cedar
Aspen (Popple)	Cypress	Redwood
Spruce	Basswood	Butternut
Western (yellow) pine	Willow	Cucumber
Cottonwood	Noble fir	Alpine fir
Yellow poplar	Magnolia	Lodgepole pine
Balsam fir	Buckeye	Jack pine

Group 2

Southern yellow pine	N.C. pine	Larch (tamarack)
Hemlock	Douglas fir	

Group 3

White elm	Pumpkin ash	Tupelo
Red gum	Black ash	Maple—soft or silver
Sycamore	Black gum	

Group 4

Hard maple	Hackberry	White ash
Beech	Birch	Hickory
Oak	Rock elm	

5. Sides, top, bottom, and ends must consist of lumber from Groups 2, 3, or 4 woods, except as provided for in paragraph 10, and graded as prescribed.

6. Cleats and battens must consist of lumber graded as prescribed.

DIMENSIONS OF PARTS

7. Boards must conform to requirements for thickness specified in paragraph 10, except that variation of not exceeding $\frac{1}{32}$ inch thereunder is allowed up to 10 per cent of the area thereof. Adjacent edges must be cut true and be

in close contact. Boards must average not less than 4 inches in width with a minimum width of not less than $2\frac{1}{2}$ inches. Variation of $\frac{1}{32}$ inch is allowed from cross section measurements specified herein, for cleats, battens, and handles. Dimensions of length, width, and height are outside measurements.

8. Cleats must have a thickness of not less than $\frac{3}{4}$ inch and the sum of the thickness and width must be not less than $1\frac{5}{8}$ inches.

9. Battens must have a thickness not less than that of the cleats and a width of not less than $2\frac{1}{8}$ inches.

10. All boxes made under this specification must consist of parts having dimensions not less than those described below, in addition to conforming to paragraphs 8 and 9, except as provided for in paragraph 7: Provided that slash-grain lumber made from Group 4 woods may have the thickness reduced by not more than 25 per cent.

Maximum	Minimum			Binding Wires		
	Thickness of lumber		Battens	Minimum		Maximum
Gross weight of package	Ends	Sides, top and bottom	Number	Number	Steel Wire Gauge	Spacing
(pounds)	(Inch)	(Inch)				(Inch)
50	3/16	3/16	.....	4	15	5
50	3/16	3/16	.....	3	14	5
100	1/4	3/16	1	4	14	5
100	1/4	1/4	1	3	14	6
200	3/8	1/4	2	6	14	6
200	3/8	1/4	2	5	13	6
300	3/8	5/16	3	6	14	7
300	3/8	5/16	3	5	13	7
400	3/8	3/8	4	5	13	8

Lumber from Group 1 woods may be used under the restriction that thickness must be increased by not less than 25 per cent.

MANUFACTURE

11. All boxes specified herein must be as follows:—

(*a*) Completely closed, free from all openings, and with all joints in close contact, unless otherwise provided for.

(*b*) All parts must be cut true to size and form.

(*c*) Top, side, and bottom sections must be connected by three or more binding wires, and also must be reinforced at both ends by cleats stapled to boards. These cleats must fit together at ends in mortise and tenon or mitered joints.

12. *Wires.*—Binding wires must be of annealed steel, of gauge specified in paragraph 15, uniformly spaced, each wire being continuous once around the box: Provided that wires of not less than No. 12 gauge, stapled as required by paragraph 13, may be in sections, if one of the two loops at connecting ends of sections is passed through the other and bent back securely against the box.

13. *Staples.*—Staples used on end binding wires must be not less than No. 16 gauge and $1\frac{1}{8}$ inches long, and must be driven home astride the wires, through boards and into cleats, and be anchored in the cleats. Staples used on intermediate binding wires must be not less than No. 18 gauge, and must be driven astride the wires, through boards, and be firmly clinched. All staples must be spaced with centres not more than 2 inches apart for Group 3 and 4 woods, $1\frac{3}{4}$ inches for Group 2 woods, and $1\frac{1}{2}$ inches for Group 1 woods, and staple next adjacent to corners and edges must be not more than $1\frac{3}{4}$ inches therefrom. Staples are not required to be driven over binding wires into handles.

14. Each end must be securely fastened on the inside to three end cleats, and to all battens that are prescribed with staples not less than 16 gauge and $1\frac{3}{16}$ inch long, or with not smaller than two penny cement-coated wire nails spaced not more than $2\frac{1}{2}$ inches apart and not less than 2 inches from ends of cleats.

15. Battens, when prescribed, must be spaced equally on outside of end pieces, and be secured across the grain of the same.

CLOSURE

16. In closing the box the ends of the binding wires must be drawn tightly together and twisted with not less than three complete twists, and the twisted ends to be forced flat against the side of the box parallel to the binding wires; or, when binding wires have loops at each end, one loop must be passed through the other and bent securely back against the side of the box.

MARKING

17. (*a*) Each box must be plainly marked with a symbol consisting of a rectangle, as follows:—

C.R.C.—6A ***

The stars are to be replaced by figures to show gross weight for which the box is intended.

(*b*) The letters and figures in this symbol must be at least $\frac{1}{2}$ inch high. This symbol shall be understood to certify that the package complies with all requirements of this specification.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40049

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic its Turtleford Southeasterly Branch from mileage zero at the junction with the Turtleford Subdivision of the Canadian National Railways at mileage 56.2, to Rabbit Lake, Saskatchewan, a distance of 65.5 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile.

File No. 26653.10

WEDNESDAY, the 21st day of December, A.D. 1927.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Turtleford Southeasterly Branch from mileage zero, at the junction with the Turtleford Subdivision of the Canadian National Railways at mileage 56.2 to Rabbit Lake, Saskatchewan, a distance of 65.5 miles; also the north leg of the wye at the said junction, a distance of 0.24 of a mile.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40081

In the matter of the application of the Malagash Salt Products, Limited, of New Glasgow, Nova Scotia, for an Order directing the Canadian National Railways and the Canadian Pacific Railway Company to establish a rate of 36½ cents per 100 pounds on salt, in carloads, from Malagash aforesaid to Temiskaming and Kipawa, Quebec.

File No. 29064.5

TUESDAY, the 27th day of December, A.D. 1927.

S. J. McLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon reading what is alleged in support of the application, and considering the representations made on behalf of the railway companies before the Chief Traffic Officer of the Board on December 19, 1927; and upon the report and recommendation of the Chief Traffic Officer,—

The Board orders: That the Canadian National Railways and the Canadian Pacific Railway Company be, and they are hereby, required to establish, effective January 2, 1928, a joint rate on salt, coarse or rock, in carloads, of 36½ cents per 100 pounds, from Malagash, Nova Scotia, to Temiskaming, Quebec; the rate to be divided 17.7 cents for the Canadian National Railways and 18.8 cents for the Canadian Pacific Railway Company.

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of the complaint of the Canadian Lumbermen's Association of Ottawa, Ont., against the rate of 34½ cents per 100 pounds charged on a carload shipment of lumber from Brighton Siding, Que., on the Canadian National Railways to Chatham, Ont., for Chatham, Wallaceburg and Lake Erie Railway delivery on March 4, 1927.

File 26963.30

JUDGMENT

ASSISTANT CHIEF COMMISSIONER MCLEAN:

A car of lumber was shipped from Brighton Siding, Que., on the Canadian National, to Chatham, Ontario, for C.W. and L.E. delivery. The carrier charged 33 cents per 100 pounds, per C.N. Tariff, C.F. 209, C.R.C. 1364, plus an additional charge of 1½ cents per 100 pounds for C.W. and L.E. team track delivery, making a total charge of 34½ cents. It is pointed out that while the tariff does not provide a rate for Chatham, C.W. and L.E. delivery, there is in the tariff cited a rate of 33 cents per 100 pounds, from Brighton Siding to Wallaceburg, Ontario, C.W. and L.E. delivery via Chatham.

It is urged that Chatham, C.W. and L.E. delivery, is intermediate to Wallaceburg and, therefore, the 33-cent rate should be the maximum. What is involved is the legality of the 1½ cents difference per 100 pounds, depending upon the applicability of the long and short haul clause.

Under the decisions of the Board which are summarized in the *Armstrong-Whitworth case, Vol. XII, Board's Judgments and Orders, pp. 250 et seq.* it is pointed out that the interswitching toll provides a means of making joint rates within four miles of the point of interchange. On this basis then Chatham, with C.W. and L.E. delivery and a mileage of 781 miles, has a joint rate of 34½ cents, while the longer haul of 800 miles from Brighton Siding to Wallaceburg has a joint rate of 33 cents.

The correspondence which has been interchanged recognizes, on the part of the railway, the position of the Board that the interswitching toll constitutes a part of the through rate, but it is submitted by the railways that this basis would only be applicable when the consignor indicated on his shipping instructions that delivery was required on the tracks of a carrier, other than the road haul carrier, at destination. Whether such limitation is or is not properly applicable need not be gone into here. It is sufficient to say that the Board has on

its files a certified copy of the bill of lading showing that C.W. and L.E. delivery at Chatham was indicated by the consignor; that is to say, the matter involved falls within the limitation which the railway claims should be applicable.

Under subsection (5) of section 314 it is provided:—

> "The Board shall not approve or allow any toll, which for the like description of goods, or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line or route is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the Board is satisfied that, owing to competition, it is expedient to allow such toll."

Under the decisions of the Board the rate which was charged for the delivery on team tracks of the C.W. and L.E. at Chatham is a joint rate. In both cases the traffic is interchanged between the Canadian National Railways and the C.W. and L.E. at Chatham.

No competitive conditions have been established which come within the discretion granted under subsection (5) of section 314. On the record the 33-cent rate to Wallaceburg is the maximum.
January 5, 1928.

Chief Commissioner McKeown, Deputy Chief Commissioner Vien and Commissioner Oliver concurred.

ORDER No. 40227

In the matter of the complaint of the Canadian Lumbermen's Association, of Ottawa, Ontario, against the rate of 34½ cents per 100 pounds charged on a carload shipment of lumber from Brighton Siding, Quebec, on the Canadian National Railways, to Chatham, Ontario, for Chatham, Wallaceburg & Lake Erie Railway delivery, on March 4, 1927.

File No. 26963.90.

WEDNESDAY, the 18th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon consideration of the written submissions of the complainant and the Canadian National Railways, and the report of its Chief Traffic Officer, and its appearing that Chatham, Wallaceburg and Lake Erie Railway delivery is an intermediate station to Wallaceburg, shown in the tariff under which the traffic moved, the rate to Wallaceburg not being specifically indicated as competitive,—

The Board Declares: That the legal rate applicable on the said shipment was the rate of 33 cents per 100 pounds published to Wallaceburg, Ontario, the said rate applying as the maximum to Chatham, for Chatham, Wallaceburg and Lake Erie Railway delivery.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the Village of Lamont, Alta., for Order opening the main crossing of the Canadian National Railways' right of way which is opposite the street known as First Street West, in the Village of Lamont, said crossing being between the United Grain Growers' Elevator and the Alberta Pacific Elevator.

File 30762

JUDGMENT

McLean, Assistant Chief Commissioner:

As the crossing in question has been the scene of two accidents, one fatal, and has been the subject of correspondence, investigation and direction, it seems proper to set out its history in essential detail.

The crossing in question, known as First street west, is a temporary private crossing over the tracks of the Canadian National Railways at the village of Lamont, Alta. On October 18, 1920, one, Robert Milsap, drove on to this crossing, with the result that damage was done to his wagon and horses, and he himself was injured.

On the blue-print then filed, it appeared that First street west intersected Railway avenue on the north, which is the street parallel to the railway tracks. No road was shown on the plan from Railway avenue south. A temporary private crossing from Railway avenue is shown as leading south from Railway avenue to the southerly boundary of the right of way. The crossing apparently serves various elevators and industries located on the right of way to the south of the tracks, and it angles between structures on the right of way. There is no street or highway shown south of the right of way and connecting therewith. The crossing in question leads from the north, or town side, to the south side between the Alberta Pacific Elevator and the Alberta Farmers' Co-operative Elevator.

It was pointed out in the report of the investigation then made by the Board's Inspector that the injured man had apparently driven out from behind or between the elevators where he had been unloading grain, so that the limited view and the noise in connection with the movement of the wagon may have been contributing factors.

Subsequent to this accident, the attention of the raiway was drawn to the danger of having a private crossing of this nature in existence over side tracks and main lines, and inviting the attention of the company to the elimination of such dangerous private crossings. In response to this, the railway stated that it was desirous of eliminating such private crossings, endeavouring at the same time to avoid inconvenience as far as possible. Under date of March 26, 1921, the railway wrote in as follows:—

> "Replying to your letter of the 15th of February last, I enclose herewith, for your information, a copy of a report dated 19th instant from the vice-president to myself and would ask the Board's attention particularly to the last paragraph thereof. I am to-day replying to Mr. Hungerford, suggesting that all private crossings be closed wherever possible and that in future under no circumstances shall any more be opened up."

In reply, under date of April 27, 1921, on direction, the railway was written to as follows:—

> "Replying to your letter of the 15th instant, herein, I am directed to state that while the Board cannot possibly give the guarantee asked for in your letter, it approved of the suggestion in this connection as set forth in your letter to the Board dated March 26, 1921, provided that the following words be added to the last sentence of the said letter—'without application to and approval by the Board.'"

Under date of June 10, 1921, the railway replied stating it it would govern itself accordingly.

On February 5, 1924, a wagon was struck by a train on the crossing and the driver was killed. In the report made by the Board's Inspector, it was pointed out that the driver approached the track on the private crossing from between the elevators or commercial buildings on the south side and drove in front of the train; he was thrown forward between the rails and the engine passed over him.

While there were apparently some features of negligence on the part of the unfortunate deceased, at the same time it was pointed out by the Inspector that the crossing was " on account of the elevators, coal sheds, etc., obscuring the view to approaching trains . . . a veritable man-trap. . . ." The Inspector recommended that the existing private crossing should be closed and various changes, referred to later, be made. It was stated that the council of the municipality recognized the danger of the existing private crossing; that it did not make any definite decision at the time, but that it was prepared to discuss the matter with the railway officials after council meeting took place.

Following this, the matter was set down for hearing at Edmonton on June 13, 1924. Under date of June 9, there was forwarded to the Board a letter from the Canadian National Railways reading as follows:—

> " With further reference to my letter of the 21st ultimo, relative to conditions at Lamont:
>
> " We will arrange, after conferring with the representatives of the town, to build a road giving entrance from the west end of the yard to the elevators, and fix up the east end of the elevator track, so that they can unload or load to teams; the temporary road just west of the United Grain Growers' elevator opposite First street west, where the accident happened on February 5, 1924, to be closed."

At the hearing at Edmonton, no one appeared for the municipality. Mr. Fraser, for the railway, at *Evid. Vol. 424, pp. 4438-40,* said that there had been discussion with the representatives of the municipality, and they agreed that the best thing to do was to close the crossing. Mr. Fraser referred in this connection to letter from the general superintendent of the railway written May 26, saying that there had been a conference of the general superintendent, Mr. Brown, and representatives of the railway with representatives of the municipality; that the representatives of the municipality had no objection to closing the crossing in question; but that in lieu of the road so closed they desired to have a road leading from the east and west surveyed road. This is the road on the south; and the railway stated that in order to construct it it would be necessary to purchase about three-quarters of an acre of land to put in a 40-foot road. The railway understook the maintenance of the road. A plan was filed showing the work the railway was doing; and the Board requested that a communication be filed by the municipality showing its concurrence in the arrangement set out.

While the railway, on the representations made, understood that an agreement had been arrived at with the municipality, difficulties arose. The Board was advised under date of August 8, 1924, that owing to the absence of a member of the council of Lamont, it had been impossible at the council meeting held to close the question up. Under date of September 22, 1924, the difficulty of getting a final agreement was again placed before the Board by the railway, which stated that the driveway along the elevator track had already been graded and put into condition to facilitate team loading and unloading. Further representation was contained in a letter from the railway dated November 17 which quoted from a letter of General Superintendent Brown of November 5 reading as follows:—

"The town of Lamont seems to have some difficulty in holding a council meeting on account of one of their councillors being out of town. However, I have their assurance that when the road diversion is completed by us they would be quite willing for us to close the road in question, and I am arranging accordingly."

Thereafter there was placed before the Board by the railway a copy of a letter from the municipality dated December 5, addressed to J. E. Wilson, Superintendent of the Canadian National Railways, Edmonton, Alta., saying that a meeting had been held and that about,—

"seventy-five per cent of the ratepayers present expressed themselves very strongly against the proposed closing of the temporary crossing just west of the United Grain Growers' elevator, feeling that the business men of the town would suffer considerably in consequence, due to the extra haul of freight and increased drayage charges. In addition, the closing of the temporary crossing would necessitate farmers driving about an extra two miles when coming to Lamont elevators or stockyards, which would have the tendency to divert business to other points, and most of our business, as you are already aware, comes from the north side of the track."

On direction, thereafter, the matter was looked into and reported upon by the Board's Engineering Department. The Board's Engineering Department recommended that First street west should be closed; but it did not agree in the recommendation which had been made as to the closing of First street east. The following words are excerpted from the report:—

"In view of the fact that the closing of this crossing (First street east) will involve the construction of a local track on the north side of the main track, at an expense of about $2,000, I am of opinion that it should be allowed to remain, and that the municipality should apply to have crossing made into a public crossing. The company should be permitted to close the crossing at First street west."

The section of the Board which held sittings in Edmonton on June 30, 1924, gave direction which was embodied in the following communication to the municipality, dated March 30, 1925:—

"Referring to the crossings of the Canadian National Railways at First street east and First street west at Lamont Station, Alta., I am directed to inform you that the Board having gone very thoroughly into this matter has decided to permit the Canadian National Railway Company to close the crossing at First street west, but that the crossing at First street east is to remain open; also that if further application is made by the railway company to close the crossing at First street east, the municipal authorities will be duly notified before any action is taken by the Board."

No order issued, as this was not a public highway.

Under date of May 22, 1925, a petition, which was received by the Board on May 27, was sent forward by the Board of Trade of Lamont stating that the closing of the crossing in question had been "a serious inconvenience to the business community in general, and more particularly to the farmers east of the town desirous of shipping their produce from the town of Lamont", and they asked that the crossing be reopened.

Under date of June 9, 1925, the applicants were written to pointing out that an application for the establishment of a public crossing over the railway can only be acted upon by this Board when it is made by the proper authorities of the municipality or province concerned who have control over the roads.

Under date of August 17, 1927, the village of Lamont, through its reeve and secretary-treasurer, wrote complaining of the closing of the private crossing, and emphasized the business inconvenience which it was stated was being endured by this crossing being closed.

The situation then was, the closing of First street west after accidents, investigation by the Board's Operating Department, a hearing, investigation by the Board's Engineering Department, and ruling of the Board which has already been set out.

In view, however, that there might be some new or material evidence to present, the question was set down for hearing. The hearing took place in Edmonton on October 12, 1927. The village of Lamont was represented, as were also the Bawlf Grain Company, Limited, the Alberta Pacific Grain Company, and the United Grain Growers' Company.

What was emphasized at this hearing was the inconvenience, more especially the business inconvenience, existing on account of the crossing in question not being opened. It was claimed that to have the crossing opened would lessen the haul, give a more established road and firmer road-bed, and enable larger loads to be hauled.

The railway pointed out the improvements it had made. These are covered in a plan filed by the railway showing (*a*) the approach road running easterly from the surveyed road at the west and south of the right of way; (*b*) the road to be graded up about 1½-foot fill parallel to the southerly boundary of the right of way; and (*c*) a road for team loading. Plan also carries a notation that the crossing on First street east was not to be closed. It was testified, on behalf of the railway, that between $1,200 and $1,300 had been expended on this work.

The crossing has been found by the Board's officials to be dangerous. A view of the plan makes clear the restricted view existing and points out the danger; and there are also elements of danger in respect of a crossing carried through a yard. The railway has emphasized what it considers to be features of danger.

At the hearing, Mr. Harrison, of Lamont, who is a business man there, was present on behalf of the council of the municipality, having been requested by the mayor of the town to be present. At p. 10712 of the evidence, the following discussion took place when Mr. Harrison was under cross-examination by Mr. Owens for the railway.

> "Q. Do you think that, if that crossing is opened again, it would be perfectly safe, or at least as safe as an ordinary road crossing?
>
> "A. No, it is not as safe as an ordinary crossing.
>
> "Q. In other words, you would have to use more than reasonable care?
>
> "A. Yes, you would."

No doubt there would be added convenience to those doing business at Lamont and, possibly, this might react to the increase in the volume of business to the merchants of Lamont. On the record, the matter narrows down to business convenience versus safety. As already pointed out, the Board of Trade of the municipality was earlier notified that if it was desired to have a public crossing opened up at the point in question there would have to be formal application. No such application has been made. I do not think that, on the record, if such application were made we would be justified in granting it. The question then arises, are conditions so different in respect of the private crossing as to justify direction to reopen a crossing through the yards, to give access to the elevators and other buildings south of the railway?

The Board, while balancing convenience and safety, must, if there is any doubt, give added weight to safety. I think there is no doubt that the crossing would be unsafe; and I am, therefore, of opinion that the Board would not be justified in directing that it be reopened.

Evidence was submitted to the effect that the roads constructed by the railway in connection with the closing up of the crossing were not satisfactory. The following statement was made at the close of the hearing by Mr. Brown, the general superintendent:—

> " It appeared by the evidence here that the road is very bad. I may say to the Board that we are prepared to have these roads inspected, both east and west at Lamont, and fix them up. But we have not had any complaints that I know of in connection with them. The complaint has been the opening of the crossing and not the condition of the road."

In accordance with this, investigation will be made as soon as the roads permit, by the Board's Engineer in conjunction with the representatives of the municipality and of the railway; and such recommendations, if any, as may be necessary to put the roads in shape will be made by the Board's Engineer, and the matter will thereafter, if necessary, be dealt with by order.
January 5, 1928.

Commissioners Lawrence and Oliver concurred.

Complaint of the Council of the Town of Wallaceburg, Ont., and the Township of Harwich against proposed discontinuance of passenger service by the Chatham, Wallaceburg and Lake Erie Railway Company between Wallaceburg and Chatham, Ont.

File 35054

JUDGMENT

McLean, Assistant Chief Commissioner:

In addition to the solicitors, there were notified in this matter the clerk of the township of Harwich and the municipal representatives of the town of Wallaceburg. The Board was advised by telegraphic communication, before the hearing, that the town of Wallaceburg was not going to appear in the matter. Counsel for the railway company indicated there was apparently a mistake in connection with this, since it was the township of Dover which was really interested. The matter stood and, later, in the course of the hearing, Mr. Montgomery, the reeve of the township of Dover, appeared and presented his case.

As represented by him, what was desired by the municipality is that there shall be a passenger car in the morning from Wallaceburg in time to accommodate the school children, and another in the afternoon for the purpose of bringing them home. It was stated there were about fifty children attending the schools in Chatham and some in the town of Wallaceburg. The request as presented narrowed down to furnishing facilities for the school children and for express.

At present, there is a bus line operated about a mile from the electric line, and attempts have been made to operate a truck; but it is stated that on account of the condition of the roads the service has not worked out satisfactorily so far.

The railway has ceased operating the passenger service but continues the freight service. It represented that it would be impracticable to run a mixed service which would give sufficiently well-timed movements as to permit the school children to fit into the school hours.

Leaving aside the limitation of the Board's powers in regard to the matter concerned, a subject which is dealt with in the *Red Mountain Case—Rossland Board of Trade vs. Great Northern Ry. Co., 28 Can. Ry. Cas., 24,* and *Hunter Bros. vs. Great Northern and C.P.R. Cos., 30 Can. Ry. Cas., 180,* counsel for the railway devoted his attention to its financial condition. He was of opinion that the freight service afforded was of value and that as a freight proposition

there should be some adequate return. The railway is endeavouring to make arrangements with some of the steam roads so as to have the Chatham, Wallaceburg and Lake Erie Railway Company as a feeder in connection with freight movements. The railway in running through the municipality parallels the town line at a distance of about seven-eighths of a mile from it. The town line is paved and gravelled from Wallaceburg to Chatham.

In the exhibits filed it is shown that there has been a constant decrease in the passenger earnings. The number of passengers carried in 1921 was 196,885; this fell in 1927 to 63,301. The total receipts from passengers in 1921 were $62,820.96. There has been a sharp decrease ever since, with the result that the 1927 figures stand at $16,271.58. That is to say, the revenues now are, in round numbers, 26 per cent of what they were in 1921.

Exhibit No. 2 filed gives details in regard to the operating expenses. The figures for operating expenses on the passenger side are $40,755. The total operating expenses, both freight and passenger, in 1927 are $181,707. The following analysis of the expenses chargeable to passenger business was submitted:—

Superintendents	$1,437
Track labour	1,000
Sanding track	400
Bonding	300
Power plant equipment, overload	500
Repairs to passenger cars	5,878
Shop machinery expenses	1,000
Miscellaneous power	100
Power purchased, 40 per cent charged to passenger traffic	9,400
Passenger trainmen	8,939
Miscellaneous car service expenses	200
Ticket agent	720
Barn rent	1,221
Operation of signals	500
Derailments	200
Miscellaneous general expenses	500
Insurance	1,500
Damage to locomotives by low voltage	1,200
Time of freight trainmen, 15 per cent	2,400
(This is charged up on the point of delay caused by passenger trains to railway, it being a single track.)	
Delay in movement of cars, 10 per cent	3,160

This gives a total of $40,775, which was checked on the 1926 figures, which had a revenue of $32,156 from passengers. The figures given are for the fiscal year ending June 30.

The figures above include no contribution to taxes or fixed charges. The taxes are about $6,000, while the fixed charges are $34,725.

Exhibit No. 2, already referred to, shows a deficit on freight and passengers for the fiscal year ending June 30, 1927, amounting to $53,459.

As pointed out at the hearing, the situation involved was one which aroused sympathy because of the question of facilitating the attendance of school children at the educational centres where work has been taken up by them; at the same time it was intimated that, on the record of red ink figures which was submitted, there was grave doubt whether the Board could do anything on the passenger business side. By concentrating his presentation on the needs of the school children, the representative of the municipality was, as I understand it, admitting the unsatisfactory condition the railway was in from the standpoint of general passenger business. The railway, I take it, would be quite willing to continue the passenger service if there were any reasonable expectation of getting a better return. The service for school children, which is especially referred to, on the 30th of June, 1927, meant that the railway was carrying twenty-four children daily each way, at an average of 7½ cents each.

On the record as submitted, the Board is not justified in making any order. January 9, 1928.

Commissioner Lawrence concurred.

ORDER No. 40127

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 1 to Tariff C.R.C. No. E-4335, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. E-4335, to Cap de la Madeleine, Quebec, are those published to Three Rivers, Quebec, in Canadian Pacific Railway Tariff C.R.C. No. E-3992.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40128

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 2 to Tariff C.R.C. No. E-4308, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the said Supplement No. 2 to Tariff C.R.C. No. E-4308, approved herein, are the tolls contained in Canadian Pacific Railway Tariff C.R.C. No. E-3219.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40129

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 3 to Tariff C.R.C. No. E-4319, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 3 to Tariff C.R.C. No. E-4319, approved herein, are those contained in G. C. Ransom's Tariff C.R.C. No. 111.

3. And the Board further certifies that, with respect to the provision contained in the schedule named in paragraph 1 hereof, for fruits and vegetables, canned, and apples, evaporated, in carloads, from Port Williams and Sheffield Mills, Nova Scotia, to stations in Western Canada, the normal tolls which, but for the said Act, would have been effective in lieu thereof, are those published from Aylesford, Nova Scotia, to the same stations in item No. 269 of Supplement No. 21 to G. C. Ransom's Tariff C.R.C. No. 111.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40130

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 3 to Tariff C.R.C. No. E-4318, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 3 to Tariff C.R.C. No. E-4318, approved herein, are the tolls contained in G. C. Ransom's Tariff C.R.C. No. 110, except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to the provision contained in the schedule named in paragraph 1 hereof, for fruits and vegetables, canned, and apples, evaporated, in carloads, from Port Williams and Sheffield Mills, Nova Scotia, to stations in Western Canada, the normal tolls which, but for the said Act, would have been effective in lieu thereof, are those published from Aylesford, Nova Scotia, to the same stations in item No. 383 of Supplement No. 50 to G. C. Ransom's Tariff C.R.C. No. 110.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40131

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 1 to Tariff C.R.C. No. E-4316, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 1 to Tariff C.R.C. No. E-4316, approved herein, are the tolls contained in Tariff C.R.C. No. E-3832, except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to the provision contained in the schedule named in paragraph 1 hereof, for hoop, barrel (iron or steel), the normal tolls which, but for the said Act, would have been effective in lieu thereof, are those published on bar or band iron or steel in Canadian Pacific Railway Tariff C.R.C. No. E-3832; and that, with respect to tolls published to Cap de la Madeleine, Quebec, the normal tolls which, but for the said Act, would have been effective in lieu thereof, are those published to Three Rivers, Quebec, in Canadian Pacific Railway Tariff C.R.C. No. E-3832.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40132

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 2 to Tariff C.R.C. No. E-4314, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 2 to Tariff C.R.C. No. E-4314, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-3468, except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to rates published in the schedule named in paragraph 1 hereof, to Cap de la Madeleine, Quebec, and Buckingham, Quebec, the normal tolls which, but for the said Act, would have been effective in lieu thereof, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-3468, as follows:—

To Cap de la Madeleine, P.Q.—the rate published to Three Rivers, P.Q.
To Buckingham, P.Q.—the rate published to Hull West.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40133

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 1 to Tariff C.R.C. No. E-4314, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. 4314, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-3468, except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with regard to the rate published in the schedule named in paragraph 1 hereof, to Buckingham, Quebec, the normal toll which, but for the said Act, would have been effective in lieu thereof, is the rate published to Hull West, Quebec, in Canadian Pacific Railway Tariff C.R.C. No. E-3468.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40134

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and Order No. 39862, dated November 12, 1927.

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 1 to Tariff C.R.C. No. E-4304, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which would have been effective in lieu of that published in the said Supplement No. 1 to Tariff C.R.C. No. E-4304, to Gatineau, Quebec, is that published to Hull West, Quebec, in Canadian Pacific Railway Tariff C.R.C. No. E-4175.

3. And the Board further orders that the said Order No. 39862, dated November 12, 1927, be, and it is hereby, amended by striking out the words and figures, "Supplement 1 to E-4304" and "E-4175", under columns 1 and 2 respectively, of the schedule.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40135

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

SATURDAY, the 7th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That Supplement No. 2 to Tariff C.R.C. No. E-4304, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 2 to Tariff C.R.C. No. E-4304, to Cap de la Madeleine, Quebec, are those published to Three Rivers, Quebec; and to Gatineau, Quebec, those published to Hull West, in Canadian Pacific Railway Tariff C.R.C. No. E-4304.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40142

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company", under Section 330 of the Railway Act, 1919, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 3196, issued for the purpose of changing Cambridge, Ontario, from a non-agency to an agency station, without any change of rate.

File No. 1067

MONDAY, the 9th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

The Board orders: That the applicant company's Standard Mileage Freight Tariff, C.R.C. No. 3196, on file with the Board under file No. 1067, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40144

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and Order No. 39727, dated October 12, 1927.

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the

Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. E-4312, approved herein, on railway equipment, are those published in item No. 6, page 223, of Canadian Freight Classification No. 17.

3. And the Board further orders that the said Order No. 39727, dated October 12, 1927, be, and it is hereby, amended by striking out the words and figures, " Supplement No. 1 to E-4312 " and " E-4250 ", under columns 1 and 2 respectively of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40145

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39783, dated October 26, 1927.

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 2 Tariff C.R.C. No. E-4312, approved herein, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-4250, except items reissued from Supplement No. 1 to Tariff C.R.C. No. E-4312, approved by Order No. 40144, and except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to rates published in item 490A of the said Supplement No. 2 to Tariff C.R.C. No. E-4312, on oil, fish, whale, or sea animal, the normal toll which, but for the said Act, would have applied in lieu thereof, is 56 cents per 100 pounds.

4. And the Board further orders that the said Order No. 39783, dated October 26, 1927, be, and it is hereby, amended by striking out the words and figures, " Supplement 2 to E-4312 " and " E-4250 ", under columns 1 and 2 respectively of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40146

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39970, dated December 1, 1927.

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 3 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. E-4312, approved herein, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-4250, except item 535 reissued from Supplement No. 1, and approved by Order No. 40144, and item 490B reissued from Supplement No. 2, approved by Order No. 40145.

3. And the Board further orders that the said Order No. 39970, dated December 1, 1927, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40147

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 4 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 4 to Tariff C.R.C. No. E-4312, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-4250, except item No. 455 reissued from Supplement No. 1, and approved by Order No. 40144, and item No. 490B reissued from Supplement No. 2, and approved by Order No. 40145, and except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to rates published in item 565, on crushed sea shells, carloads, the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Sup-

plement No. 4 to Tariff C.R.C. No. E-4312, approved herein, are from St. John, New Brunswick, as follows:—

To	
Toronto, Ont., Dundas, Ont., London, Ont.,	30 cents per 100 pounds
Windsor, Ont.,	33 cents per 100 pounds.

And that, with respect to lumbermen's batteaux, scows, and warping tugs, in carloads, published in item No. 75 of the said Supplement No. 4 to Tariff C.R.C. No. E-4312, approved herein, the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement, are the sixth-class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40148

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 5 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 5 to Tariff C.R.C. No. E-4312, approved herein, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-4250, except item No. 455 reissued from Supplement No. 1, and approved by Order No. 40144; item No. 490B reissued from Supplement No. 2, and approved by Order No. 40145, and items Nos. 565 and 75, approved by Order No. 40147, and except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to rates published on cheese colour and cheese rennet, in carloads, in item No. 145 of the said Supplement No. 5 to Tariff C.R.C. No. E-4312, the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement, approved herein, are the third-class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40161

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39725, dated October 12, 1927.

File No. 34822.13

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 820, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. 820, approved herein, on railway equipment, are those published in item No. 6, page 223, of the Canadian Freight Classification No. 17.

3. And the Board further orders that the said Order No. 39725, dated October 12, 1927, be, and it is hereby, amended by striking out the words and figures, " Supplement 1 to 820 " and " 777 ", under columns 1 and 2 respectively of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40162

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39785, dated October 26, 1927.

File No. 34822.13

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. 820, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 2 to Tariff C.R.C. No. 820, approved herein, on oil, fish, whale, or sea animal, from Halifax, Nova Scotia, to stations in Ontario shown in item No. 490A, is 56 cents per 100 pounds.

3. And the Board further orders that the said Order No. 39785, dated October 26, 1927, he, and it is hereby, amended by striking out the words and figures, " Supplement 2 to 820 " and " 777 ", under columns 1 and 2 respectively of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40163

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39971, dated December 1, 1927.

File No. 34822.13

WEDNESDAY, the 11th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls contained in item No. 490B of Supplement No. 3 to Tariff C.R.C. No. 820, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been applied in lieu of that published in the said Supplement No. 3 to Tariff C.R.C. No. 820, approved herein, on oil, fish, whale, or sea animal, in barrels only, from Halifax, Nova Scotia, to points named in Ontario, is 56 cents per 100 pounds.

3. And the Board further orders that the said Order No. 39971, dated December 1, 1927, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40164

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39862, dated November 12, 1927.

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 1 to C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 1 to C.R.C. No. E-4322, from Chipman, Minto, and South Devon, New Brunswick, to Fairville, New Brunswick, on logs and bolts, is 11 cents per 100 pounds.

3. And the Board further orders that the said Order No. 39862 be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40165

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 3 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. E-4322, approved herein, are those contained in Canadian Pacific Railway Tariff C.R.C. No. E-4203, except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to rates on pulpwood to Cap de la Madeleine, Quebec, contained in the schedule named in paragraph 1 hereof, the normal tolls which, but for the said Act, would have been in effect in lieu thereof, are those published to Three Rivers, Quebec, in Canadian Pacific Railway Tariff C.R.C. No. E-4203.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40166

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 2 to Tariff C.R.C. No. E-4322, approved herein, on mill refuse, carloads, from Plaster Rock, New Brunswick, to Edmundston, New Brunswick, is 5½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40167

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39730, dated October 12, 1927.

File No. 34822.16

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 124, filed by the New Brunswick Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. 124, approved herein, on railway equipment, are those published in item No. 6, page 233, of the Canadian Freight Classification No. 17.

3. And the Board further orders that the said Order No. 39730, dated October 12, 1927, be, and it is hereby, amended by striking out the words and figures, " Supplement No. 1 to 124 " and " 116 ", under columns 1 and 2 respectively of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40168

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39853, dated November 12, 1927.

File No. 34822.16

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 1 to Tariff C.R.C. No. 132, filed by the New Brunswick Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of the said Supplement No. 1 to Tariff C.R.C. No. 132, approved herein, from Chipman, New Brunswick, to Fairville, New Brunswick, on logs and bolts, is 11 cents per 100 pounds.

3. And the Board further orders that the said Order No. 39853, dated November 12, 1927, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40169

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39861, dated November 12, 1927.

File No. 34822.15

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 1 to Tariff C.R.C. No. 167, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provision of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 1 to Tariff C.R.C. No. 167, approved herein, from Minto, New Brunswick, to Fairville, New Brunswick, on logs and bolts, is 11 cents per 100 pounds.

3. And the Board further orders that the said Order No. 39861, dated November 12, 1927, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40170

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39729, dated October 12, 1927.

File No. 34822.15

WEDNESDAY, the 11th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 159, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. 159, approved herein, on railway equipment, are those published in item No. 6, page 233, of the Canadian Freight Classification No. 17.

3. And the Board further orders that the said Order No. 39729, dated October 12, 1927, be, and it is hereby, amended by striking out the words and figures, " Supplement No. 1 to 159 " and " 153 ", under columns 1 and 2 respectively of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40184

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39729, dated October 12, 1927.

File No. 34822.15

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplements Nos. 2 and 3 to Tariff C.R.C. No. 157, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplements Nos. 2 and 3 to Tariff C.R.C. No. 157, approved herein, are those published in Fredericton and Grand Lake Coal and Railway Tariff C.R.C. No. 152, except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to rates published in the said Supplement No. 2 to Tariff C.R.C. No. 157, on railway equipment, approved herein, the normal rates are those published in item No. 6, page 223, of the Canadian Classification No. 17; and that, with respect to rates published in Supplement No. 3 to Tariff C.R.C. No. 157, on lumberman's batteaux, scows, or warping tugs, approved herein, the normal tolls are the 6th class rates in effect prior to July 1, 1927.

4. And the Board further orders that the said Order No. 39729 be, and it is hereby, amended by striking out the words and figures, "Supplement 2 to 157 and 152" under columns 1 and 2 respectively of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40185

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.15

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 160, Supplement No. 3 to Tariff C.R.C. No. 167, and Supplement No. 4 to Tariff C.R.C. No. 168, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Supplement No. 1 to Tariff C.R.C. No. 160, Supplement No. 3 to Tariff C.R.C. No. 167, and Supplement No. 4 to Tariff C.R.C. No. 168, to Cap de la Madeleine, Quebec, approved herein, are those published to Three Rivers, Quebec, in Fredericton and Grand Lake Coal and Railway Tariffs C.R.C. Nos. 122, 149, and 42.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40186

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).
File No. 34822.15

FRIDAY, the 13th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement Nos. 1 and 2 to Tariff C.R.C. No. 169, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplements Nos. 1 and 2 to Tariff C.R.C. No. 169, on potatoes and turnips, carloads, approved herein, are as follows:—

To Cap de la Madeleine, P.Q., the rates published to Three Rivers, P.Q.; and to St. S. Jerome, P.Q., the rates published to Lachute, P.Q.—in Fredericton and Grand Lake Coal and Railway Tariff C.R.C. No. 117.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40187

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).
File No. 34822.15

FRIDAY, the 13th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 170, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in item No. 50A of the said Supplement No. 1 to Tariff C.R.C. No. 170, approved herein, on old rails for melting or rerolling, to stations in Canada where through class rates are in effect, are the 10th class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40188

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. E-4310, on gypsum board, approved herein, when included with carloads of wall plaster, not to exceed 10 per cent of the gross weight, are the 10th class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40189

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. E-4320, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of those published in item No. 410A of the said Supplement No. 2 to Tariff C.R.C. No. E-4320, approved herein, is, from St. John, New Brunswick, the rate from St. Stephen published in item No. 410 of G. C. Ransom's Tariff C.R.C. No. 256.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40190

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. E-4335, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 2 to C.R.C. No. E-4335, approved herein, on potatoes and turnips, carloads, to St. Jerome, Quebec, are those published to Lachute, Quebec, in Canadian Pacific Railway Tariff C.R.C. No. E-3992.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40192

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 4 to Tariff C.R.C. No. 615, and Supplement No. 3 to Tariff C.R.C. No. 616, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 4 to Tariff C.R.C. No. 615, and Supplement No. 3 to Tariff C.R.C. No. 616, to Cap de la Madeleine, Quebec, approved herein, are those published to Three Rivers, Quebec, in Temiscouata Railway Tariffs C.R.C. Nos. 263 and 531.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40193

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

FRIDAY, the 13th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplements Nos. 1 and 2 to Tariff C.R.C. No. 624, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplements Nos. 1 and 2 to Tariff C.R.C. No. 624, on potatoes and turnips, carloads, approved herein, are as follows:—

To Cap de la Madeleine, P.Q., the rates published to Three Rivers, P.Q.; and to St. Jerome, P.Q., the rates published to Lachute, P.Q., in Temiscouata Railway Tariff C.R.C. No. 509.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40194

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

FRIDAY, the 13th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 627, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the said Tariff C.R.C. No. 627, approved herein, are the tolls contained in Tariff C.R.C. No. 563 of the said Temiscouata Railway Company.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40195

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 4 to Tariff C.R.C. No. 825, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 4 to Tariff C.R.C. No. 825, to Cap de la Madeleine, Quebec, approved herein, are the tolls published to Three Rivers, Quebec, in Dominion Atlantic Railway Tariff C.R.C. No. 490.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40196

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in the tariffs filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1	Column 2
C.R.C. No.	C.R.C. No.
Supplement 2 to 783 Supplement 3 to 783 Supplement 4 to 783	738

Column 1	Column 2
Supplement 3 to 794 Supplement 4 to 794 Supplement 5 to 794	725
Supplement 4 to 813	776
Supplement 6 to 817	737

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40197

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act, 1927 (17 George V, Chapter 44) and the Order of the Board No. 39784, dated October 26, 1927.

File No. 34822.16

FRIDAY, the 13th day of January, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 125, Supplement No. 3 to C.R.C. No. 132, and Supplement No. 2 to C.R.C. No. 133, filed by the New Brunswick Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of tolls named in the said Supplement No. 1 to Tariff C.R.C. No. 125, Supplement No. 3 to Tariff C.R.C. No. 132, and Supplement No. 2 to Tariff C.R.C. No. 133, to Cap de la Madeleine, Quebec, approved herein, are those published to Three Rivers, Quebec, in New Brunswick Coal and Railway Tariffs C.R.C. Nos. 88, 112, and 29.

3. And the Board further orders that the said Order No. 39784, dated October 26, 1927, be, and it is hereby, amended by striking out the words and figures "Supplement 2 to 124" and "29, 30, 85" under columns 1 and 2 of the schedule.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40198

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.16

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplements Nos. 1 and 2 to Tariff C.R.C. No. 134, filed by the New Brunswick Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplements Nos. 1 and 2 to Tariff C.R.C. No. 134, on potatoes and turnips, carloads, approved herein, are as follows:—

To Cap de la Madeleine, P.Q., the rates published to Three Rivers, P.Q.; and to St. Jerome, P.Q., the rates published to Lachute, P.Q., in New Brunswick Coal and Railway Tariff C.R.C. No. 83.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40199

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.16

FRIDAY, the 13th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 135, filed by the New Brunswick Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 1 to Tariff C.R.C. No. 135, on old rails for melting or rerolling, to stations in Canada where through rates are in effect, approved herein, are the 10th class rates in effect prior to July 1, 1927.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40230

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13.

WEDNESDAY, the 18th day of January, A.D. 1928.

S. J. MCLEAN, *Asst. Chief Commissioner.*
C. LAWRENCE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 3 to Tariff C.R.C. No. 824, filed by the Dominion Atlantic Railway Company under the provisions of section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby declares that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. 824, approved herein, are those contained in G. C. Ransom's Tariff C.R.C. No. 110, except as specified in paragraph 3 hereof.

3. And the Board further certifies that, with respect to the tolls published in item 80A of the schedule named in paragraph 1 hereof, from Port Williams and Sheffield Mills, Nova Scotia, the normal tolls which, but for the said Act, would have been effective in lieu thereof are those published from Aylesford, Nova Scotia, in item 383 of Supplement No. 50 to G. C. Ransom's Tariff C.R.C. No. 110.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40229

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.9

THURSDAY, the 19th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 206, filed by the Atlantic, Quebec and Western Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Tariff C.R.C. No. 206, approved herein, are the tolls contained in Tariff C.R.C. No. 205.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40231

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13.

