

Judgment re Average Demurrage.

6264. Feb. 8.—In the matter of the complaint of the Wallaceburg Sugar Company, Ltd., of Wallaceburg, Ont., complaining that the effect of the operation of certain of the Canadian Car Service Rules is unfair and burdensome to large shippers; and applying for an order directing the adoption of what is known as the "Average Plan of Car Service." Upon the hearing of the complaint and counsel for the Grand Trunk, Canadian Pacific, and Michigan Central Railway Companies, the evidence adduced, and what was alleged—it is ordered that the application be, and it is hereby, dismissed.

D'Arcy Scott, Assistant Chief Commissioner, gave the following judgment:

The average demurrage plan, which the applicant seeks to have established, may be described as the giving of credit of free time by a railway company for use of a freight car to a consignee, when the amount of time he takes to unload the car is less than the amount of time allowed to do so by the Car Service Rules; which credit, or spare time, is set off against excess time for the use of other cars for which the railway company now charges the consignee demurrage. At the hearing of this case, it was urged by the applicant, that as the average system existed in Michigan where some of its competitors were, that it should be adopted in Canada, at least in so far as the sugar refiners were concerned. It was also stated that the Michigan refiners were able to purchase their raw material in Canada, but the Canadian refiners were denied the privilege of purchasing in Michigan; that the United States manufacturer was protected by a duty of \$1.77 per 100 lbs., while the protection granted the Canadian manufacturer was but 83c., and that, therefore, some special consideration should be granted the applicant. I cannot see how the fairness or the justice of the system upon which charges for car service in Canada are made is affected by these conditions which surround the sugar refiners of this country, or why, because such conditions exist, a radical change in the system should be made.

Mr. Gordon, General Manager of the Wallaceburg Company, told us that while they can regulate the number of cars of beets ordered per day from the farmers, they cannot control the number of cars per day which the railway companies may deliver, and that as a result they are sometimes "swamped." He said that, on an average, they unloaded 22 cars a day during the past year, but have unloaded as many as 90 cars in a day. About 60% of the beets consumed at the refinery are hauled by rail; the haulage of the other 40% being about equally divided between water transports and teams. That the company is capable of handling a fair number of cars within the time allotted by the Canadian Car Service Rules is quite apparent from the statement submitted with its application, dated Nov. 11, 1908. It shows that during a certain period 1,051 cars were unloaded, and that the average time per car was 31½ hours. Of this number of cars, 855 were not held longer than the 48 hours' free time allowed for unloading under the Car Service Rules. This proves that, under ordinary circumstances, 48 hours is sufficient time to be allowed for unloading a car of beets.

If special circumstances occur, for which the consignee is not responsible, which prevent him from unloading the cars delivered within the allowed free time, the Car Service Rules provide that demurrage shall not be charged for necessary additional time. For instance, allowance of extra time is made when cars are tendered to the consignee under conditions for which

the railway company is responsible in numbers beyond his ascertained reasonable ability to unload, or where the weather is inclement and unsuitable for unloading. These rules are interpreted, not by the railway company interested, but by the Canadian Car Service Bureau, whose Manager, Mr. Duval, stated, under oath, that the rules are interpreted most liberally to the consignee, and that the object of the Bureau is to secure the quick release of cars, rather than the collection of demurrage for the railways. This can be well understood even from the railway point of view, because while the car is held the company can only get \$1 per day for it, whereas the earning capacity of a freight car in service is about three times that amount.

The average system suggested, in my opinion, is not justifiable under the contractual relations, which exist between the consignor or consignee (as the case may be) and the railway company. The contract of carriage is, that the railway company will carry the goods to the point where they are to be delivered to the consignee, who in turn is to unload and release the car with all reasonable dispatch. For more certainty and uniformity of practice, rules have been adopted, which say in effect that "reasonable dispatch" for unloading shall not, in the case under consideration, exceed 48 hours. If a man exceeds this reasonable time in unloading, he is penalized by a charge of \$1 per day for the extra time he may hold the car. Such a provision is in the public interest, because it makes a consignee prompt in releasing cars consigned to him, and thus increases the supply of available cars for the shipping public. In my opinion, the average system might have the effect of making a consignee dilatory about unloading so long as he had free time to his credit, and if he had not free time to his credit the circumstances would be the same as they are under the present rules.

