

ing freight classification and schedules be approved, and the railways are directed to give due effect thereto forthwith, as follows:— That under the heading of "Fruits" the Canadian Freight Classification be amended by reducing "Pears" (green) in boxes or barrels, from 1st class to 3rd class, in less than carloads, and from 3rd to 5th class in carloads. Also that "Apples" (green) in boxes, which are at present 2nd class in less than carloads and 5th class in carloads, be made 3rd class in less than carloads and 5th class in carloads; thus making the classification of apples and pears in boxes and barrels uniform. That fruit described in the current Canadian Freight Classification as "Fruit, Fresh," be carried in baskets, boxes, or crates on the following described reduced basis of rates, viz.:— Between all stations in Ontario, east of Sault Ste. Marie and Fort William, and between all stations in Quebec, and interprovincially between Ontario and Quebec, also from stations in Ontario and Quebec to stations in New Brunswick and Nova Scotia, at 4th-class rates in carloads of not less than 20,000 lbs., instead of 3rd class as at present, and at 2nd-class rates in less than carload lots of 10,000 lbs. or over, instead of 1st class as at present. Also from stations in Ontario and Quebec to Winnipeg, Portage la Prairie, and Brandon, at 4th-class rates in carloads of not less than 20,000 lbs. instead of at 3rd class as at present. It is understood, in all cases, that the total charges on a smaller lot shall not be greater than the total charges on a larger lot at the next lower rate as indicated above. With respect to the charge made by railways for refrigerating shipments in transit, it is ordered that the average actual cost of the ice, and the placing thereof in the cars, shall not be exceeded, and that pending a decision by the Board as to a reasonable charge for such service, the charge for refrigerations shall not be more than \$2.50 a ton of 2,000 lbs. on the actual weight of the ice supplied. The question of lower rates on "Apples" (green) in carloads, being still a subject of consideration and correspondence with the principal railways, the Board reserves its order upon this question until such correspondence shall be closed, not, however, to be delayed for such purpose beyond a reasonable time.

CONCESSIONS FOR NEW INDUSTRIAL PLANTS.

The chairman of the Advisory Committee of the Canadian Freight Association made an application on behalf of all the railways in Canada, for permission to make concessions from the current rates on material for construction and machinery for equipment of new industrial plants. Hitherto it has been customary for the railways to make a reduction of 25 % from current rates in such cases. The object of the concession asked is to encourage the establishment of manufacturing plants at points where such do not exist, and for the development of those already established, more particularly at non-competitive points, or points outside large centres, and this allowance has been confined to the parties interested in the operation of the plant, and has not been given to the contractors putting up the buildings or supplying the machinery. The Commissioners, in their judgment, said:—"The application opens up a question of very considerable magnitude and importance. The fact that the railways found it in their interest to adopt and continue a policy of this kind may be thought to afford some justification for its further continuance. The companies, it may be supposed, would not be likely to pursue a course which would be injurious to their own traffic interests or which would not really be stimulative to business on their respective lines. The question is also one of some delicacy, since it may be felt to be a hardship by those who have been expecting this advantage if the practice were now to be disallowed.

Above this, and beyond these considerations, however, arises the question whether the permission to a railway company to impose special rates below the current tariff charges on all material used for construction and all machinery used for equipment of new or the development of existing industrial plants would not facilitate or tend to facilitate the making of discriminating rates as between shippers of these kinds of merchandise? We fear it would. The applicants, in support of their application, rely on sub-sec. 4 of sec. 275 of the Railway Act, as contemplating and authorizing just such a concession as is now applied for. No doubt, Parliament intended, in enacting this clause, to introduce an element of elasticity into the freight clauses of the Act and to empower the Board, in the exercise of a wise discretion, to modify the rigid interpretation which it would otherwise be compelled to place upon the clause relating to discrimination. But the Board is unable to agree that sec. 275 should be so interpreted as to justify and support the application in its present form. It will be observed that the application is for permission to the railway companies to make concessions from current rates on material for the construction and machinery for the equipment of new industrial plants, etc. Authority, if given in such general terms, would allow a railway company to be the sole judge as to the cases in which reductions on rates should be granted. The railway company would be authorized to determine as to whether the new industry proposed to be established or the old one to be further developed were entitled to receive these favors, and with such a power conferred upon the companies a door would be opened for widespread discrimination in freight rates upon the carriage of all merchandise of the description embraced within the order. This Board is prepared to give due effect to sub-sec. 4, sec. 275, to what it believes to be the extent intended by Parliament, but, in the opinion of the Board, such a concession must be the subject of a separate and distinct application in each case, and must be dealt with on the individual merits of each and with full knowledge of the facts and circumstances in every instance, and upon such information as will enable the Board to judge of the effect of its order upon other industries and upon the shippers and dealers in commodities, whether of a like or of a different kind. For these reasons, the Board must decline to "entertain" the present application."