THURSDAY, the 19th day of January, A.D. 1928.

S. J. MCLEAN, *Asst. Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 828, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Tariff C.R.C. No. 828, approved herein, are the tolls contained in Tariff C.R.C. No. 766.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40238

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.23

THURSDAY, the 19th day of January, A.D. 1928.

S. J. MCLEAN, *Assistant Chief Commissioner.*
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

The Board orders:

1. That the tolls published in the tariffs filed by the Canada and Gulf Terminal Railway Company under section 9 of the Maritime Freight Rates Act, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 3 to	
32	25
33	33½
Supplement 1 to	
33	33½
35	33½
36	34

S. J. McLEAN,
Assistant Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the city of Quebec that the matter of grade separation at highway crossings on the Canadian Pacific Railway be considered.

File 35435

JUDGMENT

THOMAS VIEN, ESQ., K.C., DEPUTY CHIEF COMMISSIONER:

This application was heard at Quebec on the 23rd of November, 1927, before the Chief Commissioner, Messrs. Commissioners Lawrence and Oliver and myself.

There appeared before us on behalf of the city of Quebec: Elisee Theriault, Esq., K.C., M.P.P.; on behalf of the Canadian National Railways: C. V. Darveau, Esq., K.C., and T. Waterston, Esq.; and on behalf of the Canadian Pacific Railway: E. P. Flintoft, Esq., Assistant General Solicitor.

This matter originated with an application of the city of Quebec, in a letter of the city clerk addressed to this Board on July 27, 1927, enclosing a resolution of the city council dated July 22, 1927, to the effect that level crossings of the railway lines in the streets of the city created a great danger and interfered with the movements of the fire brigade, the police patrol, the automobile and the other vehicular traffic, and caused considerable damage to business and industries as the results of long delays.

The resolution further pointed out that serious and often fatal accidents had taken place at these level crossings, and requested the Board of Railway Commissioners for Canada to take the necessary steps with a view to solving with the least possible delay this vital question upon which depended the security of the citizens of Quebec and the development of their business and industrial life.

These crossings are situated on the southwest side of the Saint Charles river, on the Canadian Pacific Railway lines, over which the Canadian National Railways have running rights, by virtue of an agreement.

At the hearing at Quebec on November 23, Mr. Theriault strongly urged the point of view of the city in support of its application.

Mr. Flintoft, on behalf of the Canadian Pacific Railway (Record Vol. 524, p. 12540), conceded that these level crossings were very unsatisfactory, and had given them serious concern; that they presented a difficult problem, inasmuch as they were immediately out of the Canadian Pacific Railway Palais station, where both the railway and the highways are heavily travelled over; that the level of the streets in relation to that of the St. Charles river, in the immediate neighbourhood, does not allow the construction of subways; and that the upgrade of the railway immediately out of the station, is another obstacle that has to be overcome.

All parties agreed that this matter should be referred to the Chief Engineer of the Board for investigation and report. The engineers of the city and of the railway companies would co-operate with him to find out the most reasonable solution, having regard to the safety and convenience of the public and of the railway, and to the cost of the undertaking. A similar course was followed in Montreal in May, 1927, and gave satisfaction.

I am therefore of the opinion that this matter should be referred to the Chief Engineer of the Board who should be appointed and directed to make an inquiry and report on the whole situation of level crossings in the city of Quebec on the Canadian Pacific Railway lines, from the Palais station to the limits of the city.

The Chief Engineer should report progress to the Board from time to time, and in consultation with the city and the railway engineers should evolve a scheme for the consideration of the Board.

The Board shall then take action, after due notice to all interested parties.

Ottawa, December 29, 1927.

Chief Commissioner McKeown concurred.

Application of the Woods Manufacturing Company, Limited, for an Order determining the terms and conditions under which the Canadian National Railways shall place and move cars on the siding westerly of the railway company's tracks in the City of Toronto, and particularly for an Order declaring that such contract shall not include any provision requiring the applicant company to indemnify the railway company in respect of any negligence of the railway company, its servants and agents.

File 26829.17

JUDGMENT

McLean, Assistant Chief Commissioner:

There is involved in the present application the question of liability. As set out in the draft agreement which the railway submitted to the applicant, section 3 reads as follows:—

> "3. That the applicant shall assume the duty and obligation of keeping said coal pits so covered, protected and maintained in every possible manner as to prevent accident and causing of loss, injury and damage to the property of the company, or to the person and property of the company's employees and the agents, servants and workmen of the applicant, and the applicant shall at all times indemnify and save harmless the company from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings, by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the existence of these presents, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of the rights arising hereunder."

The applicant took the position that the indemnity should not be extended to cover the negligence of the railway company or its employees.

By Order No. 27566 of August 17, 1918, provision was made under the Branch Lines sections for the construction of a siding into the premises of the Woods Manufacturing Company, Limited, east of Logan avenue, in the city of Toronto. Subsequently an application was launched by the applicant setting out the following:—

> "(1) That the applicant is the owner of certain lands fronting on Logan avenue, in the city of Toronto, and abutting on the tracks of the railway company in rear thereof.
>
> "(2) That a siding has been constructed at the said point over six pits or excavations used as coal hoppers.
>
> "(3) That the railway company insists upon including in the terms of a proposed agreement for the operation of the said siding over the said coal hoppers a provision to the effect that the applicant shall at all times indemnify and save harmless the railway company from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings, by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the existence of the said agreement.
>
> "(4) The applicant is willing to indemnify the railway company in respect of every matter or thing in connection with the operation of the said siding and coal hoppers except the negligence of the railway company, its servants or agents, but the railway company claims to be indemnified in respect of the negligence of itself or its servants or agents, which the applicant is unwilling to do."

The powers conferred by the Railway Act in regard to branch line construction are set out in sections 180 to 184, and 185 to 187 inclusive.

The applicant contends that under section 312, subsection (7), the railway is not able to relieve itself from neglect or refusal to comply with the requirements of the section on the ground of any notice, condition or declaration, if the damage arises from any negligence or omission of the company or of its servants. The applicant's contention, as I understand it, is that the matter is covered by section 312. The section referred to is concerned with the general question of facilities. The provisions of the Branch Lines sections are, in my opinion, separate and distinct in subject matter from section 312. The breach which is involved in subsection (7) of section 312 is a neglect or refusal to furnish facilities in compliance with the provisions of the Act; then, if any such breach arises the remedy of the applicant is against the company by action. It is then set out that in any such action notice, condition or declaration, does not relieve the railway from liability for negligence.

Counsel for the railway took the position that the clause involved was fair. He contended that an especial feature of danger was created by the construction of the hoppers under the siding track and that, therefore, an especial burden of responsibility was placed upon the employees working under the siding in question. He stated that he was not, in the present instance, raising the question of the power of the Board to deal with the Siding Agreement, but that he was willing to have the matter dealt with on its merits. Notwithstanding this method of approach, it seems to me the fundamental matter is the Board's power in the question.

The matter of principle involved is not new. The Board had before it in 1924 the application of the Provincial Paper Mills, Limited, of Thorold, Ont., for a ruling of the Board in the matter of a difference which arose between the applicant and the Niagara, St. Catharines and Toronto Railway Company

as to proper form of siding agreement to govern the operation of the siding. The matter was heard but no judgment was rendered, as it seemed expedient to have the matter stand over for further consideration. An extension of time was accordingly allowed, and thereafter the form of agreement which had been proposed by the railway was accepted by the applicant. No decision having been rendered in the matter, the action arrived at by consent is no necessary criterion of the conclusion which should be arrived at in the present instance.

In the application of Carroll Bros., of Buffalo, N.Y., decided February 7, 1922, there was involved the request that the Board fix the charges for a siding into the applicant's property. The siding in question had been built under the Branch Lines sections of the Railway Act, now numbered sections 181 to 184 inclusive. It was claimed that the sums charged for rental on the siding of the applicant were in excess of the sums charged for rental on the siding of the competitor, and it was claimed that a question of unjust discrimination and undue preference was involved, and that the Board, therefore, should deal with the matter. *Vol. XI, Board's Judgments and Orders, p. 465.*

The judgment in question analyzed in some detail the provisions of the sections dealing with branch line construction. It was pointed out at p. 467 that a great many applications come before the Board dealing with branch lines to be constructed to serve industries in connection with which there is a co-operative scheme of construction as between the railway and the industry, and this is coupled with an annual charge. It further sets out that the terms upon which a railway enters upon the construction are defined in the siding agreement, which sets out a contractual basis agreed upon by the parties. Continuing, the judgment sets out that the Board has no power to compel the construction of a branch line to serve an industry under sections 180 to 184 of the Railway Act. Application is then made under section 185, which provides for forced construction.

If the Board possessed powers under sections 180 to 184, the group of sections given the caption of "Branch Lines" in the Act of 1919, to determine the conditions as to construction and operation—which, of necessity, includes payments necessary in connection with such construction—when the parties are not in agreement, it would have been unnecessary to confer on the Board the power set out under section 185. If the Board has no power under the Branch Lines sections to fix, at the outset, the terms as to co-operative construction and cost of maintenance, then it also follows that the Board is without power to revise the terms so agreed upon and fixed in a contractual arrangement (*vide* pp. 468-469). It follows that if the Board is without power to revise the terms agreed upon and fixed in a contractual arrangement it is, in view of the framework and provisions of sections dealing with branch lines, equally without power to make an agreement under the Branch Lines sections 180 to 184 for individuals who are not in agreement.

When reference is made to section 185, it will be found that summarizing the conditions precedent to the Board's consent, it must be satisfied,—

(*a*) that the branch line is necessary in the public interest;

(*b*) or that it will give increased facilities to business;

(*c*) and that it is satisfactory from an engineering standpoint.

The Board is empowered to deal with the cost of physical construction and the repayment of same. Also, the Board has power to deal with the operation and maintenance of the said spur or branch line, having due regard to the requirements of the traffic and the safety of the public and of the employees of the company.

Under the pertinent sections of the Railway Act, and for the reasons set out, the only powers which the Board possesses in regard to the authorization

or compulsory construction of branch lines, are those set out in sections 185 to 187. Section 186, dealing with the extension of a spur built under section 185, authorizes the Board to attach to such extension any terms and conditions which it thinks just and reasonable. It is, I think, obvious that the terms and conditions which are referred to are operating and engineering ones.

Sections 180 to 184 recognize the right of the railway to build branch lines. The remedial portion of the Act, as contained in sections 185 to 187, is an invasion of the field conferred upon the railway under sections 180 to 184. Unless, therefore, there are explicit words contained in the remedial sections conferring jurisdiction to deal with the determination of individual terms of a proposed contract the Board is without jurisdiction; and so I am forced to conclude in the present case.

January 9, 1928.

Chief Commissioner McKeown concurred.

Application of the residents along the Canadian National Railways between Winnipeg and Pinewood for an Order directing the Canadian National passenger train running between Winnipeg and Duluth to leave Winnipeg at a convenient hour for the farmers of the district.

File 35415.

JUDGMENT

McLean, Assistant Chief Commissioner:

I concur in the disposition recommended by Commissioner Oliver and agreed in by Commissioner Lawrence in regard to the train service, namely, that the time of its departure from Winnipeg be made 7 p.m.

The question of the long distance sleeping-car business has been given consideration. With the change proposed, sleeping-car passengers, Winnipeg to Fort Frances, will be able to stay in the car at Fort Frances until the same time as at present, for the reason that the departure from Fort Frances, either to Duluth or Fort Frances, is not changed. Day coach passengers for Fort Frances will have to leave the train at 3.25 a.m., or as much later as the company provides for the train to arrive, unless they are allowed to occupy the cars until departure either for Duluth at 6.50 a.m., or Port Arthur at 7.15 a.m., to whichever point the day cars are forwarded by outgoing trains.

The time-card in regard to this train has been extremely variable. In the period from 1922 to 1926, this train has started at 5 p.m., 5.15 p.m., 6 p.m., 6.45 p.m., and 8 p.m. In January, 1927, it started at 10.15 p.m., and at present it is starting at 9.50 p.m.

As pointed out in the reasons for judgment of Commissioner Oliver, the installation of an oil electric car service between Winnipeg and Sprague is a matter which is in the option of the railway.

On consideration, the change in service recommended should go into effect on Monday, February 6, 1928.

January 19, 1928.

Commissioner Oliver:

This application was heard in Winnipeg on Wednesday, November 2, 1927, by the Assistant Chief Commissioner and Commissioners Lawrence and Oliver.

The evening train for Fort Frances and Duluth leaves Winnipeg at 9.50 p.m. and arrives at Sprague at 1.40 a.m. (Sprague is 96 miles from Winipeg and is the station in Manitoba nearest the international boundary on the Canadian

National line from Winnipeg to Fort Frances and Port Arthur, with branch from Fort Frances to Duluth. "Pinewood" station is not shown on the railway time-table.)

The complaint of the applicants was that the local service given by this train between Winnipeg and Sprague was at hours that were very inconvenient for the chiefly rural population of the region through which the railway passes, most of whom had to drive considerable distances from the several stations to reach their homes. The applicants asked that the hour of departure from Winnipeg be changed from 9.50 to 5 or 6 p.m.

The Canadian National Railways opposed the suggested change in the time of departure because the present hour was more convenient for the patrons of the road in the Rainy River settlement, at Fort Frances, at Port Arthur and at Duluth.

It seems to be fully established that there is a clash of interest between the population resident along the line between Winnipg and Sprague and that resident at and near Fort Frances and beyond. An hour of departure that would suit Fort Frances, Port Arthur and Duluth cannot possibly be convenient to the residents between Winnipeg and Sprague.

There is no doubt that the traffic to Fort Frances, Port Arthur and Duluth provides a much larger revenue to the railway that that between Winnipeg and Sprague. But a railway is built to serve the population along its line, as well as at its terminals. Through business can only exist as local traffic builds it up. Ordinarily a railway has a monopoly of the traffic in the country adjacent to its line. That seems to be the fact in the case of the line from Winnipeg to Sprague. It is also a fact that this section of the railroad was built for the especial purpose of providing accommodation for the section of Manitoba through which it passed. Unless the railway gives the people in that area service, they cannot be served.

After full consideration of the different features of the situation and of the representations both of the applicants and of the railway, the Board's Chief Operating Officer has recommended (December 28, 1927) that the time of departure from Winnipeg be made 7 p.m., with adjustment to correspond in the times of departure from Fort Frances both to Duluth and Port Arthur.

At my request the Chief Operating Officer of the Board has also submitted (January 12, 1928) an estimate of the cost of operation of an oil electric car giving such a round trip service at $1,283 per month. This estimate is based on figures furnished by the Canadian National giving the cost of operation of an oil electric car between Ottawa and Pembroke, Ontario, a distance of 89.6 miles. The Chief Operating Officer also found that if the through train were relieved from all stops between Winnipeg and Sprague there would be a saving of forty-two minutes in time on the run to Fort Frances and Duluth.

A return was submitted by the Canadian National Railways showing earnings for sixteen months from July, 1926, to October, 1927, both inclusive, by train No. 20 between Winnipeg and Sprague, averaging $1,500 per month. This was the amount received for return tickets sold, as well as single trip tickets, but did not take into account single trips tickets inbound, between Sprague and Winnipeg which would be part of the earnings of a car making the round trip. It is reasonable to assume that if service were given at hours convenient to the people a much larger business would be done. The statement of earnings submitted by the Railway did not take account of express and mail services, the earnings from which would also accrue to the suggested oil electric car.

I am of opinion that the residents of the region dependent for service on the section of the National Railways between Winnipeg and Sprague are entitled to service that will be of greatest benefit to them, after all the conditions have been given reasonable consideration. I therefore think that the railway company

should be required to readjust the timetable in accordance with the suggestion of the Chief Operating Officer of the Board, of date December 28, 1927, or in the alternative to put on an oil electric car service between Winnipeg and Sprague, leaving Sprague in the morning and Winnipeg in the evening at such hours as would be found most convenient for all concerned; this car to give passenger, mail and express service to all stations between Winnipeg and Sprague.

Ottawa, January 16, 1928.

Commissioner Lawrence concurred.

Application of the Canadian Pacific Railway Company for authority to construct, maintain and operate branch line of railway to serve the K.V.P. Grain Company, at Mile 77·8, Langdon Subdivision, to and into the southeast quarter of Section 8, Township 29, Range 20, W.4.M.

File 22370.96.1.

JUDGMENT

McLean, Assistant Chief Commissioner:

The application as launched shows on the plan filed a proposed branch line running northwesterly and connecting with a line marked as "main line to Knee Hill;" 33 feet south of the line so marked is a broken line south of which the K.V.P. Grain Company has property for the purposes of its spur. The proposed spur intercepts the broken line again at a point marked 2 ÷ 20 on the plan, and from there to 0 ÷ 00 the property is shown on the book of reference as owned by the Red Deer Valley Coal Company; that is to say, at the point where the proposed branch line is shown as connecting with the "main line," as well as at the point marked 2 ÷ 20, there is a distance of 33 feet south from the "main line" to the broken line above referred to, and the book of reference recognizes this as being owned by the Red Deer Valley Coal Company. Between the point marked 2 ÷ 20 and the point marked 0 ÷ 00, across which it is proposed to take the spur track, there is an area of approximately one-twelfth of an acre.

The section of land in question has been before the Board in various ways. In *Application of the Red Deer Valley Coal Company, Ltd., for an Order under Section 35, etc., Board's Judgments & Orders, Vol. XVI, p. 22,* application was made for interpretation of certain portions of the agreement existing between the Red Deer Valley Coal Company and the railway.

In connection with the carrying of the Canadian Pacific tracks through the area in question, an agreement was entered into on July 24, 1922, between the Canadian Pacific Railway Company, on the one hand, and the North American Collieries and the Red Deer Valley Coal Company, on the other. The recital set out that the railway company had located a proposed line of railway through section 8, and was desirous of connecting the said located line of railway with the tracks of the Canadian National Railways in the southeast quarter of section 9. It recited, further, that there was an agreement between the parties that the railways company should, during the time covered by the agreement, have the right to reconstruct, maintain and operate the mine spur of the coal companies upon certain terms and conditions hereinafter mentioned.

Paragraph 1 provided for the reconstruction, repair and operation of the mine spur.

Under paragraph 2, the railway company was obligated to rebuild the mine spur in conformity with the Canadian Pacific standards, and to so main-

tain it during the term of the agreement. It was set out that the steel at present laid on the mine spur was the property of the Canadian National Railways, and this was either to be purchased by the Canadian Pacific Railway or delivered by it to the Canadian National Railways.

Under paragraph 3, it was set out that the railway company " also agrees to construct the sidings, passing track, and spur tracks shown in red upon the said plan; and it was also recited that the railway company was to have the use of the " middle and northerly tracks " between points specified.

Under paragraph 4, the trains and engines of the Canadian National and the engines and cars of the coal companies that now operate the said mine spur were to have precedence over the trains of the Canadian Pacific; and the operation of all such trains, engines and cars are to be regulated in such manner as the Chief Operating Officer of the Board of Railway Commissioners for Canada may direct.

Under paragraph 5, the Canadian Pacific was not by virtue of this agreement to acquire any title to any part of the property of the coal companies.

Under paragraph 6, it was set out that upon the termination of the agreement, the tracks herein provided for, or a sufficient number of them, will be left in place to enable the North American Collieries, Limited, to operate in an efficient manner; and such tracks were to become the property of the North American Collieries.

Under paragraph 7, the railway company agreed to construct and maintain, at its own expense, any necessary cross-over of the said tracks, whenever it may be necessary for the coal companies to cross the tracks of the mine spur.

Paragraph 8 provided for a contribution of cost by the Canadian Pacific to the installation of a rock conveyor. It does not appear to be necessary to go into this further.

Paragraph 9 provided for indemnification by the Canadian Pacific, within a defined area, in respect of damages arising out of operation of its trains and engines during and after the removal of the pillars in the mine of the coal companies, in a defined strip of territory.

Paragraph 10 set out that the covenants on the part of the railway company herein contained and accepted by the coal companies are in lieu of any compensation to which they may otherwise be entitled under the provisions of the Railway Act.

The agreement was to run for a period of ten years from the date of the agreement, and thereafter from year to year until terminated by either party by six months' notice in writing. Provision as to the person or persons on whom the notice is to be served is made.

Under date of August 13, 1923, an agreement was made between the Canadian Pacific Railway Company, of the First Part, and the Red Deer Valley Coal Company, of the Second Part. This referred to the agreement of July 24, 1922, and set out that the North American Collieries, Limited, have ceased to have any interest in the coal property or mine spur referred to in said agreement. It was set out that the parties had agreed to execute this supplementary agreement in order to confirm the prior agreement, except in so far as it is hereafter varied.

By paragraph 1, it is provided that the tracks which were referred to in paragraph 6 of the earlier agreement shall, upon the termination of the agreement, become and remain the property of the Red Deer Valley Coal Company.

Under paragraph 2, the railway company agreed to pay the sum of $4,000 to the Red Deer Valley Coal Company " for all rights and privileges conferred upon the railway company under the terms of the said recited agreement, and for the exercise of the railway company's powers upon the properties of the coal companies thereunder."

Paragraph 3 set out that the parties agreed that the covenants contained in the said prior agreement should be binding upon and enure to the coal company, its successors and assigns to the same extent as if said North American Collieries, Limited, had been a party to the said agreement.

As pointed out, the portion of the property of the Red Deer Valley Coal Company involved is not large. At the hearing in Calgary, the matter was allowed to stand for negotiations between the parties. It is not necessary to deal with the detail of these negotiations in the present connection, because no agreement was arrived at.

The Canadian Pacific Railway Company takes the position, in substance, that while it admits there is nothing in the agreements of 1922 and 1923 which expressly gives to the railway company the right to build spurs, at the same time the railway in question is operated as part of the company's main line from Langdon to Knee Hill. It is represented further that there is also nothing in the agreement which restricts the railway's rights, and that the railway is given the right to operate the portion of line in question as a railway; and it is submitted that this gives the railway the right to do everything which is incidental to the operation of the railway. *Evid Vol. 521, p. 11317.*

In a written communication on file dated July 14, 1927, it was claimed by the railway that during the term of the agreement the coal mine's spur must be considered as part of the railway; and it reaffirmed its position that during the currency of the agreement with the coal company the Canadian Pacific enjoys all rights in respect of the coal mine spur which it enjoys in respect of any part of its main line. It is contended that there is no question but that the railway has a right, under the terms of the agreement, to build an industrial spur off the main line in question.

The coal company set out *inter alia* that the agreement it has with the Canadian Pacific does not provide for the building of other spurs off "the coal mine spur"; and it is contended that the maintenance of the present coal mine spur is only by way of compensation for its use. In the course of argument *(Evidence Vol. 521, p. 11336)*, counsel for the Red Deer Valley Coal Company said:—

> "I submit upon argument that this line is a line which belongs to my client, the coal company; that the only outstanding documents in regard to it are the agreements to which the Board has been referred; that the railway line falls under the category of a private line, and that the railway company's rights in this line must be read and construed according to what is within the four corners of the agreement."

At p. 11326, the following discussion in regard to the Canadian Pacific's position took place:—

> "Assistant Chief Commissioner: You contend in substance that the tracks you are operating at that point have all the attributes of a main line, and that the authorities referred to are not controlling authorities because you allege you do not have a spur track off which a spur track is being constructed. That is the essence of your contention, is it not?
>
> "Mr. McCaig: That is the essence of it.
>
> "The Assistant Chief Commissioner: That what is referred to is a railway, not a private spur.
>
> "Mr. McCaig: Not a private spur."

Representation was made by the K.V.P. Grain Company as to the urgency of its need in regard to the branch line construction. It was represented to them that such rights, if any, as might be conferred in respect of operation

were tied up to the provision respecting the life of the existing agreement. The Canadian Pacific is willing to take the order on these terms, and the situation was clearly understood and accepted by the K.V.P. Grain Company who, in common with the railway, understood that no rights as to damages would arise from the termination of the agreement in accordance with the provisions set out in it.

The status of the mine spur from the standpoint of spur versus main line was gone into at the hearing. I do not go into it now as it does not appear to me to be necessary in connection with the disposition which I consider must be made.

Under the agreements referred to, the railway acquired no title to any part of the property of the coal companies. The railway is operating under an agreement, limited in point of time. Part of the property of the coal companies is land. Under the Interpretation Section—section 2, subsection 15—of the Railway Act, land includes, *inter alia*, easement or servitude. An easement or servitude derogating, as it does, from the rights of ownership is not to be a creation of mere inference. Under the definition of land above referred to, the railway has power, under the provisions of the Railway Act, to expropriate an easement or servitude.

The Railway Act was amended in 1919 to include, *inter alia*, reference to easement or servitude which I have above set out. There has not, to my knowledge, been any application to the Board involving the compulsory taking of an easement or servitude in respect of branch line construction, but I take it that it is beyond doubt that the same formal requirements are applicable here as apply in the case of the taking of land as ordinarily defined.

The railway had power to proceed under the Railway Act with the compulsory taking of the necessary lands for right of way and other necessary purposes through the property in question. Instead of doing that, it acted under the agreement. In so far as there is an invasion of property rights of the coal company by the railway, the scope of this must, I take it, be ascertained from the agreement; and the extent to which such invasion of the property rights of the coal company exists is a matter upon which the agreement must be taken as speaking with authority.

The agreement defines the mine spur. It is clear that the railway has a right to reconstruct, maintain, and operate this and, so operating, to move over the necessary lands of the coal company. The railway also agrees to construct the sidings, passing track, and spur tracks shown in red on the plan attached to the original agreement; and it is set out that, in respect of the tracks so referred to, the railway company is to have the use of certain tracks and the coal company of other defined tracks. The railway, in respect of the sidings, passing track, and spur tracks referred to, has the right to operate over the necessary portions of the coal company's lands, and to this extent limits the rights of ownership of the coal company; but under the agreement now standing between the Canadian Pacific Railway Company and the Red Deer Valley Railway Company the latter agrees to the limited easement or servitude thus created.

There is nothing on file or on the record which specifically shows or reserves any right of or to the railway to build a spur track within the area involved in the present application, such spur track being off the coal mine spur which is designated by the Canadian Pacific as the "main line."

It does not seem to me justifiable by inference to extend an agreement and, therefore, in my opinion, it is beyond the power of the Board to rule that the railway has such reserved rights of easement or servitude over and across the land in question as would justify granting the order asked for, such order involving an affirmation of the right of the railway to carry the spur in ques-

tion on the land and over the line of the coal company without compensation. If the company still desires to construct a spur or branch line, authorization for the construction of same may be given. The burden will, thereafter, be on the railway to acquire, by compulsory taking, the necessary right of way either by acquiring land or such easement or servitude as may be necessary to connect the proposed spur line with the line of the railway shown on the plan.

January 17, 1928.

Commissioners Lawrence and Oliver concurred.

Application of the residents who live in subdivision of farm lot No. 102, immediately south of the Essex Terminal Railway Siding, Ford City, Ont., per Messrs. Frederick Kerby & Co., Windsor, Ont., for an Order temporarily opening up the crossing provided for in Order No. 16962, dated July 3, 1912, on application of E. N. Richards and George H. Bennett, in order to give residents communication with Ford City until such time as an Order will issue granting a crossing on Central Avenue.

File 13227

Application of Cyril Fraser and Amos Ellwood on behalf of themselves and other owners and ratepayers of the Town of Ford City, County of Essex, Ont., per Messrs Rodd, Wigle & Whiteside, Windsor, Ont., for an Order authorizing the construction of a highway known as Strabane Avenue, in the Town of Ford City across the lands of the Grand Trunk Railway Company (C.N.R.) and across the lands of the Essex Terminal Railway in the Town of Ford City, so as to give them an outlet to the Front street of the town.

File 13227

Application of the Town of Ford City, Ont., per Furlong, Brackin, Furlong & Riordon, Windsor, Ont., that the municipality be added as an applicant for authority to construct Strabane avenue across the Canadian National Railways and the Essex Terminal Railway, in the town of Ford City, Ontario.

File 13227

Application of the Corporation of the Town of Ford City, Ontario, for an Order directing the Canadian National Railways to provide and construct a suitable highway crossing where Central avenue, Ford City, intersects the lands of the said railway.

File 33728

Application of the Corporation of the town of Ford City, Ontario, for an Order directing the Essex Terminal Railway Company to provide and construct a suitable highway crossing where Central avenue, Ford City, intersects the lands of the said railway.

File 33843

JUDGMENT

McLean, Assistant Chief Commissioner:

I

The applications set out above involve the question of highway crossings in Ford City. The first three are concerned with the request to open up a crossing on the line of Strabane avenue. This involves crossing the tracks of

the Essex Terminal Railway and of the Canadian National Railway. It is claimed that there are rights of crossing over the railways in question. The applications in regard to Central avenue also involve crossing over the tracks of the Essex Terminal Railway and of the Canadian National Railway. The crossings may be said to be alternative. Considerations of the matters affecting these crossings, although taken up in separate hearings, are somewhat interwoven. Consideration will be given, in the first instance, to Strabane avenue.

II

It is necessary to set out at some length questions pertaining to the status of Strabane avenue.

Under date of December 31, 1909, application was made by Evariste Nomore Richards and George H. Bennett, of the city of Windsor, for an order directing the Grand Trunk Railway to provide and construct a suitable farm crossing over this railway intersecting farm lot 102 in the First concession of the township of Sandwich East, in the county of Essex, Ontario. It is intimated in the application that a farm crossing had at one time existed, but that this had been closed, thereby depriving the applicants of the proper use of their land. The crossing in question is the crossing which is involved in, and a necessary part of, the highway if Strabane avenue produced is to be carried over the tracks of the railway.

In the reply of the applicant Richards, under date of February 17, 1910, it is stated that he takes title to the land involved through one Askin, who had a farm crossing at the point where the present applicant asks for a crossing; and he intimates that he has no access to the land in question except by the permission of an adjacent lot owner, and that this involves travelling a roundabout route.

The application was heard in Windsor on March 25, 1910, before Chief Commissioner Mabee, Assistant Chief Commissioner Scott, and Commissioner Mills.

In judgment rendered at the hearing by Chief Commissioner Mabee it was stated that the crossing had been closed up without authority, but that at the same time, by reason of the changed conditions, it did not appear that it would then be proper to order another crossing at the place asked for. It was recited that when the title passed from Askin to the present owner there was no crossing at the point at which the crossing was now applied for, but that there was apparently a legal crossing on the other side of the lot jointly with one Labadee.

This crossing is only 210 feet from the point at which the crossing was asked for in the hearing in question.

The judgment then continues: " It does not seem to us that the purchaser, taking title with a knowledge that there was no crossing at the point in question, and that it had been closed up for many years, and that there was upon the ground and in the conveyance a right to a crossing at the other side of the lot that it would be proper for us at this time to order the crossing asked for ".

The decision so rendered was, however, without prejudice to the present or any future owner of the land making an application for the re-establishment of the old crossing opposite Strabane avenue. Order No. 10073, of March 25, 1910, issued accordingly.

Under date of October 21, 1911, the same applicants came before the Board asking that a direction go to the Grand Trunk Railway to reopen, reconstruct and provide a suitable farm crossing from the lands of the applicants to a street known as Strabane avenue. One reason given for the application was that the use of the lane along the easterly line of the farm lot in question had been refused to them by Labadee, who claimed ownership.

In an affidavit on file of December 11, 1911, it is stated that the crossing in question had been open and in use until about the year 1889.

The application was spoken to in Windsor on June 22, 1912, and the matter was heard before Assistant Chief Commissioner Scott and Commissioner McLean.

In the decision rendered at the hearing by Assistant Chief Commissioner Scott it was stated that as a result of inspection on the ground by members of the Board who heard the case there was evidence of some kind of a crossing over the railway at the point in question, and it was decided that a crossing "in the nature of a farm crossing" should be given to the applicants, who were to do the work at their own expense. It was set out that like all other farm crossings there must be gates, and the gates must be kept closed. The obligation of the Railway Act in this respect was set out.

Order No. 16962 of July 3, 1912, issued implementing this judgment.

A communication from the Grand Trunk Railway, dated December 18, 1922, in referring to said Order 16962, set out that at the time the order was made the applicants owned land at both sides of the railway. It was stated that these parties had since sold the land on the south side of the railway tracks to the Ford Motor Company. It was claimed that there had been considerable trouble to the railway on account of the crossing being used by the general public, regardless of the notice to the effect that the crossing was not a public one. It was said that the parties owning land in the subdivision south of the Essex Terminal Railway were using the crossing to reach the property to the north, and that they appeared to be desirous of converting it into a public crossing, to which the railway objected. Application was made for an order under section 51 of the Railway Act to rescind said Order No. 16962.

The attention of the railway was drawn to the fact that no service of application had been made upon the parties interested. Thereafter the Board was notified that copies of the application had been served on Messrs. Richards and Bennett, and also on the Ford Motor Company. Service was acknowledged by these parties, and no objection having been taken by them, Order No. 34558 of December 13, 1923, issued rescinding Order No. 16962.

III

Under date of July 12, 1925, an application in regard to Strabane avenue was launched by certain landowners in the town of Ford City. The applicants' solicitors stated that, "The owners and inhabitants just south of Strabane avenue, in the town of Ford City, believe, rightly or wrongly, that their interests are being sacrificed by the town to the interests of real estate operators and they have determined to ask the Board to consider their situation and the question of opening up of Strabane avenue so as to give them an outlet to the Front street of the town." The application asked for an order authorizing the construction of a highway known as Strabane avenue across the lands of the Grand Trunk Railway (now the Canadian National Railways), and across the land of the Essex Terminal Railway. It was recited in paragraph 2, that at the time of the granting of Order 16962 of July 3, 1912, establishing a farm crossing over and across the lands of the then Grand Trunk Railway, the road had been in constant use by the inhabitants of Ford City, and it was intimated that when the Grand Trunk was constructed a crossing had been allowed, which, it was claimed, had never been closed.

The Essex Terminal Railway, in its reply, denied the existence of the crossing in question. It was stated that the company had never permitted a crossing of any kind at the point in question, and had endeavoured to keep trespassers off its property.

IV

The matter was set down for hearing at Windsor, December 18, 1925, before Chief Commissioner McKeown and Commissioner Lawrence. The hearing was extended in order to enable the municipality to be joined as a party, and thereafter the necessary additional parties having been notified, the matter was set down for hearing at Windsor before Assistant Chief Commissioner McLean and Commissioner Lawrence.

Most assuredly crossing conditions in Ford City are, in various ways, in an unsatisfactory shape. Putting the matter mildly, it would appear that in the desire to have a rapid opening up of and sale of subdivided property, there has not been adequate consideration on the part of those subdividing in regard to the highway needs of those who are destined to live on the subdivided lots. The fact that ready means of egress and ingress would necessitate the crossing of railway tracks already in place has apparently not been given due weight by those interested in disposing of the subdivisions. While it is proper that the highway crossing needs should be considered, it must be borne in mind that in opening up crossings over railways various questions must be considered, e.g., the needs of the public, the effect of the crossing on the operation of the railway, questions of public safety and the well established principles of the Board in regard to factors affecting distribution of cost.

As to the operation of the railway, interference with it on behalf of the public must be reasonable. Railways operating under Dominion charter are given powers in the general interest, and an unreasonable exercise of power against the railway may, and will interfere with the carrying out of operating service in such a way as will best serve the general public.

At Strabane avenue there are, on the Canadian National, six tracks, 510 feet south of the most southerly track of the Canadian National are the tracks, three in number, of the Essex Terminal Railway. From the northern limit of the right of way of the Canadian National to the southerly limit of the Essex Terminal is a distance of 690 feet. It is on record that on the Canadian National there are seven high speed passenger trains daily, except Sunday. There are twelve eastbound freights, and eleven westbound freights; and in addition there is a volume of switching.

The application as launched is for a level crossing. It may as well be frankly said that such a condition as exists at the point of crossing is utterly unfitted for any type of level crossing, whether by watchman, bell and wigwags, or gates. The situation is too dangerous a one to justify the contemplation of a level crossing for a moment.

This still leaves the question of the division of cost.

It was pressed very strongly by the counsel for the different parties at the hearing in Windsor last December that there were prior and reserved rights of highway use at the crossing in question. I do not consider it necessary to go at any considerable length into this phase of the question. Admissions of counsel and rulings of the Board on similar matters are all that I consider necessary to direct attention to here.

In the application already referred to, which stated that almost from the time of the opening up of the farm crossing in 1912 the crossing was used as part of a highway, no doubt this is a fact. I think there was no sustained objection to the position that the crossing had, in fact, been used for highway purposes.

Counsel for the applicants and for the town of Ford City stated that work had been done on the highway in question. This, no doubt, is so; but when asked under what authority had the farm crossing become a highway, he answered "none whatever." *Evid Vol. 524, pp. 12756-12757.* He stated that he had been speaking more of the land on either side of the crossing, and the

work that had been done on either side. He spoke of the road running south from the Grand Trunk having become a highway, and then continued, "and they perhaps trespassed on the crossing." The discussion which took place pointed out that no sanction had been given by the Board converting the farm crossing into a public highway. Counsel said they were asking the Board for this authority now, and that it would be made a public highway by by-law as far as the town could act.

At both sides of the right of way, where the crossing is asked for, work has been done on the highway; but this does not convert a farm crossing into a highway. A farm crossing, under section 272, when it is given of right, is a crossing "convenient and proper for the crossing of the railway for farm purposes." A crossing under section 273, when it is of grace, is a crossing which "the Board deems it necessary for the proper enjoyment of his land, and safe in the public interest."

In *Town of St. Pierre vs. Grand Trunk Ry. Co., 13 Can. Ry. Cas., 1,* there was involved what is sometimes referred to as the Simplex Avenue Crossing case. Simplex avenue, in the town of St. Pierre, had been originally a farm crossing, but at the time the application was before the Board in 1911 it was used as a general public highway crossing. The Board ruled that the applicant must reimburse the respondent for the cost of construction, maintenance and protection of the crossing. A grant was allowed out of the Grade Crossing Fund. Protection by gates and watchman was directed.

In 1914 the Board had before it an application to open up Park avenue over the tracks of the Canadian Pacific Railway, in the city of Montreal. This was a farm crossing upon which had developed a heavy volume of traffic. It was converted by the Board into a public highway crossing; and protection being necessary from the outset, the expense of said protection, subject to contribution from the Grade Crossing Fund, was placed upon the applicant. *City of Montreal vs. C.P.R., 18 Can. Ry. Cas., 50.*

Where a crossing originated as a farm crossing it continues to hold that status, notwithstanding the increase in the volume of traffic. The increase in the volume of traffic does not make it into a public highway. It is a crossing, under the Railway Act, for a particular purpose, and must obtain the sanction of the Board before it is legalized as a highway. It therefore comes under the operation of the junior and senior rule. Reference to the effect of this rule may be noted in the *City of London* v. *Grand Trunk Ry. Co. (Ashland Avenue Crossing Case), 20 Can. Ry. Cas., 242.* Reference may also be made to *Town of Ford City v. Grand Trunk Rly. Co., 20 Can. Ry. Cas., 1; City of Lachine v. Grand Trunk Rly. Co., 18 Can. Ry. Cas., 385.*

V

To bring the crossing within the reasoning of the Town of St. Pierre case, and also the Park Avenue case, so far as contribution from the Grade Crossing Fund is concerned, it might be necessary to deal with the question of whether the rights in respect of a farm crossing existing, and stated to have been in existence and enjoyed until 1889, still remained and were effective in 1909. Under subsection (2) of section 262 of the Railway Act, power to contribute out of the Grade Crossing Fund is limited to highway crossings of railways at rail level in existence on the first day of April, 1909.

Leaving this phase of the matter to be dealt with in case of need, the situation is that whatever expense protection may involve at the point in question. the burden of such expense must be borne by the applicant municipality subject to such contribution, if any, as it may be possible to give out of the Grade Crossing Fund. Protection at the point in question should be by a subway.

VI

When the application in the Central Avenue case was heard, judgment was reserved. Subsequent to this, the parties were written to as follows:—

"Referring to the crossing application of Ford City, as above referred to, which was heard at the sittings of the Board in Windsor on the 17th inst., I am now directed by the Board to write the municipality of Ford City, and the railway company, as follows:—

"The Board has before it various crossing applications involving the opening up of crossings across railways at points where there is a more or less congested condition of railway traffic.

"It is contended by the municipality that the crossings are necessary, in order to afford access to existing subdivisions. It is contended by the railway company that the crossings asked for are, in various instances, in dangerous situations so far as the safety of the public using the highway is concerned; and that, in addition, the opening up of some of the crossings would put a serious obstacle in the way of the necessary and proper use of railway facilities. It is contended that traffic has developed in such a way that in at least one instance the railway will need to add more tracks to the existing number now on the ground.

"The Board has to look at the matter from various standpoints:

"(1) There is the question of reasonable convenience of the parties desirous of obtaining access by new highway crossings to various sections of the municipality.

"(2) There is the very important question whether the crossings as asked for would, if opened up, be reasonably free from danger in respect of the traffic, vehicular or pedestrian, using the crossing.

"(3) There is the fact that the railway has the right to use its right of way in connection with the handling of traffic, this necessitating laying down upon such right of way such number of tracks as may properly be necessary.

"(4) There is the fact that in connection with such use of its right of way by the railway it must be borne in mind that Ford City is a municipality whose traffic importance is steadily increasing; therefore it is neither in the interests of the municipality nor of the railway that anything should be done which would interfere with the reasonable use of the railway facilities, with a view to development and prompt handling of traffic.

"As pointed out, the Board has had before it various applications from the municipality. It seems to the Board that the matter should not be approached piecemeal. It is in the interests both of the municipality and of the railway company that some definite plan should, if possible, be worked out, so that the municipality can adjust its street development to such plan; and the railway will also have this plan before it in connection with the expansion of its railway facilities.

"The Board, therefore, recommends that a conference be held, at a convenient time, to be attended by the engineering representative of the municipality and the engineering representatives of the railway or railways concerned. The Board's Engineer will also co-operate in the conference. The matter to be considered is what is necessary in regard to crossings over the tracks of the railways operating in Ford City, and the best way of working out what is reasonably necessary.

"It should be borne in mind in said conference that in all probability it will be necessary to bear in mind in connection with the opening up of crossings, if such opening up seems advisable, that there should also be constructed highways parallel to the railway right of way or rights of way, so as to prevent unnecessary reduplication of crossings."

Subsequently, the Board was advised that the matter of the rearrangement of the Essex Terminal tracks was under consideration between the railway on the one hand and representatives of the Ford Motor Company and Ford City on the other. With this understanding, the matter was allowed to stand for further development. The negotiations in regard to the rearrangement of the Essex Terminal tracks have come to naught; and at the hearing in Windsor the Board's Order No. 37255 of January 22, 1926, which it issued in this matter was, by consent, rescinded.

At Central avenue the town of Ford City has no rights of crossing, farm crossing or otherwise, over the tracks of the Essex Terminal and the Canadian National Railways. At Central avenue the Canadian National has six tracks. Between the most southerly of the Canadian National tracks and the most northerly of the Essex Terminal tracks there is a distance of 250 feet. The Essex Terminal has three tracks. Between the northerly limit of the Canadian National right of way and the southerly limit of the Essex Terminal right of way is 425 feet.

In the discussion at the hearing in this case counsel for the municipality expressed the opinion that the municipality was willing to pay the cost of protection at the present time until such a time as some other means could be arranged such as a subway. *Evid. Vol. 441, p. 1001.* Again at p. 1007 he uses the following language:—

"There is no doubt of it being a subway proposition in the near future, say in the next five years. If a crossing could be established with some reasonable protection in the meantime, I think in five years there will be a subway crossing."

VII

A level crossing either at Strabane avenue or Central avenue is out of the question. It is recognized that a subway either at Strabane avenue or Central avenue will be costly. Without going into detail, it would appear that Central avenue would be the less expensive. If the town desires to take a crossing on Central avenue it may do so by providing a subway at its own expense. The Board's Engineer recommends Central avenue as being a crossing preferable to Strabane avenue; and he is also impressed by the necessity of Central avenue being a subway crossing.

If, as suggested by the Board in the letter above quoted, there should be an atempt to work out some general plan, the Board would welcome any progress that can be made in this regard.

The views above expressed in regard to Strabane avenue and Central avenue will clear up this phase of the situation.

OTTAWA, January 27, 1928.

Commissioner Lawrence concurred.

Complaint of the Northern Bolt, Screw & Wire Company, Owen Sound, Ont., et al, against cancellation of import rates on wire rods, in carloads, from Montreal.

File 27007.12

JUDGMENT

McLean, Assistant Chief Commissioner:

Under date of December 22, 1927, the Report of the Board's Chief Traffic Officer, attached hereto, was submitted for consideration. Before final action was taken on the matter, a submission was made on behalf of the Steel Company of Canada, by Mr. Dean, who stated there were various matters which he considered material to a presentation before the Board and which had not been submitted. He asked permission to file this additional material, copies of same being supplied to the parties in interest, their rights of reply being reserved. He also pointed out, further, that the delay could not prejudice any one, inasmuch as the St. Lawrence navigation was closed.