The Canadian Car Service Rules have only been in force since March 1, 1906, and it has taken some time to get the public to understand them. They may be defective in some details and require to be amended, but I think they are founded on sound principles, which should not be departed from. The uncontradicted evidence of Mr. Duval, of the Car Service Bureau, to the effect that cars are being released more quickly by consignees under these rules than was done formerly, proves that the desired result is being accomplished. The intention is that, under the Car Service Rules, each car shall be dealt with by itself and without reference to the movements of other cars. This insures equal treatment of the smaller shipper or consignee with the larger one. But, if the average plan were in force, I can well see that an injustice would be done the small dealer by giving an advantage or preference to the dealer who had a large number of cars to unload. Suppose a dealer with a large capacity for storage received 50 cars of merchandise, which under the rules he had two days to unload, and unloaded them all the first day, he would then have 50 days to his credit. The next day, he and a small competitor each received one car. The small competitor would have to unload in two days or be penalized, while the other could hold his car for 50 days' free time, which might prove to be of very material advantage. It may be said that this is an extreme case. It doubtless is, but it shows how the average demurrage plan might work out unless there were limitations upon it. Mr. Gordon suggested that the plan might be adopted for those in his line of business only. I do not think it would be advisable at this early date to start making exceptions to the general principles laid down in the car service order, which has not yet been in effect for

three years. These principles are, in my opinion, sound, and should not be interfered with. If the applicant cannot get redress under the rules from the Car Service Bureau, he may apply to this Board, and his complaint will be heard. I am, therefore, of opinion that this application should be dismissed.

April Birthdays.

Many happy returns of the day to—

J. A. Armstrong, Chief Train Dispatcher C.P.R., Ottawa, born at South Durham, Que., April 6, 1863.

F. J. Balch, Assistant General Freight Agent Ottawa and New York Ry., Ottawa, born at Massena, N.Y., April 15, 1870.

Adam Brown, formerly President Wellington, Grey and Bruce Ry. (now G.T.R.), Vice-President G.N.W. Telegraph Co., and Postmaster of Hamilton, born at Edinburgh, Scotland, April 3, 1826.

A. E. Edmonds, District Passenger Agent C.P.R., Detroit, Mich., born at Woodstock, Ont., April 8, 1866.

J. H. Flock, K.C., Honorary Counsel Canadian Ticket Agents' Association, London, Ont., born at Toronto, April 6, 1834.

B. W. Folger, Manager Niagara Navigation Co., Toronto, born at Kingston, Ont., April 8, 1872.

W. E. Fowler, Master Car Builder C.P.R., born at Weymouth, Dorsetshire, Eng., April 27, 1856.

F. A. Gascoigne, Superintendent Car Service, C.P.R. Eastern Lines, Montreal, born at Gosport, Hants, England, April, 1866.

J. P. Gay, Manager G.T. Despatch Fast Freight Line, Detroit, Mich., born at Hamilton, Ont., April 26, 1857.

B. C. Gesner, formerly Air Brake Inspector I.C.R., now travelling representative Galena Signal Oil Co., born at Cornwallis, N.S., April 23, 1859.

J. Murray Gibbon, Advertising Agent C.P.R., London, Eng., born at Udewella, Ceylon, April 12, 1875.

J. M. Horn, city freight agent Canadian Northern Ry., Winnipeg, born at Schoots, Lanarkshire, Scotland, April 12, 1880.

B. S. Jenkins, General Superintendent C.P.R. Telegraphs, Winnipeg, born April 8, 1859.

J. Kyle, Assistant Master Mechanic Canadian Northern Ry., Edmonton, Alta., born at Toronto, April 11, 1877.

J. B. Lambkin, Assistant General Passenger Agent Intercolonial Ry., Halifax, N.S., born at Quebec City, April 5, 1858.

J. S. Lawrence, ex-Superintendent C.P.R., Medicine Hat, Alta., born at Toronto, April 9, 1863.

D. McNicoll, Vice-President C.P.R., Montreal, born at Arbroath, Scotland, April 7, 1852.

P. Mooney, General Freight and Passenger Agent Halifax and Southwestern Ry., Halifax, N.S., born at St. Catherines, Que., April 19, 1871.

R. S. Richardson, Assistant Superintendent C.N.Q.R., Montreal, born at Napanee, Ont., April 9, 1865.

W. A. Ritchie, District Superintendent The Pullman Co., Montreal, born at Edinburgh, Scotland, April 13, 1854.

E. W. Smith, Superintendent Dining and Parlor Car Service, G.T.R., Toronto, born at North Bridge, Mass., April 21, 1869.

W. S. Tilston, Chief of Montreal Board of Trade Transportation Bureau, born at Manchester, Eng., April 14, 1877.

W. Wainwright, Fourth Vice-President G.T.R., Montreal, born at Manchester, Eng., April 30, 1840.

W. Woollatt, ex-General Superintendent Buffalo Division Pere Marquette Rd., Walkerville, Ont., born at Weedon, Hertfordshire, Eng., April 2, 1855.