
CASE STATED BY THE BOARD OF RAILWAY
COMMISSIONERS FOR CANADA

1931
*Feb. 3.
*May 11.

IN THE MATTER OF the complaints of the Western Canada Flour Mills, Ltd., Calgary, and the Calgary Board of Trade against proposed cancellation of the present arrangement of absorbing terminal charges at Vancouver on traffic destined to the Orient, such terminal charges to be added to the rail and ocean rate, except on shipments from Manitoba points;

AND

IN THE MATTER OF Order No. 36108, dated February 19th, 1925, suspending, pending hearing by the Board, the C.P.R. Co's. proposed amendment, subsection "D", Sup. 10, to its tariff C.R.C. No. W-2755, and the C.N.R. Co's. proposed amendment, Item 10-A, Sup. No. 2 to tariff C.R.C. No. W-401; File No. 33564.1;

AND

IN THE MATTER OF the application of the New Westminster Harbour Commissioners, New Westminster, B.C., that the

*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Cannon JJ.

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RAILWAY
COMMISSIONERS FOR
CANADA *re*
POWERS AS
TO WHARFAGE
CHARGES.

prevailing practice of the Canadian National Railways and the Canadian Pacific Railway Company of absorbing one-half wharfage, or 25 cents per ton, *re* handling of export flour through the ports of Vancouver and Victoria, be extended to include the port of New Westminster;

AND

IN THE MATTER OF the jurisdiction of the Board to deal with wharfage charges. File No. 33564.5.

Railways—Powers of Board of Railway Commissioners for Canada—Wharfage charges—Railway Act, R.S.C., 1927, c. 170, ss. 2 (32), 358.

The Board of Railway Commissioners for Canada has no power, under the *Railway Act*, R.S.C., 1927, c. 170, to regulate (no question as to discrimination being involved) as to absorption by a railway company of wharfage charges in respect of transpacific freight, at the point where the goods are transferred from rail to ship for ocean carriage to the transpacific country.

The function of the Board as to tolls and charges is (excepting as to powers conferred by s. 358 of the Act) limited to regulating charges for carriage and for those other services which are incidental to carriage, as railway services, within the meaning of the Act. The wharfage service in question is not such a service. This would appear to be so independently of, but is put beyond doubt by, s. 358. The definition of "toll" (s. 2 (32)) cannot properly be construed as declaring that any wharfage service is a railway service in the above sense.

CASE STATED by the Board of Railway Commissioners for Canada for the opinion of the Supreme Court of Canada, under s. 43 of the *Railway Act*, R.S.C., 1927, c. 170, on the question set out *infra*.

Under tariffs in force for a number of years prior to 1925, the Canadian Pacific Railway Company and the Canadian National Railways undertook to absorb, in the case of import as well as export traffic, 50% of the wharfage charge at Vancouver and Victoria, where such wharfage did not exceed 50 cents per 2,000 pounds, such absorption being borne equally between transpacific steamship lines and the railways. The absorption extended to traffic moving from points in Canada east of Edson and Canmore, Alberta, and Kootenay Landing, British Columbia. In 1925 the steamship companies took the position that they would no longer participate in the absorption except on business originating at points east of the Manitoba-Saskatchewan bound-

ary. The railways then proposed to amend their tariffs so that the absorption would apply only on traffic moving from points in Canada east of the Manitoba-Saskatchewan boundary. On complaint being made to the Board by certain shippers, an order was issued suspending, pending hearing by the Board, the proposed amendments.

At subsequent hearings held by the Board the question of the Board's jurisdiction in respect of such wharfage charges was raised, and after hearing the matter the Board stated a case in writing for the opinion of this Court upon the question (set out below) as to the Board's jurisdiction.

The judgment of the Assistant Chief Commissioner delivered in the matter was the case stated by the Board, and it concluded as follows:

In general, it may be said that the Board has dealt with absorptions concerned with the following situations:

(1) Where the absorption takes place as incidental to service, over the lines of the railway carrier in Canada and intermediate between the initial point and the destination point, both being located in Canada.

(2) Permission has been given in some instances to absorb.

(3) The question of absorption has arisen in connection with correcting unjust discrimination and undue preference.

The point involved in the question as to control over wharfage absorption is a new one. In summary form, the matter divides itself under the following headings:

(1) A movement from a point in Canada to a point in a foreign country, involving, in the case of the Canadian Pacific, a movement over its rails and a further movement over its wharf to the ship; and in the case of the Canadian National, from its rails to a wharf which is not owned by it, and a movement from this to the ship.

(2) It is contended that under Section 358, the powers of the Board in respect of water-borne transportation are limited to movements between points in Canada. In the present instance, there is a movement which has its initial point in Canada but which has its destination in a foreign country.

(3) It is submitted that while the Board may have power to deal with absorptions which are intermediate to movements between an initial point in Canada and destination point, no such power exists where the traffic has gone beyond the end of the rails of the carrier and is being moved to a destination in a foreign country.

(4) It is admitted that subsection 32 of the Interpretation Section of the Railway Act, includes under "toll" a charge or allowance for wharfage. But it is contended that this is only a definition section, and that the scope of the Board's powers thereunder must be obtained from the section or sections dealing with the particular subject matter concerned. It is claimed that the definition concerned in the definition section, while applicable in so far as The Railway Act applies, is limited by the words, "unless the context otherwise requires." And it is contended that the limitations contained in Section 358, which have already been set out, show that the context, on account of the limitation of the field within

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which the Board has power, precludes the possibility of subsection 32 of Section 2, in regard to wharf charges, being applicable.

The question which the Board, in pursuance of the powers conferred upon it by Section 43 of The Railway Act submits for the opinion of the Supreme Court of Canada is:

"Does the fact that the Board's powers under Section 358 of The Railway Act are limited as set out above, preclude the application of Section 2 (32) of the Act in respect of wharfage charges on transpacific freight?"

*F. P. Varcoe* for the Attorney General of Canada.

*W. N. Tilley K.C.* for the Canadian Pacific Railway Company.

*Alistair Fraser K.C.* for the Canadian National Railways.

The judgment of the court was delivered by

DUFF J.—I have carefully examined the sections of the Act dealing with the powers of the Board, and have come to the conclusion that (excepting the powers conferred by section 358) the function of the Board as to tolls and charges is limited to regulating charges for carriage and for those other services which are incidental to carriage, as railway services, within the meaning of the Act. My conclusion would have been that, independently of section 358, the service in question is not such a service. Section 358, I think, puts the matter beyond doubt. The office of interpretative sections is well known. The definition of "toll" cannot properly be construed as declaring that any wharfage service is a railway service in the above sense.

I confess I have had some difficulty as to the form of the question. I have read it, however, as framed on the assumption that section 358 is to be read in conjunction with the other pertinent sections of the statute; reading it in that sense the answer is in the affirmative.

*Question answered in the affirmative.*

Solicitor for the Board of Railway Commissioners for Canada: *A. G. Blair.*

Solicitor for the Attorney-General of Canada: *W. Stuart Edwards.*

Solicitor for the Canadian Pacific Railway Company: *E. P. Flintoft.*

Solicitor for the Canadian National Railways: *Alistair Fraser.*