In view of these representations, action in the matter was temporarily withheld. Under date of January 11, 1928, Mr. Dean submitted the detailed statement of the Steel Company of Canada which he had been permitted to file. Submissions have been made by various parties, including not only the shipping interests but also the Canadian Freight Association, by its chairman, Mr. Ransom.

The matter has been given further consideration and it now appears that the time is ripe for action. I am of opinion that the Report of the Chief Traffic Officer of December 22, 1927, and the supplementary report of January 26, 1928, should go as the judgment of the Board.

January 30, 1928.

Chief Commissioner McKeown concurred.

SUPPLEMENTARY REPORT OF CHIEF TRAFFIC OFFICER W. E. CAMPBELL

Subsequent to my report dated December 22, 1927, with the consent of the Board, further submissions were made in writing by the Steel Company of Canada, copies of which were sent to the other parties interested. Written submissions were thereafter filed by Mr. Marshall, manager of the Transportation Department of the Board of Trade of the city of Toronto, on behalf of the complainants, also by Chairman Ransom of the Canadian Freight Association.

The submissions of the Steel Company of Canada were in the nature of amplifications of their oral representations at the sittings of the Board. Careful consideration has been given to the statements made in the written submissions filed subsequent to my report, and brief comment made herein with respect to some of the points made.

It is alleged that the proposed increased import rate on wire rods will place them on the recognized basis governing import rates; that if any lower basis is recognized it may affect the general import and export rate structure. There are, as admitted on the record, some exceptions from the so-called, recognized basis of import rates. Inasmuch as it is stated the question of these particular rates on wire rods was first taken up with the railways in 1924 and the latter took no action towards increasing them until 1927, it may be assumed that they were not looked upon as affecting the general question of import rates.

It is noted from the representations made, that while the importation of wire rods from the United States is decreasing, importation from Europe has

increased in the last two or three years due, it is stated, to low prices, which in turn is brought about by the availability of cheap labour there. The Board can deal with the reasonableness of rates from a rate standpoint, but cannot go beyond this in an effort to deal with economic or other considerations.

Import rates, where at variance with domestic rates, are lower than the latter. They are in the nature of proportional rates, the traffic having already borne a transportation charge. The domestic rate, plus terminal charge, is the maximum, and to provide for this, on account of the import tariff being governed by the Official Classification, a rule is carried in the import tariff stipulating that the domestic rates, plus terminal charges, will apply if lower than the rates shown therein. The import rates in effect on wire rods prior to November 30, 1927, were the domestic rates previously published thereon, plus ninety cents per gross ton for Montreal Terminals.

As stated in my previous report, it is not alleged by the carriers that the rates are being increased for the reason that the former import rates were unremuneratve or unreasonable per se, and considering the matter from a rate standpoint I do not consider, for the reasons already set out, the increase proposed in the import rates has been justified.

OTTAWA, January 26, 1928.

REPORT OF CHIEF TRAFFIC OFFICER, W. E. CAMPBELL

Complaint was made to the Board by the following firms against proposed cancellation by the carriers of import rates on wire rods in carloads from Montreal:—

Northern Bolt Screw and Wire Company Ltd., Owen Sound, Ont.
Frost Steel and Wire Company Ltd., Hamilton, Ont.
Laidlaw Bale Tie Company, Hamilton, Ont.
B. Greening Wire Company, Ltd., Hamilton, Ont.
Graham Nail Works, Toronto, Ont.
Toronto Wire and Nail Company, Toronto, Ont.
P. L. Robertson Manufacturing Co. Ltd., Milton, Ont.
Canada Metal Company, Ltd., Toronto, Ont.

The Board of Trade of the city of Toronto also made representations, on behalf of its interested members, against cancellation of the rates. The rates in effect previous to November 30, 1927, and the increased rates proposed by the carriers, which are complained of, are shown below.

To	From Montreal, Que.		
	Miles.	Rate to Nov. 30, 1927, per gross ton.	Proposed rate per gross ton.
Toronto	334	$4 80	$6 60
Hamilton	373	4 80	6 60
Milton	375	5 20	6 60
Owen Sound	498	5 80	7 90

The carriers do not claim that the rates are being increased for the reason that the former rates were unremunerative. According to their statement on the record, their action in increasing the rates was solely as a result of allegation of certain Canadian manufacturers of wire rods, that the import rates that were

in effect were detrimental to the Canadian manufacturer. The carriers state that upon such representation they decided to make the proposed changes in rates with the idea of endeavouring to protect Canadian manufacturers of wire rods.

These wire rods are the raw material from which the various complainants manufacture numerous articles such as nails, tacks, screws, bundling wire, box straps, strapping wire, bolts, fence wire, hay wire, bale ties and various other grades of wire for most commercial purposes. The various complainants allege that they will be detrimentally affected, to a serious extent, by the proposed increase in these import rates. They refer to competition at Montreal, as well as keen competition from Europe in certain lines of these finished goods through both Atlantic and Pacific ports. It is alleged, and statements were made and an exhibit filed in support thereof, that the western Ontario manufacturer is at a rate disadvantage with the Montreal competitor at the seaboard. According to the record, the complainants obtain a certain proportion of their raw material (wire rods) from Canadian manufacturers, and some is imported, and both the question of price and quality enters into the matter. It was contended that for certain purposes the foreign rods were different in quality and more desirable, but on this point the statements were somewhat conflicting, it being asserted by the representative of the Steel Company of Canada that they are manufacturers of wire rods, as well as of the finished products made therefrom, all of which are drawn from their own rods. Representatives of the complainants stated there was a greater wastage, in some cases, when the Canadian rods were used.

Representatives of the Steel Company of Canada, who are opposing the position taken by complainants, and are in accord with the proposition to advance the import rates, states their position as being that they do not see any reason why the Canadian carriers should maintain lower import rates on wire rods from Montreal than are in effect from any other North Atlantic port; that they are simply asking that the carriers establish from Montreal the same basis of rates as would be applicable from Baltimore, which has the lowest rate basis of any United States Atlantic port.

Mr. Marshall, representing the Toronto Board of Trade and complainants, stated that if it was a question of protection of the Canadian manufacturer, the rates should be continued as protection to the complainants, who are under a distinct disadvantage as compared with their competitors at the seaboard.

Considering the question from a rate standpoint, the former and proposed import rates on wire rods from Montreal, and the rates per ton per mile, are as follows:—

To	From Montreal		
	Miles.	Rate per gross ton.	Rate per gross ton per mile.
	Rate to November 30 1927		
Toronto, Ont.	334	$4 80	1 43c.
Hamilton, Ont.	373	4 80	1 28c.
Milton, Ont.	375	5 20	1 38c.
Owen Sound, Ont.	498	5 80	1 16c.
	Proposed.		
Toronto, Ont.	334	$6 60	1 97c.
Hamilton, Ont.	373	6 60	1 76c.
Milton, Ont.	375	6 60	1 76c.
Owen Sound, Ont.	498	7 90	1 58c.

There are in effect commodity rates on wire rods from Hamilton, Ont., as follows:—

To.	From Hamilton.		
	Miles.	Rate per gross ton.	Rate per gross ton per mile.
Brantford	25	$1 50	6 00c.
Collingwood	108	2 40	2 22c.
Gananoque	225	3 40	1 51c.
London, Ont.	76	2 20	2 89c.
Milton, Ont.	21	1 50	7 14c.
Niagara Falls	44	1 60	3 63c.
Owen Sound	160	2 60	1 62c.
St. Catharines	33	1 60	4 84c.
Sarnia	135	2 60	1 92c.
Toronto	39	1 60	4 10c.
Walkerville	185	3 10	1 67c.

The mileages are not comparable, but taking some of the rates from Hamilton and tapering the rate per ton per mile for the longer mileage in proportion to the tapering under the standard mileage tariff for 6th class—the rating applicable on wire rods—it shows the rates that have been in effect from Montreal to be on a basis very closely approximate to the commodity rates from Hamilton.

Comparison may also be made with rates in effect on wire rods, carloads, from Sydney, N.S., prior to July 1, 1927, when they were reduced under the Maritime Freight Rates Act. The rate to Toronto was $6.60 per gross ton, which is the same as the increased rate proposed from Montreal. The rate from Sydney to Owen Sound was $7.90 per gross ton, or the same as the proposed rate from Montreal.

With regard to the reference to maintenance of a parity of rates from Montreal and Baltimore, it may be stated that there is not a parity throughout in respect to import traffic from these two ports. The rates from Montreal are in some cases higher, in others lower, than from Baltimore.

From a rate standpoint, I do not consider the increased rates proposed are justified, and my recommendation is that the Board order the carriers to reinstate the rates that expired on November 30, 1927.

Ottawa, December 22, 1927.

Complaint of Canadian Shippers' Traffic Bureau against Rule contained in Tariffs of the Canadian National and Canadian Pacific Rilways, covering Stop-off and Reshipping Arrangements on Lumber, which provides that said Arrangement will not apply when the Stop-off point and final destination are both located within the same group of Terminals.

File No. 8641.47.

JUDGMENT

Chief Commissioner McKeown:

On behalf of the complainants it is contended as a matter of law, that rates under Special Freight Tariffs filed pursuant to section 331 of the Railway Act, are not legal rates if objected to, until a hearing is had and decision is given. In other words, that objection to such rates filed pursuant to subsection 3 of section 331 necessarily acts as a stay of procedure in connection with the enforcement of such rates, and the same are ineffective until the question of their propriety is

disposed of. Mr. Cook reasons that if, in the face of objections filed, the Board allows such rates to be effective, it then in effect is determining the matter and declaring the rates in question to be proper and lawful, and a subsequent hearing like the present would be an application for a reversal of the Board's previous decision, and that such procedure was never contemplated nor intended by the Act.

He contends that the more reasonable and proper construction in working out the Act is, that objections when made cast upon the railway the burden of justifying the rates complained of which, he says, cannot be done except at a hearing and, therefore, the reasonable interpretation of the statute is that there should be no change in the tariff until such matter is definitely determined.

The Railway Act provides:—

> "331. (1) Special freight tariffs shall be filed by the company with the Board, and every such tariff shall specify the date of issue thereof and the date on which it is intended to take effect.
>
> "(2) When any such special freight tariff reduces any toll previously authorized to be charged under this Act the company shall file such tariff with the Board at least three days before its effective date, and shall, for three days previous to the date on which such tariff is intended to take effect, deposit and keep on file in a convenient place, open for the inspection of the public during office hours, a copy of such tariff, at every station or office of the company where freight is received, or to which freight is to be carried thereunder, and also post up in a prominent place, at each such office or station, a notice in large type directing public attention to the place in such office, or station, where such tariff is so kept on file: Provided that the Board may by regulation or otherwise determine and prescribe any other or additional method of publication of such tariff during the period aforesaid.
>
> "(3) When any such special freight tariff advances any toll previously authorized to be charged under this Act, the company shall in like manner file and publish such tariff thirty days previously to the date on which such tariff is intended to take effect: Provided that where objection to any such tariff is filed with the Board, the burden of proof justifying the proposed advances shall be upon the company filing said tariff.
>
> "(4) When the foregoing provisions have been complied with, any such special freight tariff, unless suspended or postponed by the Board, shall take effect on the date stated therein, as the date on which it is intended to take effect, and the company shall, thereafter, until such tariff is disallowed or suspended by the Board or superseded by a new tariff, charge the toll or tolls as specified therein, and such special freight tariff shall supercede any preceding tariff or tariffs, or any portion or portions thereof, in so far as it reduces or advances the tolls therein."

It is argued that such special freight tariff does not come into effect until the objections filed with the Board, as provided in subsection 3, are disposed of. The section has never been so interpreted by the Board. This provision has been in effect for nine years, and during that period hundreds of special tariffs have been filed and always been dealt with in the way in which the one now discussed is being treated, namely that on complaint received, the Board has exercised the right to either suspend the tariff, or to allow it to go into effect as in the present case, and when so requested has set down the objections to be argued and formally disposed of, as provided in subsection 4. The concluding part of this section seems to contemplate action in harmony with the course pursued by the Board. In speaking of the effective date of such tariff it says—

"any such special freight tariff, unless suspended or postponed by the Board, shall take effect on the date stated therein as the date on which it is intended to take effect, and the company shall thereafter until such tariff is disallowed or suspended by the Board, or superseded by a new tariff, charge the toll or tolls specified therein, etc."

It is not suggested that a procedure uniform for many years can render effective a course which is in contravention of the statute, but I am not convinced that the Board has misdirected itself in this regard. I am of opinion that the uniform procedure of the Board has dealt with these tariffs in accordance with the intent and wording of the statute, and consequently this motion must be dismissed, as recommended in the report of the Chief Traffc Officer.

Assistant Chief Commissioner McLean concurred.

Ottawa, January 30, 1928.

REPORT OF CHIEF TRAFFIC OFFICER, W. E. CAMPBELL

In the tariffs of the Canadian National and Canadian Pacific Railways covering stop-off and reshipping arrangement on lumber, carloads, for dressing, resawing, kiln-drying or sorting and reshipment, there was added, effective August 2, 1926, a rule stipulating that the stop-off and reshipping arrangements in question would not apply when stop-off and destination points are both located within the same group of terminals.

On July 13, 1926, the Canadian Lumbermen's Association wrote the Board outlining their objections to the said rule and applied for an order suspending same. It was set out that this rule would materially affect the users of the arrangement provided for by these tariffs at various points, it having been the practice of the carriers, at some point at least, to apply the stop-off and reshipping arrangement covering movements that would be prohibited under the added rule.

Subsequently, a communication from the Canadian Shippers' Traffic Bureau dated July 24, 1926, was received by the Board on July 28, in which this bureau also applied for suspension of the rule referred to. The Traffic Bureau also set out its reasons for the application, which are later referred to herein.

Consideration was given by the Board to the submissions of the Canadian Lumbermen's Association and the Canadian Shippers' Traffic Bureau, as well as to the rules and provisions set out in the tariffs in question, apart from the additional rule proposed by the railways, and to which exception and objection was taken. Without quoting in detail the relevent rules, which are fully set out in the tariffs, it may be stated that the decision of the Board was that the tariffs were explicit and the wording thereof made clear that the point where the transit arrangement for kiln-drying, resawing, dressing, etc., was allowed, was a point intermediate to the destination; that lumber consigned to Toronto, for example, on arrival there, is at its destination; that it would not be open to the shipper or consignee to contend that, under the tariffs, they had the right to single out one point in Toronto terminals and have the resawing, etc., done there and then have the lumber reshipped to another point in Toronto terminals, at the same time claiming that the second Toronto terminal was the final destination. The same question might arise as to a movement within the same terminal. In other words, it was held that the provisions of the tariff did not justify breaking up a destination point in the manner suggested by complainants so that one point in the same terminal or group of terminals would be treated as intermediate to another point in the same terminal or group of terminals under the provisions of the transit arrangement; that the contract of

carriage from the initial point of shipment has ceased on arrival at the destination and any movement thereafter to another point in the same terminal or group of terminals would be subject to local switching charges. The Board further held that the fact that the Railways had apparently allowed something to be given which was not covered by the existing tariffs, was not the proper measure of what the tariffs permitted by the explicit terms thereof.

The Board has previously ruled that "Tariffs are to be construed according to their language, and the intention of the framers and the practice of the carriers do not control"—application of the Robin Hood Mills, Limited, Board's printed Judgments, Orders, Regulations and Rulings, Vol. XI, page 477. The Interstate Commerce Commission have enunciated the same principle:—

> "Tariffs are to be construed according to their language. The intention of the framers and the practice of the carriers do not control. Newton Gum Co. vs. C.B. & Q.R.R. Co., *et al*, 16 I.C.C., 341."
>
> "Tariffs are to be construed according to their language and the intention of the person who framed the tariff, or the arbitrary practice of carriers thereunder, may not be looked to as authoritative construction thereof. Pacific Coast Biscuit Co., vs. S.P. & S. Railway Co., *et al*, 20 I.C.C., 549."

The parties were informed, therefore, that the Board was of the opinion that a *prima facie* case for suspension had not been made out. Subsequently the Canadian Shippers' Traffic Bureau requested that the matter be set down for hearing by the Board and it was spoken to at sittings in Toronto on November 16, 1927. The Canadian Lumbermen's Association withdrew their objections to the rule and are not now a party to the complaint. It was stated that objections made by lumber dealers in Montreal had also been the subject of discussion with the carriers and there is no complaint from them on the record here. The Canadian Shippers' Traffic Bureau are representing in this complaint, the following firms:—

T. H. Hancock, Limited,
Robert Bury & Co., (Canada), Limited,
Shreiner & Mawson,
The Boake Manufacturing Co., Limited,
Neilson Magann Lumber Co., Limited,
all of Toronto, Ont.

On behalf of the carriers, it was stated that the incorporation of rule complained of in the tariff, was designed to stop the practice which had been allowed at some points and to restore the practice which prevailed when the stop-off and reshipping privilege was first established, which excluded from the application thereof, what really are only reswitching movements; that the privilege claimed is not accorded in the case of any other commodity so that it is not discriminatory to withdraw it in the case of lumber; that to contend that the terminal points are being discriminated against in favour of intermediate points is to overlook the essential nature of the transit privilege which was intended to relieve intermediate points from the application of burdensome combinations of rates.

It was stated that transit arrangements on lumber were established many years ago to take care of bona fide dressing of lumber at mills intermediate to point of origin of the lumber and ultimate destination, and were granted because of the impracticability of having such mills located at all points of origin of the lumber; that the arrangements have spread to include other processes such as sorting and kiln-drying which also cannot effectively be carried out at the large number of shipping points at which lumber originates. The carriers submitted that the milling of a car of lumber at a point such as Toronto and

the disposition of the same lumber within the same terminal, or at the ultimate destination to which the car was originally consigned, was never undertaken in granting the transit privilege; that such a service places an undue burden on the carriers at terminals which are taxed in taking care of the traffic handled therein.

The Canadian Shipper's Traffic Bureau, hereinafter referred to as the complainant, submitted numerous reasons in support of their application for withdrawal of the rule here in question, and a substitution therefor of the transit privilege where the stop-off and destination points are located within the same terminal or group of terminals. Careful consideration has been given to these various submissions, and those that were particularly stressed are specifically referred to herein.

Complainant stated the rule takes away the practice that was permitted by the carriers, and the privilege which was enjoyed by the shippers and consignees, and consequently provides a substantial advance in the charge for transit privilege on lumber when the stop-off point and final destination are both within the Toronto group of terminal stations.

The complainant's statement in this respect is correct. The rights of the shippers under the terms of the tariff have, as above set out, been ruled upon by the Board, and the question as to the reasonableness of said tariff provisions and the rule complained of is herein dealt with.

Complainant alleged that the rule in question results in unjust discrimination against consignees in Toronto, and undue preference in favour of shippers outside of Toronto, inasmuch as the Toronto assignee is denied the right to transit in Toronto on lumber originating at points outside of Toronto, when such lumber, after processing, is delivered to customers in Toronto. It was further alleged by complainant that there is unjust discrimination resulting from the fact that under the grouping arrangement on which the lumber rates are based, a point beyond Toronto, say Oakville, may take the same rate as Toronto, so that a shipment accorded transit arrangement in Toronto and reshipped to Oakville would take the same rate as Toronto, plus a stop-off charge, while a similar shipment processed in Toronto and subsequently shipped to another siding in Toronto would be assessed the Toronto rate plus a switching charge in excess of the one cent stop-off charge. In the one case, the shipment is at its final destination, namely, Toronto, and the subsequent switching movement is a new transaction and the combination of rates applies, said combination naturally being in excess of the through rate to a point beyond which is in the same rate group as Toronto. The transit privilege could not be denied at Toronto when the lumber is reshipped to an outside destination beyond without discriminating against Toronto as a dressing point in transit. It is necessary, therefore, to permit the transit arrangement in Toronto on lumber reshipped to points beyond to avoid discrimination between localities. I do not consider the application of the transit arrangement when the shipment goes beyond Toronto, and denial thereof when the traffic, after reaching Toronto, its final destination, stays there, constitutes unjust discrimination. All other points are treated the same as Toronto, namely, that lumber reaching its final destination is denied transit arrangement at that point. All points are accorded transit arrangement when the lumber is reshipped, under the terms of the tariff, to other points beyond the transit station. When the traffic, which is here in question, reaches Toronto it is at its final destination, and when the consignee later sells the material to a customer at the same destination and desires to make delivery by ordering a car from the railway and having it switched, such switching service or movement is in lieu of, or in the equivalent of, a cartage service, for which a reasonable switching charge is justifiable. The tariffs covering milling in transit arrangements on other traffic contain a similar rule

to that here objected to, which has never been the subject of complaint to the Board. Transit privileges were never granted except for the purpose of permitting such transit at a point intermediate to the final destination. "Transit" implies that a commodity is first carried to a milling or manufacturing point where a commercial process is performed, and the resulting product is moved on to other destinations. It may here be noted that the Interstate Commerce Commission have similarly defined the transit privilege, Empire Coke Co. vs. B. & S. R.R. Co., 31, I.C.C., 573. The Interstate Commerce Commission also state in F. W. Stock and Sons vs. Lake Shore and Michigan Southern Railway. 31 I.C.C., 153:—

> "The theory of transit is service at some point between the points of origin and destination of the traffic and in the direction of the movement of the traffic to the point of final destination. A back-haul is contrary to the purpose of transit and should generally be permitted only to meet unusual situations, and when to do so, does not result in unjust discrimination or other violations of law."

With regard to denial of the transit arrangements on shipments into Toronto and subsequently handled in switching movement, in lieu of trucking, to consignee's customer there, there is no discrimination as between various consignees in Toronto as the switching charge is applicable for all such movements from one siding to another after arrival at destination; further, there is no discrimination as between Toronto and other points as a switching charge is applicable at all points for movement from one siding to another after arrival at destination. I do not consider it would be reasonable to require the carriers to accord transit privilege to cover such movements in order to enable the consignee, by such means, to make delivery of his goods to his various customers in the same city, who are provided with or located convenient to sidings, at such a nominal charge, in lieu of a cartage service. To allow a switching movement under such circumstances would involve haulage at heavy terminal cost for distances up to sixteen or eighteen miles for a rate of merely 1 cent per 100 pounds, minimum $5 per car. Complainant stated that the cost of terminal service might be no greater in such cases than is involved when the traffic is reshipped under the transit arrangement to points outside. No definite statement or evidence on this point appears on the record, but, as already set out herein, the transit arrangement could not be denied at Toronto in the case of traffic destined to points beyond without involving discrimination as between localities.

I do not consider the rule complained of is unreasonable, and consequently recommend that the complaint be dismissed. I have not herein dealt with legal questions submitted by complainant or any issue beyond what was covered by the written submissions that were on the record and set down to be spoken to at Toronto sittings.

OTTAWA, January 6, 1928.

Complaint of Canadian Shippers' Traffic Bureau re Item 649 in Canadian National Railways Tariff C.R.C. No. E-875, and Item 1355 in Canadian Pacific Railway Tariff C.R.C. No. E-4257, covering Switching Charges on Lumber, in carloads, between points within Toronto Terminals.

(File No. 21700.37)

JUDGMENT

CHIEF COMMISSIONER MCKEOWN:

This application was made before the complaint set out in file No. 8641.47 was disposed of, in which representation was made against a rule in the tariffs

of the Canadian Pacific and Canadian National Railways covering stop-off and reshipment arrangements on lumber, to the effect that such arrangement will not apply where the stop-off point and final destination are both located within the same group of terminals, and it was thereunder further argued that it is illegal to enforce such charges before hearing and disposition of the objections filed.

Neither of these contentions was upheld in dealing with the complaint under file No. 8641.47, and there is consequently nothing to be considered in this matter except the question of the reasonableness of the switching charge. This has been thoroughly covered by report of the Chief Traffic officer, with whose conclusions I am fully in accord. No legal question presents itself other than that which has been previously dealt with under file No. 8641.47 and therein dismissed.

Assistant Chief Commissioner McLean concurred.

Ottawa, January 30, 1928.

REPORT OF CHIEF TRAFFIC OFFICER, W. E. CAMPBELL

In their tariffs containing charges for local switching services at various stations, the Canadian National and Canadian Pacific Railways publish switching rates on lumber, carloads, minimum weight 45,000 pounds, between points in Toronto Terminals. Toronto Terminals are divided into groupings as described in the tariffs, and the switching charges in question vary from 2½ cents to 5 cents per 100 pounds according to the movement involved between the various groups comprising the terminal. These rates were established by the Canadian National Railways on August 4, 1926, and by the Canadian Pacific Railway on October 15, 1926. Prior to the dates named, the local switching rates applicable under the tariffs for the movement of lumber between points in Toronto Terminals varied from 4½ cents to 7½ cents, so that the items now in effect represent a substantial reduction from the former local switching rates. Complainant alleged that little or no lumber traffic had moved under the former rates.

The item in the Canadian Pacific Railway tariff stipulates that these lower rates are applicable only on shipments on which that railway has received a road haul. The item in the Canadian National Railways tariff is not so restricted at present, but the representative of that railway stated it was their intention to amend the tariff, making a similar restriction at Toronto, and also with respect to a corresponding item covering local switching on lumber between points in the Montreal Terminals. It was stated that when these lower switching rates on lumber were published, it was the intention, at both Toronto and Montreal, to stipulate that they only applied on traffic on which the company had received a road haul; that on traffic on which a road haul had not been received, the company was, it was contended, reasonably entitled to the normal local switching rates that apply for movements that are not otherwise specifically provided for, and as already above set out.

The complainant stated it would not object to the current switching rates on lumber for team track deliveries, but would like said rates reduced for private siding deliveries, also in the case of switching service involving two line movement, *i.e.* a car originating at a point in Toronto Terminals on the Canadian National Railways and switched to the Canadian Pacific Railwy for delivery at some point in the Toronto Terminals on their line, or vice versa. Objection was also taken to the restriction of these switching rates to shipments on which the Company had received a road haul.

The complainant alleged that the current switching rates on lumber are too high, and, in support of this, filed an exhibit making comparisons with switching rates on other commodities for various movements within Toronto

Terminals. Some of the comparisons do not show a higher switching charge per car than in the case of lumber, when the stipulated minimum weight is taken into consideration, but in other cases there are switching rates cited which are lower than applicable on lumber. A mere comparison of switching rates on lumber and for specified movements in the case of dressed meats, packing house products, live stock, batteries, etc., unsupported by a showing of the conditions under which the lower rates are maintained, does not furnish any evidence that can be accepted as proof that the switching rates on lumber are unreasonable *per se*. In the case of these local switching movements, in many instances, each one of them has its individual characteristics, and further, the nature of the switching service varies as well as the cost thereof. Representative of the carriers stated that some of the switching rates referred to might be considered analogous to a reforwarding rate as the carrier obtained two or three hauls, and consequently there were special conditions attaching to the lower switching rates with which comparison was made. There is no question of competition involved because the commodities provided with the lower switching rates do not in any way compete with lumber. However, the record is devoid of any definite or detailed evidence as to the conditions surrounding the various switching movements that were compared, or as to the cost of the switching service. The switching rates in question were not prescribed by the Board so that it has no data from any previous record, and nothing was adduced on the record in this case, that would enable the formation of an opinion as to the reasonableness *per se* of the lower switching rates to which complainant alluded. Some of them are lower than any rate that has ever been prescribed by the Board.

There is nothing on the record indicating that the reduced switching rates on lumber are in any way disproportionate to the cost to the railway for the service performed thereunder. The switching service involves the movement through congested terminals with a heavy operating expense, and it has always been maintained by the carriers, and it has not been demonstrated to the contrary, that the cost of such movements within terminals is as great—if not greater—as for road haul movements of similar mileage. The rates here in question are appreciably lower than the rates for road haul movements of similar mileage.

I do not consider a case has been made out that would warrant the Board in directing a reduction in the switching rates published in the items specifically covered by this complaint, namely, item 649 in Canadian National Railways Tariff C.R.C. No. E-875 and item 1355 in Canadian Pacific Railway Tariff C.R.C. No. E-4257, covering switching charges on lumber, in carloads, between points within Toronto Terminals, and recommend, therefore, that the complaint be dismissed.

Ottawa, January 10, 1928.

Application of the City of St. Thomas, Ont., for an Order relieving the city from the payment of any portion of the cost of providing watchmen or protection at the crossing of the London and Port Stanley Railway on Talbot street, St. Thomas, Ontario.

File 25542.37

JUDGMENTT

Commissioner Lawrence:

This matter was heard in St. Thomas on December 15, 1927. Mr. A. A. Ingram appeared for the city of St. Thomas, and Mr. T. G. Meredith, K.C., and Mr. J. E. Richards appeared for the London and Port Stanley Railway Company.

Order No. 29860, dated July 15, 1920, issued upon the application of the Corporation of the City of St. Thomas for the purpose of allowing the said corporation to operate one-man street cars for a period of three months. The order provided that the cost of protection at Talbot street crossing should be divided equally between the Corporation of the City of St. Thomas and the London and Port Stanley Railway Company.

Upon the application of the city of St. Thomas, Order No. 31085, dated June 8, 1921, issued, granting leave, pending further order, to operate the "P-A-Y-E" one-man operated cars of the St. Thomas Street Railway over the London and Port Stanley Railway on Talbot street, in the said city of St. Thomas.

At the hearing in St. Thomas, December 15, 1927, Mr. Ingram stated, at p. 12853 of the evidence, Vol. 524:—

> "At the time this Order (No. 29860) went into effect, my instructions are that the total cost of the crossing protection was paid by the London and Port Stanley Commission; and I am arguing that as the order in question was made purely for the purpose of protecting the operation of one-man cars over this crossing, and that was the only reason why the city at that time was charged with any portion of the cost.
>
> "Commissioner Lawrence: The crossing was protected previous to that last order, during the same hours as at present, from 5 a.m. until 12 midnight, and the railway company paid the full cost.
>
> "Mr. Ingram: Those are my instructions. The railway company paid the total cost at that time. Then the city ceased the operation of its one-man cars, over this crossing on the 15th February, 1926, and our contention is that since that time the applicants should be relieved from any payment of any further cost in connection with it. I am submitting that the London and Port Stanley Railway Company should be placed in the position of showing that the city should pay part of that cost since February 5, 1926."

At p. 12857—

> "Mr. Meredith: Mr. Chairman and Mr. Commissioner, as far as I understand, and I am speaking just from instructions and not from having examined the files, there was no order previous to the order my friend speaks of, with regard to Talbot street. Perhaps you may remember, or you may not, that at one time the railway was run by the Pere Marquette and that it was only after their operations ceased that the Port Stanley came into control as they now are. I do not know why any consent was given to the order, if one were given, because it seems to me to be entirely out of the usual practice. My understanding of the practice is that whether there be street cars of the municipality running over a steam road crossing or otherwise, bearing in mind that this road the London and Port Stanley—which was constructed in 1852, before St. Thomas was practically known, and bearing in mind the tremendous growth of St. Thomas since that time, it is not the railway, the railway is paramount, they have the first right. Any necessity for protection at any crossing in the city of St. Thomas over the London and Port Stanley Railway, has been caused by reason of the increase in the population, and the change in the method of traffic from horse and wagon, to a considerable extent to the motors of to-day.
>
> "Commissioner Lawrence: Is it your contention, Mr. Meredith, that the railway is senior to Talbot street?
>
> "Mr. Meredith: Oh yes, 1852, Mr. Commissioner.

"Commissioner LAWRENCE: I know, but you have no evidence in regard to when Talbot street was surveyed.

"Mr. MEREDITH: No, I have not, but this is a matter that as I said when I spoke in the first place, I am speaking from instructions quite recently received."

Again at pp. 12861-12862 it is stated:—

"The ASSISTANT CHIEF: I am not positive that we have the benefit of your position on that on file. You say that the city council takes the position that its application was for the purpose of operating one-man street cars, which have since been discontinued; and further that the city being the senior organization should not be held responsible for any part of the watchmen and protection of this railway crossing. It has been pointed out by Mr. Meredith that in cases where it is not well established that the street is senior, still we have made in various cases the municipality participate in the cost. So that whatever be the facts as to the seniority of Talbot street, that is not in itself an answer to the proposition that there should be a division of cost.

"Mr. INGRAM: No, I quite appreciate that Mr. Chairman, but my submission was that in 1921 they had undertaken that cost and they must be deemed, up to that point at any rate, to have considered the conditions such that they were largely responsible for them and should bear the cost. That since that time there being no change in the conditions, or if there have been, the onus is on my learned friend to establish that to the satisfaction of the Board before they ask the Board to shift the incidence of the cost of crossing protection. Then with reference to discontinuing this protection after ten p.m., as recommended by the engineer of the Board. I have no instructions from my clients on that point and would hesitate to accede to the withdrawal of any protection from 10 p.m. to 12 p.m. So that on that point I would like to have the matter reserved until I could get instructions, before any order is made to change that.

"The ASSISTANT CHIEF: How soon could you advise us?

"Mr. INGRAM: Within two weeks.

"The ASSISTANT CHIEF: As regards the period, Mr. Ingram, from 12 p.m. to 6 a.m. I take it that the city is not urging that?

"Mr. INGRAM: No I am not urging that at all."

In regard to the discontinuing of the protection after ten p.m., Mr. Ingram stated, as will be noted from the above citation, that we would like to have the matter reserved until he would get instructions, and before the close of the hearing he handed in the following communication from the mayor of the city of St. Thomas:—

"December 15, 1927.

"Mr. A. A. INGRAM,
St. Thomas, Ont.

"DEAR SIR,

Re Crossing Protection at Talbot Street

I beg to advise that the city is of the opinion that this crossing should be protected between the hours in question, that is, 10 p.m. to 12 midnight.

"Yours truly,

"(Sgd.) J. HANDFORD,
"*Mayor.*"

Under date of December 28, 1927, the Board received the following communication from Mr. J. E. Richards, Manager and Treasurer of the London and Port Stanley Railway:—

> "Answering your favour of December 20 which refers to the Talbot street crossing protection at St. Thomas, would state that if the Board considers it advisable to continue the watchman until 12 o'clock we are quite agreeable to this arrangement and could do the work with two men working nine hours per day, each at a cost of $90 per month.
>
> "If you will refer to the statements furnished the Board as to the railway traffic across Talbot street, from 10 p.m. to 6 a.m., you will find that about half of those movements take place between the hours of 10 and 12 o'clock. Therefore, the movements after 12 o'clock will be very limited and could be taken care of quite easily."

I take it that Mr. Meredith was not seriously arguing that the London and Port Stanley Railway was senior to Talbot street, and I am of the opinion, from what is on file, and statements made at the hearing in St. Thomas, that Talbot street is senior to the railway. As there has been considerable change in the traffic on Talbot street, and obligations placed upon the railway by speed restrictions and flag protection by train crew, since the time the former order was issued, I think that the city of St. Thomas should be required to contribute a small percentage towards the cost of this protection, and would, therefore, suggest that order issue requiring protection by flagman, as at present, at this crossing from 6 a.m. until 12 o'clock midnight, 70 per cent of the cost of such protection to be paid by the London and Port Stanley Railway Company, and 30 per cent by the city of St. Thomas. All movements on the railway to be limited to six miles per hour; and all freight and switching movements, between the hours of 12 o'clock midnight and 6 a.m., to be protected by flagging by one of the train crew.

The above ratio of distribution of cost to date from February 15, 1926, the time when the St. Thomas Street Railway ceased operation.
January 31, 1928.

Assistant Chief Commissioner McLean concurred.

Application of the Rural Municipality of South Qu'Appelle No. 157 for protection at alleged dangerous crossing at McLean, Sask. C.P.R.,—Case 2109

JUDGMENT

McLean, Assistant Chief Commissioner:

There are six tracks which cross the highway at McLean. The north track is a wood track which is said to be seldom used; the second track is the elevator track; tracks 3 and 4 are main line tracks; and tracks 5 and 6 are sidings. There are advance warning signs in place on each side of the crossing. All freight trains passing McLean stop. It is an inspection point for the inspection of trains. On account of the grade, McLean is a high point and freight trains, of necessity, have to go more or less slowly at that point. There is also the fact that it is necessary to run two engines to get up over the hill. Passenger trains Nos. 1 and 2 stop at McLean; Nos. 3 and 4 do not stop, nor do trains Nos. 7 and 8. These latter trains run in the summer season only. As to tracks Nos. 5 and 6 above referred to, any cars left on both or either of these spurs are, under regulations, kept 300 feet away from the boundary of the highway.

The application was launched by the rural municipality of South Qu'Appelle, No. 157, Sask.

In 1920, the highway was made a part of the main highway which the province was taking over, maintaining and putting in form. It is admitted that there has been increase of traffic over this main road. The extent to which this has increased is not definitely set out.

At the hearing, there was discussion in regard to the construction of a subway. This would involve a diversion some 1,200 feet in length. To be more exact, the point where the subway is proposed to be located is 1,144 feet west of the boundary of section 13-18-16-2. This, in addition to the construction of the diversion, involves the maintenance of a diverted road 2,288 feet long.

The question of drainage was adverted to and the province undertook to have a study made in regard to the drainage. The report made on behalf of the Department of Highways of the province is that its engineers are convinced that a subway at this point cannot be satisfactorily drained, and would be impassable for a long period in the spring of the year and after very heavy rains.

The title of the road is and always has been in the province. When a road is made a Provincial highway in the province of Saskatchewan, the total burden of maintenance is on the province. It was submitted by the province that under existing conditions the installation of bells and wigwags on each of the running tracks would be a satisfactory method of taking care of the situation at present, the other tracks being protected by the train crew.

Considerable discussion took place in regard to the question of seniority. It does not appear to be necessary to go into this phase of the matter. It is admitted that there was a highway crossing at this point prior to 1909. The Board in dealing with matters of protection at highway crossings has held itself free to deal with division of cost, even where a highway came into existence after the railway, and where conditions of traffic justify protection.

As above referred to, the diversion, if the roadway is built along the railway on both sides, would be 2,288 feet; but, as is pointed out by the department in a written submission, this location would involve a number of bad turns, and it is altogether likely that if a subway were erected it would be found necessary to build 3,000 feet of highway and purchase the right of way thereafter.

On the data submitted by the department, an estimate of the cost of the diversion for the proposed subway, over and above what would be on the present line of crossing, would be approximately one-quarter of a mile at $3,000 per mile, or $750. Maintenance costs would run about $25 per year. This does not include the cost of the necessary lands for the right of way for the diversion.

The Board in dealing with an *application of the Canadian National Railways for an order directing that the wigwag signal installed at the crossing of the Kingston Road, near West Hill, Township of Scarboro, etc., file 9437.1202—Board's Judgments and Orders, Vol. XVI, p. 182, pointed out, at p. 184,* that while the Board had no power to order the Department of Highways for the province of Ontario to contribute to the proposed rearrangement, yet "we have the result that by improving the roads of that department more and more traffic is carried, and we have to look to you as really the guardian of that traffic. Aside from any question of jurisdiction, we expect you to implement your guardianship by the assistance of the question of protection; that is looking at it from the broad standpoint." The matter was allowed to stand for one month from the date of the judgment (November 10, 1926) for consideration by the Department of Highways of consent to contribution to the division of cost. Subsequently under date of February 1, 1927, the department consented to a contribution of one-third of the cost of installation as well as of maintenance; and Order No. 38742, of February 5, 1927, issued accordingly.

Leaving aside any question of consideration of contribution to the cost of the subway itself, the situation is that the capital cost of the province of the diversion necessary to make use of the proposed subway would be $750; then, in addition, there is the sum, not stated, to include the cost of the necessary land for the right of way for the diversion; and the maintenance charges would be $25 per year.

I am of opinion that a reasonable method of protection would be to have bells and wigwags protecting the running tracks; on the other traks, protection to be given by the train crew. It appears to me that a reasonable division of cost would be 40 per cent of the cost of installation from the Grade Crossing Fund; the balance of cost of installation to be divided equally between the railway company and the province; the cost of maintenance to be on the railway.

In view of what has been set out, the matter may stand for six weeks for the Department of Highways of the province to signify whether it will contribute to the cost of installation on the basis above set out.

February 2, 1928.

Commissioners Lawrence and Oliver concurred.

Application of the Council of the Municipal District of Lamerton, No. 398, for the construction of a subway at the crossing of the Canadian National Railways (Calgary-Tofield Branch), on the S.W. ¼ of Section 14-39-23, W. 4 M.

File 10821.39

JUDGMENT

McLean, Assistant Chief Commissioner:

This matter was set down for hearing at Calgary (Evid. Vol. 521, p. 11300). While the application was made for a subway, the traffic conditions do not, I think, justify the direction for installation of a subway at the point in question.

As pointed out on p. 11302, in the statement of Colonel Parks, the parties agreed to a relocation of the roadway, and improving the crossing by cutting away the bank southwest of the crossing. This is as set out in Mr. Simmons' memo. which is agreed in by Commissioner Lawrence. The work proposed will cost approximately $650.

At the hearing, pp. 11304-11306, counsel for the railway took the position that the railway was senior and that the expense should be upon the municipality.

Under date of March 15, 1911, application was made to the Board by the Grand Trunk Pacific Railway Company, asking for sanction of the road diversion at the point in question. The proposed diversion is set out on the plan attached to the application. At the hearing, p. 11805, I pointed out that according to the Board's records the highway was senior to the railway. Mr. Pettit, one of the applicants, said that his recollection was that there was an old trail existing before the railway went through. Mr. F. W. White stated the road was there before the construction of the railway; that the road allowance was not opened up; and that the applicants were using the old trail which went through this property at the point where it was being asked a subway should be built.

My understanding is as I set out at p. 11306 in the following words:—

> "Anyway, at this particular point, there was a trail and the diversion in 1911 was made to change the route made by the trail;"

and it was stated that it was on account of the municipality not being able to open up the road that the trail had been used.

The application made in 1911 and plan attached thereto make clear that the diversion was in respect of the road allowance, and that the municipality in respect of rights of crossing on the road allowance was senior. The railway was constructed subsequent to March, 1911. By section 260 of the Railway Act, the cost of construction of the protection is on the railway.

February 2, 1928.

Commissioners Lawrence and Oliver concurred.

Application of Northern Electric Company, Limited, Montreal, Quebec, for a ruling of the Board as to the charges properly applicable on certain shipments of switchboards consigned to the Northern Electric Company, c/o Alberta Government Telephones, Edmonton and Lethbridge, Alta.

File No. 33365.74

INFORMAL RULING OF THE BOARD

Section 3 (*a*) of rule 8 of Canadian Freight Classification No. 17 reads as follows:—

> "Unless otherwise provided in separate description of articles, a shipment containing articles, of dimensions other than those specified in section 3 (*b*) of this rule, the dimensions of which do not permit loading through the centre side doorway 6 feet wide by 7 feet 6 inches high, without the use of end door or window, in a closed car not more than 36 feet in length by 8 feet 6 inches wide and 8 feet high, shall be charged at actual weight and authorized rating, subject to a minimum charge of 4,000 pounds at the first-class rate for the entire shipment."

Applicant sets out that in respect of certain shipments the charges made are considered to be excessive. The facts as set out are as follows:—

> "1 box—switchboard weighing 620 pounds forwarded September 2, 1926, to the Northern Electric Company, c/o Alberta Government Telephones, Edmonton, Alta.
>
> "1 box—switchboard weighing 865 pounds.
>
> "1 box—telephone parts, weighing 19 pounds, forwarded September 24, 1926, to the Alberta Government Telephones, Lethbridge, Alta.
>
> "1 box—switchboard weighing 460 pounds forwarded September 25, 1926, to the Northern Electric Company, c/o Alberta Government Telephones, Lethbridge, Alta.
>
> "Charges paid by us on these shipments were on the basis of first class rate, in accordance with item No. 58, page No. 106, Canadian Freight Classification No. 17, but the railway company have in addition charged on the basis of 4,000 pounds for each of the switchboards above referred to, claiming that they are entitled to the collection of charges on this basis, in accordance with provisions of section No. 3, rule No. 8, Canadian Freight Classification No. 17.
>
> "At the time these shipments were forwarded, it was considered that the preferable method of shipping them would be to have the boxes containing the switchboards placed in an upright position in the cars. Packages were, therefore, labelled accordingly, and in order to comply with

our wishes in this respect the railway company found it necessary to supply cars higher than the average box car. Having supplied such cars they billed us and collected charges on the basis above referred to.

"It is our contention that the provisions of section 3 of rule No. 8 do not apply in the present instance. The packages were not of dimensions to demand the use of an end door or of a window, and could have been quite easily loaded through the centre side doorway, 6 feet wide by 7 feet 6 inches high, of an ordinary car, but could not have been stood upright in the car, the inside height of which is only 8 feet."

Applicants considered it necessary to have the boxes containing the switchboards placed in an upright position in the cars. The packages were loaded accordingly. The railway company, in order to comply with the requirements of the applicant, had to use box cars higher than the average box cars.