COAL FROM NIAGARA FRONTIER TO COBOURG.

In connection with the application of the G.T.R. for a ruling as to whether the company would be allowed to continue a difference in the rate of freight on bituminous coal of 10c. a ton between the Niagara frontier and Cobourg, Ont., such reduced rate being in favor of the manufacturer, as compared with that charged to the dealer or consumer, the judgment of the Commissioners referred to certain important matters. The Commissioners said:—"This application for the Board's permission to continue the differential rate, if the same is to be continued, becomes necessary by reason of certain provisions contained in the Railway Act, 1903. Sec. 252 provides that railway tolls shall, under substantially similar conditions and circumstances, be charged equally to all persons, and that the same rate and no reduction or advance in any such tolls shall be made, either directly or indirectly, in favor of or against any particular person or company using the railway. There is a case, namely: sub-sec. 4 of sec. 275, which, under certain special circumstances, qualifies sec. 252, and vests a discretion in the Board under certain express conditions, to sanction a reduction in the ordinary tolls; but the application before us does not come within the pro-

vision of this clause. The question, therefore, for the Board to determine is: Can the present application be properly entertained? We are of opinion that it cannot. No evidence has been offered to show that the manufacturers would, if the reduced rate was not allowed by the railway, be unable to carry on their business. On the contrary, the statement of the applicant company is: that the manufacturers have threatened, not to close their factory, but to arrange for their coal shipments being made by water, by which means, the manufacturing companies say, the freight on their coal will not exceed 80c. a ton. Even if it had conclusively appeared that a refusal to allow the reduction in the rate to 80c. per ton would injuriously affect the manufacturing interests, the case would not be thereby altered. The law is clear that the allowance of a reduction in the freight rate on any article of merchandise to one class of shippers and refusal of the same rate to another is unjust discrimination, and unjust discrimination is prohibited by the Railway Act. Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products; and a carrier who, under any pretext whatsoever, grants to one shipper an advantage which he denies to another, violates the spirit and thwarts the purpose of the law. This is the statement of a conclusion arrived at by the Inter-State Commerce Commission in a question very similar to the present; and will be found in a case of *Castle versus Baltimore and Ohio Railroad Company*, Eighth Inter-State Commerce Report, and to this judgment and opinion this Board subscribes. This matter resolves itself, therefore, practically into one for the consideration of the railway company, and in the judgment of this Board, for the railway company alone. The company has it in its power to make the rate to manufacturers 80c. a ton, and thereby secure the carriage over its line of the manufacturers' coal supply, but it can only do so by making the same rate to all its patrons, dealers, consumers and manufacturers alike. The application of the G.T.R. Co. for the ruling asked for must therefore be denied."

SPLIT PEAS FOR EXPORT.

The Pea Millers' Association, in a complaint, alleged that the railways charged higher rates from Ontario milling points to the seaboard on split peas for export than was charged on other grain products, such as flour and rolled oats for export. The facts were not disputed, but the railway companies contended that the nature of the article and the character of the shipment justified the difference in the rates. Prior to Oct. 27, 1902, the rate in what is known as the 78 % points, G.T.R. main line, Toronto to Point Edward and all south thereof to Lake Erie, on flour and bulk grain and split peas to New York, Philadelphia, Baltimore, Boston, Portland, and St. John was the same, but on that date the rate on split peas was raised from 11½ to 19½c.; on Dec. 1, 1903, the rate on flour and bulk grain was raised from 11½ to 13½c.; and on Dec. 12, 1903, the rates were reduced to 13c. for flour and bulk grain and 16c. for split peas; whilst on May 5, 1904, the old rate of 11½c. on flour and bulk grain was re-established and the rate on split peas reduced to 14½c. The export rates to Montreal have also varied, but, generally speaking, the New York rates have been the maximum to Montreal. The increase of the split pea rate to 19c., although not up to the full classification, was prohibitive, as was shown by the reduction to 16c., and afterwards to 14c. The applicants contend that the increase to 19c. lost them the British market, which has not been recovered, the reduction not being sufficient. The Commissioners were of opinion