Applicants contend that the packages could have been quite easily loaded through the centre side doorway, the door space in the ordinary car being 6 feet wide and 7 feet 6 inches in height. It is admitted, however, that the packages in question could not have stood upright in the ordinary car, the inside height of which is only 8 feet.

Reference is made to "the use of end door or window" by the extract from the classification above cited does not appear to be material. "Loaded" must be taken as meaning not only getting the article into the car, but also if some special position or location is necessary in order to handle the article through to destination, putting it in such position or location in the car. It is admitted that to effect the loading necessary in connection with moving the article to destination it was necessary to have a larger car. Such loading could not be effected in a closed car of the dimensions set out in the rule. The charge, as assessed, is not in contravention of the rule.

Ottawa, January 25, 1928.

ORDER No. 40246

In the matter of the application of the Sydney and Louisburg Railway Company, hereinafter called the "Applicant Company," under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44), for approval of its Standard Freight Tariff C.R.C. No. 23, on file with the board under file No. 34822·8.

Saturday, the 21st day of January, A.D. 1928.

S. J. McLean, *Assistant Chief Commissioner.*

Thomas Vien, K.C., *Deputy Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's said Standard Freight Tariff C.R.C. No. 23, on file with the Board under file No. 34822.8, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of *The Canada Gazette.*

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 40254

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44); and the Order of the Board No. 39783, dated October 26, 1927.

File No. 34822.12

MONDAY, the 23rd day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the proportionate tolls published to Swastika, Ont., in Supplement No. 3 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal proportionate tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. E-4324, to Swastika, Ont., are as follows:—

From	*Classes in cents per 100 pounds*									
	1	2	3	4	5	6	7	8	9	10
Fredericton, N.B.	156									
Grand Falls, N.B. Plaster Rock, N.B. Saint John, N.B. St. Leonards, N.B. South Devon, N.B. Westfield Beach, N.B West St. John N.B. Woodstock, N.B.	156½	137½	116¾	98½	78	75½	57½	58¼	—	57¾
Baker Brook, N.B. Caron Brook, N.B. Clairs, N.B. Edmundston, N.B. Green River, N.B. Quisibis, N.B. St. Basil. St. Hilaire, N.B. Sigas, N.B. Theriault, N.B.	160½	139¼	119¾	98½	79½	72	57½	58¼	—	57¾

3. And the Board furthers orders that the said Order No. 39783, dated October 26, 1927, be, and it is hereby, amended by striking out the words and figures, "Supplement 3 to E—4324" and " E—3219, E—3221, E—3224, E—3990," under columns 1 and 2, respectively, of the schedule.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40263

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.25

Monday, the 23rd day of January, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*

S. J. McLean, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published from Quebec Central Railway stations named, to points in New Brunswick, in Supplement No. 4 to Tariff C.R.C. No. 974, filed by the Quebec Central Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 4 to Tariff C.R.C. No. 974, are those published in Quebec Central Railway Tariff C.R.C. No. 512.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40253

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14

Tuesday, the 24th day of January, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*

S. J. McLean, *Asst. Chief Commissioner.*

The Board orders:

1. That the proportionate tolls to Swastika, Ont., published from Riviere du Loup, P.Q., in Supplement No. 3 to Tariff C.R.C. No. 615, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal proportionate tolls which, but for the said Act, would have been effective from Riviere du Loup, P.Q., to Swastika, Ont., in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. 615, approved herein, are as follows:—

Classes in cents per 100 pounds.

1	2	3	4	5	6	7	8	9	10
$138\frac{1}{2}$	$121\frac{3}{4}$	$103\frac{3}{4}$	86	$69\frac{1}{2}$	$66\frac{1}{2}$	$50\frac{1}{2}$	$51\frac{3}{4}$	—	$50\frac{3}{4}$

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40255

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

TUESDAY, the 24th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 2 to Tariff C.R.C. No. E-4316, to Elk Lake and Silver Centre, Ont., filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 2 to Tariff C.R.C. No. E-4316, to Elk Lake and Silver Centre, Ont., was that published in Canadian Pacific Railway Tariff C.R.C. No. E-3832.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40256

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

TUESDAY, the 24th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the proportionate tolls published to Swastika, Ont., in Supplement No. 3 to tariff C.R.C. No. 825, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. 825, to Swastika, Ont., are as follows:—

From	Classes in cents per 100 pounds									
	1	2	3	4	5	6	7	8	9	10
Halifax, N.S. . . .	160½	139¼	119¾	100½	79½	72	57½	58¼	—	57¾
Middletown, N.S. .	192	163¼	126¾	95	79½	70½	73½	69¼	—	70¼
Bridgetown, N.S. } . .	199	173¼	148¼	125½	100	97	72½	73¼	—	71¾
Yarmouth, N.S. }										

H. A. McKEOWN.
Chief Commissioner.

ORDER No. 40257

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

TUESDAY, the 24th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item No. 415A of Supplement No. 3 to Tariff C.R.C. No. 822, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby declares that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item No. 415A of Supplement No. 3 to Tariff C.R.C. No. 822, approved herein, are those contained in J. C. Ransom's Tariff C.R.C. No. 256.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40261

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.16

TUESDAY, the 24th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the proportionate tolls published to Swastika, Ont., in Supplement No. 3 to Tariff C.R.C. No. 133, filed by the New Brunswick Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal proportionate tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. 133, to Swastika, Ont., approved herein, are as follows:—

From	Classes in cents per 100 pounds									
	1	2	3	4	5	6	7	8	9	10
Chipman, N.B. Norton, N.B.	156½	137½	116¾	98½	78	75½	57½	58¼	—	57¾

H. A. McKEOWN.
Chief Commissioner.

ORDER No. 40262

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.15

Tuesday, the 24th day of January, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*

S. J. McLean, *Asst. Chief Commissioner.*

The Board orders:

1. That the proportionate tolls published to Swastika, Ont., in Supplement No. 3 to Tariff C.R.C. No. 168, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal proportionate tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 3 to Tariff C.R.C. No. 168, to Swastika, Ont., are as follows:—

	Classes in cents per 100 pounds.									
From	1	2	3	4	5	6	7	8	9	10
Margsville, N.B...	156½	137½	116¾	98½	78	75½	57½	58¼	—	57¾

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40308

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

Tuesday, the 25th day of January, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*

S. J. McLean, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls from stations in New Brunswick to points on the Quebec Central Railway, published in Supplement No. 4 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 4 to Tariff C.R.C. No. E-4324, approved herein, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-3224.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40269

In the matter of the application of The Express Traffic Association of Canada for approval of Supplement "D" to Express Classification for Canada No. 7, on file with the Board under file No. 4397.90

THURSDAY, the 26th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said proposed Supplement "D" to Express Classification for Canada No. 7, on file with the Board under file No. 4397.90, be, and it is hereby, approved; the said Supplement to be published as Supplement No. 2 to the Express Classification for Canada No. 7.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40291

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

MONDAY, the 30th day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls on fertilizer and fertilizer material from West St. John, New Brunswick, in item No. 275, and on lumbermen's supplies, published in item No. 615 of Supplement No. 6 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said items Nos. 275 and 615 of Supplement No. 6 to Tariff C.R.C. No. E-4312, approved herein, are as follows: On fertilizer and fertilizer material, from West St. John, New Brunswick, in cents per 100 pounds.

To Arundale, New Brunswick	14½
Belleisle, New Brunswick	14½
Cody, New Brunswick	15
Cumberland Bay, New Brunswick	15½
Norton, New Brunswick	10
Scotch Settlement, New Brunswick	14½
Thorne, New Brunswick	14½
Washdemoak, New Brunswick	15
Young's Cove Road, New Brunswick	15

on lumbermen's supplies, the 6th class rates in effect prior to July 1, 1927.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40288

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44);

File No. 34822.15

TUESDAY, the 31st day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls on lumbermen's supplies, published in item No. 277 of Supplement No. 4 to Tariff C.R.C. No. 157, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item No. 277 of Supplement No. 4 to Tariff C.R.C. No. 157, approved herein, are the 6th class rates in effect prior to July 1, 1927.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40290

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44);

File No. 34822.16

TUESDAY, the 31st day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published on lumbermen's supplies, in item No. 277 of Supplement No. 4 to Tariff C.R.C. No. 121, filed by the New Brunswick Coal and Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item No. 277 of Supplement No. 4 to Tariff C.R.C. No. 121, approved herein, are the 6th class rates in effect prior to July 1, 1927.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40292

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

TUESDAY, the 31st day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published on lumbermen's supplies in item No. 615 of Supplement No. 6 to Tariff C.R.C. No. 820, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2 And the Board hereby certifies that the normal tolls which, but for the said Act, would have been in effect in lieu of those published in the said item No. 615 of Supplement No. 6 to Tariff C.R.C. No. 820, approved herein, are the 6th class rates in effect prior to July 1, 1927.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40293

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

TUESDAY, the 31st day of January, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll on bones, from Halifax and Aylesford to Windsor, Nova Scotia, published in item No. 36 of Supplement No. 5 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item No. 36 of Supplement No. 5 to Tariff C.R.C. No. 813, approved herein, is 22 cents per 100 pounds.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XVII Ottawa, March 1, 1928 No. 26

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Dominion Millers' Association, Toronto, for an Order directing the railway companies to issue tariffs in accordance with the Board's Orders Nos. 586 and 641, based on the reshipping rate from Chicago.

and

Complaint of the Dominion Millers' Association, Toronto, that the present tariffs of the railway companies on the product of ex-lake grain milled in transit and exported via New York discriminate in favour of Chicago, Detroit, Toledo, Buffalo, etc.

File No. 666.1

REPORT OF CHIEF TRAFFIC OFFICER, W. E. CAMPBELL

THIS REPORT IS ISSUING AS THE JUDGMENT OF THE BOARD IN THIS MATTER

(All rates herein are stated in cents per one hundred pounds, and the term "Bay ports", as used herein, covers Port Colborne, Port McNicoll, Tiffin, Midland, Goderich, Collingwood, and Depot Harbour.)

At a sittings of the Board held in Ottawa September 18, 1923, there was heard the complaint of the Dominion Millers' Association with regard to export rates on flour from Bay ports and interior Ontario milling points to New York. There was involved the question as to whether the rates in force were in compliance with the provisions of the Board's orders dated July 25 and September 4, 1905, and numbered 586 and 641, respectively. In a judgment dated April 19, 1924, the Board held that its orders of 1905 had not been violated in respect of this traffic, and the complaint was dismissed by Order No. 35041, dated May 8, 1924. A perusal of that judgment is of assistance, as it deals with some of the submissions again placed before the Board in the present complaint. (See Volume XIV, p. 52, Board's printed Judgments and Orders).

By the Board's General Order No. 400 a reduction was made effective May 26, 1924, in the rates on ex-lake grain when milled, bagged, cleaned or clipped at Bay ports or in transit and reshipped for export to both Canadian and United States seaboard ports. (Volume XIV, p. 74, Board's printed Orders and Judgments.)

On January 10, 1925, Mr. C. B. Watts, secretary of the Dominion Millers' Association, asked that the full Board hear his complaint which was set out in his letter as follows:—

> "On complaint of the Dominion Millers' Association in 1905 that the rates from Ontario points to the seaboard were unfair and excessive as compared with the rates from Chicago, the Board issued Orders No. 586 on 25/7/05, and on the request of the railroads No. 641 in September, 1905, that the rates from Ontario points are to be based on the percentages fixed by the Board of the rate in effect from Chicago to the Seaboard for export.
>
> "We claim that the rates in effect as shown in Canadian Pacific Railway Tariff C.R.C. E-4119, Section 3, Supplement 4, page 3, from Goderich and Port McNicoll, and Supplement 25, Canadian National Railways Tariff C.R.C. E-447, section 5, page 10, from Midland, Port Colborne, etc., are not the percentages called for by the above orders, based on the reshipping tariff from Chicago which is in effect, and on which the traffic is carried.
>
> "Also that the rate from Detroit, which is a 78 per cent point the same as Goderich, is only 18½ cents while the rate from Goderich is 21 cents to New York, Philadelphia and Baltimore for export, and that the rate from Port Colborne is 18½ cents although it is a 70 per cent point and the rate should only be 16½ cents as against 18½ cents from Detroit, Toledo, etc.
>
> "We ask that an order of the Board be issued instructing the railroads to issue tariffs in accordance with orders No. 586 and No. 641, based on the reshipping rate from Chicago of 22½ cents on grain and 23½ cents on flour, being the rates now in effect and on which the traffic is carried, instead of on the so-called local export rates, which are really only paper rates.
>
> "We apply to the Board, under section 314 of the Railway Act, to order the railroads to amend their tariffs, also on the ground that their present rates discriminate in favour of Chicago, Detroit, Toledo, Buffalo, etc., in granting a lower rate on the product of Canadian wheat ground at those points than when ground at Port Colborne, Goderich, etc., as those discriminatory rates are not only prejudicial to the interests of the Canadian milling industry and to Canada, but to the revenues of the railroads themselves."

This complaint was listed for hearing at Ottawa on March 17, 1925, but by agreement between the parties the hearing was postponed until April 21. On April 15 the Maple Leaf Milling Company, Limited, of Toronto, with mills at various points, asked to be permitted to intervene and were allowed to do so. Similar permission was given to the Western Canada Flour Mills Company, Limited, whose head office is at Toronto, in response to their letter of April 17. At the hearing on April 21 counsel for the Maple Leaf Milling Company stated they desired to be heard regarding the rate from Port Colborne to New York quite independently of the complaint of the Dominion Millers' Association, but were not prepared to go on with their case at that time. The submissions of the Dominion Millers' Association and the railway companies were heard, and it was arranged that the Maple Leaf Milling Company should be heard at a later date. Obviously, the case could not be closed and a decision reached prior to hearing the submissions of the Maple Leaf Milling Company who, under date of September 9, asked that a date be set for a hearing, and the matter was listed for the Ottawa sittings on September 29, 1925. At this sittings Mr. George Lynch-Staunton, K.C., represented the Ontario Department of Agriculture as interveners, and the Canadian National Millers' Association

intervened in support of the application of the Maple Leaf Milling Company. Written briefs were also filed with the Board subsequent to this hearing by various parties in interest.

Thereafter, the Board had under consideration questions involved in the General Freight Rates Investigation and this matter was held in abeyance to be dealt with at the same time, or subsequently.

A great many features were referred to in the numerous written submissions and at these hearings, and while the various briefs and official notes of evidence have all been gone over and carefully considered it would be impracticable within the confines of report of reasonable length to fully analyze and comment upon all of the points alluded to, nor is such a course necessary.

Mr. Watts stated he had some new evidence which, if submitted to the Board at the previous hearing in September, 1923, he felt might have resulted in a different judgment being rendered by the Board. His contention, briefly summarized, was that his previous complaint had been dismissed on the ground that the tariff naming reshipping rates from Chicago, to which he asked that the Board's orders of 1905 be applied, was not in existence when the orders were made. Subsequently he had obtained additional information concerning these rates to the effect that the reshipping rate established from Chicago to New York in 1907 was the same as the local rate existing at the time, the latter being increased 4 cents contemporaneously with the establishment of the reshipping rate. Mr. Watts stated:—

> "From the above, it would appear that it was a piece of clever manipulation on the part of the railroad authorities by which they were able to continue the rate of 14 cents on the shipments from Chicago but at the same time increased the rates that were effective by the order of the Board in 1905 in favour of Ontario millers."

In other words, he alleged that the orders of 1905 had prescribed rates from Ontario points based on the local export rate from Chicago; therefore, as the reshipping rate subsequently established from Chicago was the same as the local rate and the traffic substantially all moved east from Chicago on the reshipping rate, the Board should now direct that the rates on ex-lake grain from bay ports, milled in transit at Ontario mills and the product exported via New York, be based on the percentages prescribed in the Board's orders of 1905 of the reshipping rate from Chicago as now in effect, or as changed from time to time in the future. Mr. Watts stated at p. 496.

> ". . . as I have stated in my case here, my contention is that really the Board's order should be based on the reshipping rate which was the original rate in effect when the order was given. Calling it by another name does not alter the fact that that was the rate in effect."

This contention was urged and repeated by Mr. Watts a number of times. (See notes of evidence, Vol. 440, Part 2, pp. 487-489, 496, 506, 509, and 518.)

If the rates now under attack had been prescribed by the Board based on the local export rate from Chicago, and a change had been made, such as described, under which the local rate had been converted into a so-called reshipping rate and continued at the same figure, the local rate as such being materially increased, the contention that the reshipping rate should now be taken as the measure of the rates from Ontario points would seem to have a great deal of force and merit. That, however, is not the situation; and the contention of Mr. Watts on this point is entirely fallacious for the following reasons:—

1. The traffic here in question is grain received ex-lake at the various bay ports, milled there, or shipped to milling points in Ontario and there milled, and the product reshipped to New York for export.

2. All that the Board's orders of 1905 did, so far as relates to export rates from Ontario points to New York, was to change some station groupings and percentages with respect to rates then in existence which were based on percentages of the Chicago-New York rate. Rates then in force not based on percentages of the Chicago-New York rate, also, manifestly, any class of traffic on which export rates to New York were not at the time published from Ontario points, were outside the scope of the orders.

3. There was no tariff in existence in 1905, nor was one issued as a result of the Board's orders in that year, naming,—

(*a*) ex-lake grain rates from bay ports to New York for export;

(*b*) through ex-lake rates on grain from bay ports shipped to milling points in Ontario, there milled and the product reshipped to New York for export.

This traffic, therefore, was outside the scope of the orders.

4. There is still no tariff covering movement (*a*) above described. There was no tariff permitting the movement (*b*) for ten years after the coming into force of the Board's orders, the first tariff being issued December 15, 1915, following conference between Mr. Watts and representatives of the Grand Trunk Railway. When this tariff was first issued, the rates published therein were not based on the Chicago-New York rate, nor were the rates established the percentages set out in the Board's orders of 1905 of either the local or the reshipping rate from Chicago.

Inasmuch as rates on the traffic here involved were not even in existence in 1905, nor until ten years afterwards, and when first issued were not based on the Chicago rate, either local or reshipping, under the orders of 1905, Mr. Watt's contention is palpably unsound in its initial premise that the rates under attack were originally based on the Chicago local rate, and, as a corollary, this of course, entirely nullifies any force that might otherwise attach to the argument that the reshipping rate, rather than the local rate, should now be the basis of the Ontario rates. Further, the rates now in force, and complained of, are those which were prescribed by the Board in its General Order No. 400, dated May 14, 1924. It is further significant that Mr. Watts did not, following the first publication of these rates, which were the subject of conference between himself and the railway, make complaint to the Board that they were not based on its orders of 1905, either as respects the local or the reshipping rate from Chicago; no such contention was set up until eight years later.

The information which Mr. Watts described as new evidence which might have affected the Board's judgment of April 19, 1924, was not, in reality, new. Full information concerning the establishment of the reshipping rate from Chicago in 1907 was already before the Board and set out in summary form in my report of December 14, 1923.

In addition to the contention above dealt with, it was alleged that discrimination exists. The orders of 1905 having no application whatever, there remain two ways of attacking the rates:—

1. That they are unreasonable *per se,* and place an unreasonable burden upon the commodity concerned as compared with other commodities; or
2. That unjust discrimination exists.

There was no evidence directed to establishing a case under the first heading, but Mr. Watts, as well as the interveners, attacked the present rates under the second heading. As presented, the alleged unjust discrimination is measured by mileage comparisons with rates between points in the United States in no way subject to the control or jurisdiction of this Board. The rates from the

Canadian Bay ports are alleged to discriminate in favour of Buffalo, Toledo, Port Huron, Detroit and Chicago. Below is shown a comparison of the export flour rates, taking, in the case of the United States points (except Buffalo), the lower reshipping rates rather than the local rates; from Buffalo the rate is not designated as a reshipping rate. From the Canadian Bay ports the mileage is computed on the distance via Canadian National Railways to Buffalo, thence average of 443 miles to New York. The mileage used from the other shipping points is indicated.

To New York from	Miles	Rate
Chicago (average)	982	23½
Detroit (C.N.-D.L. & W.)	628	18½
Port Huron (C.N.-D.L. & W.)	590	18½
Toledo (Pennsylvania)	700	18½
Collingwood	611	22
Depot Harbor	693	24½
Goderich	600	21
Midland	633	22
Tiffin	632	22
Port McNicoll	643	22
Port Colborne	464	18½
Buffalo (average)	443	16

Complainants point out that the rate from Port Colborne is 2½ cents more than from Buffalo although only 21 miles further; also, that Port Colborne is charged the same rate as Detroit, although a considerably shorter haul; further, the rates from Goderich, Midland and Port McNicoll are higher than from Detroit and Toledo.

There was not uniformity as to what was asked for by way of reduced rates. The Maple Leaf Milling Company's submissions dealt only with the rate from Port Colborne, from which point they desire a rate based on the percentage groupings authorized by the Board's orders of 1905 applied to the reshipping rate from Chicago. This would be 70 per cent of 23½ cents, or a rate of 16½ cents from Port Colborne to New York. Mr. Watts also asked that the rates from the Canadian Bay ports be based on the percentage groupings of said Orders applied to the Chicago reshipping rate, which would make a rate of 18½ cents from Port McNicoll, Tiffin, Midland and Goderich; 19½ cents from Collingwood; and 21 cents from Depot Harbour. However, in his last brief, filed subsequent to the hearing, he states:—

> "The Ontario mills must have *at least equal rates* with their competitors at Buffalo and elsewhere in order to get their share of the export flour business."

Inasmuch as the cost of lake transportation to the Bay ports approximates that to Buffalo, his statement means that the Buffalo-New York rate should also apply as maximum from the Canadian Bay ports to New York, including milling in transit privilege. As the stop-off charge for milling in transit is 1 cent, Mr. Watt's proposal in reality means a rate 1 cent less from the Canadian Bay ports than from Buffalo. Counsel for the Ontario Government pointed out that in western Canada the rates on grain and flour are identical, and asked that the same treatment be given in eastern Canada where there is at present a difference in the rates on export movements to the various Atlantic ports, the flour rate being higher than the grain rate. While the submissions of the other parties related to the export rate from Bay ports to New York, counsel for the Ontario Government included the Canadian Atlantic ports as well, also the rates from Fort William. He stated that, so far as his client, the province of Ontario, is concerned, it would not matter if the rate on grain was advanced to the flour rate; that they would prefer to have the rates equal at the flour rate than unequal at the present rate, whether this involved increasing the wheat rate or reducing the flour rate.

So far as relates to Toledo, Detroit, Port Huron and Chicago, while comparison was made by complainants of the rates from those points to New York with the rates from the Canadian Bay ports, no evidence was adduced by them as to the extent to which milling of grain is done at those points, or the volume of flour shipped therefrom to New York for export; in fact, it was not alleged, specifically, that the milling industry at those points detrimentally affected the Ontario millers. No data whatever are on record concerning Toledo. With respect to Detroit, counsel for the railways stated the Canadian lines are quite willing to withdraw their concurrence in the rate, but that practically no traffic was handled by them on it; that the Canadian Pacific Railway had not handled a car for several years, and the Canadian National Railways handled nineteen cars in 1924. It was stated there was formerly a small mill at Port Huron, but it was burnt, and there is at present no mill there. Mr. Watson stated there was practically no milling at Chicago, and in his last brief states:—

> "I have before me particulars of all the wheat arriving at Chicago by water since the opening of navigation this year, and also the disposition of the product, and the Central Inspection Bureau report that they were unable to find any movement of the product of ex-lake wheat from Chicago to New York for export. . . .The 1,858,000 barrels manufactured by Chicago mills was practically all for local consumption in the United States, with the exception of a small lot to New Orleans for export."

In any event, Chicago is not in as favourable a position, from a rate standpoint, as the Ontario points because, according to the record, substantially the same water rate governs to Chicago as to the Bay ports, and from Chicago to New York the rail rate is, of course, higher than from the Bay ports and interior Ontario mills.

With regard to Buffalo, complainants pointed out that the milling capacity there has very materially increased during the last two or three years. It was admitted by Mr. LaFerle, traffic manager for the Maple Leaf Milling Company, that this was in part due to a readjustment of milling centres in the United States; *e.g.*, the Pilsbury Company have established a large mill at Buffalo, but this is a readjustment from one point to another in the United States. Figures as to the disposition of the output of the Buffalo mills as between domestic consumption in the United States and for export are not on the record. As to whether Buffalo or Port Colborne has an advantage with respect to milling and selling costs, or how they compare, no information is given. Mr. Watson referred to a report made by the United States Tariff Commission dated April 17, 1924, showing the milling and selling costs in the United States amounted to 57.77 cents per 100 pounds as compared with 50.10 cents per 100 pounds in Canada, which would be equal to a difference of 15.03 cents per barrel, but there is nothing definite before the Board as to the accuracy of these figures, or how they would apply to the specific points of Buffalo and Port Colborne.

Mr. LaFerle stressed the necessity, from the standpoint of profitable operation of their Port Colborne mill, of a rate approximating that from Buffalo. Eliminating Buffalo, the geographical location of Port Colborne places it at an advantage, from the standpoint of the rail freight rate to New York, over other Bay ports and interior milling points in Ontario; also the other United States shipping points referred to. Port Colborne's alleged disadvantage, as compared with Buffalo, is not the result of some entirely changed condition of the freight rate structure that has taken place since the Maple Leaf Milling Company established their mill at that point, because the rate from Port Colborne has, naturally, always been higher than from Buffalo. At present it is 2½ cents higher, but formerly there was a greater spread and it was 8½ cents. The pre-

sent rate was established by the Board's General Order No. 400, dated May 14, 1924. It would seem obvious that the rail freight rate is only one of many factors in connection with milling of grain and exporting of the flour. If the freight rate were paramount and controlling, then, according to the record in this case, Buffalo is the only point at which grain should be milled for export via New York, because the transportation rate by water to that point is approximately as low as to any other point, and the rail freight rate thence to New York is the lowest. Further, the rates from the other Bay ports and interior Ontario milling points are also embraced in this complaint, but if the rates asked for therefrom in the original submissions and at the hearing were granted by the Board, Port Colborne would still have a rate advantage over all the other Ontario points. This may account for Mr. Watts' contention, in his last brief, that the Ontario mills require a rate equal to the Buffalo rate as maximum, including milling in transit privilege which in reality would mean establishing a rate from all Ontario points 1 cent less than from Buffalo. Such a proposition ignores the fact that the Buffalo rate is a rate in the United States which is entirely outside the jurisdiction of this Board; that there is no evidence as to whether or not it is a profitable rate to the railroads; that between Buffalo and New York the entire haul is over single-line carriers, while the haul from the Bay ports is not only a greater distance, as already indicated herein—up to 50 per cent greater—but involves a haul over Canadian carriers and across the International bridge before it reaches the rails of the United States carriers. At the previous hearing of September 18, 1923, when asked if, because the American railroads choose to give a rate of 16 cents from Buffalo to New York, the Canadian railways are guilty of discrimination because they charge more from the Canadian mill, Mr. Watts admitted that this position was not tenable (pp. 2781-2).

It will, therefore, be observed that if, in the matter of the rate to New York, Buffalo has a geographical advantage over all other points, similarly, Port Colborne has a geographical advantage not only over all other Ontario milling points, but also over the milling points in Western Canada. No discussion took place regarding the position of the Canadian millers west of Fort William so far as concerns the matter of their rates with respect to the movement of flour to New York for export, of which a large tonnage is shipped by them, or how they might be affected by the establishment of the rates here applied for. There is no complaint before the Board regarding these rates, although it may well be that to direct the rate adjustment here sought would be followed by a complaint from that source. As illustrating the geographical advantage of Port Colborne with respect to the shipment of flour via New York, taking grain originating at, say, Maple Creek Sask., the approximate rate situation of the Port Colborne mill and the western Canadian mill is as follows:—

CASE 1

Grain milled in transit in Western Canada and reshipped to New York for export.

Maple Creek to Fort William	23.00c.
Stop off en route for milling	1.00
Fort William to New York, via lake and rail	31.50
Total	55.50c.

CASE 2

Grain ex Western Canada milled in transit at Port Colborne and reshipped to New York for export.

Maple Creek to Fort William	23.00c.
Fort William fobbing	2.50
Lake rate, Fort William to Port Colborne	5.77 *
Insurance	0.42
Bay port elevation	1.25
Port Colborne to New York	18.50
Total	51.44c.

(* Average for 1924, as reported by Dominion Bureau of Statistics.)

With regard to the contention that the rate from Port Colborne, as well as other points, should be based on the percentages authorized by the Board's order of 1905 applied to the Chicago reshipping rate as at present in effect, or as changed from time to time in the future, the Board would require to be satisfied that the evidence adduced warranted the conclusion that the present rates, which it prescribed in 1924, are unreasonable to the extent that they exceed the rates applied for. The Buffalo rate itself is not based on the established percentage of the Chicago-New York reshipping rate, otherwise it would be 14 cents instead of 16 cents. The possible result of any such direction by the Board might be to order a rate from Port Colborne lower than from Buffalo. For example, this Board has no voice or control over the Chicago-New York rate. If successful representations were made to the United States carriers that a reduction should be made in the Chicago-New York rate of, say, 2 cents, and no change were made in the Buffalo rate, it would automatically establish a rate of 15 cents from Port Colborne as compared with 16 cents from Buffalo —an anomoly which requires no comment.

Even if the Board's powers and its opinion as to the reasonableness of the present rates resulted in the view that a rate parity should exist as between Port Colborne and Buffalo, bearing in mind that the Board has not the slightest control over the Buffalo-New York rate, there is at once apparent the obvious futility of the Board's being able to assure the maintenance of Port Colborne on a rate parity with Buffalo and at the same time avoid ordering rates from Port Colborne which might be absolutely unremunerative to the Canadian carriers.

The rate from Port Colborne is $2\frac{1}{2}$ cents over the Buffalo rate, and the distance from Port Colobrne to Buffalo is 21 miles. In a recent case before the Interstate Commerce Commission there was considered the rate on newsprint paper, in carloads, from Thorold, Ont., to New York. The rate complained against was $33\frac{1}{2}$ cents per 100 pounds. This was found unreasonable to the extent that it exceeded $29\frac{1}{2}$ cents. Ontario Paper Co., Limited, *et al.* vs. Canadian National Railways, *et al.*, 95 I.C.C. 66. Later, upon reargument, the original finding was affirmed (102 I.C.C. 365) and (at p. 366) the Commission stated:—

> " In point of distance Thorold's nearest competing point is Niagara Falls, N.Y., about 12 miles away. The short-line distance from Niagara Falls to New York is 443 miles, 1 mile less than from Thorold. For about 97 per cent of the distance from Thorold shipments from that point move over the same rails as those from Niagara Falls. It would seem, therefore, that the fairest basis of comparison is afforded by the rate of 26.5 cents on newsprint paper from Niagara Falls to New York and that a rate 3 cents higher from Thorold is ample to cover the extra service required, involving use of an additional carrier and a crossing of the Niagara river."

The rates here under attack are those to New York, the major portion of the haul being over lines of United States carriers. Under Order in Council P.C. 886, dated June 5, 1925, the Board was directed to make a thorough investigation of the rate structure and to particularly consider, amongst other things, " the encouragement of the movement of traffic through Canadian ports ". On the traffic here under consideration the rail rates to Montreal are at present lower than to New York, ranging from 1 cent at Port Colborne to 7 cents at Depot Harbour. From Bay ports to St. John and Halifax the rates are only 1 cent over Montreal, and also, except in the case of Port Colborne, lower than to New York, notwithstanding the much longer haul involved. Mr. LaFerle stated that they also had the advantage of a rate via water from Port Colborne

to Montreal during the season of navigation of 12-13 cents. The readjustment of rates to New York here sought would make the rates to that point lower than the present rates to the Canadian ports, so that, without also reducing the latter rates, it would tend to diversion of traffic away from, rather than attract it to, Canadian ports. The present rates to Canadian winter ports yield the Canadian carriers very low earnings. Deducting the stop-off charge, for the average haul of 895 miles to St. John the rate yields an earning of 3.91 mills per ton per mile, and to Halifax, 1,213 miles, an earning of 2.88 mills per ton per mile, and, further, out of these rates, certain terminal charges are absorbed.

As here presented on the record, the case for the various complainants, except that of the Ontario Government hereinafter dealt with, resolves itself, largely, under the following headings:—

1. It is alleged that discrimination in rates exists, and the measure of the discrimination is comparison, based on mileage, with rates in the United States; rates which are not in any way controlled by this Board; rates between points in different territory and with no evidence as to the similarity of transportation conditions.

2. Comparison with United States rates which, as regards some points, appear to be largely "paper" rates, i.e., rates on which no traffic moves.

As regards the first heading, the Board has stated concerning comparisons between United States and Canadian rates that "tolls fixed in the United States are not the criteria of reasonable tolls in Canada".

National Dairymen's Assn. v. Dominion Express Co.; 14 C.R.C. 142.

Riley v. Dominion Express Co.; 17 C.R.C. 112.

Complaint of Dominion Sheet Metal Corpn., Ltd., Hamilton, Ont., *re* rate on Galvanized Sheets to Winnipeg, Man.; Board's printed Judgments and Orders, Vol. XII, p. 290.

> "Mere rate comparisons are not conclusive. The Board has held that no inference can be drawn from a mere comparison of distances upon different portions of railways, and that any party raising complaint of unjust discrimination upon a mere comparison of distance should show the nature of the particular lines referred to, circumstances in relation to cost of construction, maintenance and operation and business, and that there is a material disproportion of rates as against the shorter lines after due allowance is made for the circumstances just mentioned.

British Columbia Pacific Coast Cities v. C.P.R. Co., 7 C.R.C. 125, at p. 143.

Canadian Oil Cos. v. G.T.R., C.P.R., and C.N.R. Cos., 12 C.R.C. 350, at p. 354.

> "'Not mere mileage comparisons but also comparisons in respect of condition of operation, cost of carriage, volume of traffic, etc., are necessary.'
>
> "Mileage in many cases is one of the minor factors in striking a rate.

Doolittle & Wilcox v. G.T. and C.P.R. Cos., 8 C.R.C. 10, at p. 11.

> "Under the body of regulation which is developed under the Railway Act, mileage is not a rigid yard-stick of discrimination."

Complaint of Spanish River Pulp and Paper Mills, Ltd., *re* rates on paper from Sturgeon Falls and Espanola, Ont., to Toronto and other destinations; Vol. XII, pp. 276-7, Board's printed Judgments and Orders.

Again, in the application of the Calgary Live Stock Exchange *et al re* minimum carload weights on sheep, Vol. XIII, Board's printed Judgments and Orders, at p. 237, dealing with comparisons with American rates and practices, it is stated:—

> "Unless it is apparent that conditions are to such an extent on all fours as to establish identity of circumstances, rates and minima, existing under another jurisdiction, are not necessarily conclusive as to what is reasonable."

Concerning the second heading, in so far as comparison was made with rates without it being shown in evidence that traffic was moving thereon, the following is an excerpt from the Board's judgment in the complaint of the Spanish River Pulp and Paper Mills, Ltd., Vol. XII, Board's printed Judgments, and Orders, at pp. 277 and 279:—

> "The matter of 'paper' rates has been dealt with from time to time in various decisions under the procedure of the Interstate Commerce Commission.
>
> "A railway is not required to publish a rate over a certain line upon a particular grade of coal where the mine produced nothing which can be shipped under that rate.
>
> McGrew v. Missouri Pacific Ry. Co. (1901), 8 I.C.C.R. 630.
>
> "A mere paper rate never carried into effect cannot be availed of as a basis to recover damages on the ground that such rate was unjustly discriminatory.
>
> Lehigh Valley Ry. Co. v. Railey *et al* (1902), 112 Fed. Rep., 487.
>
> "*Re* Comparison made with grain rates to Galveston:—
>
> "'It appears, however, that practically no grain is shipped to Galveston for export and, therefore, the rates are paper rates and not fairly comparable.'
>
> Export Rates on Flaxseed, etc., 27 I.C.C.R. 246, at p. 247.
>
> "Rates alleged to discriminate in favour of St. Louis and Cincinnati were stated to evidently exist unused and, therefore, were without prejudice to Kansas City.
>
> Peet Bros. Mfg. Co. v. Ill. Cent. Ry. Co., *et al*, 34 I.C.C.R. 634, at p. 637.
>
> "'A comparison of actual rates with paper rates affords a very insecure basis for a finding of undue or unlawful prejudice against complainants.'
>
> "Under the decisions, then, mere mileage comparisons, without detail as to the traffic, if any, moving are not conclusive. Further, mere 'paper' rates under which no commodity is moving are equally inconclusive."

Counsel for the Ontario Government contended that the present rate situation tended to cripple and destroy the local milling companies in Ontario, with the result that this had an effect in the supply of bran and shorts for stock feed that was detrimental to the livestock and dairying interests of the province. His witness, Professor Leitch, of the Ontario Agricultural College, outlined the effect of the by-products of the milling industry—bran and shorts—on livestock production, and their necessity to supplement the Canadian-grown natural feed crops, a supply of which is of vital concern, especially during the winter season. He stated the small mills of Ontario rendered a most efficient service in the distribution of bran and shorts to the farmers. He presented in considerable detail information derived from studies made by the department with which he is associated showing that a shortage of wheat offal during the year

ending May 1, 1921, due to decline in export milling and consequent high prices, accompanied by the substitution therefor of other supplemental feeds, resulted in a heavy loss due to increased prices of rations and decreased quantity of milk obtained from dairy cows through the use of a less satisfactory ration. The net result was extra cash cost of feed accompanied by decrease in the milk yield per cow. Similar unsatisfactory conditions obtained with respect to hog-raising. Professor Leitch stated that the shortage in the year in question was in no way due to the freight rates or any action of the railway companies, but to causes absolutely beyond their control. It was an abnormal condition. The record indicates a very large exportation of bran and shorts from Canada, largely to the United States. It appears that there is never actually a shortage in Canada in the sense that the amount produced is less than the consumption, but there is a brisk demand in the United States and the natural law of supply and demand affects the price. For example, for the fiscal year ending March 31, 1924, the exportation of bran, shorts and middlings from Canada to the United States totalled 230,452,000 pounds. Professor Leitch did not suggest, nor is there any evidence showing, that the price of bran and shorts to the farmer would be in any way affected or cheapened under the rates applied for. Counsel for the Ontario Government appeared to be particularly pleading for the smaller interior Ontario millers. It is evident that the mills so located that they receive their northwest grain direct by water at their mill have a decided advantage over the mills at inland points; e.g., at the hearing in September, 1923, at page 2773, Mr. Watts quoted the following statement of Mr. W. B. Wood:—

> "At my mill in Montreal I can bring the wheat down all-water and I can ship my flour to Europe at 15 cents per barrel less than any mill in Ontario can touch it at."

Fifteen cents a barrel is equal to 7½ cents per 100 pounds. No discrimination appears to exist, nor is any alleged, with regard to the rail freight rates from these interior mills as compared with the Bay ports, and under the reduced rates applied for there would be no difference in rate relationship; in other words, what is applied for would not give the interior millers any rate advantage, or place them in a position to better meet competition with these other mills than they are in to-day.

As to the contention that because the rates on grain and flour are identical in Western Canada they should be the same in Eastern Canada, it was not shown that the rate situation in Western Canada in any way reacts to the detriment of the millers in Eastern Canada, or that the western miller has any rate advantage over the east in reaching competitive markets.

> "The Board has recognized that differing conditions, competitive conditions, etc., have brought about differing rates and rules in different sections.
>
> "In speaking of rate adjustments in the West, it has been said that particular facts of the section in which the rate adjustment is made must be considered, and it does not follow that the arrangement operative in the West would be a criterion of discrimination in connection with a complaint as to a different rate adjustment east of the Lakes. *Re Freight Tolls, 27 Can. Ry. Cas. 153, at p. 174.* Manifestly the same principle applies when the comparison is concerned with a rate or practice existing in Eastern Canada."

Application of Calgary Live Stock Exchange, et al., re minimum carload weights on sheep; Vol. XIII, p. 245, Board's printed Judgments and Orders.

Conditions in Eastern Canada surrounding the movement of grain and flour for export are quite dissimilar from the conditions existing in western Canada. This matter was fully gone into in the case of the application of the Canadian National Millers' Association, covered by the Board's judgment dated March 6, 1922, Vol. XII, p. 1, Board's printed Judgments and Orders. It was there developed clearly that with respect to this export movement, rates on grain in the east are controlled by conditions dissimilar to those controlling the movement of flour. So far as the difference between the grain and flour rates eastbound from Fort William is concerned, that is controlled by the rates contemporaneously in effect from Duluth, Minneapolis and St. Paul.

On full consideration, my conclusion is that the rates under attack have not been shown to be unreasonable or unjustly discriminatory, and that the Board would not be justified in directing any further reduction in the rates prescribed by its General Order No. 400 of May 14, 1924, and, therefore, recommend dismissal of these applications and complaints.

OTTAWA, November 11, 1927.

I concur.—H. A. McK., S. J. McL., T. V., C.L.

Application of Canadian Shippers' Traffic Bureau for ruling of the Board that the legal rate for lumber, in carloads, from Carleton Place to Toronto, Ontario, is 17½ cents per 100 pounds as published in Canadian Pacific Railway Company's tariff C.R.C. No. E.-3818, between Arnprior, Ontario, and Toronto, Ontario.

File 26602.75.

THIS REPORT IS ISSUING AS THE JUDGMENT OF THE BOARD IN THIS MATTER

REPORT OF CHIEF TRAFFIC OFFICER W. E. CAMPBELL

Applicant submitted a freight bill for a carload of lumber shipped on June 10, 1927, from Carleton Place to Toronto. A rate of 18 cents per 100 pounds was assessed and applicant asked for ruling of the Board declaring that the legal rate is 17½ cents.

At the time this shipment moved, there was no specific commodity rate published on lumber, in carloads, from Carleton Place to Toronto. The railway charged the Ottawa rate of 18 cents, treating Carleton Place as intermediate under the long and short haul clause. Applicant contended that the Arnprior rate of 17½ cents should be assessed, alleging that shipments from Arnprior are actually handled by the railway through Carleton Place and Smiths Falls, thus making Carleton Place intermediate under the long and short haul provisions of the Act. The route of actual movement of traffic from Arnprior to Toronto was not specifically developed on the record, which would be necessary before the Board could make a ruling in the matter from the standpoint of the applicability of the long and short haul provisions of the Act, section 329, subsection 3. However, it is stated in applicant's letter of October 24, 1927, that the carrier had agreed that a rate of 17½ cents should be protected on the shipment in question, so that the carrier has recognized the contention of applicant. Further, the railway company has, by supplement 97 to its tariff C.R.C. No. E-3818, effective September 3, 1927, provided that the rates published on lumber from Arnprior will apply from Carleton Place to

points west of Smiths Falls and south of MacTier, Ont., unless the mileage or specific rates from Carleton Place are lower. At the sittings in Toronto applicant stated he was unaware that the company had, since the application was filed, made the tariff provision above set out.

The matter having been thus disposed of so far as the specific shipment covered by the application is concerned, and also so far as governs traffic in the future, the application for a ruling being unnecessary, it should, in my opinion be dismissed.

Ottawa, January 9, 1928.

ORDER NO. 40296

In the matter of the application of the Canadian Shippers' Traffic Bureau for a ruling of the Board that the legal rate for lumber, in carloads, from Carleton Place to Toronto, Ontario, is 17½ cents per 100 pounds, as published in Canadian Pacific Railway Tariff C.R.C. No. E.-3818, between Arnprior, Ontario, and Toronto, Ontario.

File No. 26602.75.

Wednesday, the 1st Day of February, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, November 16, 1927, in the presence of representatives of the Canadian Shippers' Traffic Bureau, the Canadian Freight Association, Canadian National Railways, and Canadian Pacific Railway Company, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer, and its appearing that the Canadian Pacific Railway Company has, by Supplement No. 97 to its tariff C.R.C. No. E.-3818, effective September 3, 1927, provided that the rates published on lumber from Arnprior will apply from Carleton Place to points west of Smiths Falls and south of MacTier, Ont., unless the mileage or specific rates from Carleton Place are lower,—

The Board Orders: That the application be, and it is hereby, refused.

H. A. McKEOWN,
Chief Commissioner.

Complaint of the Canadian Shippers' Traffic Bureau, Toronto, Ontario, re *rate charged on a carload shipment of lumber from Dutton, Ont., to Montreal, P.Q., for export.*

File No. 35312

JUDGMENT

Chief Commissioner McKeown:

The complaint in this case sets out that the rate charged on a carload of lumber shipped from Dutton, Ont., on the Pere Marquette Railway, stopped in transit at Toronto for sorting, and subsequently reshipped to Montreal, is: (*a*) unreasonable, (*b*) illegal.

As regards (*a*), inasmuch as the complaint deals with the rate on a past shipment and does not, as worded, deal with the question of a rate for the future, the question for determination is whether the lawfully published rate was assessed. This has been dealt with by the Chief Traffic Officer whose determination is that the rate as in effect at the time this shipment moved was 37½ cents per 100 pounds. I agree with his conclusions upon that point and this branch of the subject requires no further consideration.

(*b*) The grounds upon which it is claimed that the charge is illegal, are thus stated by the complainant:—

> "The so-called export tariff on class rates of the Pere Marquette Railway Company, C.R.C. No. 2512, which publishes a 35-cents 6th class rate to Montreal, and which apparently is the rate herein assessed, is illegal inasmuch as said tariff purports to be governed by official classification No. 48, or reissues thereof and by exceptions to said classification or reissues thereof. The official classification is a foreign publication and under section 322 of the Railway Act the use thereof is limited to traffic to and from the United States."

The section of the Railway Act referred to reads as follows:—

> "322 (1) The tariffs of tolls for freight traffic shall be subject to and governed by that classification which the Board may prescribe or authorize, and the Board shall endeavour to have such classification uniform throughout Canada, as far as may be, having due regard to all proper interests.
>
> "(2) The Board may make any special regulations, terms and conditions or order or direction in connection with such classification, and as to the carriage of any particular commodity or commodities mentioned therein, as to it may seem expedient.
>
> "(3) The company may, from time to time, with the approval of the Board, and shall, when so directed by the Board, place any goods specified by the Board in any stated class, or remove them from any one class to any other, higher or lower class: Provided that no goods shall be removed from a lower to a higher class until such notice as the Board determines has been given in the *Canada Gazette*.
>
> "(4) Any freight classification and exception thereto in use in the United States may, subject to any regulation, order or direction of the Board, be used by the company with respect to traffic to and from the United States."

In the written argument supporting his contention, Mr. Cook, counsel for the complainant, says:—

> "My respectful submission is with regard to section 322, that there is a duty cast upon the Board to have uniformity of classification all other considerations being equal. And further the Board has no jurisdiction to allow of the use of any foreign classification except as mentioned in subsection 4 of section 322.
>
> "I submit further that under the Act, which I contend is explicit and plain as to when and where any foreign classification is allowable, there is no jurisdiction in the Board to allow any such classification except in the case of international shipments under subsection 4. The use of any other classification in any other case is, I submit, unlawful and should be supplanted by an all-Canadian classification."

The shipment in question did not move under tariffs governed by the so-called official classification. There are export tariffs governed by such classification, but they are specifically authorized by order of this Board No. 586 of July 25, 1905. The substance of this order requires that export rates from Ontario be based on certain percentages of the Chicago-New York rate. It is a fact that the Chicago-New York rates are subject to the official classification complained of, but the Ontario rates take their validity from the order of this Board above cited, and while as a matter of competition the Ontario rates necessarily follow such classification, they do not derive their validity therefrom, but as above mentioned.

The clear expression of the use of the official classification in respect to traffic to and from the United States, and its use in connection with points in Canada to Canadian ports, is to be found in the Judgment of the Assistant Chief Commissioner in the complaint of Messrs. Graham Company, Limited, Belleville, Ont., reported in Vol. 6 of the Board's Orders, Judgments, etc., at page 266, as follows:—

> "While the use of the Official Classification, as has been indicated, is permitted with respect to traffic to and from the United States, what the applicants are interested in is a movement from Canadian points to Canadian ports.
>
> "There has grown up on the part of the railways the practice of permitting the use of the Official Classification from points in Canada to Canadian ports. The Canadian railways having ports on the Atlantic seaboard have, for a great many years, carried overseas traffic under special export tariffs largely based on those of the American carriers to New York and subject to the Official Classification. The result of this is to put the Canadian shipper on a parity with his American competitor exporting by way of an American port, and thereby to ensure a parity of treatment as between Canadian and American ports. The export rate basis for Belleville is as set out in the order of the Dominion Millers' Association application, issued July 25, 1905.
>
> "This method of handling export business has been tied up to the Canadian Classification by the provision that if the Canadian Freight Classification and the Canadian domestic rate to the port, plus the port terminal charge, provides a lower rate, this lower rate is not to be exceeded. That is to say, the Canadian shipper has the advantage of the lower rate combination afforded by the use of the Official Classification and the export tariff based on the New York rates, subject to the maximum afforded by the Canadian domestic tariff under the Canadian Freight Classification, plus the port terminal charge."

There is also the charge at Montreal terminals of 4 cents, but this has no bearing upon the issue. Taken throughout, none of the charges made in this case rest for their authority upon the Official Classification, but upon the Canadian Classification. These charges for the carriage complained of were imposed under tariffs governed by the Canadian Freight Classification, and I am consequently of opinion that the reasons set out by Mr. Cook in his argument cannot prevail.

The application will, therefore, be disallowed.

Ottawa, January 30, 1928.

Assistant Chief Commissioner McLean concurred.

REPORT OF CHIEF TRAFFIC OFFICER W. E. CAMPBELL

This complaint refers to a carload shipment of lumber made from Dutton, Ont., on the Pere Marquette Railway, on or about February 15, 1927, consigned to Toronto for sorting in transit, and reshipped on or about May 11, 1927, via Canadian National Railways to Montreal for export. The real question for determination by the Board is what was the legal rate applicable on this shipment under tariffs then in force. The complainant does not approach the question from this standpoint, but makes certain rate comparisons and arguments tending to show that the rate charged was unreasonable, and makes application to the Board for a declaration that the rate charged, namely, 35 cents per 100 pounds plus a terminal charge of 5 cents per 100

pounds, was unreasonable to the extent that it exceeds a rate of 22 cents plus 5 cents terminal charge. Unless the Board found as a fact, that the rate legally in force at the time this shipment moved was that contended for, a finding of unreasonableness, as sought, would be of not effect with regard to this shipment.

Complainant is well aware, from previous judgments of the Board in cases to which he has been a party, that the Board has declared it has not the power to direct refunds with respect to past transactions if the legally published rate was charged.

Application of Canadian Shippers' Traffic Bureau, *re* rates on wood-pulp from Bathurst, N.B., etc., to Toronto, Ont., Board's Judgments, Orders, Regulations and Rulings, Volume 16, page 135.

Application for ruling of the Board *re* charges on carload shipment of lumber from Baptiste, Ont., to Grand Rapids, Michigan, Board's Judgments, Orders, Regulations and Rulings, Volume 15, page 249.

The Board can prescribe and direct the publication of what it considers a reasonable rate for the future, but this would have no retroactive application. The application, as worded by complainant in his submission of June 7, 1927, does not deal with the question of a rate for the future.

Mr. Ransom, for the carriers, stated their investigation developed that this was the first car of lumber exported from Dutton for many years and, so far as they were advised, there was no prospect of further shipments from that point. Complainant alleged there might be further shipments. It developed at the hearing that the complainant had made no application to the carriers for establishment of a reduced rate from Dutton and Mr. Ransom stated the carriers were prepared to consider such application if there was likely to be further movements from Dutton or other points on the Pere Marquette Railway from which export rates on lumber to Montreal are not published. Application should be made to the originating carrier initially and, if a satisfactory rate is not published, complaint may be made to the Board. Certain rate comparisons made by complainant would be pertinent to consideration by the Board of a complaint following failure of the carriers, on application, to establish a rate which complainant considered reasonable.

The provisions of the tariff authorizing dressing and sorting in transit on lumber stipulate that on reshipment of lumber from stop-off point, through charges to final destination will be based on application of the tariff rate in effect on date shipment was forwarded from original point of shipment. On February 15, 1927, the lowest published rate on lumber, in carloads, from Dutton to Montreal was a combination of rate of 9½ cents, Dutton to Chatham, as contained in Pere Marquette Railway Tariff C.R.C. 2463; plus rate of 23 cents Chatham to Montreal, as contained in Canadian National Railways Tariff C.R.C. E-3475; plus 1 cent stop-off, Canadian National Railways Tariff C.R.C. E-697; plus 4 cents for Montreal Terminals, Canadian National Railways Tariff C.R.C. E-663, making the aggregate charge 37½ cents per 100 pounds.

Complainant referred to a joint rate via Pere Marquette and Canadian Pacific Railways on lumber, in carloads, from Sarnia to Montreal, for export, of 22 cents. This rate is not in effect from Sarnia to Montreal on shipments via Pere Marquette and Canadian National Railways, which was the route travelled by the shipment here in question. There being no rate of 22 cents from Sarnia to Montreal for export, via the route this shipment travelled, complainant's contention that said rate was legally tariffed from Dutton to Montreal via Pere Marquette and Canadian National Railways under the long and short haul provisions of the Railway Act, obviously fails.

Complainant referred, and objected to, certain export tariffs of the carriers because they are governed by the Official Classification. So far as this is relevant to this complaint, the objection is academic because the rates charged are contained in tariffs that are governed by the Canadian Freight Classification, except that the charge for Montreal terminals is found in a tariff that is governed by the Official Classification, but there were no conditions of the Official Classification at variance with those of the Canadian Classification that actually had any bearing whatever with respect to this shipment.

I have not dealt with the legal submissions of complainant or issues that were not set out in the record that was before the Board when this matter was set down for hearing. I consider the complaint should be dismissed.

OTTAWA, January 9, 1928.

Complaint of Canadian Shippers' Traffic Bureau against rate of 23½ cents per 100 pounds charged on a car of lumber from Gravenhurst to Listowel, (Canadian Pacific Railway delivery) which moved via Mount Forest, Ontario.

File No. 34846

JUDGMENT

CHIEF COMMISSIONER MCKEOWN:

The complaint made on behalf of Messrs. Shreiner & Mawson of Toronto, Ont., is that a certain rate charged on a carload of lumber shipped from Gravenhurst to Listowel, over the Canadian National Railways, is unreasonable. The facts in connection therewith are thoroughly set out in the report of the Chief Traffic Officer hereunder, and need not be repeated here, except as may be necessary to make the legal situation clear.

After shipment, request was made that the car be transferred to the Canadian Pacific Railway at Listowel, and having passed the junction point before such instructions were acted upon, it was brought back to Mount Forest, the nearest point of interchange, and was there delivered to the Canadian Pacific Railway pursuant to such instructions. Dissatisfaction in connection with the rate having been expressed, adjustment of the same was made, which seemed to take care of the existing situation. But on behalf of complainants, the Board has been asked to make a ruling as to the reasonableness of the rate in question, and specifically to say that a rate in excess of 17 cents per 100 pounds on a shipment of lumber from Gravenhurst (Canadian National Railways) to Listowel (Canadian Pacific Railway) is unreasonable.

Certain decisions of the Board to the effect that it has no power to order refunds in case of over charge are again challenged, and concerning this no reason has been given which in my opinion, would justify the reopening of this question which has been thoroughly settled by decisions of this Board. See the Board's printed Orders, Judgments, etc. Vol. 16, p. 136, wherein an application by the Canadian Shippers' Traffic Bureau for an order to disallow an alleged unlawful rate imposed by the Canadian National Railway on certain carloads of woodpulp from Bathurst, N.B., etc., to Toronto, was dealt with.

It is contended by Mr. Cook in his argument to the Board "that there is a general principle of law involved in all cases where the Board is to decide upon the facts as to whether rates or tolls are unreasonable or unduly discriminative", and that such principle is that "the applicant is entitled in all cases where rates or tolls are found to be unreasonable or unduly discriminatory, to the ruling or declaration of the Board that such rates or tolls so found are unlawful, or that the legal rate was, or should have been. . . . .He draws a distinction

between rates which are "legal" and rates which are "lawful." The former he defines as "created or permitted by law", and the latter being a rate "which conforms to or is enforcible at law."

It seems to me that, as to the two branches of complainants' legal argument, the first one is met by the decisions of the Board above refered to; and as to the second, the procedure of the Board is so clear as to permit of no misapprehension.

The question of reasonableness of a rate, whether it be a joint rate or otherwise, is a matter of fact and must be dealt with from that standpoint. When any given rate is challenged as being unreasonable, the Board gives consideration to the objections urged and, if they appear to be well founded and it finds that the rate so challenged is as a matter of fact unreasonable it thereupon disallows the same and substitutes therefor a rate which, in its view, is reasonable, and thereafter unless altered, such rate is the legal rate to be charged If, after such finding and declaration by the Board, carriers persist in charging a higher rate, the same woud undoubtedly be illegal.

I agree with the recommendation of the Chief Traffic Officer that this complaint be dismissed.

Ottawa, January 30, 1928.

Assistant Chief Commissioner McLean concurred.

REPORT OF CHIEF TRAFFIC OFFICER W. E. CAMPBELL

In this case shipment was made from Gravenhurst, June 11, 1926, via Canadian National Railways, of a carload of lumber destined to Listowel, which is also a point on the Canadian National Railways. Subsequent to shipment, the railway was requested to divert the shipment to Canadian Pacific Railway delivery at Listowel. There being no interchange between the Canadian Pacific Railway and the Canadian National Railways at Listowel, it necessitated the car being interchanged at some outside point short of destination. Before the railway effected the diversion, the car had reached Listowel on the Canadian National Railways. It was brought back to Mount Forest and there delivered to the Canadian Pacific Railway who handled it to Listowel.

The Board has already ruled that via the route the shipment moved, the legal rate properly applicable was a combination of 15½ cents for Canadian National Railways from Gravenhurst to Mount Forest and 8 cents for Canadian Pacific Railway from Mount Forest to Listowel, or a through rate of 23½ cents, plus $3 diversion charge. This information was conveyed to complainant in letter from the Secretary of the Board dated November 5, 1926.

Complainant contended that a reasonable through rate would be 17 cents per 100 pounds, and requested that the Board issue ruling accordingly, together with recommendation that refund be made by carriers on basis of the 17 cent rate. The Board's power to order refunds is most fully set out in its judgment dated August 12, 1926, in application of the Canadian Shippers' Traffic Bureau for an order disallowing alleged unlawful rates charged by the Canadian National Railways on carloads of wood-pulp from Bathurst, N.B., Port Arthur, Ont., etc., to Toronto, Volume XVI. Board's printed Orders, Judgments and Rulings, page 135. The legal rate having been charged, the Board cannot make any order that would have retroactive application, and can only deal with the matter of reasonableness of the rate for the future.

Complainant asked for a ruling of the Board that the rate charged is unreasonable. The question of the reasonableness of the joint rate via the route that this shipment was handled, namely, from Gravenhurst to Mount

Forest via the Canadian National Railways and from Mount Forest to Listowel via the Canadian Pacific Railway, is purely academic, because if a through joint rate were established, the traffic would not move via the route mentioned. From Gravenhurst to Listowel the distance via the Canadian National Railways direct is 180 miles and the published rate is 16½ cents per 100 pounds. Via the joint route through Mount Forest, the distance is 331 miles, or 151 miles greater, and the rate of single line carrier for such mileage would be 20 cents per 100 pounds. The complainant could have obtained a lower through rae if, at the time of shipment, instruction had been given the carrier to make Canadian Pacific Railway delivery through junction point according the lowest combination of rates, which would have been Guelph, making a combination Gravenhurst to Guelph, Canadian National Railways, 13½ cents, Guelph to Listowel, Canadian Pacific Railway, 8½ cents, total 22 cents.

It is not the practice of the carriers to establish, nor has it been the practice of the Board to direct, joint through rates for a sporadic movement between two points, both of which are located on the same line of railway, except to the extent that a joint rate is established through the medium of interswitching at those destination points where an interchange between railway companies exists. So far as the record here indicates, this was a sporadic movement. Where joint through rates are not published, the through rate is made up of a combination of the rates to and from the junction point and each carrier provides by a tariff rule for a deduction in its rate to and from the junction point in connection with such through movements.

Joint through rates are not now in effect from Gravenhurst, on the Canadian National Railways, to stations on the Canadian Pacific Railway. The Canadian National Railways has its own line from Gravenhurst to Listowel. For the movement of isolated cars of lumber, where joint through rates are not in effect, the provision is as set out in the preceding paragraph hereof. I do not consider a case has been made out warranting direction by the Board that joint through rate applied for should be established, and recommend that the complaint be dismissed.

I have not dealt with the legal submissions of complainant, or issues that were not embraced in the record when it was set down for hearing.

Ottawa, January 11, 1928.

Complaint of Canadian Shippers' Traffic Bureau against inclusion of Rules in recent Tariffs of Canadian National Railways defining "Direct Routing" of which Rule No. 5 on page 6 of Tariff C.R.C. No. E.-1256 and Rule No. 9 of Tariff C.R.C. No. E.-1244 are representative.

File No. 26602.74.

and

Complaint of Canadian Shippers' Traffic Bureau account of Shreiner and Mawson, against the rate of 19½ cents per 100 pounds, charged on lumber, carloads, from Corinth, Ont., to Detroit, Michigan, claim is made that rate under the long and short haul clause, should not exceed the 18½ cent rate in effect from Elmira and Hawkestone, Ont.

File No. 26963.75.

JUDGMENT

Chief Commissioner McKeown:

The complaint under file No. 26602.74 concerns the definition of the term "direct routing" in various tariffs restricting the same to the shortest distance over the Canadian National Railways as provided in official distance table Canadian National Railways No. D-22, C.R.C. No. E-881, supplements, etc.

It is contended that the interpretation now put upon the term narrows its meaning and constitutes an advance in such tolls for which, under section 331, subsection 3, thirty days' notice must be given before it can take effect, and that it renders rates to unnamed points unreasonable and unduly discriminatory.

In the complaint filed under No. 26963.75 regarding a charge imposed by the Canadian National Railways upon a car of lumber shipped from Corinth, Ont. to Detroit, Michigan, it is contended that the charge was unreasonable and unduly discriminatory on the grounds that "tariffs publishing rates which are not restricted as to route should apply to all intermediate points on lines other than which are circuitous, as shippers cannot be charged with knowledge as to the mileage via different lines or even the actual lines used by carriers who not unusually carry via longer routes than the shortest for their own convenience." In complainant's letter of the 5th of April following, he asks that the Board give a ruling on this as "simple matter of law" and says "it only remains for the Board to say whether a shipper is to be charged with the knowledge of the different divisions over which a carrier moves traffic under rates in connection with which no specific route is published....surely a question which presents no great difficulty from a legal standpoint."

As pointed out in the report of the Chief Traffic Officer, the issue under both these complaints is the same, and it is contended before the Board that the long and short haul provisions of the Railway Act apply under such circumstances to all the routes available.

Dealing with the contention that the effect of the definition complained of constitutes an advance on tolls on other routes, and therefore thirty days' notice must be given before the same can take effect, a reading of the section in question shows that its provisions deal with special freight tariffs filed as therein described. Such filing is far removed from setting out the scope and import of an expression used in a tariff already filed and approved. As a matter of fact some diversion from the direct route has on occasion been permitted, but it has uniformly been treated as an exception and the present action by the railway company is to clarify the situation which, if regarded in the way insisted upon by complainant, would result in great confusion, as there are many diverse roads connecting different points, and it is hardly conceivable that a rate reasonable under the direct route can be construed as necessarily applicable to routes much more circuitous and difficult. In my opinion the contention of the complainant in that regard cannot be upheld. These remarks are applicable to the contention made under the complaint in file No. 26963.75, and concerning both of them the provisions of the long and short haul clauses of the Railway Act are invoked.

If the facts submitted showed that there had been in either instance an infraction of this well understood regulation, the law forbidding same would automatically apply. It goes without saying that certain facts establishing an infraction must be shown before the case presented can fall within the section. But the case made out by complainant fails to sustain such contention.

The report of the Chief Traffic Officer summarizes and deals with the facts presented in support of the complaint, and I agree with him that as a matter of fact, in neither instance has there been shown any contravention of the long and short haul clauses, and such contravention not being established no question of law arises for consideration.

The complaint must be deal with as indicated by the report of the Chief Traffic Officer.

Assistant Chief Commissioner McLean concurred.

Ottawa, January 30, 1928.

REPORT OF CHIEF TRAFFIC OFFICER, W. E. CAMPBELL

The issues in these two cases are so closely related that they may properly be dealt with together. With respect to the matter of "direct routing", the Canadian National Railways have incorporated in several tariffs a provision, of which the following contained in their Tariff C.R.C. No. E-1244, is typical:—

> "Direct Routing—Rates published herein and in supplements hereto applying:—
>
> "(*a*) locally between stations on the Canadian National Railways;
>
> "(*b*) between stations on the Canadian National Railways and junction points with connecting lines, on traffic originating or destined beyond the Canadian National Railways;
>
> are applicable only over the shortest distance of the Canadian National Railways as provided in official distance table Canadian National Railways, No. D-22, C.R.C. No. E-881, supplements thereto and reissues thereof, except as may be otherwise specifically provided, or unless shipments are otherwise handled for railway's convenience."

Until recently, no specific rule as to direct routing was shown in the tariffs. The carriers state that it has never in the past been considered necessary to insert a rule of this character in their tariffs; that what it prescribes has always been the practice; that recently certain parties, particularly the complainant here, have contended that where a rate is published between two points on the same railway, and there are numerous routes available, they have the right, in the absence of any restriction or rule as to routing in the tariffs, to route traffic via any of said routes, no matter how circuitous the route may be, and regardless of the route over which the traffic is ordinarily handled by the carrier, and, further, that the long and short haul provisions of the Railway Act apply with regard to all such routes. The foregoing rule was, therefore, published in order to make clear the construction that the railway has always placed upon the tariffs.

Complainant stated (p. 12272):—

> "Take from Toronto to Detroit, for instance, there are about forty different ways of getting there, through different junctions."

A statement was filed by complainant showing some seventeen routes within the forty alleged to be available, from Hawkestone, Ont., to Detroit, Michigan, and at page 12296, complainant stated:—

> "Under these seventeen routes, it would be possible to bring in as intermediate, any point on and south of the Sarnia-Toronto line, that is, of course, west of Hamilton. We maintain that a direct route is in line where the general tendency is towards the desired destination."

The position taken by complainant is as stated by the carriers and set out in the preceding paragraph hereof.

Taking the situation on the Canadian National Railways, with its network of lines, particularly in Ontario, and a glance at the map readily shows how far-reaching would be the effect, and the chaotic and circuitous handling of traffic that the shipper might demand, if complainant's contention be considered proper, and in the absence of specific provisions in the tariff as to the routing.

It may here be stated that, so far as the Board's records show, it has not heretofore been claimed, except recently, by complainant and possibly one or two others, that in the absence of a specific rule as to routing in the tariffs, traffic should be handled as here contended for by the complainant. The Board has never issued any ruling upholding such contention.

In the construction, compilation and publication of freight rates, they are, generally speaking, based on mileage or mileage groupings, except in the case of competitive rates, and as the carriers are required, with regard to rates constructed on a mileage basis, to compute same based on their shortest mileage between point of origin and destination, such rates have, therefore, been considered as applicable only over the shortest route, except as may be otherwise specifically provided, or unless shipments are otherwise handled for railway's convenience, in which case the rates, based on shortest distance, also apply.

Take the rates from Montreal to Toronto, which are based on the short mileage and, under the complainant's contention, in the absence of routing, such rates would also apply from Montreal via North Bay to Toronto, which is obviously a most unnatural and circuitous route. Complainant stated that in the absence of a rule as published, shippers could route different cars shipped from the same point on the same day, via different routes, so that they would arrive at the destination on different days, which would be a convenience in many cases to the consignee, and would avoid demurrage. There is no evidence that in actual practice traffic has been so routed and handled.

The direct routing rule will have no effect so far as concerns the rates specifically published between points of origin and destination as shown in the tariffs, but where there may be no rate specifically published from certain intermediate shipping points, or to some intermediate points of destination, on one of these many alternative routes, under the complainant's contention, they would all be brought in under the long and short haul provisions of the Railway Act. For example, in the case of the shipment from Corinth to Detroit, there was a special commodity rate published on lumber of 18½ cents from Hawkestone to Detroit. No commodity rate was published from Corinth and the shipment was charged the sixth class rate, applicable on lumber, of 19½ cents. Complainant claimed the Hawkestone rate should apply as maximum under the provisions of section 329 of the Railway Act, subsection 3, with regard to special freight tariffs, which states:—

> "Greater tolls shall not be charged for a shorter than for a longer distance, over the same line, in the same direction, if such shorter distance is included in the longer."

No evidence was adduced by complainant to prove that traffic from Hawkestone to Detroit is handled through Corinth. It was stated by the carriers that traffic between the said points had never been handled through Corinth; that that would be a most unnatural route via which to handle shipments between the points named, and that consequently there was no violation of the long and short haul provisions of the Railway Act because the shipment had not been hauled from Hawkestone to Detroit over the same line (through Corinth).

Another advantage to shippers, under the complainant's contention, and with unrestricted routing, would be with regard to shipments of lumber stopped off for dressing, etc., in transit. If, between point of origin and final destination, there was a point on one of the many alternative routes at which it was desired to have the shipment dressed, etc., in transit, complainant contended there should be no charge for haul out of direct run.

In other words, the principal advantages to the shippers, under complainant's contention, as shown in the record, would be with regard to the intermediate application of the rates from and to points where none were specifically published, and avoiding out of line haul charge in other cases under the tariff arrangement governing dressing, etc., of lumber in transit.

So far as relates to the intermediate application of rates, it does not require effect to be given to the complainant's contention in order to do justice to shippers with regard to the matter of the rate. With the published rule in the

tariff, it would be a notice to the shipper at Corinth that the rate from Hawkestone would not, under the provisions of section 329 of the Railway Act, be applicable, and if the published rate from Corinth was found to be out of line, the question could be taken up and the rate adjusted prior to shipment. Reductions in rates can be made effective upon three days notice with regard to traffic between points in Canada. I do not consider it necessary or desirable that tariffs should be left entirely open as to routing, and the interpretation here sought by complainant placed upon them in order to take care of the isolated shipments from or to points which would thereby be brought in as intermediate. Complainant cited various points between which commodity rates on lumber are not specifically published. There is no evidence on the record showing that lumber is actually moving between the points named. If it is, the proper way to handle such cases is to arrange to have rates specifically published where necessary. The railway stated rates are specifically published to destinations to which it is reasonably expected carload shipments will move, and if there is likely to be a movement to other points not provided for, it will publish specific rates on request of the shipper.

With respect to lumber dressed, etc., in transit, and charge for haul out of the direct run, this is a matter that has already been dealt with by the Board's Judgment dated March 31, 1927, and General Order No. 440, dated May 5, 1927, issued pursuant thereto. The judgment of the Board states in this connection:—

> "The justification for the collection of a charge for an out of line haul, is the performance by the Railway of an additional service beyond what is involved when the stop-off point is on the direct run—the direct run being the route over which the traffic moves. When the stoff-off point is on the route over which the traffic moves between point of origin and final destination there is no justification for the charge."

General Order 440 disallowed rules contained in tariffs of the carriers which provided that the out of line haul would be the difference between the distance via the shortest route from point of origin to final destination, and the shortest distance from point of origin to final destination via the stop-off point.

So far as relates to the suggestion of complainant that the rule may in some way affect the movement of traffic, or manner in which the operating department of the railway has heretofore handled it, to the detriment of the shipper, it may be observed that, as already set out, the rule has reference only to rates and merely makes clear the practice which has heretofore prevailed; further, the Railway is on record as stating that there is no intention whatever to interfere with operating arrangements that will expedite the movement of traffic in the interest of the public.

Complainant contended that to restrict shipments to the shortest route should not be recognized; that the Interstate Commerce Commission will not recognize it (p. 12276). Again at pages 12277-8, the following discussion took place:—

> "Mr. Ransom: Do you know of any case in which the Interstate Commerce Commission has given the shipper the privilege of taking eight cars that are consigned from one point to another and sending four of them by a circuitous route to avoid arriving at destination at the same time, and avoiding demurrage charges?
>
> "Mr. Killingray: We do not have to.
>
> "Mr. Ransom: You mentioned that the Interstate Commerce Commission recognizes what you are after.

"Mr. KILLINGRAY: Surely. The Interstate Commerce Commission as a matter of fact has always said the shipper has the right to route his traffic. That covers the whole thing.

"Mr. RANSOM: I think the proposition Mr. Killingray has advanced is most ridiculous; he proposes that we split up our trains, take out three or four cars, and take them by a long route through a congested terminal like Toronto, in order to get train service for a commodity like lumber, which is to be sent by a route that is going to delay it, and in some way escape demurrage.

"Mr. KILLINGRAY: Not only does the Interstate Commerce Commission recognize the right of every shipper to route his lumber, it also recognizes that the carrier has no right to question why the shipper should route it this way or that way.

"Mr. RANSOM: I do not think the Interstate Commerce Commission says that a shipper can send a car of lumber from Chicago to Detroit through Battle Creek.

"Mr. KILLINGRAY: Of course you have the privilege of ignoring that, and we have no comeback unless we are damaged."

Reference was also made by complainant to Fourth Section Order 8900 of the Interstate Commerce Commission. A careful reading fails to show wherein either the Fourth Section of the Interstate Commerce Act, or the order in question, contains a direction to carriers in the United States, which, if also applied in Canada, would prohibit the publication by Canadian carriers of the rule which is here objected to by the complainant. With regard to complainant's statement that the Interstate Commerce Commission will not recognize the restriction of shipments to the direct routes, this is not borne out by the record, as rules that are actually in effect on tariffs which have been filed with, and accepted by, the Interstate Commerce Commission, with respect to routing over the rails of United States carriers between points in the United States, are practically the same as that here objected to. For example, in connection with Canadian Pacific Railway Tariff C.R.C. No. W-2670, which is filed with the Interstate Commerce Commission under their number W-688, applying on wood-pulp from certain stations in Canada to points in the United States, the said tariff contains rules 4 and 5, reading as follows:—

"4. Except as otherwise provided, under the rates named in tariff and as amended, traffic while on the rails of the Northern Pacific Railway will move via the most direct route from point where received from consignor or connecting line, to point where delivered to consignee or connecting line, except that when for its convenience the Northern Pacific Railway forwards the shipments via other routes, rates will apply."

"5. Except as otherwise provided, under the rates named in Tariff and as amended, traffic while on the rails of the Minneapolis, St. Paul and Sault Ste. Marie Railway will move via the most direct route from point where received from consignor or connecting line, to point where delivered to consignee or connecting line, except that when for its convenience the Minneapolis, St. Paul and Sault Ste. Marie Railway forwards the shipments via other routes, rates will apply."

Reference could be given to other tariffs of United States carriers which restrict the routing over their lines to the direct route, with provision that the rates will also apply where traffic is otherwise handled for carrier's convenience, or otherwise specifically provided for.

Complainant admitted that the carriers are at liberty to restrict their rates to any one route. He stated, page 12298:—

> "The railway has the right to restrict its rates to any one route, but it should publish them in the tariff, and if the shipper wants another route he should be at liberty to come to the Board and ask for a reasonable rate. These things all have to be decided upon their own individual merits."

While contending, therefore, that in the absence of restriction as to routing, any route in existence between point of origin and destination, regardless of its circuity, is available, and while apparently desiring such condition, in some cases, at least ,complainant at the same time recognizes the right of the railway to restrict its rates to any one route, but states it should be done by publication in the tariff. This has been done by the incorporation in tariffs of the rule complained of. However, complainant states the rule is not sufficiently specific, because it requires the shipper to check the shortest mileage, as found in the official distance table of the carriers, to determine what route is available under the rule in question. The practice for a great many years has been in accordance with the rule that is herein quoted. Shippers all over the country, and many who are shipping in larger volume than the clients of complainant, are working under said rule, and no complaint has been received of any difficulty they are experiencing. This rule is not confined to the tariffs applying on lumber, in which the complainant is interested, but is published in numerous tariffs applying on various other commodities, as well as in tariffs naming class rates.

The railway bases its rates, except where competitive, as already stated, on the shortest distance between point of origin and destination, and a provision in the tariff stipulating that the rates are applicable only over the same route as the rates are based on, except as may be otherwise specifically provided, or unless shipments are otherwise handled for the railway's convenience, in which case the rates apply, I consider to be reasonable. Complainant admits the railway's right to so prescribe routing, but objects to the rule on the ground that it is not sufficiently specific. To meet the complainant's objection, it would appear that the specific routing through the various junctions would have to be set out in the tariff to cover the routing between each shipping point and each destination. Of course, in some cases, such a method of indicating the routing could be grouped as to certain shipping stations and certain destinations. To conform, however, with this idea of complainant, would involve a most cumbersome and confusing addition to the tariffs and, in some cases, the size of the tariff would be augmented by many pages of routing instructions to provide, in effect, for the same method of handling as prescribed by the concise rule that is here in question. I do not consider a case has been made out under which the Board would be warranted in directing the cancellation or modification of the rule in question.

The complaint with regard to the rate charged on the shipment from Corinth to Detroit should be dismissed, there being no violation of the long and short haul provision of the Railway Act proven. The question of reasonableness for the future, of the rate charged from Corinth to Detroit, is not involved in this issue, the complaint being directed to the legal charge on a shipment which moved in 1924.

Ottawa, January 19, 1928.

Application of the City of Windsor for a rehearing of its application for crossing with a bridge the C.P.R. tracks at Wyandotte street.

This matter was set down for further hearing to enable the parties to make such representations as they desire regarding:

1. *Extra cost of Canadian Pacific Railway third track.*
2. *Extra construction cost by reason of the City's request that the bridge be constructed the full width of the street.*

File 3526.24.

Heard at Windsor, Ontario, December 13, 1927.

JUDGMENT

McLean, Assistant Chief Commissioner:

I

Under date of October 25, 1926, judgment was rendered in the matter of the application of the city of Windsor, Ontario, for the reconstruction of Wyandotte street bridge, in that city. Thereafter, Order No. 38320, of October 29, 1926, issued.

This order provided that the Canadian Pacific Railway Company was to reconstruct the said bridge, so as to provide a roadway 44 feet in width, with two sidewalks each six feet in width; or, in the alternative, a roadway 46 feet wide and two sidewalks each five feet in width. The applicant was to elect, within ten days from the date of the order, whether it desired to have a structure 66 feet wide. The order continued:—

> "If so, such extra width to be provided by the applicant entirely at its own expense as to the cost attaching to the additional ten feet, and such items of cost as may attach thereto. Detail plans of the proposed work to be submitted by the railway company to the applicant and to the Engineer of the Board for approval."

By the order, 60 per cent of the cost of construction of the 56-foot bridge was placed on the Canadian Pacific Railway Company; the balance on the applicant. The cost of maintenance was to be borne and paid by the railway company. The applicant, however, was to be at the expense of any covering or surfacing on the substructure of any different construction or durability than that provided at the time of the construction of the original bridge which, in its judgment, might be necessary to take care of the traffic at the point in question.

II

Counsel for the railway company sets out that the width of the right of way, at the place in question, is 150 feet. Before the reconstruction of the second bridge there were two tracks under it. There is a space of 45 feet on the east side from the centre line and 105 feet from the west. As set out, in a communication on file from the railway, under date April 4, 1927, one of the abutments is carried to a greater depth than the city thinks necessary for the present purposes. It is set out, "that the abutment is carried to this greater depth in order to provide against the possible construction in the future of a third track". What is involved then is the question of additional cost arising from additional depth of the abutment. It is stated that there are siding tracks on either side of the bridge now, and that it is quite likely that within a very short time the track in question will require to be run through. The plan filed shows the two main spurs between which there are the two tracks at the present time. On the east side there are short abutments on the extreme property of the boundary of the right of way. This is not changed. The difference in cost involved is about $3,200.

III

July 9, 1912, plans were placed before the Board showing the proposed replacement at Wyandotte street, of the existing wooden bridge by steel bridge. The plans proposed were approved by Orders No. 17096, of July 23, 1912, and No. 20250, of August 30, 1913. The replacement would have involved a decreased vertical clearance. This was objected to by the city, and the reconstruction proposed, therefore, did not go on. In regard to this bridge, as proposed and approved, no provision was made for division of cost, or was any suggestion of any portion being placed on the city. The application provided for an additional third track, under the bridge. The work of providing for this third track would have cost substantially the same as is involved in the present third track provision.

IV

The position of the railway, in the present instance, is set out at pages 12831 to 12834 of the evidence, which may be summarized as follows:—

1. The width of the right of way, at the place in question, is 150 feet; 45 feet on the east side from the centre line, and 105 feet on the west side.

2. This right of way is on both sides of Wyandotte street, and the railway has the right to cross Wyandotte street with the tracks.

3. The railway has put in, on the west side of the bridge, a deeper abutment, in order to give room for a third track.

4. It is contended that the railway should not be limited in the use of its right of way, and decisions of the Board in this connection are referred to. The situation, as presented, is that there are 45 feet of right of way on one side of Wyandotte street, then the width of the street, and then 105 feet of right of way. The right of crossing on Wyandotte street comes from the sanction of the Railway Committee in 1889. Counsel for the railway, referring to this order, says:—

> "We have the same right to cross at the lower level as we have on the upper level having got that under an Order . . . of the Privy Council."

The right to carry a railway track across a street—proper authority having been obtained—gives no property right in respect of the crossing in question, other than by the creation of an easement, nor does it create any easement in respect of tracks to be laid down in the future, and within a certain width. Each track so to be laid down requires a separate sanction.

Following the position set forth by counsel for the railway, the railway has the same right of crossing on the lower level as on the upper level. The railway would have rights of crossing on the upper level only in so far as each such crossing had been specifically sanctioned. The third track, which is now before us, would seem to be a reasonable provision for future development, and costs necessarily incidental to make provision for this third track, would appear to be reasonable to incur.

I am of the opinion that the additional cost of the deeper abutment should go into the total cost, and that the cost involved should be apportioned as provided for in Order No. 38320 of October 29, 1926, viz., 60 per cent on the railway and 40 per cent on the city of Windsor.

V

The second matter involved is, the extra construction cost by reason of the city's request that the bridge be constructed to the full width of the street.

As set out in summarizing the order, provision was made for a bridge 56 feet wide, it being in the option of the city to have a bridge 66 feet wide, the

cost appertaining to the additional 10 feet being entirely on it. The nature of the construction is such that a retaining wall is necessary for a bridge 66 feet wide. A retaining wall would also be necessary for a bridge 56 feet wide. The question arises to what extent is the cost of the 66-foot structure, so far as approaches are concerned, in excess of 56-foot structure. In regard to the latter, as has been pointed out, the railway was to pay 60 per cent.

From the discussion which took place, it appeared that there had been some misunderstanding, and it was suggested that the railway at one time was averse to participating in the cost of the approaches. This was, however, set at rest in the hearing. What is involved is about $13,000.

The situation then is that, subject to what has already been pointed out, the order was for a 56-foot structure. Within the limits of the work necessary for the construction of the 56-foot structure the cost was to be divided between the railway and the city in the proportion of 60 per cent and 40 per cent. In respect of the additional cost of the actual width of the 66 feet, all of this is on the city. In the proportion of 60 per cent and 40 per cent for the 56-foot structure, the railway's portion includes its contribution to the cost of the approaches.

In the event of the parties being unable to agree on this phase of the matter, it will be submitted to the Board's Chief Engineer for investigation and report, and action thereafter by the Board.

Ottawa, February 11, 1928.

Commissioner Lawrence concurred.

Application of the Vancouver Milling and Grain Company re *rates on poultry and stock feed shipped with mixed cars of grain and grain products.*

File 35122

JUDGMENT

McLean, Assistant Chief Commissioner:

Application was made for a rearrangement in regard to the rates on which live stock food and poultry food moves.

Under the rules referred to later, live stock food and poultry food, not medicated or condimental, and containing not more than 20 per cent of ingredients other than grain products, is subjected to certain rate arrangements later set out.

The poultry food is spoken of as laying mash. It is a mixture of mill grains (bran, middlings, ground oats, ground corn meal); beef scrap or fish meal; sometimes soy bean meal or powdered milk.

Applicants say that at present they lose the benefit of the transit privilege even on the part of the food which consists of grain by-products.

As the situation stands at present, if a miller loads, into a car entitled to transit, ten bags of grain products intended for poultry food and two bags of meat scrap, he would, under the existing tariff, be entitled to the transit rate on the grain products, and 4th class rate on the meat scrap. If, however, he mixes the ten bags of grain and two bags of meat scrap, and thereby produces twelve bags of poultry food, he is denied the transit privilege on any portion thereof and must pay the 8th class rate on the whole shipment from mill to final destination. The content of the car is exactly the same; but the ingredients not being shipped in separate bags a higher rate is charged.

The rates in Eastern Canada, as compared with Western Canada, have as their subject-matter in Eastern Canada live stock food and poultry food and in Western Canada stock and poultry foods. There are common to both the

provisions (*a*) that they are not medicated or condimental; (*b*) that they contain not more than 20 per cent of ingredients other than grain products. Further analysis sets out the following:—

Eastern Rule

1. On shipments both of transit and non-transit products;
2. The transit portion will be charged on the transit rate;
3. The non-transit portion will be charged at the local C.L. grain products rate from the milling point;
4. The weight of the non-transit portion may be used in making up the transit C.L. minimum weight.

Western Rule

1. Shipments other than Grain Products in bulk, in bags, or barrels only;
2. With milled in transit cars of flour and other grain products;
3. Will be charged the carload rate from the milling point to destination at the actual weight;
4. The total weight of all commodities in the car will be used in marking up the carload minimum.

The laying mash may either be mixed by hand at destination, or mechanically mixed at the mill and shipped out; the latter gives a better mixture of more uniform quality and grade.

In the case of milling, malting, storage and cleaning in transit, as well as in the case of stop-off on rough lumber for dressing, resawing, kiln-drying, resorting or reshipment, arrangements as to rates continue notwithstanding changes in the shipments out as compared with the shipments in. This is not, of course, conclusive in connection with the particular facts before us, but is interesting from the standpoint of analogy.

There is a difference in value as between the foreign ingredients—meat scrap, fish meal, etc.—and the grain products; and the mixture so obtained has some additional value over an equivalent amount of grain products. As set out in evidence (p. 10878), the foreign material which is included in the maximum of 20 per cent is worth from one-third to one-half more by weight than the grain products factor. But, while the mill-mixed "mash" is somewhat more valuable by weight than the grain products factor, it must be remembered that in a ton of "mash" the foreign products represent a maximum of 400 pounds. On the evidence, the "mash" in which the applicants are interested had from 5 per cent to 10 per cent of foreign products, *i.e.* from 100 to 200 pounds.

As developed the foreign products have in Ontario, under tariff, the 8th class rate, or lower, where the grain and grain products have a lower commodity rate. The applicants propose that so far as they are concerned they should pay the 4th class rate on the foreign products (p. 10914). Taking, for example, a 40,000 pound shipment of grain products from Leader, Sask., milled at Vancouver, and destined to Kamloops, there would be, on a 20 per cent mixture, 38,000 pounds of grain and grain products and 2,000 pounds of poultry food. The latter is charged an 8th class rate of 39 cents. What is proposed is that there should be a transit charge on 39,600 pounds, and a 4th class non-transit rate of 59 cents on 400 pounds non-transit material.

Reference was made by the railways to the *Taylor Milling and Elevator Co., case: Judgments and Orders, Vol. IX No. 5 p. 103.* In this there was involved the classification of Chick Feed. The railways referred to this as showing that the applicants, in that case, were not allowed the privilege of including L.C.L. shipments of poultry food with grain products at C.L. rates bulking the whole to make up the minimum weight required for grain products. The Board did hold that chick feed, shipped in carload lots, might not be mixed with grain products on grain products rate.

In the present instance, however, what is involved is not an application for the carriage of poultry food on the grain products rate, but for the 4th class rate on the foreign products.

As set out on pages 10876 and 10914 of the evidence, what is being asked for is that the addition of the foreign ingredients should not cause the applicants to lose the benefit of the transit privilege in respect of the grain products.

On p. 10914, it is stated—

> "We are not asking that the foreign or non-transit ingredients should be handled at a cheaper rate; we are willing to pay for that on the proper basis; but we do want to have the transit rate apply to the grain products."

In substance, then, what is set out is that the applicants are willing to pay the regular 4th class rate on the non-transit material, provided the grain content is given the transit rate.

I think this is reasonable and should be allowed.

February 13, 1928.

ORDER NO. 40328

In the matter of the complaints of the Northern Bolt, Screw and Wire Company, Limited, of Owen Sound, Ontario; the Frost Steel and Wire Company, Limited, The Laidlaw Bale-Tie Company, Limited, and the B. Greening Wire Company, Limited, of Hamilton, Ontario; The Graham Nail Works (Reg'd), Toronto; Toronto Wire and Nail Company, Limited; The P. L. Robertson Manufacturing Company, Limited, Milton; Canada Metal Company, Limited, Toronto; and the Board of Trade of the City of Toronto—against the proposed cancellation of import rates on wire rods from Montreal.

File No. 27007.12.

Tuesday, the 7th Day of February, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

Upon hearing the complaints at the sittings of the Board held in Toronto, November 16, 1927, the complainants, the Steel Company of Canada, Limited, Hamilton, the Canadian Freight Association, Canadian National Railways, and Canadian Pacific Railway Company being represented at the hearing, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board Orders: That the Canadian National Railways and the Canadian Pacific Railway Company be, and they are hereby, required to publish the following import rates on wire rods, in coils, carloads, from Montreal, P.Q.:—

To	
Toronto	$4.80 per gross ton
Hamilton	4.80 per gross ton
Milton	5.20 per gross ton
Owen Sound	5.80 per gross ton

minimum weight 30 gross tons, except when marked capacity of car is less, in which case the marked capacity of car will be the minimum weight; but in no case is the minimum weight to be less than 60,000 pounds.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40334

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of what is known as the Saskatoon Loop Line.

File No. 34971.2

WEDNESDAY, the 8th day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

The Board orders: That the applicants be, and they are hereby, authorized to open for the carriage of traffic that portion of the new main line through the city of Saskatoon, in the province of Saskatchewan, known as the "Loop Line", comprising the following mileage: Main Loop line from junction with Saskatoon Terminals Subdivision of the Canadian Northern Railway to junction with the Asquith Subdivision of the Grand Trunk Pacific Railway, a distance of 5.69 miles, crossing the Pheasant Hills Branch of the Canadian Pacific Railway Company, at grade, at mileage 4.84; north leg of wye at the junction with the Saskatoon Terminals Subdivision, 0.39 miles in length; east leg of wye at the junction with the Asquith Subdivision, 0.28 miles in length; connection between the old Rosetown Subdivision at mileage 2.20, and the loop line at mileage 5.41 of length 0.35 miles; connection between the old Rosetown Subdivision at mileage 3.92 and the Asquith Subdivision, 1.58 miles in length; crossover from the Asquith Subdivision to mileage 0.32 of new Rosetown Subdivision, 0.06 miles in length—total mileage, 8.35 miles.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40342

In the matter of the application of the Council of the Municipal District of Lamerton No. 398, in the Province of Alberta, hereinafter called the "Applicant", under Section 256 of the Railway Act, 1919, for authority to construct a subway at the crossing of the Canadian National Railways (Calgary-Tofield Branch), in the Southwest Quarter of Section 14, Township 39, Range 23, West 4th Meridian, as shown on the plan and profile dated June 9, 1927, on file with the Board under file No. 10821.39.

WEDNESDAY, the 8th day of February, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, October 28, 1927, in the presence of counsel for the applicant and the railway company, and what was alleged; and upon the report of its Chief Engineer,—

The Board orders: That the application for a subway at the point in question be, and it is hereby, refused, but that the view at the said crossing be

improved by cutting off the shoulder of the bank in the southeast angle of the crossing and chiselling off the top of the bank on the west side of the track, so as to improve the view for people approaching the crossing from the west; the said work to be done by and at the expense of the railway company.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 40351

In the matter of the application of the Vancouver Milling and Grain Company, Limited, regarding rates on poultry and stock feed shipped with mixed cars of grain and grain products.

File No. 35122.

WEDNESDAY, the 8th Day of February, A.D. 1928.

S. J. McLEAN, *Assistant Chief Commissioner.*
C. LAWRENCE, *Commissioner.*
Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, October 19, 1927, in the presence of counsel for and representatives of the Vancouver Milling and Grain Company, Limited, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged,—

The Board Orders: That the present regulation and rate covering stock and poultry food shipped with milled-in-transit cars of flour and other grain products, published by the Canadian Pacific and the Canadian National Railway Companies as applicable in the territory Port Arthur, Armstrong, and west thereof, be cancelled; and that, effective not later than March 11, 1928, the following be substituted therefor, namely:—

"When stock and poultry food (not medicated nor condimental) containing not more than twenty per cent (20%) of ingredients other that grain or grain products, in bulk, in bags or barrels only, are shipped with milled-in-transit cars of flour and other grain products, the grain or grain products portion thereof will be charged at the transit rate, and the non-transit portion will be charged at the local L.C.L. rate from the milling point. The weight of the non-transit portion may be used in making up the transit carload minimum weight."

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 40340

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.14.

THURSDAY, the 9th Day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published on potatoes and turnips from Temiscouata Railway stations to St. Jerome, Quebec, and Charlemagne, P.Q., in Supplement No. 2 to Tariff C.R.C. No. 623, filed by the Temiscouata Railway Com-

pany under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 2 to Tariff C.R.C. No. 623, approved herein, are as follows:—

To St. Jerome, P.Q., those published to the same point in Temiscouata Railway Tariff C.R.C. No. 492.

To Charlemagne, P.Q., those published to Lachute, P.Q., in the same tariff.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40345

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

THURSDAY, the 9th day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:—

1. That the tolls published in tariffs filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, and set out in column 1 of the schedule to this order be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule, opposite the corresponding tariffs mentioned in column 1.

SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 5 to 783	738
Supplement 5 to 812	779

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40352

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13

Monday, the 13th day of February, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

The Board orders:—

1. That the toll published on hay and straw from Truro, Nova Scotia, ex College Bridge, New Brunswick, to Yarmouth, Nova Scotia, in item No. 40 of Supplement No. 6 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been applied in lieu of that published in the said item No. 40 of Supplement No. 6 to Tariff C.R.C. No. 813, approved herein, is 14 cents per 100 pounds.

H. A. McKEOWN,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of the Village of Erieau, Ont., against the Pere Marquette Railway Company constructing extensions of tracks and switches and making certain other changes at Erieau in connection with coal trackage and storage, at the west end of the village which is a residential section, the Council claiming that such changes should be limited to the east end of the village;

AND

Application of the Pere Marquette Railway Co., for an Order permitting it to construct, maintain and operate three additional tracks on its right of way across Second street and Fourth street and two additional tracks across a street crossing the right of way of the P.M. Rly., which street is near to the Town Hall in the Village of Erieau, Ont., for the purpose of enabling the said P.M. Rly. Co'y to afford proper shipping facilities to the Lake Erie Coal Company, Limited.

File 35536.

JUDGMENT

COMMISSIONER LAWRENCE:

A joint meeting was held at Chatham, Ont., on November 11, 1927, by Mr. A. G. Blair, K.C., Counsel, Mr. H. A. K. Drury, Assistant Chief Engineer, and Mr. M. J. McCaul, Inspector, representing the Board, and Mr. G. L. Fraser, representing the Pere Marquette Railway Company, and Mr. J. G. Kerr, K.C., for the village of Erieau, together with a number of property owners affected.

The matter was heard at a sittings of the Board held at Windsor, December 13, 1927, before Assistant Chief Commissioner McLean and Commissioner Lawrence. Mr. G. L. Fraser, solicitor, and Mr. D. J. Swope, Division Engineer, appeared for the Pere Marquette Railway Company, and Mr. J. G. Kerr, K.C., appeared for the municipality of Erieau, as well as a number of private individuals affected by the application.

A joint inspection and conference was again held at Erieau, Ont., on Friday, January 20, 1928, when the railway company and the village of Erieau were represented.

In view of what was submitted at the conference at Chatham, and at the sittings of the Board in Windsor, and the inspection made on January 20, by

Mr. Simmons, Chief Engineer, and Mr. Spencer, Chief Operating Officer, as above set out, and their joint report in connection therewith, I think an Order might issue requiring the railway company to locate its track scale on the new lead near the depot, as shown on the plan on file, dated October 4, 1927, and to construct one siding parallel to and on the south side of its main line west from the entrance to the new proposed yard, the said crossing not to be generally used for the purpose of storing cars.

The three crossings connecting the north and south highways, one opposite lot 76, one at Fourth street and one at Second street; the distance from the crossing opposite lot 76 to Fourth street being 1,400 feet, and the distance from Fourth street to Second street being 1,625 feet; and the plans accompanying the application, modified as set out above to be approved.

The maintenance of the highway crossings authorized by the order to be in accordance with the Board's plans and specifications, and at the expense of the municipality of the village of Erieau.

February 17, 1928.

Chief Commissioner McKeown, Assistant Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioner Oliver concurred.

In the matter of the complaint of the Dominion Millers' Association that the present tariffs of the railway companies on the product of ex-lake grain milled in transit and exported via New York, discriminate in favour of Chicago, Detroit, Toledo and Buffalo.

File No. 666.1

JUDGMENT

COMMISSIONER OLIVER:

I have before me for signature an order dismissing the above complaint of the Dominion Millers' Association, which was heard by the Board on April 21, 1925, and on October 2, 1925.

The order as drafted is not based on the written judgment of a member of the Board, but on the report of the Chief Traffic Officer.

I find on page 8 of the report of the Chief Traffic Officer, "A comparison of export flour rates", in which he says:—

> "From the Canadian bay ports the mileage is computed on the distance via Canadian National Railways to Buffalo, thence average of 443 miles to New York. The mileage used from the other shipping points is indicated.

To New York from	Miles	Rate
Chicago (average)	982	23½
Detroit	628	18½
Port Huron	590	18½
Toledo	700	18½
Collingwood	611	22
Depot Harbour	693	24½
Goderich	600	21
Midland	633	22
Tiffin	632	22
Port McNicoll	643	22
Port Colborne	464	18½
Buffalo	443	16

> "Complainants point out that the rate from Port Colborne is 2½ cents more than from Buffalo although only 21 miles further; also that Port Colborne is charged the same rate as Detroit, although a considerably shorter haul; further the rates from Goderich, Midland and Port McNicoll are higher than from Detroit and Toledo."

On reference to the file I find that in a letter, dated February 22, 1926, D. A. Campbell, General Manager of the Maple Leaf Milling Company, made the following statement:—

> "Under date of November 4, I wrote you pointing out in a general way, items of general discrimination against the milling of wheat in Canada in favour of Buffalo, and in particular referred to a case of rank discrimination where the by-products of Canadian wheat ground in bond in Buffalo, were taken by the Canadian National Railroad right through Port Colborne, where our mill is located, through Toronto and Montreal to New England points, at a rate seven cents per 100 pounds lower than the rate from our Port Colborne mill on the same traffic moving in the same way" . . . . .
>
> "Buffalo mills continue to grind Canadian wheat in large volume, using a rate 2½ cents a hundred cheaper than from our Port Colborne mill, and I maintain that in the making up of the rate from Port Colborne to New York for export, the percentage of the through rate granted to the Canadian National Railroad gives them a revenue greater for the service they perform, than any other rate on any other export traffic in North America. . . . .
>
> "We have represented to you that we should have a sixteen-cent rate from Port Colborne to New York for export or the same rate as is given the mills at Buffalo. If your Board decide against us in this case you will give a further impetus to the milling of Canadian wheat in bond at Buffalo."

A letter from C. B. Watt, Secretary of the Dominion Millers' Association, dated November 10, 1927, appears on this file. Mr. Watt says:—

> "I am instructed to bring to your attention the fact that the exports of flour from Canada during the last year declined over one million and a half of barrels from the previous year. . . . During the crop year ending July 31, 1927, over 128 million bushels of Manitoba (Canada Western) wheat were shipped to Buffalo and other United States lake ports, while the total quantity of wheat shipped at the same time to all Canadian lake ports, including Montreal and Quebec, was only 100,598,000 bushels."

A comparison of rates and distances as given by the Chief Traffic Officer from Canadian and United States points, shows the following:—

	Miles	Rate	
Depot Harbour	693	24½	
Toledo	700	18½	
Difference		6	cents
Midland	633	22	
Detroit	628	18½	
Difference		3½	cents
Goderich	600	21	
Port Huron	590	18½	
Difference		2½	cents
Port Colborne	464	18½	
Buffalo	443	16	
Difference		2½	cents

All mills at points mentioned in both Canada and the United States draw their wheat supplies from the same or similar sources and compete in the same export markets. The milling industry is one of the most important in Canada, and has been developed to such a degree that it is dependent on the export

market for its prosperity and further expansion. If the figures given by the Chief Traffic Officer are correct, the present export rail rates place the Canadian mills at a definite disadvantage, as compared with their United States competitors. Whether the serious decrease in export output in 1927 is a reflection of the rate discrimination in favour of their competitors or not it shows beyond question that the industry is not able to pay higher rates than their competitors for equal service.

For the foregoing reasons, I am unable to agree with the Chief Traffic Officer that the complaint of the Dominion Millers Association should be dismissed.

OTTAWA, February 18, 1928.

ORDER No. 40384

In the matter of the application of the Dominion Millers' Association for an Order directing the railway companies to issue tariffs in accordance with the Orders of the Board Nos. 585 and 641, dated July 25, 1905, and September 4, 1905, respectively, based on the reshipping rate from Chicago;

In the matter of the complaint of the Dominion Millers' Association that the present tariffs of the railway companies on the product of ex-lake grain milled in transit and exported via New York discriminate in favour of Chicago, Detroit, Toledo, and Buffalo.

File No. 666.1

And in the matter of the application of the Maple Leaf Milling Company, Limited; the Western Canada Flour Mills Company, Limited; the Canadian National Millers' Association, and the Department of Agriculture of the Province of Ontario to intervene in the above matters.

File No. 666.1

THURSDAY, the 16th day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Hon. FRANK OLIVER, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, April 21, 1925, and October 2, 1925, in the presence of counsel for and representatives of the Dominion Millers' Association, Maple Leaf Milling Company, Canadian National Millers' Association, the Department of Agriculture of the Province of Ontario, Canadian National Railways, and Canadian Pacific Railway Company, and what was alleged; and upon the report and recommendation of its Chief Traffic Officer,—

The Board orders: That the said application and complaint of the Dominion Millers' Association be, and they are hereby, refused and dismissed.

H. A. McKEOWN,
Chief Commissioner.

Application of the City of Quebec, P.Q., for an Order authorizing the construction of a subway under the Canadian National Railways tracks on the Charlesbourg Road, and dividing the cost of said construction and its maintenance between the Canadian National Railways and the City of Quebec.

File 26782.21.

JUDGMENT

THOMAS VIEN, Esq., K.C., *Deputy Chief Commissioner:*

This matter was heard at Quebec on the 22nd of November, 1927, before the Chief Commissioner, MM. Commissioners Lawrence and Oliver, and myself.

There appeared before us: for the city of Quebec, Eugene Chapleau, Esq., K.C., and Elisee Theriault, Esq., K.C., M.P.P.; for the Canadian National Railways, C. V. Darveau, Esq., K.C., and T. Waterston, Esq.; for the citizens of the city of Quebec, S. Lapointe, Esq., K.C.

At mileage 2.3 of the Canadian National Railways, Quebec district, Montreal division, St. Lawrence subdivision, the Canadian National Railways lines cross a public highway known as the Charlesbourg road. This crossing is within the city of Quebec, Limoilou Ward, about two miles west of Limoilou Junction.

In October, 1922, our inspector Lalonde reported an accident that had occurred on the 3rd of the same month, whereby one person was fatally and four persons seriously injured.

On the 13th of June, 1923, the Department of Highways for the province of Quebec pointed out the dangerous conditions of this crossing, and requested that the railway company be directed to provide adequate protection.

On the 15th of June, 1925, the city of Quebec applied to this Board for an order directing the construction of a subway and apportioning the cost of construction and maintenance between the Canadian National Railways, the Quebec Railway, Light, Heat and Power Co., and the city of Quebec.

The Canadian National Railway objected that the crossing was not dangerous; that the traffic was light on the railway; that a subway was unnecessary and would be expensive; that if the city required it for the purpose of extending the street railway system, it should be entirely at its own expense.

Numerous complaints and applications have been received since from several interested parties, among whom Henri Lavigueur, Esq., M.P., Mr. Frank Byrne, the Quebec Land Company, the Quebec Realty Co., Arthur Simard, Esq., N.P., all to the effect that the crossing is dangerous, the traffic heavy and a subway urgently needed.

The matter was set down for hearing and heard at Quebec on the 23rd of January, 1926 (Record, vol. 450, p. 873). A number of witnesses appeared in support of the applications and complaints; statistics of the traffic on the highway and the railway were filed.

The Quebec Railway, Light, Heat and Power Company, represented by counsel, without opposing the construction of a subway, could not see why they had been brought into this matter, inasmuch as they were not using and did not intend to use the crossing, nor the subway if it were built, and urged that no part of the cost should be assessed against them.

Mr. Chapleau, on behalf of the city, was unable to show how the city could compel the Street Railway Company to extend its system beyond the crossing, and stated that if it was the intention not to order the Street Railway Company to pay any portion of the cost, he needed further instructions from the city before urging the immediate construction of the subway (vol. 450, p. 885). He therefore made an application for postponement which was granted.

On the 12th of May, 1927, the city asked leave to amend its application so as to leave out the Street Railway Company and to provide for the appor-

tionment of the cost of construction and maintenance between the Canadian National Railways and the city, after deducting a contribution from the Grade Crossing Fund.

Estimates of the cost of the proposed work were also filed by the city, communicated to the railway company and analyzed by the Board's Engineers. The railway company later submitted its own estimates amounting to $61,000, including no allowance for temporary roadway.

The matter was then again set down for hearing, and heard at Quebec as aforesaid.

The city of Quebec called as witnesses, among others, Mr. Henri Lavigueur, ex-mayor, an important business man, and a member of the House of Commons for the county of Quebec; Mr. Joseph Samson, an ex-mayor, another important business man, and member of the legislature of Quebec for the county of Quebec Centre; Dr. Valmore Martin, then mayor of the city of Quebec; the Hon. Adelard Turgeon, K.C., Speaker of the Legislative Council of Quebec, director of the Quebec Light, Heat and Power Company, President of the Quebec Land Company and of the Nor-Mount Realty Company; Mr. Emile Bouchard, a citizen and an alderman of the city, and several others.

These notables were unanimous in saying that this crossing was dangerous, highly travelled over, and should be protected by a grade separation.

Some twenty years ago the north side of the St. Charles river was used as farm land only, and had but one access to the city of Quebec, by way of the Dorchester bridge, a toll bridge. The toll gates have now been removed, Dorchester bridge has been made free, a new bridge has been built. Limoilou has become one of the most important wards of the city, has a population of over 23,000 and property valued for assessment purposes at $9,237,000. The Charlesbourg road is, in part, a street of the city, the most important thoroughfare in Limoilou, and the main artery leading from the city of Quebec to the back country to the north, where very old parishes and settlements are situated. Since 1912, following its Good Roads policy, the provincial Government of Quebec has improved it, and motor and other vehicular traffic on it has increased, and is still increasing by leaps and bounds.

Traffic statistics were filed by Mr. Arthur Bergeron, an official of the provincial Department of Roads, Quebec, showing that during the week from the 1st to the 7th of August, 1927, there passed on the Charlesbourg road, a total of 13,156 vehicles, or an average of 1,880 per day. It is among the seven or eight most highly travelled-over highways in the province.

The Canadian National Railways submitted that the average number of movements at this crossing was fifteen per day, and the largest number, twenty-three; that arrangements were being completed for the enlargement of the coach yard at the joint terminals, Canadian Pacific Railway Palais Station, which, it was hoped, would take care of all the passenger equipment and passenger trains of both the Canadian National Railway and the Canadian Pacific Railway; that they intended to divert their passenger trains to the Palais Station, which would reduce the average number of movements at this crossing to eleven or twelve a day. They admitted that there was a very urgent demand from the city and other interests for the construction of a tunnel (vol. 523, p. 12498).

Estimates of the cost of the proposed tunnel prepared by the railway company and the city engineers practically agree, and amount to $61,000 (vol. 523, p. 12501). Estimates prepared by the Board's Engineer amount to $66,145 including land expropriations and damages.

The city requests that a contribution of 40 per cent of the cost of construction should be granted from the Grade Crossing Fund, and that the balance of the cost of construction and the whole of the cost of maintenance should be divided evenly between the city and the railway company, notwithstanding the seniority of the city.

The dangerous circumstances of this crossing and the urgent need of a grade separation for the safety and convenience of the travelling public are clearly established by the testimonial and documentary evidence produced.

If a grade separation is needed, as I think it is, it would be unwise, as suggested by the railway company, to await the outcome of long and protracted negotiations between the Canadian Pacific Railway and the Canadian National Railway, mooted for over two years already, with no tangible result, in connection with certain changes proposed at the Canadian Pacific Railway Palais station, for the accommodation of additional Canadian National Railway passenger trains. These alterations at best would only reduce the average railway movements at the crossing to eleven or twelve, and the maximum to eighteen or nineteen a day.

I am therefore of the opinion that the application should be granted; that the city should be authorized to build a tunnel under the Canadian National Railway tracks at this crossing according to plans and specifications to be approved by the Chief Engineer of the Board, who will also be charged with the supervision of the work of construction; that a contribution should be granted from the Grade Crossing Fund, not exceeding 40 per cent of the cost of the actual construction work, nor the sum of $25,000; that the balance of the cost of construction, and the cost of maintenance of the said grade separation should be evenly divided between the city and the railway company.

Ottawa, February 21, 1928.

Chief Commissioner McKeown and Commissioners Lawrence and Oliver concurred.

ORDER NO. 40392

In the matter of the application of the city of Quebec, in the province of Quebec, hereinafter called the "Applicant," under Section 256 of the Railway Act, 1919, for authority to construct a tunnel under the tracks of the Canadian National Railways on the Charlesbourg Road, as shown on the plan and profile on file with the Board under file.

No. 26782.21.

Friday, the 24th day of February, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*

Thomas Vien, K.C., *Deputy Chief Commissioner.*

C. Lawrence, *Commissioner.*

Hon. Frank Oliver, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Quebec, November 22, 1927, in the presence of counsel for and representatives of the applicant, the Canadian National Railways, and residents of the city of Quebec, and what was alleged,—

The Board Orders:

1. That the applicant be, and it is hereby, authorized to construct a subway under the tracks of the Canadian National Railways on the Charlesbourg road, in the city of Quebec and province of Quebec, as shown on the plan and profile on file with the Board under file No. 26782.21; detail plans of the proposed subway to be filed for the approval of an Engineer of the Board.

2. That forty per cent of the cost of constructing the said subway, but not exceeding the sum of $25,000, be paid out of the Railway Grade Crossing Fund; the remainder of the cost of construction, as well as the cost of maintenance, to be divided equally between the applicant and the Canadian National Railways.

3. That the said work be done under the supervision and to the satisfaction of the Chief Engineer of the Board.

H. A. McKEOWN,
Chief Commissioner.

(Traduction)

Requête de la Cité de Québec, P.Q., qu'ordre soit donné aux chemins de fer Nationaux de construire un passage souterrain au croisement du chemin de Charlesbourg, et que le coût de cette construction et son entretien soit réparti entre le C.N.R. et la Cité de Québec.

Dossier 26782.21.

JUGEMENT

THOMAS VIEN, C.R., *Commissaire en Chef Suppléant:*

Cette affaire a été entendue à Québec le 22 novembre 1927, en présence du Commissaire en chef, de MM. les Commissaires Lawrence, Oliver et moi-même.

Ont comparu devant nous: pour la Cité de Québec, MM. Eugène Chapleau, C.R., et Elisée Thériault, C.R., M.P.P.; pour les chemins de fer Nationaux, MM. C. V. Darveau, C.R., et T. Waterston; pour les Citoyens de la Cité de Québec, M. S. Lapointe, C.R.

Au milliaire 2.3 de la ligne des chemins de fer Nationaux, district de Québec, division de Montréal, subdivision St-Laurent, la voie du C.N.R. croise un chemin public connu sous le nom de "Chemin de Charlesbourg". Ce passage à niveau est situé dans les limites de la Cité de Québec, quartier Limoilou, environ à deux milles de la jonction Limoilou.

En octobre 1922, notre inspecteur M. Lalonde nous rapportait un accident survenu le 3 du même mois, où cinq personnes avaient été gravement blessées, dont une mortellement.

Le 13 juin 1923, le ministère de la Voirie de la Province de Québec nous signalait ce passage dangereux et demandait un arrêt requérant la compagnie du chemin de fer d'y installer une protection adéquate.

Le 15 juin 1925, la Cité de Québec demandait à la Commission d'ordonner la construction d'un passage souterrain, et de répartir le coût de cette construction et de son entretien entre les chemins de fer Nationaux, la compagnie Québec Railway, Light, Heat and Power, et la Cité de Québec.

Le C.N.R. s'y objecta, prétendant que ce passage n'était pas dangereux; que la circulation sur le chemin de fer était minime; qu'un souterrain n'était pas nécessaire et serait dispendieux; que si la Cité en avait besoin pour prolonger le réseau des tramways, ce devrait être entièrement à ses frais.

Plusieurs plaintes et requêtes nous furent adressées par divers intéressés, entre autres par M. Henri Lavigueur, M.P., M. Frank Byrne, la Quebec Land Co., la Quebec Realty Co., et M. Arthur Simard, N.P., toutes à l'effet que cette traverse à niveau est dangereuse, que le trafic y est considérable, et que la construction d'un souterrain est urgente.

L'affaire fut inscrite et fut entendue à Québec le 22 janvier 1926 (Voir Vol. 450, p. 873 de nos archives). Nombre de témoins comparurent au soutien de ces requêtes et de ces plaintes; des statistiques de la circulation tant sur le chemin public que sur le chemin de fer furent produites.

La compagnie "Quebec Railway, Light, Heat and Power," par son procureur, sans s'opposer à l'établissement d'un passage inférieur, fit valoir qu'elle n'aurait pas dû être impliquée dans cette affaire puisqu'elle ne se sert, ni ne se servira du passage en question, non plus que du souterrain, si on en construit un, et soumit qu'elle ne devait être assujétie à aucuns frais.

M. Chapleau, au nom de la Cité, ne fut pas en mesure de prouver que la Ville pouvait forcer la compagnie des Tramways à prolonger sa ligne au delà de ce passage; il déclara alors que si l'on n'avait pas l'intention d'ordonner à cette compagnie de contribuer aux frais de construction, il lui fallait des instructions supplémentaires de la Cité avant de procéder avec sa requête (Vol. 450, p. 885); il demanda un ajournement qui lui fut accordé.

Le 12 mai 1927, la Cité demandait d'amender sa requête de façon à retrancher les conclusions relatives à la compagnie des Tramways, et à conclure à la répartition du coût de la construction et de l'entretien entre le C.N.R. et la Ville, déduction faite d'une contribution prise à même la Caisse des Passages à niveau.

Des estimés du coût des travaux projetés furent produits par la Cité, signifiés à la compagnie du chemin de fer, et vérifiés par les ingénieurs de la Commission.

Puis cette cause fut de nouveau inscrite et fut entendue à Québec comme susdit.

La Cité fit comparaître comme témoins, entre autres: M. Henri Lavigueur, ex-maire, homme d'affaires important et député du comté de Québec à la Chambre des Communes du Canada; M. Joseph Samson, un autre ancien maire et homme d'affaires important, député du comté de Québec Centre à la Législature de Québec; le Dr. Valmore Martin, alors maire de Québec; l'honorable Adélard Turgeon, C.R., Président du Conseil Législatif de Québec, directeur de la Quebec Light, Heat and Power Co., président de la Quebec Land Co., et de la Nor-Mount Realty Co.; M. Emile Bouchard, échevin de la Cité de Québec, et plusieurs autres.

Tous ces notables s'accordèrent à dire que ce passage était dangereux, très achalandé, et qu'il devrait être protégé en supprimant la traverse à niveau.

Il y a quelque vingt ans, la rive nord de la rivière St-Charles était exclusivement en culture, et n'avait qu'une voie d'accès à Québec: le pont Dorchester, un pont de péage. Les barrières de péage ont été abolies, le pont Dorchester est devenu libre, un nouveau pont a été construit. Limoilou est aujourd'hui un des quartiers principaux de la Cité, avec une population de 23,000 âmes, et des biens imposables d'une valeur de $9,237,000.

Le chemin de Charlesbourg est, en partie, une rue de la Ville, la plus importante de Limoilou, et la principale artère allant de Québec vers les campagnes voisines au nord, où se trouvent d'anciennes paroisses et de vieux établissements. Depuis 1912, le Gouvernement provincial de Québec, suivant sa politique de bons chemins, l'a pris à sa charge et l'a amélioré, et la circulation véhiculaire s'est rapidement et considérablement accrue.

Des statistiques de la circulation produites par M. Arthur Bergeron du ministère de la Voirie de la Province de Québec, démontrent que pendant la semaine du 1er au 7 d'août 1927, 13,156 voitures ont passé sur ce chemin, soit une moyenne de 1,880 par jour. C'est un des sept ou huit chemins les plus fréquentés.

Les chemins de fer Nationaux représentèrent que les trains qui passent à cet endroit étaient, en moyenne, au nombre de 15 par jour, et au maximum, au nombre de 23; qu'on était à négocier un acte d'accord dans le but d'agrandir le parc à wagons, au terminus conjoint, à la gare du C.P.R. au Palais; qu'on espérait par ce moyen y loger le matériel roulant et tous les trains de voyageurs du C.N.R. et du C.P.R.; que si on amenait tous les trains de voyageurs à la Gare du Palais, on réduirait à onze ou douze par jour le nombre des trains à ce passage.

Ils admirent cependant que la Cité et plusieurs intéressés demandaient avec instance la construction d'un tunnel (Vol. 523, p. 12498).

Les estimés du coût de ce tunnel préparés par la compagnie du chemin de fer et ceux préparés par les ingénieurs de la Cité s'accordent à peu près, et se chiffrent à $61,000 (Vol. 523, p. 12501). Ceux préparés par l'ingénieur de la Commission se chiffrent à $66,145, y compris le coût de l'expropriation des terrains et les dommages.

La Cité demande qu'une contribution de 40 pour cent du coût de la construction soit accordée à même la Caisse des Passages à niveau, et que la balance du coût de construction, et le coût total de l'entretien, soient divisés en parts égales entre le compagnie et la Cité, nonobstant le droit d'ancienneté de cette dernière.

Les dangers que présente ce passage, et le besoin urgent d'y remédier par la construction d'un souterrain, ont été clairement établis par la preuve testimoniale et documentaire faite en cette cause.

Si tel est le cas, comme je le crois, on aurait tort d'adopter la suggestion des chemins de fer Nationaux et d'attendre la conclusion de pourparlers longs et indéfinis entre le C.P.R. et le C.N.R., pourparlers qui durent plus de deux ans sans resultats tangibles, relativement à certains changements proposés à la station du C.P.R. au Palais afin de pouvoir y accommoder tous les trains de voyageurs du C.N.R. Ces changements auraient l'effet tout au plus de réduire le nombre des trains au passage en question, à 11 ou 12 par jour, en moyenne, et à 18 ou 19 par jour, au maximum.

Je suis donc d'avis que la requête devrait être accordée; que la Cité devrait être autorisée à construire un tunnel sous les voies ferrées du C.N.R. à ce passage, conformément à des plans et devis qui devront être approuvés par l'ingénieur en chef de la Commission, lequel aura aussi la surveillance des travaux de construction; qu'une contribution n'excédant pas 40 pour cent du coût réel des travaux de construction, ni la somme de $25,000, devrait être accordée à même la Caisse des Passages à niveau; que la balance du coût de construction, et l'entretien du dit passage devraient être divisés entre la Cité et la compagnie du chemin de fer, en parts égales.

Ottawa, 21 février, 1928.

Appuyé par le Commissaire en chef McKeown et les Commissaires Lawrence et Oliver.

(Traduction)

ARRÊT N° 40392

Est considérée la requête de la Cité de Québec, dans la Province de Québec, ci-après dénommée la "Requérante," en vertu des dispositions de l'article 256 de la Loi des chemins de fer, 1919, demandant qu'ordre soit donné de construire un tunnel sous les voies des chemins de fer Nationaux du Canada, au croisement du chemin de Charlesbourg, tel qu'indiqué sur les plan et profil produits au dossier de la Commission sous le

N° 26782.21.

VENDREDI, le 24ième jour de février, A.D. 1928.

L'hon. H. A. MCKEOWN, C.R., *Commissaire en chef;*

THOMAS VIEN, C.R., *Commissaire en chef suppléant;*

C. LAWRENCE, *Commissaire;*

L'hon. FRANK OLIVER, *Commissaire.*

Après avoir entendu la requête à une de ses séances tenue à Québec le 22 novembre 1927, en présence des avocats et des représentants de la Requérante, des chemins de fer Nationaux du Canada, et des résidents de la Cité de Québec; vu aussi les allégués—

La Commission Ordonne:

1. Que la requérante soit, et elle est par les présentes autorisée à construire un passage souterrain sous les voies des chemins de fer Nationaux du Canada, au croisement du chemin de Charlesbourg, dans la Cité de Québec, et Province de Québec, tel qu'indiqué sur les plan et profil produits au dossier de la Commission sous le No 26782.21; des plans détaillés du passage souterrain projeté devant être produits et soumis à l'approbation d'un ingénieur de la Commission.

2. Que quarante pour cent du coût des travaux de construction du dit souterrain, mais n'excédant pas la somme de $25,000, soit payé à même la "Caisse des Passages à niveau"; la balance du coût de construction, de même que le coût de l'entretien, devant être divisés entre la Requérante et les chemins de fer Nationaux du Canada, en parts égales.

3. Que les dits travaux soient exécutés sous la surveillance et à la satisfaction de l'Ingénieur en chef de la Commission.

H. A. McKEOWN,
Commissaire en chef.

Application of the Municipal Corporation of the City of Ottawa, for an Order, under Sections 257 and 264, of the Railway Act, requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of said companies, to replace the existing Somerset Street Bridge, or viaduct, in the City of Ottawa, which carries Somerset street and the tracks of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways, and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street, and for an Order apportioning the cost of such new bridge between the said railways, or between some one or more of them and the said Corporation, as the Board may direct.

Case 396—Part 2.

JUDGMENT

McLean, Assistant Chief Commissioner:

I.

By application, dated July 14, 1927, the city of Ottawa asked for an Order, requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of the said companies, to replace the existing Somerset street bridge, or viaduct, in the city of Ottawa, which carries Somerset street and the tracks and right of way of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways, and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street.

An Order is also asked for, apportioning the cost of such new bridge between the said railways, or some one or more of them, and the said corporation of the city of Ottawa, as the Board may direct.

It is set out that the existing bridge, over the tracks of the said railway companies, whereby the Ottawa Electric Railway Company's tracks and right of way are carried over the said railways, was originally constructed at the cost of the Ottawa Electric, and was, thereafter, enlarged at the joint cost of the said company and of the applicant corporation, under Order No. 3684, of the Board, dated March 13, 1907. It is represented that the bridge has fallen into bad repair and is dangerous to traffic. It is also set out that it is of insufficient breadth, and it will be necessary to remove it and replace it by a more modern structure of greater breadth.

The Canadian Pacific Railway Company, in answering, claims seniority at the point in question, and therefore takes the position that it is exempt from contribution to the cost of construction and maintenance of a new bridge. In making its submission, it said it was not objecting to the application.

The submission made by the Ottawa Electric Railway Company, hereinafter spoken of as the Ottawa Electric, was as follows:—

> " 1. The said bridge consists of a bridge built in 1907 which is a roadway for vehicular traffic other than street car traffic, and adjoining that on the north a bridge built about 1896 for street railway traffic, upon which other vehicular traffic, as well as foot traffic, was permitted."
>
> " 2. The said south bridge was built in order that the public, other than the Electric Company's passengers, should not drive or walk on the

company's north bridge which was said to be dangerous for such traffic, and to supply a roadway equivalent to the laneway which existed prior to the Electric Company buying the said wooden bridge.

" 3. The Electric Company declares that it is the absolute owner of the north bridge and approaches thereto and is not there solely as licensee or by permission and that such north bridge and approaches belong to it absolutely subject to any right which the public other than the tramway-using public may have acquired through its constant use thereof over a long period of years.

" 4. The present application is occasioned by the increase in vehicular and pedestrian traffic, the Electric Company's vehicles now comprising less than 16 per cent of such vehicular traffic.

" 5. The effect of the Electric Company's franchise agreement with the present applicant is that the car-riding public are burdened with such extra expenditures as may be imposed on the Electric Company inasmuch as the Electric Company is entitled to have its fares varied from time to time so that it shall receive a just and reasonable return on the value of its capital assets.

" 5A. The said passengers and the Electric Company will receive no benefit from the proposed new bridge inasmuch as the present north bridge is adequate and safe for street railway traffic.

" 6. The Ottawa Electric Railway has an investment of $31,918 in the said bridges, which investment is a capital asset upon which the company has borrowed money, and issued bonds, and upon which investment its revenue from fares must by law provide a reasonable return, and which investment the present application proposes to destroy.

" 7. The company's sole obligations with respect to any bridge are set forth in Section 20 of an agreement between the city and the said company, dated June 28, 1893, whereby the company agreed to provide the stringers on the underbeams of bridges traversed by the company's railway, and in Section 20 (*a*) which provides that should any such bridge require strengthening because of the operation of the said company's railway thereon, the company and the city shall bear the cost of such strengthening in equal proportions.

" 8. All obligations and expenses relating to the construction, repair and maintenance of any bridge other than the obligations set forth in said Sections 20 and 20 (*a*) are obligations and expenses to be borne by the city of Ottawa or by such other parties exclusive of this company as this Board may deem fit.

" 9. If, as alleged, the company originally constructed at its own cost the said bridges, then no principle was involved in such construction nor was any precedent established thereby, the sole reason therefor being that the city of Ottawa had no funds to assist in the said construction and it was a matter of urgent public necessity for the company to extend its transportation system forthwith westward along the said street and the company made such expenditure voluntarily and without prejudice.

" 10. The Order of the Board, dated March 13, 1907, was made at a time when the volume and nature of traffic was radically different from that now prevailing and such order was based upon conditions which do not now exist and upon a misapprehension of the effect of certain agreements between the city and the company which were not referred to in the evidence or argument at such time, or in ignorance thereof, and the company should not have been ordered to pay any part of the cost of widening the said bridge.

"11. There is nothing contained in the agreement between the city of Ottawa and this company dated the 8th April, 1893, releasing the present applicant from liability it might have had or may now have respecting the construction, repair or maintenance of the said bridges, or any bridge or bridges that might be constructed in its place, and the said Agreement simply stating that *the agreement* shall not be construed as imposing any such liability, and this Company declares that the city of Ottawa or others, and not the Company, always did have and still have the sole obligation for the said construction, repair and maintenance and that such obligation does not depend upon the said agreement and is not imposed thereby.

"12. The grade of the said bridge is unnecessarily steep and could be reduced with safety."

The Canadian National Railways made a detailed answer claiming that, under Agreement with the Ottawa Electric, it was to be indemnified and saved harmless from and against all liability to maintain, repair, alter, or re-construct, the said bridge, or the approaches thereto. The Agreement in question, which is referred to later, is dated August 21, 1896. The Canadian National Railways also relied on the Judgment delivered by the late Chief Commissioner Killam, in the matter of the said Somerst street bridge, dated March 13, 1907, and of the Order No. 3684 of the Board of the same date. The Judgment and Order in question are referred to later.

The parties had their attention drawn to the plans, and were asked to show cause why Order should not go, within eight days, directing the performance of the work, and reserving the question of distribution of cost for further Order, after hearing, if such hearing was requested by any of the parties. This went out on August 5, 1927. In the event it did not appear to be feasible to advance the matter in this way, it consequently was set down for hearing.

In a supplementary written submission, dated August 17, 1927, the city of Ottawa, by its solicitor, in asking for a date to be set for a hearing, stated that, in the opinion of the Board of Control, the ratepayers of the city of Ottawa should know the cost of the structure, and their proportion, prior to the work being undertaken.

II

The plan, as submitted, shows a street 58 feet wide, 42 feet of which are given over to vehicular and street railway traffic, and 16 feet for sidewalks. By lowering the two railway tracks and providing, approximately, 20 feet overhead clearance, it is proposed to reduce the road grade on the east approach to 4.91 per cent. There is no material change to the grade to the west approach. The Board's Chief Engineer points out that the side clearances are standard and that he can see no special objection to the overhead clearance being reduced, as there appears to be no particular necessity for men being on the top of cars. There are three openings concerned—

(1) Champagne avenue, of which there is proposed a span of 22 feet instead of 12 feet as at present;
(2) A span of 61 feet 10 inches over the Canadian National;
(3) A span of 32 feet over the Canadian Pacific;

The balance of the work will be made up of earth fills with necessary retaining walls. It is proposed to lower the tracks on the Canadian National to give a reduced clearance of 20 feet 6 inches. It was stated that the city proposed to use steel. It is understood by the Board's Engineering Department that it is proposed to build with steel encased in concrete. It is reported

that, if this is so, then this type of construction gives more permanency than bare steel, and it is just as good as a reinforced concrete, providing the encasing is properly done. Reinforced concrete would require additional false-work, and the steel construction, as also set out, would mean about 1½ feet lower at the highest point of the bridge. (McCallum p. 10329). The re-arrangements in clearances, with their effects on grades would flatten the grade on top of the bridge about 3½ feet, (McCallum, p. 10329). The reduction of the vertical clearances brings about a betterment in grades. As proposed this grade revision deals only with the Canadian National end. There is no revision with respect to the Canadian Pacific. What is proposed would give a better grade from the east approach. A reduction of 3½ feet in the crown of the bridge has already been referred to. In later communication of the Chief Engineer of the city, he said it would give a reduction of at least 3 feet 9 inches.

The Canadian National, while taking the position that they had no objection to the plans submitted so long as they were not called upon to contribute, said that if they did contribute, they would prefer reinforced concrete instead of steel; this preference being due to lower maintenance cost. The city favoured steel as having cheaper construction cost.

In cross-examination, of the City Engineer, by Counsel for the Ottawa Electric, the following developed (p. 10346-7):—

"Q. . . . As far as the revision of grades is concerned, that deals with the Canadian National end of it; there is no revision with respect to the C.P.R.?"

"A. Yes, it does not touch the C.P.R. at all."

"Q. And that is to get a better grade from the east approach, is it?"

"A. To get a better grade from both approaches. No, I beg pardon; the grade is practically not changed on the approach where your under bridge is, but it gets a better grade on the other end, and it helps to cut down the crown about 3 feet 9 inches.. .. .."

"Q. Then that is entirely a matter of highway improvement?"

"A. Yes."

"Q. And as far as the widening of the bridge is concerned that, as I understand it, from what you say, is due entirely to the road; the vehicular and the pedestrian traffic over the bridge?"

"A. Yes, to meet the present needs."

"Q. Largely, I suppose due to the motor traffic?"

"A. Yes, nearly all the traffic is motor traffic now."

III

It is admitted by counsel for the steam railways that the bridge needs renewal. Counsel for the Canadian National (p. 10347) says that the north half, *i.e.* the lower portion, is not at all well maintained and is not in particularly good shape, but can be made alright without being re-constructed. The south half, which was built in 1907, he says is in pretty bad shape and requires renewal.

In a written submission, dated June 18, 1927, which was submitted in connection with the application of the city to restore the Somerset crossing at grade, it was stated by the Canadian National—

".. .. that there is no doubt but that the bridge in question is in a poor state of repair and requires renewal, and when renewed full consideration should be given to the present and future travel."

Counsel for the Canadian Pacific said, at p. 10323—

"We will admit, as far as we are concerned, that the bridge needs renewal."

Counsel for the Canadian National said, in the same connection—
"I will admit that."

Counsel for the Ottawa Electric says (pp. 10233-4) the south approach—the part built in 1907—is in bad repair and needs something to be done; probably needs renewal. It is claimed the north bridge—the one built in 1896—is in perfect repair, as far as any question of renewal is concerned, and that with minimum repairs it will last an indefinite period. It is contended that the need of change is due to increase in pedestrian and vehicular traffic.

IV

Exhibits filed dealt with the traffic on the bridge. Exhibit No. 8, filed by the city, shows that for one week, June 22 to 29, 1927, there were 19,633 vehicular and street car movements. Of these, 4,721 were street car movements, or 24 per cent of the total. This shows an average for a 24-hour period, in the case of vehicles, other than street cars, of 1,115·7 movements eastbound, and 1,014·57 westbound. The Ottawa Electric movements eastbound were 334·28, and 340·14 westbound. Pedestrian movements were 790·7 eastbound and 807·85 westbound. The traffic, it appears, was fairly well balanced.

The eight hours, 4 p.m. to 12 p.m., are, in proportion to time, the heaviest loaded in number of movements. In this period the following are the percentages of the respective daily totals: vehicles, other than street cars, 45 per cent; street cars, 38 per cent; pedestrians, 53 per cent. Reduced to smaller units of movements, the following detail is available:—

	Per Hour	Per Minute
Vehicles, other than street cars	94.9	1.57
Street cars	24.8	0.41
Pedestrians	83.3	1.38

A further analysis of the total traffic for the average 24-hour period enables the following comparisons of traffic density to be made:—

	Per Hour	Per Minute
Vehicles, other than street cars	88.75	1.47
Street cars	28.09	0.46
Pedestrians	66.60	1.11

In the submissions made in the application for a grade crossing, already referred to, the Canadian National filed a statement showing bridge traffic for the forty-eight hours ending noon on June 4, 1927. This, when analyzed, gives the following results:—

	Average per day	Average per hour	Average per minute
Vehicles, other than street cars	3,277	136.5	2.60
Street cars	673	27.6	0.49
Pedestrians	2,224	92.6	1.54

Vehicles, other than street cars, afford the following percentage subdivisions: motors, 65·7 per cent; horse-drawn vehicles, 14·9 per cent; bicycles, 18·8 per cent.

Exhibits Nos. 6 and 7 were filed by the Ottawa Electric, dealing with the traffic count for four days, inclusive, July 21 to July 24, 1927. This showed average daily crossings of motors and horse-drawn vehicles as 2,511, or 78·535 per cent of the total, while the average crossings of street cars, per day, was 681·5, or 21·465 per cent of the total. The details are given by days, and are worked out on graphs. The percentages vary somewhat. Those that have been given are the average. The highest per cent of street car crossings, in proportion to total crossings of motor cars and horse-drawn vehicles, was on Thursday, July 21, when there appeared 23·56 per cent; on Saturday, July 23, the lowest figure was 19·29 per cent.

The Vice-President of the Ottawa Electric, in examination (p. 10351 and following pages), gave testimony regard exhibit No. 6, which covered the traffic proportions, as illustrated in graphs, which have just been referred to. . . . He also dealt with exhibit No. 7. He stated, in referring to exhibit No. 6, that the street railway traffic over a 24-hour period was approximately 20 per cent and submitted that the average peak would be about the same; i.e., when the street railway traffic increases the vehicular traffic increases. The peak hours are about noon and between five and six o'clock. Vehicular traffic is shown as being especially high at noon and in the evening, with a smaller peak around midnight. Motor traffic is stated, by him, to be about 65 per cent of the total vehicular traffic at the peak.

Exhibit No 7., filed by the Ottawa Electric Railway, for the same period, gave a grand total as follows, for the periods July 21 to 24:—

Street cars	2,726
Horse drawn vehicles	614
Motor vehicles	9,430
Bicycles	1,128
Pedestrians	6,212

which produced, daily averages: street cars, 681 per day; horse-drawn vehicles, 153; motor vehicles, 2,357; bicycles, 282; and pedestrians, 1,553.

V

As has been pointed out, there are submissions from the railways in regard to the unsatisfactory condition of the bridge, the Ottawa Electric, however, contending that the portion of the structure it claims to be especially concerned with is in good shape. The Board has had special tests made in regard to the condition of the structure, using for this purpose not only its own engineers, but also the experts of the Canadian Inspecting and Testing Company, Limited. The reports submitted show that the matter has been gone into in great detail.

In regard to the Champagne Avenue subway, it was pointed out that rust damage had affected the beams. In the case of the bridge over the Canadian National tracks, the steel work is, in general, and apart from the design of the structure for street car traffic, in very satisfactory shape. In the case of the bridge over the C.P.R. tracks, the concrete piers supporting the structure have a vertical crack, showing itself on the centre of the piers at each side of the tracks. On the south side of the south street line, towards Breeze Hill avenue, there is a large crack, which is said to be apparently caused by the side thrust of the road hill. The beams of the structure are said to be in bad condition, and the top and bottom flanges of the beams are badly affected by rust. It is said that, evidently, the steel work has not been painted for some considerable time, as the beams in their present condition are considerably coated with soot and rust. Reference is again made to the entire steel work being weakened by rusted condition, and the destruction by sulphur and gas.

Reports made by the Bridge Engineer of the Board may be summarized:—

(*a*) At Champagne avenue, the present state of the steel shows the beams are over-stressed;

(*b*) The portion of the bridge which crosses the Canadian National, and more especially the beams on the western side of the crossing, are strained to a greater extent than is permitted, not only by the Standard Specifications of the Canadian Engineers Standards Association, but by almost every standard bridge specification. The over-stress referred to is, however, stated by him not to be a cause for immediate alarm.

(*c*) As to the bridge over the Canadian Pacific, it is stated to be strained beyond the point set by Standard Specifications.

A further report, dealing with the vehicular portion of the bridge structure openings sets out:

1. That the three steel openings, now used for vehicular traffic and for electrical railway traffic are, at present, undergoing serious over-stress;
2. That all three steel openings require either repairs or additions or preferably renewal;
3. That if nothing is done in the near future to relieve its condition, this portion of the structure will be in danger.

The Board's Chief Enginer reported as follows:—

1. "Herewith are Mr. Gagnon's reports on the steel work of the Somerset street bridge, in which I concur. It appears that the floor beams at all three openings require either extensive repairs or renewals;"
2. "As to the concrete and masonry walls, they are in much the same condition as they have been for some years.

On the south side, the concrete retaining wall, starting from the east end, is in good condition as far as the C.N.R. opening. Between the latter and the C.P.R. opening, the wall was bulged and cracked in places and requires repairs and renewal. On the north side, the wall between Champagne street and the C.N.R. is out of line and has bulged somewhat. While it is not sightly, I am of opinion that it will last for some considerable time. Taken as a whole the masonry and concrete will last sometime yet with reasonable repairs."

3. "As to the road surface and its width, I quite agree with the officials that the bridge requires widening. Under present conditions, west bound vehicular traffic has to cross the street car tracks at the foot of each approach, and there is no room for a sidewalk on the north side of the street, all of which makes for danger to users of the street. The city's contention that the street should be widened, so that there will be room for vehicular and pedestrian traffic north of the street railway tracks, is reasonable."

Copies of the memorandum of the Board's Chief Engineer and of the reports of its Bridge Engineer, went to the parties for the filing of their exceptions, if any. The Canadian National stated it had no exceptions to make. The city of Ottawa, re-emphasized the position taken in its application.

In referring to the statement of the Chief Engineer, that the masonry and concrete will last for sometime yet with reasonable repairs, the comment was made that very extensive repairs and renewals would have to be made at great cost to make this structure absolutely safe for future traffic.

The Ottawa Electric submitted that it caused an inspection of bridges, over which it runs, to be made annually by a competent Engineer.

The C.P.R. stated that it had no exception to take.

VI

The estimate made of the cost of the structure, as made by the city and submitted by its solicitor, was $185,000. Included in this is a sum of, approximately, $35,000 to cover paving, sidewalks, which the city admits should be borne by it. This figure has been checked by the Board's bridge Engineer, who accepts it as correct. A reconstructed bridge structure, as distinguished from a new structure, is estimated by the city's Engineer at $125,000.

Lowering the tracks of the Canadian National to give a vertical clearance of 20 feet 6 inches, it is estimated by the Board's Engineering Department, would cost $5,000. The following estimate of the effect still further reducing the vertical clearances has been made by the Board's Engineering Department:—

"Lowering of grade from that shown in the city's application, reducing clearance to 18 feet at both C.P.R. and C.N.R. bridge and lowering C.N.R. tracks will flatten grade at the top by about 3 feet, and provide a betterment in grade as follows:"—

"City's proposed grade—east approach, 4.41 per cent; west approach, 4.97 per cent
"New grades by reduced clearance, east approach, 3.75 per cent; west approach, 3.60 per cent"

"ESTIMATE OF SAVING IN COST"

"Saving in cost—	
"Less height of abutments at bridge crossings and retaining walls along north and south sides of approaches.	
"Concrete	$10,400 00
"Less fill at widened portion of bridge, north side	1,000 00
"Less height of steel bents at C.N.R. crossing	100 00
	$11,500 00
"Contingencies	$ 1,500 00
	$13,000 00
"Less extra cost of additional excavation required	4,000 00
"Net saving in cost	$ 9,000 00

VII

In the written submissions, on file, and in material submitted in argument, reference is made to the agreements entered into, between the Ottawa Electric and the Canadian Pacific, the Ottawa Electric and the Canada Atlantic (the predecessor in title of the Canadian National Lines) and the Ottawa Electric and the city of Ottawa.

As already pointed out, the Board had before it, in 1907, an application submitted by the city of Ottawa, for an Order directing the Ottawa Electric and the Grand Trunk Railway Company, and the Canadian Pacific Railway Company, to submit a plan and profile for the purpose of widening the bridge and approaches thereto constructed on Somerset street—a public highway in the city of Ottawa.

The agreements referred to were gone into with the usual care which characterized the late Chief Commissioner Killam, and what is involved cannot be better set out than by excerpting the following summarized statement contained in his judgment, rendered March 13, 1907:—

"By an agreement, in writing, bearing date of the 8th day of August, 1896, made between the Ottawa Electric Railway Company and the Canadian Pacific Railway Company in consideration of the sum of eight hundred dollars paid by the Canadian Pacific Railway Company to the Electric Company, the last-mentioned company agreed from time to time and at all times thereafter to 'indemnify and save harmless the Railway Company from and against all liability to maintain, alter, repair, or reconstruct the said bridge or the approaches thereto, and also from and against all claims for damages of every kind or nature whatsoever, or for any penalty imposed upon the said Railway Company by reason of any defect or default in the said bridge or crossing or the approaches thereto'; and the Electric Company further agreed that if it should at any time become necessary to reconstruct the then existing bridge, or to alter the same, plans of such alteration, or of the new bridge to be constructed, should first be submitted to and approved by the Railway Company; and the Canadian Pacific Railway Company assigned and set over to the Electric Company all the right of the Canadian Pacific Company in or connected with the said bridge and the approaches thereto.

"A similar agreement was made between the Electric Company and the Canada Atlantic Railway Company."

In summarizing the agreement between the Ottawa Electric and the city, he used the following language:—

"By agreement between the Ottawa Electric Railway Company and the city of Ottawa, bearing date the 8th day of April, 1895, the consent of the city of Ottawa was given to the construction, maintenance and operation by the Electric Railway Company of a double and single iron street railway upon and along Cedar street and other streets in the city for the unexpired portion of the term of thirty years just mentioned. By the last-mentioned agreement certain privileges and benefits were conferred upon the Electric Railway Company, and the company agreed to construct a line of street railway from its then existing system in Ottawa to the Experimental Farm, in the township of Nepean; and it was provided that nothing contained therein, or in the original agreement between the city and the company or in the by-law of the city council ratifying the original agreement or that of April, 1895, should be 'construed to impose any liability on the corporation for the construction, repair or maintenance of the bridge on Cedar street, crossing the Canada Atlantic Railway lines and the Canadian Pacific Railway lines, or any bridge or bridges that may be constructed in place of same,' or should be 'construed as an assuming by the corporation of the said bridges or any or either of them.'"

The judgment proceeding sets forth that the city of Ottawa had offered to pay one-fourth of the expense. In the present application counsel for the city emphasizes that this was a voluntary offer. The Chief Commissioner points out that the steam railways contended that the necessity for the widening of the bridge arose wholly from its use by the Ottawa Electric and that on this account and under their agreements they should be exempt from contribution. He continued, "and in this view, as between the three railway companies, I think the contention of the former two companies is correct." It is pointed out that—

"Before the tracks of the Electric Railway Company were extended over it, the bridge was quite safe and sufficient for the traffic. So far as appears, it would, with such repairs as time and use might have rendered necessary, have still been safe and sufficient for the purpose."

He then refers to the provisions of the agreement between the Ottawa Electric and the city and finds that the Ottawa Electric should widen the bridge as asked for, provision being also made for a contribution of one-fourth of the expense by the city.

VIII

Under the decision above set out, while the agreement was one of the factors, probably the main one, the factor of changed conditions, in respect of the congestion brought about by the street railway traffic, is specifically mentioned in the judgment.

The Board in *City of Windsor v. Canadian Pacific Ry. Co.* (the Wyandotte Street Bridge Case), 32 Can. Ry. Cases, 26, had before it a question of bridge construction arising under the obligations in this respect, which the railway had assumed in obtaining its location through Windsor, and which had, thereafter, been covered by an order of the Railway Committee of the Privy Council. The Board in dealing with this case, wherein the element of agreement entered, said that, under specific conditions, weight might be given to certain factors. These are not set out as an exhaustive statement. In so far as they appear applicable to the present case they are as follows: (pp. 29-30)

Congestion—that is to say, that while the bridge in existence may be strong enough to bear all the traffic then moving, it may do so at the expense of congestion. The Board may give weight to the question whether or not the life of the existing structure has expired. In so far as it still has life, this may be considered as bearing on the question of apportionment of cost—in the *City of Hamilton v. Canadian Pacific and Toronto, Hamilton & Buffalo Ry. Co., 20 Can. Ry Cases 159*, the life in the existing bridge was held to justify 30 per cent being placed on the city. See also, *25 Can. Ry. Cases*, 379 at p. 385; the Board may take into consideration whether the increase in highway traffic is due to changed status of the highway. In considering changes in traffic, due to the changed status of the highway, some weight may be given to changes in the nature of the traffic itself; in this connection the situation existing in Windsor in respect of motor traffic was taken into consideration.

The bridge has still some life, which could be prolonged by repairs. An estimate of from eight to ten years is given by the Board's Engineering Department. There is congestion of traffic—automobile traffic being, in the main, responsible. When Chief Commissioner Killam rendered Judgment, street car traffic was the prime factor in bringing about congested conditions. The items summarized in the Wyandotte Street Bridge Case may justifiably be taken into consideration here. Steam railways have a longer life than electric railways, operating over city streets, whose life is limited by franchise. The plans submitted seek a betterment of road conditions in respect of highway grades. This betterment will bring the grades below 5 per cent. Unless in exceptional conditions, and then at the expense of the applicant, grades, or grade separations ordered by the Board do not go below 5 per cent.

Order for the construction of the work asked for may go. Plans may be filed for approval of the Board's Engineer. As already indicated, the city is responsible for the paving of the roadway and for the sidewalks. The city should be responsible for the wearing surface of the bridge. The balance of the cost should be divided, 60 per cent on the Ottawa Electric and 40 per cent of the city of Ottawa. The maintenance, other than as referred to above, should be on the Ottawa Electric.

Ottawa, February 23, 1928.

Deputy Chief Comissioner Vien concurred.

Commissioner Oliver:

I

On May 27, 1927, the Corporation of the City of Ottawa applied to the Board for an Order requiring the demolition and removal of the existing bridge or viaduct on Somerset street over the tracks of the Canadian Pacific and Canadian National Railways, and the restoration of the street at grade level. The application was heard in Ottawa on July 7, 1927.

In support of the application the city of Ottawa asserted,—

(1). That the existing bridge had fallen into such state of disrepair that it had become dangerous;

(2). That street traffic had so increased that the bridge was not wide enough;

(3). That railway traffic across Somerset street had decreased by reason of changes in the operation of both railway systems, so that it would not now be so great a danger to highway traffic by way of a level crossing as it had been when the existing bridge was built;

(4). That under present conditions adequate protection could be given a level crossing without serious inconvenience to the public;

(5). That since the present bridge was built, an overhead traffic bridge had been built a short distance to the northward over the same railway tracks, on the Richmond Road (Wellington street) which converges into Somerset street a short distance west of the bridge, and is able to take the traffic (with some detour) that now passes over the Somerset street bridge.

(6). That the street railway now routed over the Somerset street bridge could be routed by way of the Richmond Road viaduct without serious detriment to its patrons.

The application of the city for the demolition of the bridge was opposed by the Canadian Pacific Railway Company, by the Canadian National Railways, by the Ottawa Electric Railway Company, by the West End Municipal Association and other sections of the citizens resident west of the bridge.

By Order dated July 12, 1927, the application for the demolition of the present overhead bridge and the establishment of a level crossing was refused by the Board.

II

Following upon the refusal of the Board to permit the demolition of the bridge and its replacement by a protected level crossing, the city, on July 14, 1927 applied to the Board under Sections 257 and 264 of the Railway Act, 1919, for an Order requiring the Ottawa Electric Railway Company, the Canadian National Railways and the Canadian Pacific Railway Company, or some one or more of the said Companies to replace the existing Somerset street bridge; at the same time filing plan and profile of such bridge as it desired to have constructed in substitution for the existing bridge.

By Order of the Board a very complete examination was made to decide as to the safety of the existing bridge. The final report of the Bridge and Structural Engineer of the Department of Railways and Canals, submitted on February 3, 1928, says:—

> " Reasonable repairs could be made,—(1) to the steel in the bridge; (2) to the timber in the bridge; and (3) to some portion of the concrete above grade in the bridge, but there would still be left the repairs to be carried out to the walls and foundations, these being the weakest parts of the whole structure. It would indeed be very difficult and costly to carry out repairs in the walls and foundations.
>
> " Considering all factors, I am, so to speak, forced to state that the life of the existing bridge with reasonable repairs appears to be a quantity beyond estimation and one entirely dependent upon its weakest portions, these, as stated above, being the walls and foundations. One could possibly, as a last resource, venture a guess of from eight to ten years."

This report did not establish that a reconstruction of the bridge is a matter of immediate urgency, so far as safety is concerned, but on the other hand, it does not establish that the bridge is actually in safe condition. It is, however, definite on the point that repairs are necessary if safety is to be maintained. No limit is placed on the cost of necessary repairs. The evidence in the case seemed to establish that vehicular traffic has increased to such an extent that the present bridge is inadequate.

III

The subject of the distribution of costs of a new bridge amongst the several parties concerned in or affected by the application of the city occupied the attention of the Board during the greater part of the hearing of September 7, 1927.

The Canadian Pacific Railway Company claimed exemption from payment of any part of the cost of the proposed new bridge on two grounds,—(1) seniority of right; and (2) agreement with the Ottawa Electric Railway Company, dated August 8, 1896.

The Canadian National Railways claimed like exemption on the ground of a similar agreement with the Ottawa Electric Railway Company, dated August 21, 1896.

The Ottawa Electric Railway Company claimed exemption from payment of any part of the cost of the proposed new bridge on the grounds,—

That the north part of the present bridge had been built by the Electric Railway Company for its own purposes and at its own sole cost; that this was the only part of the bridge used by the Ottawa Electric Railway; that it was in fact a separate bridge and was adequate for the Electric Railway Company's purposes; that it was in sufficiently good repair, and did not need renewal on grounds of safety; and that the Ottawa Electric Railway Company should not be compelled to contribute to the cost of a new bridge which was only rendered necessary by the increase in vehicular traffic.

The Ottawa Electric Railway Company also claimed compensation for its investment in the present bridge in case of replacement.

The claim of seniority of right made by the Canadian Pacific Railway Company was based on the ground that as successors of the St. Lawrence and Ottawa Railway, they had prior occupancy of the roadway at the bridge location. During the hearing on September 7, 1927, the railway company's counsel read into the record part of a letter dated November 24, 1870, from Thomas Reynolds, then managing director of the St. Lawrence and Ottawa Railway, addressed to Messrs. Sparks & Slater, owners of certain properties in that neighbourhood through or near which the railway passed, in which he said: "The terms and conditions contained in your letter, including the building and keeping of two bridges over the cutting, is entirely to my satisfaction". This letter was cited as evidence that the route of traffic which was admitted to be then existing at the site of the present Somerset Street bridge was only a farm and not a public crossing. But there appears on the file what is duly certified as a true copy of part of "Map or Plan of the proposed extension of the St. Lawrence and Ottawa Railway,—as shown on a duplicate,—examined and certified under 31 Victoria, Cp. 68, Section 8, by T. Trudeau, Deputy Minister of Public Works, (dated) Ottawa, July 7th, 1870", which shows the route of the St. Lawrence and Ottawa Railway between its crossing of the present Preston street and its crossing of the Richmond road.

Upon this plan is shown a road allowance crossed by the St. Lawrence and Ottawa Railway, at the site of the present Somerset Street bridge. The site was outside the then limits of the city of Ottawa and within a suburb known as Rochesterville, which at that time was only partly subdivided. The road or street allowance shown on the plan mentioned gave access to the Richmond road, which was then the great highway extending westward from the city. It was shown on the plan as being of the same width as the part of what is now Somerset street between Preston and Rochester, and of which street it now forms a part. It appears to me that the plan mentioned clearly establishes that the St. Lawrence and Ottawa Railway when built according to the plan on file, was built subject to the reservation of the road shown thereon, and therefore must be junior to the highway at this point.

In the Agreement of August 6, 1896, between the Canadian Pacific Railway Company and the Ottawa Electric Railway Company regarding the bridge now in question, the recital begins as follows:—

"Whereas the public highway in the city of Ottawa, formerly known as Cedar street and now known as Somerset street, is and has been carried over the St. Lawrence and Ottawa Branch of the Railway Company's line by means of an overhead bridge."

It would therefore appear that in accordance with the letter of Managing Director Reynolds of November 24, 1870, a traffic bridge, as promised by him, was duly constructed over the railway on the street shown in the plan, at the sole cost of the railway.

The Canadian Pacific Railway Company also claimed exemption from payment of any share of the cost of repair, renewal or replacement of the existing bridge under the terms of the Agreement already mentioned and dated August 8, 1896. Sections 1 and 2 of this Agreement are as follows:—

"(1). The Electric Railway shall and will from time to time, and at all times hereafter, indemnify and save harmless the Railway Company from and against all liability to maintain, alter, repair or reconstruct the said bridge or the approaches thereto, and also from and against all claims for damages of every nature or kind whatsoever, or for any penalty imposed upon the said railway company by reason of any defect or default in the said bridge or crossing or approaches thereto."

"(2). The Electric Company further agrees that if it should at any time become necessary to reconstruct the present bridge, or to alter same, plans of such alteration, or of the new bridge to be constructed, shall first be submitted to and approved of by the Railway Company."

At a date after 1870 and before 1893, the Canada Atlantic Railway crossed the roadway that is now Somerset street, (then Cedar street); and at its own cost built an overhead bridge to carry the public traffic on that street across its tracks. This railway maintained the bridge so constructed at its sole cost from the date of its erection until August 21, 1896, at which date an agreement was made with the Ottawa Electric Railway Company, identical in Sections (1) and (2) with the agreement made by the Canadian Pacific Railway Company with the Ottawa Electric Railway Company, as already quoted. At a later date the Canada Atlantic Railway became part of the Canadian National Railways system, which at present owns and operates the tracks that were built by the Canada Atlantic across Somerset street and is therefore successor in title to that Company.

IV

At some date between the years 1870 and 1893 the village of Rochesterville became part of the city of Ottawa. The western boundary of the city of Ottawa then crossed Somerset street at the west end of the main part of the overhead bridge. The western approach was in the village of Hintonburg.

By an agreement dated June 8, 1893, the city of Ottawa granted a franchise to the Electric Railway Company to be operative for thirty years from that date. In 1895 the Electric Railway Company desired to make certain extensions to its lines on various city streets and also beyond the then city limits westerly to serve the then village of Hintonburg, the Experimental Farm and other points. An agreement was made between the city and the Company making provision for these extensions, dated April 8, 1895. The powers granted the Company were expressly limited by the date of expiry of the thirty years franchise. A proviso in the agreement relieved the city from any liability,—

"For the construction, repair or maintenance of the bridges on Cedar (Somerset) street crossing the Canada Atlantic Railway lands and the

Canadian Pacific Railway lands, or any bridge or bridges that may be constructed in place of the same, or shall be constructed as an assuming by the Corporation of the said bridges or any or either of them."

While the city in 1893 had become the owner of Somerset street as far as the west end of the overhead bridge, it refused to exercise its rights on behalf of the Electric Railway Company in respect of the necessary reconstruction or replacement of the traffic bridges across the railway tracks on that street. In effect the city said to the Electric Railway Company,—"You may use Somerset street for your tracks, but you must settle with the owners of the present bridges over the steam railways on such terms as you can make with them." The Electric Railway Company secured authority from the Railway Committee of the Privy Council to cross the tracks of the Railways,—there was then no Railway Commission,—and made the Agreements of August 8, and of August 21, 1896, with the Railway Companies as to the replacement of the then existing bridges by a bridge suitable to carry the Electric Railway traffic. The Ottawa Electric Railway Company then demolished the bridges that had been built by the railway and constructed an overhead bridge over both railway tracks for the use of pedestrian and vehicular as well as street railway traffic, at the sole cost of the Electric Railway Company.

V

On November 10, 1906, the city of Ottawa made application to the Board of Railway Commissioners for an Order,—"directing the Ottawa Electric Railway Company, the Grand Trunk Railway Company of Canada, (which had acquired the Canada Atlantic) and the Canadian Pacific Railway Company to submit a plan and profile for the purpose of widening the bridge and the approaches thereto constructed by them on Somerset street." The city stated that the widening asked for was necessary because the bridge had become inadequate to carry the increased pedestrian and vehicular traffic.

By this application the city assumed responsibility for the accommodation of traffic over the railway tracks which crossed Somerset street that it had refused to accept in 1895 when the Electric Railway Company was first permitted to use the street.

The reply of the Ottawa Electric Railway Company was that the bridge was still adequate to carry the traffic.

The Canadian Pacific Railway Company claimed exemption under the Agreement with the Electric Railway Company, dated August 8, 1896.

The Board heard this application in Ottawa on January 31, 1907. On March 2, 1907, the Chief Engineer of the Board reported that the Somerset Street Bridge should be widened by sixteen feet.

The Judgment of the Board was delivered by the then Chief Commissioner Killam, on March 20, 1907. It provided,—"That the Electric Railway Company should widen the bridge by sixteen feet, according to plans to be approved by the Board, and that the city should pay the Railway Company one fourth the expense involved in the addition." In his reasons for Judgment it would appear that the Chief Commissioner assessed one quarter of the cost of the bridge against the city because it had offered to pay that proportion, and released the two steam railway companies from any payment, because of the terms of their agreements with the Electric Railway Company.

There appears on the file a memorandum by Deputy Chief Commissioner Bernier, dated Ottawa, March 20, 1907, in which he said,—"I have examined the papers and read the evidence *re* the Somerset street bridge, Ottawa, and I came to the conclusion that if the widening of it is considered a repair, the city

of Ottawa and the Ottawa Electric Railway Company should bear the expense in the proportion agreed to, but I see no evidence that the plans for such changes or repairs have been submitted nor approved by the Canadian Pacific Railway Company, as stipulated in the Agreement of August 8, 1896."

This comment by the Deputy Chief Commissioner would seem to indicate that he was not convinced that the proposed widening was either "Maintenance," " alteration", " repair " or " reconstruction " of the then existing bridge. In support of that view he instanced that the terms of the Agreement had not been followed as to submission of plans.

VI

During the hearing of September 7, 1927, it was assumed by the railways in argument that the Judgment of the Chief Commissioner relieving them from contribution to the widening of the bridge in 1907 should be accepted as effective in relieving them from any share of the cost of the presently proposed new bridge.

It appears to me that the facts developed at the hearing of September 7 must be considered and as well the changes in governing conditions that have taken place since the Agreements of 1896 were made, before such acceptance should be given.

From the record of the hearing in January, 1907, and in the reasons for Judgment given by the then Chief Commissioner in March of that year, it does not appear that he had become aware of the actual position in regard to the question of seniority, as between the city and the Canadian Pacific Railway Company, as shown by the plan of July 7, 1870.

As the Order of March 20, 1907, for the widening of the bridge was necessarily given before the work had been begun, the then Chief Commissioner could not have known that in fact under the Order an entirely new bridge sixteen feet in width was constructed. This bridge was entirely distinct from although alongside of the then existing bridge that had been built by the Electric Railway Company, and therefore was not in any sense a "repair", "maintenance" or "replacement" of that bridge, as mentioned in the Agreement betwen the city and the Electric Railway Company, nor was it a "maintenance", "alteration", "repair" or "reconstruction" of the bridge that was the subject of the Agreements of August, 1896, between the steam railways and the Electric Railway Company.

The Agreement relieving the city from liability for cost of "construction, repair, or maintenance of the bridges on Cedar street" in its terms was quite as effective to protect the city as the railway agreements were to protect them. But the city did not understand that either the city or the railways were protected in the case of the construction of the new sixteen foot bridge. When the city offered to pay one quarter of the cost, its responsible authorities must have believed that all four parties were liable and that the cost should be equally divided amongst them. Had this not been the city's belief, it would no doubt have sought protection equally with the railways against any payment, as would have been the duty of its authorities.

VII

It was brought out at the hearing of September 7, 1927, that there was no substantial ground of complaint as to the condition of the original bridge built in 1896-7 by the Electric Railway Company and still in use by it. The sole complaint as to urgent need of repairs related to the adjoining sixteen-foot

bridge built pursuant to the Board's Order of 1907. While the newer construction of 1907 may have been to some extent dependent on the original Electric Railway bridge, the latter was in no way dependent on the more recently constructed sixteen-foot bridge.

The application to the Board by the city of Ottawa on May 27, 1927, for the complete demolition of the present bridge, with the establishment of protected level crossings in its place, and the refusal of the application by the Board, in my opinion altogether changes the respective positions of the several parties interested in the Somerset street crossing of the railway tracks from what they were when the application of 1907 was heard.

What was the village of Hintonburg in 1907 is now a part of the city of Ottawa, so that the city is now responsible for the westerly approach to the bridge and for the traffic beyond, as it was not in 1907.

The city as owner of Somerset street, and as the authority responsible for the maintenance of traffic upon it in crossing the railway tracks, definitely and in due form asked for the demolition of the bridge which it had in part paid for. There seemed to the city authorities reasons that were sufficient warrant to them for making the request, and they were quite within their rights in making it. The Board had full power to grant, as well as to refuse the request. By its refusal it relieved the city of the responsibility of choice in the matter and thereby in effect compelled it to apply for authority to construct a new bridge, which is the application now under consideration.

Under the circumstances, it would appear to me that the present application must be dealt with on the facts as they have been fixed by the Board's refusal to permit the demolition of the bridge, having regard to the needs of traffic on Somerset street and the interruption to that traffic that in the judgment of the Board would be caused by the steam railways crossing the street on the level.

VIII

While it is a fact that the Electric Railway Company has paid for the bridge by which it crosses over the steam railway tracks on Somerset street, and that the part of the bridge which it uses is still in sufficiently good condition to warrant its continued use for some years, the fact that it is in occupation of a part of a roadway that the city is bound to keep open for highway traffic, places it in a position that does not entitle it either to be repaid the amount of its expenditures on the present bridge, or to be relieved of its fair share of the cost of the proposed new bridge made necessary by the Board's Order of July 12, 1907.

Nothing was brought out either in evidence or argument to indicate that the railways where they cross Somerset street have any special rights or claim to interrupt street traffic at that point. On the contrary the fact that both railways in the first place provided overhead crossings at their sole cost, and maintained those crossings for a period of twenty-six years in the case of the Canadian Pacific Railway and for a somewhat lesser period in the case of the Canadian National Railways, clearly establishes that both railways are in the position of all other railways at street or highway crossings and subject to the Order of the Board as to payment of their fair share of such crossing protection as the Board may order.

IX

The application before the Board is by the city; it is opposed by the Electric Railway Company as well as by the steam railways, so far as sharing in distribution of costs is concerned. The claim of the railways that by the agree-

ments they hold with the Electric Railway Company they are to be indemnified by the railway for any costs to which they may be put by the construction of a new bridge on Somerset street, does not seem to me to be a matter that calls for consideration by the Board. Section 35 of the Railway Act, 1919, empowers the Board to enforce the terms of agreements between railways and between railways and other persons or corporations. In case of breach of such agreements the Board is empowered after hearing, to make such order as may seem " reasonable or expedient."

Ths Agreements of 1896 were made in respect of the transfer of the rights of the steam railways in the overhead bridges which they had constructed to the Electric Railway Company which desired to replace them. The provisions of the agreements saving the steam railways from future liability at the cost of the Electric Railway Company were, and could only have been intended to be, applicable to cases in which the Electric Railway Company was altogether, or would in some degree, be responsible for the circumstances that would require the steam railways to incur costs. In the case under consideration it does not appear to me that the Electric Railway can be held to be responsible in any degree for the need of a new bridge. Under such circumstances I am of opinion that it would not be either " reasonable or expedient " that the Board should order the Electric Railway Company to pay the costs ordinarily assessable against the steam railways for a new bridge that the city which owns the street and from whom the Electric Railway Company holds its rights, formally declared was not necessary.

If under their agreements the steaf railways have a remedy against the Electric Railway, it would seem to me that they should seek that remedy in the courts at the proper time and not now at the hands of the Board in the terms of the order to be issued for the construction of a new bridge.

X

On June 23, 1908, the Board ordered the construction by the Canadian Pacific Railway of a viaduct for highway traffic on the Richmond road in the city of Ottawa, over the Canadian Pacific and what are now the Canadian National tracks. Somerset street and the Richmond road converge a short distance west of the present bridge and viaduct. The cost was to be paid in the proportion of twenty-three-thirty-sixths (23/36) by the railways and thirteen-thirty-sixths (13/36) by the city of Ottawa and the county of Carleton jointly. That is to say the two railways paid slightly under two-thirds of the total cost.

On September 4, 1905, the Board ordered the Canada Atlantic Railway, now the Canadian National, to construct a subway on Bank street in the city of Ottawa. The Electric Railway was using Bank street at and before that date. The cost was distributed as follows,—three-eighths ($\frac{3}{8}$) to be paid by the Canada Atlantic Railway; three-eighths ($\frac{3}{8}$) by the city of Ottawa, and one-quarter ($\frac{1}{4}$) by the Otawa Electric Railway Company.

On November 15, 1927, the Board ordered that in the case of certain grade separations in the northwestern part of the city of Toronto the distribution of costs should be as follows,—forty per cent from the Grade Crossing Fund up to $25,000; ten per cent of the balance to be paid by the Toronto Transportation Commission (Municipal Street Railway); the remainder to be paid fifty per cent by the steam railway, and fifty per cent by the city of Toronto.

I am of opinion that the conditions warrant an Order—(1) for the construction of a new bridge, of the character and capacity shown on the plan submitted by the city on July 14, 1927; details to be subject to alteration towards meeting the views of other interested parties as may be directed by the Board; and (2) that the cost should be apportioned as follows—The maximum

amount permitted by law to be provided from the Grade Crossing Fund; the remainder to be divided equally between the steam railways and the city; the share of the railways to be divided between them, in proportion to the bridge space occupied by their respective tracks; the Electric Railway Company to pay half the amount charegable to the city, if its tracks occupy a part of the surface of the bridge.

Ottawa, February 29, 1928.

ORDER NO. 40417

In the matter of the application of the Municipal Corporation of the City of Ottawa, in the Province of Ontario, hereinafter called the "Applicant", under Sections 257 and 264 of the Railway Act, 1919, for an Order requiring the Ottawa Electric Railway Company, the Canadian National Railways, and the Canadian Pacific Railway Company, or some one or more of the said Companies, to replace the existing bridge or viaduct at Somerset street, in the City of Ottawa, which carries the said street and the tracks and right of way of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, with a bridge of sufficient breadth and of such construction as will afford safe and adequate facilities for all traffic on the said street; and apportioning the cost of such new bridge betwen the said railway companies, or between some one or more of them, and the Applicant, as the Board may direct.

Case No. 396.

Monday, the 5th Day of March, A.D. 1928.

S. J. McLean, *Assistant Chief Commissioner.*
Thomas Vien, K.C., *Deputy Chief Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 7, 1927, and September 8, 1927, in the presence of counsel for and representatives of the Applicant, the Otawa Electric Railway Company, Canadian National Railways, and Canadian Pacific Railway Company, and what was alleged; and upon the report of the Bridge Engineer of the Board, concurred in by its Chief Engineer, and reading the written submissions filed,—

The Board Orders: 1. That the Applicant be, and it is hereby, authorized to reconstruct the said bridge carrying Somerset street and the tracks of the Ottawa Electric Railway Company over the tracks of the Canadian National Railways and the Canadian Pacific Railway Company, in the city of Ottawa and Province of Ontario, in accordance with plans to be filed for the approval of an Engineer of the Board.

2. That the said bridge be fifty-eight feet in width.

3. That the Applicant bear and pay the cost of the construction of the sidewalks and the paving of the roadway, the remainder of the cost of the said bridge to be borne and paid sixty per cent by the Ottawa Electric Railway Company and forty per cent by the Applicant; the cost of maintaining the bridge, with the exception of the wearing surface thereof which shall be maintained by and at the expense of the Applicant, to be paid by the Ottawa Electric Railway Company.

S. J. McLEAN,
Assistant Chief Commissioner.

Complaint of A. A. Wickenden of Trois-Rivieres, P.Q., per Arthur Bettez, M.P., with regard to the service given by the Canadian Pacific Railway Company's gates at St. Maurice street, Trois-Rivieres, P.Q.

and

Application of the city of Trois-Rivieres, per Zephirin Lambert, for approval of plan showing a proposed subway under St. Maurice street, Trois Rivieres, P.Q.

File 9437.1089.

JUDGMENT

THOMAS VIEN, K.C., THE DEPUTY CHIEF COMMISSIONER:

These matters were set down for hearing and heard before Mr. Commissioner the Honourable Frank Oliver and myself, at the Court House, Trois-Rivieres, P.Q., on the 11th of January, 1928.

There appeared before us: for the city of Trois-Rivieres and Mr. A. A. Wickenden, Arthur Beliveau, Esq., K.C.; for the C.P.R., L. de G. Prevost, Esq., solicitor.

In the city of Trois-Rivieres, a few hundred feet northeast of the railway station, there is a level crossing of the Canadian Pacific Railway at St. Maurice street. The Canadian Pacific Railway Company is successor in title of the Commissioners of the Q.M.O. & O. Railway Co., the North Shore Railway Co., and the St. Maurice Railway and Navigation Co.

This crossing is protected on both sides by gates operated from a tower, under the provisions of Order No. 21866, of this Board, dated May 20, 1914.

In the course of the last two decades, the development of the city of Trois-Rivieres has been enormous, due to the establishment of several new industries, consequent upon the harnessing of water powers on the St. Maurice river; the traffic on the railway and the highway has increased proportionately.

On the 18th of October, 1926, Mr. Arthur Bettez, M.P., and mayor of the city of Trois-Rivieres, brought to the attention of the Board complaints that he had received as to the dangerous circumstances of this crossing, and the very serious inconveniences suffered by the public by the loss of time due to the lowering of the gates for railway movements.

Detailed statistics of the railway and highway traffic per hour were taken by the city, from 7 a.m. on the 28th of November, 1927, to 7 a.m. on the 30th of the same month, viz., forty-eight hours, with the following results:—

Pedestrians	3,809
Horse-drawn vehicles	302
Automobiles	418
Railway movements	770

During that period the gates were closed 648 times, i.e., an average of 13½ times per hour, and remained closed 1,061 minutes, i.e., an average of 22 minutes per hour. The average is the same whether statistics from 7 a.m. to midnight or from midnight to 7 a.m. are considered.

Such a situation at a crossing in the heart of a growing city is obviously intolerable. The city now applies for an order directing that the highway be carried under the railway.

At the hearing, on behalf of the complainant and of the applicant, Mr. Beliveau stressed the urgency of such an improvement. Confronted with the traffic statistics above mentioned, though it did not admit it as an absolute necessity, the railway company could not deny the advisability of ordering a grade separation in the interest of the city and of the railway.

The main issue between the parties was the apportionment of costs, and in connection therewith, the question of seniority was extensively debated.

The applicant filed a deed dated November 15, 1879, whereby P. B. Dumoulin, M.P., donated to the city his rights in the ground occupied by St. Maurice street. In a letter on file, dated April 6, 1927, addressed to Mr. Bettez, the city clerk states, however, that no by-law nor proces-verbal formally opening this street could be found in the municipal records.

Mr. Beliveau admitted that the city was unable to establish the exact date of the opening of the street or of the construction of the railway. In his opinion, both had been established at the same time, in 1879 or thereabout. But he submitted that there was at first only one track, when there are six now, indicating clearly a considerable increase in business and revenues for the railway company; that it was the operation of these six tracks which compelled the city to apply for a subway; that the railway should therefore be called upon to bear the larger part, if not the whole of the costs; that a contribution should be granted from the Grade Crossing Fund of 40 per cent of the cost of construction, and that the balance of 60 per cent of the cost of construction should be divided in the proportion of 50 per cent on the railway company, and 10 per cent on the city (Record, pp. 280, 283).

The evidence adduced by the railway company on the question of seniority was hardly more conclusive. Mr. Frank Taylor filed as exhibit No. 1 a blueprint of the original plan of location, deposited in the Registry Office at Trois-Rivieres on the 23rd of April, 1875, whereon St. Maurice street is not shown; and, as exhibit No. 2, a report made to the legal department of the Canadian Pacific Railway on March 30, 1927, by Henry Irwin, a Quebec land surveyor, giving all the information that the railway company had been able to obtain with regard to this crossing. These documents reveal that though the Commissioners of the Q.M.O. & O. Railway had deposited their location plan in April, 1875, on the 20th of October, 1877, they purchased from Mr. P. B. Dumoulin his rights and claims in the lands of certain streets in the city of Trois-Rivieres, including St. Maurice street, " in order to construct thereon, possess and maintain the said Q.M.O. & O. Railway "; apparently in October, 1877, the railway had not yet been built across St. Maurice street, and St. Maurice street existed where the railway was to pass, or a street allowance of that name was at least indicated on plans.

The Canadian Pacific Railway were unable to establish when the railway was built. Mr. Taylor: " We have endeavoured to fix that date, sir, but we have not been able to do it; we have had to deal with records of a railway company that was defunct fifty years ago." (Record, p. 293.) No record could be found of the first trains that moved, nor of any application by the city for leave to pass St. Maurice street across the railway right of way (page 289).

Mr. Prevost submitted that the plan and Irwin's report established the railway company's seniority; that if there was a doubt it should be interpreted in its favour; that if the question of seniority were set aside, the Board should follow the precedent established in the case of Boulevard Gouin (city of Montreal vs. C.P.R., 32 C.R.C., p. 245) wherein, after a grant from the Grade Crossing Fund the costs were apportioned evenly between the city and the railway, notwithstanding the seniority of the city. (Record, p. 316.)

In my opinion, no seniority has been established conclusively, and moreover, it is not a decisive factor in the present circumstances. Since the initial construction of the railway, the traffic both on the railway and the highway has increased tremendously. In apportioning the cost of alterations of this kind, weight must be given to certain specific factors, like congestion and the nature of the traffic which creates it. The statistics above quoted shew that during a period of forty-eight hours, 720 vehicles and 3,809 pedestrians passed on the highway whilst 770 movements took place on the railway. The construction

of a subway would materially add to the safety and convenience of the pedestrian and vehicular traffic; it would also be of great advantage to the railway company which would no longer have to maintain gates and gatemen and could freely move on its tracks. A subway would be equally beneficial to the city and the railway.

I would grant the application and authorize the city to build, under the tracks of the Canadian Pacific Railway at St. Maurice street crossing, a subway, according to plans and specifications to be approved by the Chief Engineer of the Board, who should also be charged with the supervision of the work of construction; and, following the precedents established by the Board in the Hamilton Bridge Case (20 C.R.C. p. 159), in the King Street Bridge case, Hamilton (25 C.R.C., p. 379), in the Wyandotte Street Bridge case (32 C.R.C., p. 26), in the Gouin Boulevard Crossing case (32 C.R.C., p. 245), and in the Carling Avenue Crossing case, Ottawa, not reported (file 26727.162), wherein traffic conditions were carefully weighed, a contribution from the Grade Crossing Fund of 40 per cent of the cost of construction, not exceeding the sum of twenty-five thousand ($25,000) dollars, should be granted, and the balance of the cost of construction and the cost of maintenance should be apportioned evenly between the city and the railway company.

Ottawa, February 27, 1928.

Commissioner Oliver concurred.

ORDER No. 40398

In the matter of the complaint of A. A. Wickenden, of Trois-Rivieres, in the province of Quebec, against the protection provided by gates at the crossing of St. Maurice street by the Canadian Pacific Railway;

And in the matter of the application of the city of Trois-Rivieres for approval of a plan showing proposed subway under the tracks of the Canadian Pacific Railway Company at St. Maurice street aforesaid.

File No. 9437.1089.

Thursday, the 1st day of March, A.D. 1928.

Thomas Vien, K.C., *Deputy Chief Commissioner.*
Hon. Frank Oliver, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Trois-Rivieres, January 11, 1928, in the presence of counsel for the city and the railway company, and what was alleged,—

The Board Orders:

1. That the city of Trois-Rivieres be, and it is hereby, authorized to construct a subway under the tracks of the Canadian Pacific Railway Company at St. Maurice street, in the said city, as shown on the plan and profile on file with the Board under file No. 9437.1089; detail plans of the proposed structure to be filed for the approval of an Engineer of the Board; and the work to be done under the supervision of the Chief Engineer of the Board.

2. That forty per cent of the cost of constructing the said subway, but not exceeding the sum of twenty-five thousand dollars ($25,000), be paid out of the Railway Grade Crossing Fund, the remainder of the said cost, and the cost of maintenance, to be divided equally between the city of Trois-Rivieres and the Canadian Pacific Railway Company.

THOMAS VIEN,
Deputy Chief Commissioner.

Complaint of the inhabitants of Shawbridge, Piedmont and St-Sauveur des Monts, county of Terrebonne, P.Q., with regard to the construction of the National Railways Bridge over the provincial highway Montreal to Ste-Agathe on the Railway Company's line between Montreal and Huberdeau,

and

Complaint of the Royal Automobile Club of Canada with regard to the construction of the underpass of the Canadian National Railways on the Montreal-Ste-Agathe highway, a short distance from North Shawbridge.

(Case No. 637.)

JUDGMENT

THOMAS VIEN, ESQ., K.C., THE DEPUTY CHIEF COMMISSIONER.

This matter was heard at Montreal on the 23rd of January, 1928, before Mr. Commissioner Lawrence and myself.

There appeared before us for the village of Prevost, Mr. Emilien Morin, Secretary-Treasurer; for the Automobile Club, Mr. H. E. Walker; for the Canadian National Rys., Alistair Fraser, Esq., K.C.

This matter comes up upon an application as set out in the title above. At the hearing Mr. Fraser, on behalf of the C.N. Railways suggested that this matter could be adjusted out of court, if all the interested parties were summoned to a round-table conference.

He accepted the suggestion that the matter might be referred to the Chief Engineer of the Board for the purpose of such a conference, and the preparation of a plan of action.

The suggestion was accepted by all interested parties.

I am therefore of the opinion that this matter should be referred to the Chief Engineer of the Board who should be appointed and directed to make enquiry and to summon at Montreal or some other convenient place, all the interested parties, including representatives from the municipality of Prevost, and then evolve a scheme and submit it to the consideration of the Board.

After due notice to all interested parties, the Board shall then take action.

OTTAWA, February 29, 1928.

Commissioner Lawrence concurred.

ORDER No. 40413

THURSDAY, the 1st day of March, A.D. 1928.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

In the matter of the complaint of residents of Shawbridge, Piedmont, and St-Sauveur des Monts, in the county of Terrebonne and province of Quebec, against the construction of a bridge over the provincial highway, Montreal to Ste-Agathe, on the Canadian National Railways, between Montreal and Huberdeau;

And in the matter of the complaint of the Royal Automobile Club of Canada against the construction of the undercrossing of the Canadian National Railways, on the Montreal-St-Agathe Highway, a short distance from North Shawbridge. Case No. 637.

Upon hearing the complaints at the sittings of the Board held in Montreal, January 23, 1928, the village of Prevost, the Royal Automobile Club of Canada and the Canadian National Railways being represented at the hearing, and what was alleged—

The Board orders that, in pursuance of the powers conferred by Sections 62 and 69 of the Railway Act, 1919, Thomas L. Simmons, its Chief Engineer, be, and he is hereby, appointed and authorized to make inquiry and report to the Board upon the questions or matters arising in connection with the said complaints; and that he may, under such appointment and authority, take evidence and acquire the necessary information for the purpose of such report.

2. That on the filing of the said report, and before such action may be taken thereon as the Board deems proper, any party interested may make written submissions to the Board in respect thereto.

THOMAS VIEN,
Deputy Chief Commissioner.

Application of the Consumers Glass Company, Limited, Montreal, re freight rates on glass bottles and jars, carloads, Montreal to points in Western Ontario.

File 490.3

JUDGMENT

THOMAS VIEN, ESQ., K.C., THE DEPUTY CHIEF COMMISSIONER:

This matter was heard at Montreal on the 12th of May, 1927, before Mr. Commissioner Boyce, Mr. Commissioner Lawrence and myself.

There appeared before us: for the Consumers' Glass Company, MM. J. F. Hamilton and F. P. Jones; for the Canadian Freight Association, G. C. Ransom, Esq.; for the Canadian Pacific Railway Co., W. C. Bowles, Esq.; for the Canadian National Railways, F. J. Watson.

The application is for an adjustment of rates on glass bottles and jars in carloads, from Montreal to points in Ontario, so as to enable the applicant to compete with bottles and jars imported from the United States and other countries.

Several exhibits were filed and witnesses heard on behalf of the applicant and on behalf of the carriers.

After the hearing, the matter was referred to the Chief Traffic Officer of the Board, who reported on the matter on the 26th of November, 1927. The matter was then given full consideration, and I am of the opinion that the report of the Chief Traffic Officer should issue as the judgment of the Board in this case.

OTTAWA, February 29, 1928.

Commissioner Lawrence concurred.

REPORT OF CHIEF TRAFFIC OFFICER, W. E. CAMPBELL

Application is made by the Consumers' Glass Company for an adjustment in rates on bottles and jars, in carloads, from Montreal to points in Ontario, Toronto and west, on an equitable basis which will enable it to compete with bottles and jars imported from the United States and other countries.

As the issue was developed by applicant, it is alleged that the rates to the Ontario territory in question from glass manufacturing points in the United States, as compared with Montreal, are unjustly discriminatory against Montreal and unduly preferential to competitors in the United States. Applicant filed exhibit "A" showing a comparison of the rates from Montreal, P.Q., Pitts-

burgh and Washington, Pa., Wheeling, W. Va., Muncie, Ind., and Columbus and Newark, O., to twenty-two destination points in Ontario, Toronto and west. The rates from the United States points named are in all cases lower than from Montreal, but in this connection it is noted upon analyzing the exhibit that with respect to the 132 rates quoted from United States points, in eighty-five cases the mileage from the United States point to destination is less—in numerous cases appreciably so—than from Montreal to the same destination. The rates quoted from United States points are the class rates governed by the Official Classification and the United States scale of rates. From Montreal, as well as other eastern Canadian manufacturing points of these articles, namely, Hamilton and Wallaceburg, the regular 5th class tariff rates, governed by the Canadian Freight Classification and the Canadian rate scale, are applied. In the Canadian Freight Classification the ratings range from 1st to 10th class, whereas the international rates are subject to the Consolidated Freight Classification (Official) with ratings provided from 1st to 6th class, and, therefore, there cannot be uniformity in the scaling of the rates in both cases. The Board has not initial jurisdiction over the rates from United States points and, consequently, cannot prescribe, nor will the United States carriers adopt, the use of the Canadian Freight Classification on international traffic, and the remaining alternative, namely, to prescribe on international traffic the use of the Canadian Freight Classification and Canadian rate scale for that portion of the haul within Canada, would result in replacing the joint through rate structure that has always existed by combinations of rates to and from the boundary. Any such proposition would meet with great opposition from Canadian receivers and shippers on account of the substantial increase in rates that would result therefrom. It has to be borne in mind that this international rate structure, subject to the Official Classification, applies from Canada to the United States as well as in the reverse direction; in other words, the same rates apply in both directions. With regard to the Canadian rates here in question, the 5th class approximates 50 per cent of the 1st class. Applicant states that with respect to the rates governed by the Official Classification the 5th class is approximately one-third of the 1st class rate, but a check of some of the rates indicates no strict uniformity and shows 5th class rates ranging from 35 to 40 per cent of the 1st class rate. Aside from these fundamental differences in the two rate structures in question, and while glass bottles and jars are rated 5th class in both the Canadian and Official Classifications, there are many articles provided with a higher rating in the Official Classification than in the Canadian Classification, and, on the other hand, numerous others where the rating in the official Classification is lower than in the Canadian.

The matter of discrepancies in the Canadian rate structure as compared with the international rate structure, was before the Board in the so-called International Rate Case which was dealt with by order of the Board No. 3258, dated July 6, 1907. There was there involved discrepancies in the east and northbound freight rates from Canadian points on the St. Clair, Detroit and Niagara river frontiers, as compared with those from the corresponding United States frontier points, namely, Port Huron, Detroit and Buffalo; the Canadian rates being the higher. The Board recognized that the conditions were affected by the existence of companies in the United States independent of those operated in Canada, and that the harmonizing of the rates was a matter of great difficulty. The subject was one that engaged the consideration of the Board, the carriers, and parties in interest, for a considerable length of time, and the final adjustment directed 1st class rates from the Canadian frontier points which would not be in excess of those from the corresponding United States frontier points. For example, prior to the order above referred to, the 1st class rate from Detroit to Toronto was 36 cents, and from Windsor to Toronto 40 cents. To Montreal the 1st class rate from Detroit was 58½ cents, and from

Windsor the summer rate was 60 cents and the winter rate 70 cents. The order in question prescribed a 1st class rate of 36 cents from Windsor to Toronto and 58 cents from Windsor to Montreal. Under these adjustments there were still discrepancies with regard to the lower classes. The rate situation as made effective in 1908, pursuant to the order referred to, may be illustrated as follows:—

TO TORONTO

	1	2	3	4	5	6	7	8	9	10
Detroit	36	31	23	16	13	10	Official Classification			
Windsor	36	32	27	23	18	16	13	14	—	11
Windsor over Detroit	—	1	4	7	5	6				

TO MONTREAL

	1	2	3	4	5	6	7	8	9	10
Detroit	58½	50½	39	27½	23½	19½	Official Classification			
Windsor	58	51	44	36	29	27	26	24	—	21
Windsor over Detroit	—	½	5	8½	5½	7½				
Windsor under Detroit	½	—	—	—	—	—				

By reason of the various increases and reductions in rates made in both the United States and Canada at various times since 1916, the present rate situation as compared with that existing in 1908, given above, is set out below:—

TO TORONTO

	1	2	3	4	5	6	7	8	9	10
Detroit	79	67½	53	39½	28	22	Official Classification			
Windsor	68	59½	52½	43	34½	30½	27½	27½	—	24
Windsor over Detroit	—	—	—	3½	6½	8½				
Windsor under Detroit	11	8	½	—	—	—				

TO MONTREAL

	1	2	3	4	5	6	7	8	9	10
Detroit	110½	97	74	55½	44	37½	Official Classification			
Windsor	108	95½	81½	68	54	50	37½	40	—	36½
Windsor over Detroit	—	—	7½	12½	10	12½				
Windsor under Detroit	2½	1½	—	—	—	—				

Wheeling, W.Va., is one of the points shown in applicant's exhibit "A", and to illustrate a comparison of the two rate structures there are shown below the rates from Montreal and Wheeling to Grimsby, Ont., the distance being approximately the same from both points, namely, 384 miles from Montreal and 388 miles from Wheeling:—

TO GRIMSBY

	1	2	3	4	5	6	7	8	9	10
Montreal	90	79	68	55½	45½	41½	34½	36½	—	30½
Wheeling	99½	85	66½	50	35	28	Official Classification			
Montreal over Wheeling	—	—	1½	5½	10½	13½				
Montreal under Wheeling	9½	6	—	—	—	—				

It will be observed that under these two rate structures, and for approximate distances, the 1st class rate from Wheeling is 9½ cents higher than from Montreal and the 2nd class rate is 6 cents higher. Then, by reason of the differences in the scales and the percentage relationship between the classes, the rates from Wheeling are less for the 3rd and lower classes.

There was before the Board in 1909 a complaint from the Plymouth Cordage Company, alleging that the rates charged on binder twine, in carloads, from Welland, Ont., to Canadian points west of Welland, were unjustly discriminatory with respect to the rates charged on the same articles from Buffalo and Auburn, N.Y., and North Plymouth, Mass., to the same destination points. It

is set out in the judgment in that case that there was a rate of 10 cents per 100 pounds on binder twine, in carloads, from Welland to Detroit and Port Huron; at the same time the rate from Welland to Sarnia and Windsor was 18 cents. From Buffalo to Sarnia and Windsor the rate was 10 cents as compared with 18 cents from Welland. From Auburn through this territory there was a rate of from 13 to 14 cents, which was lower than the rate from Welland to the same points up to and including Sarnia and Windsor. For reasons set out in the judgment, the complaint as to discrimination was dismissed by Order No. 7897, dated August 10, 1909.

With regard to the allegation of applicant that the rates at present in force unjustly discriminate against Montreal, the evidence adduced in support thereof indicates that mileage is the yardstick by which the discrimination is measured. What has already been above briefly set out makes clear that with respect to two rate structures built up under fundamental basic differences, mere mileage comparisons are not conclusive as to the existence of unjust discrimination or undue preference, nor properly a measure by which to test or compare the rates constructed under such circumstances.

Further, with respect to the rates and mileages that are on record here, as contained in exhibit "A" filed by applicant, it would appear that, so far as concerns the United States shipping points and Canadian destinations named, the rates are not altogether based on distance; or, if they are, the basing mileage is not that shown in the exhibit, and, in many cases, the rates are controlled by shorter mileages than given, otherwise anomalies that are apparent would not exist. For example, an analysis of this exhibit shows from these United States point a rate of 29½ cents for 239 miles and 29 cents for a greater distance of 263 miles, as well as a rate of 29½ cents for 252 miles. Other anomalies in this exhibit, with respect to rates from United States points, and taking the mileages given, are shown below:—

Miles	Rate	Miles	Rate
331	33	470	35
387	32	415	36
393	31½	415	36
356	31		
337	30	415	35
		411	34
350	34	413	33½
413	33½		
374	33	356	31
387	32	340	31½
393	31½	356	32
356	31	331	33
		350	34

The mileages shown by applicant in exhibit "A" are over rail routes. The same rates as applicable via rail routes are published via water services operated across lake Erie, and via these latter routes the mileages from glass-producing centres are much less than via the rail routes, for example:—

	Miles	
Pittsburg to Ashtabula	125	Penna.
Ashtabula to Port Burwell	51	Car Ferry
Port Burwell to London	70	C.P.
	246	
Rail distance	402	
Rail distance greater by	156	
Pittsburg to Ashtabula	128	N.Y.C.
Ashtabula to Port Maitland	90	Car Ferry
Port Maitland to Hamilton	39	T.H. & B.
	257	
Rail distance	331	
Rail distance greater by	74	

	Miles	
Pittsburg to Conneaut	152	B. & L.E.
Conneaut to Erieau	72	Car Ferry
Erieau to Chatham	19	P.M.
	243	
Rail distance	365	
Rail distance greater by	122	
Pittsburg to Conneaut	152	B. & L.E.
Conneaut to Erieau	72	Car Ferry
Erieau to Leamington	43	P.M.
	267	
Rail distance	355	
Rail distance greater by	88	

The distances to Pittsburg, Pa., are:—

From Washington, Pa.	32 miles
From Wheeling, W.Va.	66 miles

It is not shown on the record to what extent mileage is the controlling factor in the international rates here quoted; and if mileage is the factor, what mileage scales are controlling. The anomalies, using the rail mileages in exhibit "A" of the applicant, are already above set out.

Mr. Ransom, on behalf of the carriers, contended that while there may be, with regard to glass bottles and jars, in carloads, a lower scale of rates from manufacturing points in the United States than applies for the same distances from a manufacturing point in Canada (this condition resulting from the differences between the two governing rate structures), this difference is more than offset by the duty which the United States manufacturer is obliged to pay when marketing his product in Canada, which ranges from 27½ to 32½ per cent, and which Mr. Ransom estimated as being equivalent to payment by the United States manufacturer of approximately $1.30 per 100 pounds, on top of his freight rate, to get the bottles into Canada. He stated that regardless of any rate adjustment a certain quantity of United States bottles will be imported into Canada; in fact Canadian bottle manufacturers imported bottles from the United States into Canada so as to have them in stock to fill out orders which came to them for types of bottles which they do not manufacture. Mr. Ransom also contended that the comparative quality of the goods made in Canada, and those in the United States, had influenced the importation of the United States articles in some cases, it being alleged that there had been instances of extensive breakage of bottles of Canadian manufacture during the filling process. The testimony on this latter point was conflicting, the applicant disputing statements made by carriers.

With regard to the rates from Montreal, Mr. Jones, of the applicant company, stated (p. 8669) he was not asking, of necessity, for a reduction in these rates, and there was no evidence adduced, nor was it contended, that the rates from Montreal are unreasonable *per se*. Mr. Jones limited his submission to the question of unjust discrimination with respect to the rates from United States points. At page 8670 of the record the following discussion took place:—

> "The Deputy Chief: Therefore, your submission is limited to a question of complaint against what you would call unjust discrimination?—A. Absolutely, sir. If our rates are too high I would ask you to order them lowered. If the others are too low I would ask you to raise them.
>
> Q. You ask them put on an equality?—A. Yes.
>
> Q. You want the rates put on the same footing proportionate to distance?—A. Yes."

Further, there is not involved in this case any claim of discrimination in the rates from Montreal as compared with the rates from the other eastern Canadian shipping points, namely, Hamilton and Wallaceburg.

Applicant filed exhibit "B" showing a few articles also classifying 5th Class, in carloads, on which commodity rates lower than the class rate are in force between Canadian points. This exhibit has no probative force so far as relates to the issue here, as the commodities shown therein do not in any way compete with those of the applicant, and it does not follow that there is any discrimination merely because the rates are different. With regard to practically every article that is accorded special commodity rates, a different set of circumstances and conditions prevails; one case can seldom be an exact precedent for another. Each traffic situation presents points of difference, and the particular facts, circumstances and conditions existing in each case must be considered, and the rates established based thereon. The result is that while the articles may all take the same classification rating, the commodity rates thereon may have a range of anywhere from 60 to 90 per cent of the class rate, and yet this situation does not result in discrimination of the character prohibited by the Railway Act.

Exhibit "C", also filed by applicant, showed that from Dunkirk and Lockport, N.Y., to some half-dozen United States destination points, commodity rates are in effect on glass bottles in carloads. No information is on the record as to the circumstances and conditions surrounding the establishment of these rates, and it is, of course, obvious, and has been so stated in various judgments of the Board, that rates established between two points in the United States are no criteria of reasonableness of rates betwen points in Canada.

Applicant referred to judgment of the Board, dated July 30, 1904, which prescribed certain commodity rates on glass bottles, in carloads, from Wallaceburg, stating that said rates had been prescribed to meet competition from the United States and Germany, and that in 1919 the Board had issued an order permitting cancellation of the commodity rates based on the claim that the importation from Germany had been eliminated, and was restricted from the United States. A perusal of the record in that case shows that the Board prescribed certain rates on glass bottles in 1904 from Wallaceburg to London, Kitchener, Hamilton, Toronto and Montreal. Subsequently, the railway companies voluntarily added a number of destinations on the same basis, and then considered it necessary to establish rates on relatively the same basis from the glass manufacturing points of Toronto and Hamilton. From Montreal a commodity rate was established to Walkerville only, presumably to enable competition with Wallaceburg for the distillery's business. The rates required by the judgment in 1904 appear from the record to have been largely the result of rebating practices antecedent to the Railway Act. In 1918 the carriers filed amendments to their tariffs providing for cancellation of the commodity rates from Toronto, Hamilton and Montreal, and also made application for rescission of the judgment of 1904 so as to enable them to cancel the special commodity rates from Wallaceburg. The tariff amendments were suspended by an order of the Board and the matter was subsequently heard at Ottawa, September 10, 1918, and by order of the Board No. 28348, dated May 19, 1919, the companies were permitted to cancel the special commodity rates and place this traffic on its appropriate 5th class basis from all points. With regard to United States competition, it appears from a perusal of the record in the 1918 case that the evidence adduced by those opposing the cancellation of the commodity rates was along the same lines as that which is before the Board here, and after full consideration, the Board authorized the placing of this traffic on the 5th class basis between Canadian points.

The Consumers Glass Company launched this application under the provisions of section 317 of the Railway Act which, so far as is relevant to the issue here, states that "The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions, and whether there has, in any case, been unjust discrimination, or undue or unreasonable preference or advantage, or prejudice or disadvantage, within the meaning of this Act."

In this case there is, on the one hand, the question of rates entirely over lines of Canadian carriers and between Canadian points, and, on the other hand, international movements over different routes, where the initial, and in numerous instances, the greater portion of the haul, is over the lines of carriers outside the jurisdiction of this Board. What has been stated by the Board in other cases is pertinent here:—

> " In the submissions placed before the Board from time to time, it has been contended that American rates shall be the criteria of reasonableness, where such rates are lower than Canadian rates. In Manitoba Dairymen's Assn. vs. Dominion and Canadian Northern Express Cos., 14 Can. Ry. Cas, at p. 149, the following language was used:—
>
> > "As I construe the Railway Act, the Board must find its criteria of the reasonableness of the Canadian rates within Canada."
>
> At p. 148 of the same judgment, in dealing with the question of discrimination, it was pointed out that the Board has already held—
>
> > " That where the traffic compared moves over two different routes, this precludes the mere reference to difference in mileage rates being taken as prima facie evidence of discriminatory treatment, and that this held with especial force where comparisons were made with the rates of railways which are not subject to the Board's jurisdiction."
>
> In Riley vs. Dominion Express Co., 17 Can. Ry. Cas., 112, p. 115, it was said:
>
> > "Rates as arrived at in the United States are not the criteria of reasonable rates in Canada unless the circumstances in both cases are on all fours."
>
> In *re* Telegraph Tolls, 20 Can. Ry. Cas., 1, at p. 6 it was said:
>
> > "The comparisons between rates in the United States and those in Canada are informative but not conclusive. They have no necessary conclusive bearing on the reasonableness of rates in Canada."
>
> Board's Judgments and Orders, Vol. XVI, p. 148—Application of the Canadian Shippers' Traffic Bureau *re* rates on woodpulp from Canadian points to Toronto.
>
> " *Re* Freight Tolls, Board's Judgments and Orders, Vol. 12, p. 73:—
> ". . . under the body of regulation which is developed under the Railway Act, mileage is not a rigid yardstick of discrimination. Discrimination in the sense in which it is forbidden by the Railway Act is a matter of fact to be determined by the Board."
>
> Complaint Spanish River Pulp and Paper Mills, Ltd., vs. C.P.R. Co. *et al,* 28 Can. Ry. Cas., 100. See summary of decisions on page 109. Canadian Oil Cos. vs. G.T., C.P., and C.N.R. Cos., 12 Can Ry. Cas., 350, at p. 354:—
>
> ". . . a mere comparison of distances without consideration of the peculiar circumstances affecting the traffic is not the final criteria of discrimination."
>
> See also Hudson Bay Mining Co. vs. Gt. Nor. Ry. Co., 16 Can. Ry.

Cas., 254, where the following language is used at p. 256:—

"It does not of necessity follow that the rates of one railway are to be taken as a conclusive measure of what is reasonable to charge on another railway. Dominion Sugar Co. vs. Canadian Freight Association, 14 Can. Ry. Cas., 188, at p. 192.

"Not simply mileage comparisons, but also comparisons in respect of conditions of operation, cost of carriage, volume of traffic, etc., would be necessary. And these to be conclusive would have to point to similarity, if not to identity of conditions."

Reference may also be made to Edmonton Clover Bar Sand Co. vs. G.T.P. Ry. Co., 17 Can. Ry. Cas., 95."

Board's Judgments and Orders, Vol. XVI, p. 144—Application of the Canadian Shippers' Traffic Bureau *re* rates on woodpulp from Canadian points to Toronto.

"The Board has held that where the traffic compared moves over two different routes, this precludes the mere references to differences in mileage rates being taken as prima facie evidence of discriminatory treatment. See complaint Sudbury Board of Trade *re* rates on coal from Toronto to Sudbury—File 11479, cited in Canadian Oil Cos., vs. G.T., C.P., and C.N. Ry. Cos., 12 Can. Ry. Cas., 350, at p. 355."

Board's Judgments and Orders, Vol. XIII, p. 190—Complaint of A. Farquharson, Fernie, B.C., *re* rates on logs from Fernie, B.C., to Calgary, Alta.

No evidence was adduced during the hearing, or in the correspondence, bearing on an alleged substantial similarity of traffic and operating conditions in respect to the movements of traffic under the rates compared.

With regard to United States competition, applicant filed an exhibit showing, over a period of years, the importation of glass carboys or demijohns, bottles, N.O.P., decanters, flasks, jars and phials. This does not show quantities, but shows the amount expressed in dollars. It was alleged the value of the imports is increasing, but an analysis of the exhibit shows a fluctuation. For example, the value of the imports from the United States in 1921 was $1,495,384, which dropped in 1922 to $673,975, with increases in subsequent years, the figure for 1926 being $1,062,367, which is still appreciably below the figure for 1921. The total value of the importation from all countries for the year 1926 was $1,344,790, so that what is important is the United States competition, and the case as developed by applicant is practically confined to the question of United States competition. This exhibit, however, is not very conclusive for the purpose of the issue here. In the first place, it includes articles of glassware that are not within the scope of the application, but the more important point in respect to this exhibit is that it includes importations into the whole of Canada, while there is only here in issue that portion of Ontario, Toronto and west. The exhibit does not give any information as to this particular territory. Treating the statistics as a whole, the carriers referred to substantial importation of articles included therein which are not covered by the application, particularly carboys and demijohns. These statistics also include the importation of second-hand bottles collected at United States frontier points and shipped into Canada, which the representatives of the carriers stated consisted, for the year 1925, of 55 cars to London, 38 cars to Waterloo, and 170 cars to Hamilton. Applicant stated (p. 8667) that with regard to the importation of bottles and jars into the specific territory here in question, the carriers should be in a much better position to supply such information from their records.

The carriers filed an exhibit showing the number of carloads of new glass bottles and jars shipped by applicant to Ontario points for the years 1925 and 1926. As this included all Ontario points, the exhibit has been analyzed so as to make a comparison in the territory Toronto and west, and it shows that to this territory applicant shipped 134 cars in 1925 and 351 cars in 1926. Exhibits were also filed by the carriers showing the glass bottles and jars (new) received at points in Ontario during the years 1925 and 1926 from the three Canadian manufacturing points, namely, Hamilton, Wallaceburg and Montreal, also from United States points. The shipments from Montreal greatly exceeded those shown in the other exhibit above referred to, which is accounted for by the fact that there is another large manufacturer shipping bottles and jars from Montreal, namely, the Dominion Glass Company, but who are not a party to this application. These exhibits also showed the shipments to all Ontario points and have been analyzed so as to segregate those destined to points in the territory Toronto and west.

Dealing with the territory in question, for the year 1925 there were shipped from Hamilton, 662 cars; from Wallaceburg, 255 cars; from Montreal, 558 cars; and from United States points, 154 cars; or, in other words, 1,475 cars from the three Canadian shipping points and 154 cars from United States points. Hamilton and Wallaceburg are within this particular territory and, of course, by reason of their geographical location, the rates from these two points are very appreciably lower than from Montreal, which is 334 miles east of Toronto. It will be noted that for the year 1925 Montreal shipped to this territory 558 cars as compared with 917 cars from Hamilton and Wallaceburg. For the year 1926, to the same territory, 918 cars were shipped from Hamilton and Wallaceburg, 962 from Montreal, and 225 from United States points; in other words, there were 1,880 cars from the Canadian shipping points and 225 cars from United States points. It is somewhat significant, as above noted, that while Hamilton and Wallaceburg are within this territory, the movement from these two points in 1926 was 918 cars, while from Montreal, with its much greater distance, and higher rates, there were shipped 962 cars, as compared with 917 cars from Hamilton and Wallaceburg and 558 from Montreal in the previous year. In this connection, however, there is a statement in the record that there is an extensive movement of bottles via truck from Hamilton consigned to points within a radius of 50 miles, principal destinations being Port Colborne, Kitchener, Waterloo and Toronto.

The 154 cars shipped from United States in 1925 were consigned to the following points:—

Chatham	50 cars	London	13 cars
Hamilton	6 "	Toronto	9 "
Leamington	2 "	Walkerville	74 "

The 1926 shipments from United States points were as follows:—

Chatham	57 cars	Walkerville	71 cars
Leamington	50 "	Windsor	4 "
London	25 "	Waterloo	2 "
Toronto	16 "		

With regard to the United States shipping points named by applicant, Mr. Ransom stated that there had been no shipments of bottles from Pittsburgh into Canada during 1925; that manufacturers at Columbus stated they had not shipped a bottle into Canada for over two years; that manufacturers at Newark stated they had only shipped 1 car into Canada during 1925, which was destined to Toronto. There is nothing on the record showing whether or not there were any shipments from Washington, Pa. Mr. Ransom stated the 50 cars shipped to Chatham in 1925 were consigned to Libby, McNeil & Libby and purchased through the main offices at Chicago from manufacturers at Wheeling, W. Va. The rate from Wheeling to Chatham is 32 cents per 100

pounds, while the rate from Wallaceburg to the same point is 12½ cents, and from Hamilton 30½ cents. It is stated the 13 cars for London were from Muncie, Ind., from which point the rate is 31 cents, as compared with 25 cents from Hamilton, and 27½ cents from Wallaceburg. The 74 cars to Walkerville were consigned to the Walkerville distilleries and shipped from Alton, Ill., at a rate of 38 cents, as compared with 24 cents from Wallaceburg, and 34½ cents from Hamilton. To all of the above-named points the rates from Hamilton or Wallaceburg are lower—in some instances very appreciably so—than from the United States points.

Taking the destination points to which shipments moved from the United States, an analysis has been made, lumping the years 1925 and 1926 together, showing the origin of receipts of bottles, in carloads, via rail, which is shown below:—

To	From Hamilton	Wallaceburg	Montreal	United States
Chatham	24	...	3	107
Hamilton	...	30	96	6
Leamington	141	...	54	52
London	398	35	242	38
Toronto	298	210	524	25
Walkerville	149	73	235	145
Windsor	209	7	129	4
Waterloo	45	30	77	2
	1,264	385	1,360	379

An analysis of the evidence, particularly that concerning the movement of the traffic and the rates in force, suggests a number of questions with regard to which, unfortunately, the record is devoid of answer. The application does not specifically set out what rates are alleged to be required, but requests an adjustment in rates from Montreal "on an equitable basis which will enable us to compete with bottles and jars imported from United States." The record indicates successful competition from Montreal into this territory, not only with respect to shipments of United States origin, but also those originating at the glass manufacturing plants located within said territory. Taking Chatham, for example, if the bottles move from Wheeling, W.Va., at a rate of 32 cents, rather than from Wallaceburg, from which point the rate is 12½ cents, or from Hamilton at a rate of 30½ cents, then what rate would be necessary from Montreal to enable the manufacturer there to compete with the United States manufacturer? If the rate controls the movement from United States points, why has the movement been restricted to eight points in the whole territory, Toronto and west, when relatively the same rates apply throughout this territory? . It is obvious from the record that the actual rate competition which applicant meets in this territory is from Hamilton and Wallaceburg; that there are factors aside from the freight rate which influence the marketing of these articles.

During the years 1925 and 1926 there were shipped to London 35 cars from Wallaceburg, from which point the rate is 27½ cents; 38 cars from United States points from which the rates range from 30 to 34 cents; and 242 cars from Montreal at a rate of 50 cents. During the same years to Walkerville there were shipped 73 cars from Wallaceburg at a rate of 24 cents; 145 cars from United States points at rates varying from 28 to 31½ cents; 149 cars from Hamilton at rate of 34½ cents; and 235 cars from Montreal at rate of 54 cents. The fact that during the year 1926, 962 cars were shipped from Montreal to all points Toronto and west, while to this same territory, with appreciably lower rates, only 918 cars were shipped from Hamilton and Wallaceburg, is significant as bearing on the rate situation as it affects the actual movement of the traffic.

Upon careful consideration of the whole record, I do not consider applicants have made out a case which would warrant direction from the Board modifying the present rates from Montreal (and any action taken in that direction would undoubtedly react on the rates from Hamilton and Wallaceburg), and recommend that the application be refused.

Ottawa, November 26, 1927.

Application of the Canadian National Railways, under section 188, for permission to close as an agency station the station at St. Pauls, Ontario.

File 4205.454

JUDGMENT

McLean, Assistant Chief Commissioner:

St. Pauls is an Agency Station, on the Stratford Division, Main Line, of the Canadian National Railways, 5·08 miles west of Stratford and 4·98 miles east of St. Mary's Junction.

The application was launched by the railway, on April 28, 1926. In the answer submitted, it was suggested that the matter be deferred for a period of one year, in order that opportunity might be given to show the true usefulness of the station to the territory tributary to it. The matter was allowed to stand accordingly. It was thereafter set down for hearing at Kitchener, Ont., on December 16, 1927. The respondents expressed the desire that another year's extension should be given. The earnings, as submitted, were as follows:—

Year	Total	Passenger	Express	Milk
1922	$13,180	$4,280	$ 931	$2,900
1923	9,547	3,034	751	2,974
1924	23,470	1,711	922	2,731
1925	9,144	1,892	892	2,730
1926	7,979	2,150	1,018	2,225
1927	9,300	3,422	988	2,200

The figures for 1924 included, approximately, $14,000 received from inbound road material. The figures for 1927 are for eleven months, ending November; the December figures are not available. If extended on the basis of December being an even one-twelfth of the total, this would give, approximately, $10,500 of a total.

It is to be noted that since 1922 there has, with the exception of 1924—which is not characteristic—been a steady downward movement. There is comparatively little freight and the bulk of it is inbound; and, the important items of earnings, as shown in the summary above, are passenger, express, and milk. No exception was taken by the respondents to the statement, as shown in the figures, and it was stated that their appearance was simply to ask "That this station, so to speak, be given a further chance and extension of time."

The railway proposes, if the order is granted, to instal a caretaker. As set out in the notes of evidence, a caretaker is to take care of the lights, keep the station clean and warm, receive freight and put it in the shed; also put express packages in the shed.

In discussion with the railway, as to the work which the caretaker would do in connection with the express, the following developed in the notes of hearing (pp. 12911-12):—

> "Commissioner Lawrence: Could any information be furnished in regard to handling outbound express? If a caretaker was appointed and if he could receive the express parcels before train time? I realize that farmers coming in with butter and eggs to ship by express, might come

in and the train be half an hour late, or even if it was on time, if they could leave the shipment, with some person to take charge of it; could anything be done in regard to that?

"The Assistant Chief Commissioner: Would your caretaker handle a package if brought in and left there? He would put it in the shed, but would there be any responsibility on the caretaker to hand it over to the baggageman?

"Mr. Fish: The caretaker would be responsible for packages, to see that it was put on the train, but not for the handling of the money. He would put it in the shed.

"The Assistant Chief: It could be handled by the caretaker from the shed to the car?

"Mr. Fish: Yes and vice versa. It could be put in the shed and then put on the train by the caretaker.

"The Assistant Chief: I understand that inbound the duty is on the caretaker to put the stuff in the shed.

"Mr. Fish: Yes.

"The Assistant Chief: And if a man comes with a case of eggs to be shipped out, it is left there with instructions and then the train comes in and the caretaker takes it to the train giving the instructions and the bill is made on the train?

"Mr. Fish: Yes, I don't think there would be any trouble about the caretaker putting the express on and taking it off and putting it in the building under proper shelter and care."

As to tickets, these will not be sold by the caretaker, but people can buy return tickets on the train. Milk is carried by means of baggage car service. Under what was proposed by the railway there would be no facilities for the purchase of milk tickets, at St. Pauls. It was suggested by Mr. Commissioner Lawrence that some arrangement might be made for the sale of milk tickets. Counsel for the respondents stated that, if the caretaker "were able to sell milk tickets, as suggested, it would be a great convenience to the people shipping out of here". The railway stated that most of the people who ship milk are in St. Marys, or Stratford frequently; that these were their shipping points, and it was suggested that it would be no hardship upon them to purchase their milk tickets at Stratford or St. Marys. Persons desirous of obtaining cars would, under the proposed arrangement, telephone to the agent at St. Marys, or the agent at Stratford; the latter point is stated to be the natural billing station for St. Pauls. Attention was specially directed to the question as to what arrangements, if any, could be made in respect of milk tickets. The Board is now advised by the railway, as follows:—

"Mr. Pratt, regional counsel at Toronto, notified Mr. W. E. Goodwin, counsel for the township of Downie, that Mr. F. P. Houck, general merchant at St. Pauls, is willing to accept the milk ticket agency if the station at this point is not continued as an agency. Mr. Goodwin acknowledged Mr. Pratt's communication and stated that he would transmit the information to his clients."

On consideration of the limited earnings and their downward trend, as well as of the limited freight movement, it would appear that the application has been justified. On the freight movement, the tonnage inbound, for the twelve months ending November, 1927, amount to 633, of which, approximately, 50 per cent moved in June and August. The tonnage outbound amounted to 185, which

was rather fluctuating in monthly amount. In September there were no outward shipments; in March and April there were 2 and 6 tons respectively. This left an average of approximately 19·6 tons per month, or about two-thirds of a car. The passenger, express, and milk traffic undoubtedly will face some factors of inconvenience under the rearrangement. As to passengers' ability to purchase tickets, either single, or return, on the train, should work out with reasonable satisfaction. The express business moving to St. Pauls will, of course, have to be prepaid. The arrangements proposed in regard to milk tickets should work out with reasonable satisfaction. The station at St. Pauls, it must be remembered, is about one and one-quarter miles from the main Provincial Highway. This highway passes through St. Marys and Stratford and between St. Pauls and it there is a good gravel road.

Ottawa, February 29, 1928.

Commissioner Lawrence concurred.

ORDER No. 40368

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", for permission to reissue, on less than statutory notice, revised supplement to Tariff C.R.C. No. E-1196, to correct error in Supplement 6 thereto.

File No. 27612.35

Saturday, the 18th day of February, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

Upon its appearing that in issuing Supplement No. 6 to Tariff C.R.C. No. E-1196, the applicants through clerical error made changes in routes and rates not authorized, and it being advisable that correction be made as soon as possible,—

The Board orders: That the applicant be, and they are hereby, permitted to reissue Supplement No. 6 to Tariff C.R.C. No. E-1196, on one day's notice, but not earlier than February 27, 1928: Provided that similar authority is given by the Interstate Commerce Commission.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40381

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.9

Monday, the 20th day of February, A.D. 1928.

Hon. H. A. McKeown, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 207, filed by the Atlantic, Quebec and Western Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Tariff C.R.C. No. 207, approved herein, are the tolls contained in Tariff C.R.C. No. 137.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40382

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.9

MONDAY, the 20th day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 217, filed by the Quebec Oriental Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the said Tariff C.R.C. No. 217, approved herein, are the tolls contained in Tariff C.R.C. No. 141.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40383

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.12

MONDAY, the 20th day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published on paper mill wrappers from Edmundston, New Brunswick, to Beaupre, Quebec, in item 60 of Supplement No. 3 to Tariff C.R.C. No. E-4314, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item No. 60 of Supplement No. 3 to Tariff C.R.C. No. E-4314, approved herein, is 39½ cents per 100 pounds.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40391

In the matter of the General Order of the Board No. 188, as amended by General Order No. 248, prescribing the regulations for the Uniform Maintenance of Way Flagging Rules for Impassable Track, for the observance of every railway company within the legislative authority of the Parliament of Canada.

File No. 4135.55

THURSDAY, the 23rd day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon reading what is filed on behalf of the Niagara, St. Catharines and Toronto Railway Company and the Canadian National Electric Railways, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the following Regulations for the Uniform Maintenance of Way Flagging Rules for Impassable Track be, and they are hereby, prescribed for the observance of the said Niagara, St. Catharines and Toronto Railway Company and the Canadian National Electric Railways, in lieu of the rules approved under the said General Order No. 188, dated April 23, 1917, as amended by General Order No. 248, dated August 19, 1918, namely:—

RULES

1. A yellow flag by day, or a yellow light by night, on the right-hand side of the track, indicates track or trolley wire is in bad order, or men at work 800 feet in advance, and train must operate at six miles an hour until it passes the same kind of signal on the left-hand side of track; and when men are at work during stormy, foggy, or smoky weather conditions, flagmen must be placed in addition to the signals referred to.

2. Before undertaking any work which will render the main track impassable, or if rendered impassable from any cause or defect, trackmen, bridgemen, or other employees of the company shall protect the same as follows:—

(*a*) Send out a flagman in each direction with stop signals at least—

1,000 feet in daytime, if there is no down grade towards the obstruction within one mile, and there is a clear view of 1,000 feet from an approaching train;

1,500 feet at other times and places, if there is no down grade towards the obstruction within one mile;

2,000 feet if there is a down grade towards the obstruction within one mile.

(*b*) The flagman must, after going the required distance from the obstruction to insure full protection, take up a position where there will be an unobstructed view of him from an approaching train, if possible, of 1,000 feet. The flagman must display a red flag by day and a red light by night, and remain in such position until recalled or relieved.

3. Trains stopped by flagman, as per rule 2, shall be governed by his instructions and proceed to the working point, or working point signal, as the case may be, and there be governed by signal or instructions of the foreman in charge.

4. When train order or bulletin protection is to be provided, a flagman must be sent out as per instructions in rule 2; flagman protection to remain until

confirmation is received of protection being provided by train order or bulletin. The defective or working point must then be marked by signals placed in both directions as follows:—

(*a*) Yellow flags by day and in addition yellow lights by night, 800 feet from the defective or working point; red flags by day and in addition red lights by night, 400 feet from the defective or working point, on the same side of the track as the motorman of an approaching train, and there is a clear view of at least 1,000 feet.

5. When weather or other conditions obscure day signals, night signals must be used in addition.

6. Flagmen must each be equipped for day time with a red flag, and for night time and when weather or other conditions obscure day signals, with a red light and a white light and a supply of matches.

And it is further ordered that the foregoing rules be printed in the working time-tables of the said railway companies for the guidance of all employees.

H. A. McKEOWN,
Chief Commissioner.

ORDER No. 40400

In the matter of tariffs, and supplements to tariffs, filed under the provisions of The Maritime Freight Rates Act, 1927 (17 George V, Chapter 44).

File No. 34822.13.

THURSDAY, the 28th day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

The Board Orders:

1. That the toll on fish, dry, in carloads, from Yarmouth, N.S., to Halifax, N.S., published in item No. 35 of Supplement No. 7 to Tariff C.R.C. No. 794, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, 1927, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item No. 35 of Supplement No. 7 to Tariff C.R.C. No. 794, approved herein, is 27½ cents per 100 pounds.

H. A. McKEOWN,
Chief Commissioner.

ORDER NO. 40403

In the matter of the application of the Niagara, St. Catharines and Toronto Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, 1919, for authority to open for the carriage of traffic that portion of its line of railway between Portage Road and Winery Road, in the City of Niagara Falls, Province of Ontario, a distance of 4,795 feet:

File No. 3498.40.

TUESDAY, the 28th day of February, A.D. 1928.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Engineer, and the filing of the necessary affidavit,—

The Board Orders, That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway along Lundy's Lane, between Portage road and Winery road, in the city of Niagara Falls, township of Stamford, and province of Ontario, a distance of 4,795 feet.

H. A. McKEOWN,
Chief Commissioner.

CIRCULAR No. 217

February 17, 1928.

Re the Matter of Elevation of Station Platforms

File 35412

Referring to this matter which has been the subject of investigation and report through the Board's Operating Department, I am now directed to ask your company to show cause why the Board should not adopt the standard of 5-inch elevation, with a time limit fixing the date at which all platforms must be brought to that standard.

I also enclose you herewith, copy of a memorandum of the Board's Chief Operating Officer, dated the 4th instant, in this connection.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

February 4, 1928.

MEMORANDUM FOR DEPUTY CHIEF COMMISSIONER

As requested by you some time ago I have looked over a number of different railways, and I find that the actual conditions of station platform elevations vary considerably as between railways, and, in some cases, as between stations on the same railway.

The Grand Trunk Western has a standard which varies from rail level to 5 inches above, with two or three exceptions at terminals where the platforms are at 11 to 15 inches above the rail.

The New York Central has rail level and tie level according to different grades of their stations.

The D. and H. for all new work is rail level filled out to within a few inches of the rail; this is explained as an easement of the difficulty in trucking across to a second track, and to get away from the space between curb and rail into which they have found people stepping both entraining and detraining, also when walking across the tracks.

The T.H. and B. is 5-inch elevation at local stations; rail level at their Hamilton terminal.

The M.C.R. has standard of rail level, but actually in existence there are platforms at tie level as well as rail level, some of the variations being brought about by change in elevation of track during ballasting and other maintenance operations.

The C.N.R. show a standard plan 5-inch elevation, but have a great many stations on different parts of their system that are at rail level, some slightly below it and others between rail level and 5-inch elevation.

The C.P.R. has a 5-inch standard which has been worked to with very few exceptions. This I understand is due to the fact that the standard was adopted years ago, and in renewals, etc., it has been provided.

The N.Y.C. in Canada varies between rail level and tie level, as illustrated by investigation on the line between Montreal and Valleyfield. Mr. Scott's letter just received shows that the company's proposal to raise all their platforms there to rail level will not be quite accomplished this year as their rail relaying will not quite cover all the line this year. There will be two stations, St. Timothee and Cecile Junction, to be dealt with in the program of 1929.

There is attached to the file memoranda showing variation in the height from top of rail to first tread of the steps of passenger cars. This you will notice varies between 13 and 22 inches.

I have not up to the present discussed with the Railway Car Department the reason for the variation in its steps above the rail, but I would like to do so.

I have no hesitation in saying that I think the most satisfactory elevation for station platforms is 5 inches above rail level.

I would suggest that the Board consider whether railway companies should not be asked to show why the Board should not adopt the standard of 5-inch elevation, with a time limit fixing the date at which all platforms must be brought to that standard.

(Sgd.) GEO. SPENCER,
Chief Operating Officer.

CIRCULAR No. 218

February 20, 1928.

Appointment and Withdrawal of Agents

File 4205.450

Referring to correspondence as to whether the portion of inter-line traffic accruing to the connecting railway should not be considered as part of the figures upon which arrangements as to station agents should be based, the Board has decided that the inter-line traffic, and all revenue traffic of whatever origin, should be considered as part of the figures upon which the justification of the rearrangement as to station agent at any particular point should be based.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.