

HON. H. A. M'KEOWN SUBMITS RULING OF RAILWAY BOARD

(Continued from page 9.)

other railway companies who were in no way bound by them.

Disaster's View.

Commissioner Boyce finds that the rates in force on July 6 were just and reasonable rates as to all companies, were equitable, uniform and undiscriminatory in their effect. He finds that the rates represented by the tariffs filed under the Crow's Nest Pass agreement and effective July 7, "are unequal, unjust, unfair, not uniform and subversive of stable rate structure. They are the cause of widespread and far-reaching dislocation and disruption of the rate structure and are not based upon any sound principle."

Commissioner McLellan, in dissenting from the finding of the majority, deals largely with the legal question involving the jurisdiction of the Board of Railway Commissioners.

"The Crow's Nest Pass arrangement was an agreement," he states, "and if the board had power under the discrimination section to disregard the limiting powers of such an agreement, what was the necessity for such legislation? It seems to me that the enactment of this legislation is in substance a statement by Parliament that in regard to the subject matter dealt with in the sub-section the board had not—in the absence of this specific enactment—regulatory powers." The assistant chief commissioner also states: "I am further constrained, although with great deference to the opinion of the chief commissioner, to conclude that the provisions of the law involved do not warrant the conclusions arrived at by the majority."

Another Disagrees.

In his dissenting judgment, Commissioner Oliver states:

"This board was created and empowered for the more efficient enforcement of the acts of Parliament regarding railways and, therefore, cannot set aside any part of the provisions of any such act, but on the contrary, is bound to loyally enforce those provisions. While it would be quite in order for the Government to negotiate a new arrangement with the Canadian Pacific Railway Company in the place of the Crow's Nest Act, I am of the opinion that such an agreement should maintain the principle of low fixed rates on basic products established by that act."

Test of Finding.

The finding follows:

File No. 238121: In the matter of



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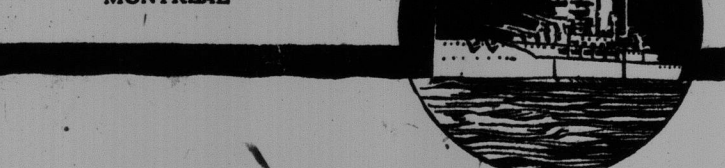
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freight tariffs, Canadian Pacific Railway, C. R. C. No. E-4187; Canadian National Railway, C. R. C. No. E-765; Canadian Pacific Railway, C. R. C. No. W-2767; Canadian National Railway, C. R. C. No. W-401.

And of various complaints against the said tariffs arising out of the restoration of the Crow's Nest pass rates. Heard at Ottawa, the 17th, 18th, 22nd, 23rd, 24th, 25th and 26th of September, 1924.

THE CHIEF COMMISSIONER:

This matter was set down for hearing following receipt of complaints from the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Prince Edward Island, as well as from cities in different parts of Canada as far apart as Vancouver, B. C., and St. John, N. B.

Volume Increases.

Such complaints were augmented in volume by specific instances of discrimination laid before the Board by Chambers of Commerce and Boards of Trade of over a score of cities, by numerous business associations, including the Kelowna Growers' Exchange, the United Farmers of British Columbia and of Manitoba, the Canadian Manufacturers' Association, the National Dairy Council and many other organizations as well as by individual companies from the east and west, all of which united to complain that the Crow's Nest Pass agreement and the rates established thereunder have resulted in discrimination against individual firms, against localities and against manufactured and natural products, culminating in an unsettled business condition throughout Canada which some of those appearing before the board have pronounced to be chaotic and others have described as absolutely destructive of trade.

Sources of Complaints.

Some of the localities represented were described as being intensely indignant because of such discrimination, and determined at all hazards that such conditions should be put an end to. Some complainants have founded their grievances upon the recent re-establishment of the rates called for by the agreement; others are protesting against any attempt to remove the preferences so created.

There are complaints from cities and towns which have come into existence since the Crow's Nest Pass agreement was made, and to which, by a narrow construction of the document, the rates provided for in the agreement are held not to apply. Other complaints have arisen by reason of certain railway lines constructed since such agreement, and by the same narrow construction, freight carried along these lines is excluded from the benefit of the reduction provided for, and consequently the localities served by such later extensions are not favored by the rates set

out in the agreement, thus causing discrimination against them.

Specific Cases.

Further complaints are concerned with a disparity in freight rates on fruit moving east as compared with that moving west, others with a disproportionate in grain rates charged in western Canada in comparison with the eastern rate, with arbitrary classification of freight, with increased carload weights, and with many other circumstances specifically enumerated in the various resolutions, petitions and representations placed before the board.

There are also complaints concerning which it may be said the Crow's Nest Pass matter has little to do, but with very few exceptions the whole trouble centres around that agreement.

The diversity of views held and expressed before the board by interested parties has demonstrated beyond doubt that under present conditions there is no common ground which all can occupy in harmony. The existence and continuance of the agreement, and of the preference thereunder given, make it impossible to reconcile such sharply conflicting interests, or to present any solution of the problem which is not fraught with what is regarded as an unjust discrimination and unfairness to one body of complainants or to the other.

Should Be Settled Soon.

The immediate and pressing necessity of a speedy determination of the unsettled problems connected with this inquiry has moved the board to hasten its decision, as far as regards the principle which it thinks should apply to the solution of the difficulties involved. It is apparent that if the reduction called for by the Crow's Nest Pass full effect must be given to them, consideration must be had of other problems, which in that event necessarily arise, but which otherwise do not exist. As, for instance, the above noted complaint as to the status under the agreement of towns and cities which have come into existence since the making of such agreement, and the liability of the part of the line of railway constructed to carry the commodities named at the reduced rates.

There are two important features of the problem which will have to be faced. In the case of the proper construction of the agreement it is that the Crow's Nest Pass reduction must persist. If, however, it should be determined otherwise, which was decided over six years ago and which is said to be still under appeal to the Supreme Court of Canada, responsible counsel have urged that the question involved here was not then argued before the board, that it was not necessary for a decision of the board to be made on that point, and that a pronouncement upon the subject by the board was unnecessary, and following such pronouncement appeal was immediately taken, which appeal, while still alive, has not been proceeded with because the rates provided in the agreement were suspended by statute.

New Brunswick and Nova Scotia.

There are other and manifold subjects remaining for consideration after the settlement of the main question of the rates, and the jurisdiction of the board over the rates called for by the agreement referred to, lies at the very threshold of the problems which have been presented for solution.

Notwithstanding this explanation, if this was an ordinary case, one in which the rights of private parties only were concerned, I think, be it so, the obvious correct practice to await the determination of the question by the hands of the Appeal Court before announcing decision hereon, especially when such proceeding seems to be at variance with the views previously expressed, even under the circumstances above stated. But in my opinion, the importance of this matter, both to the business interests of the country and to the common carriers, is of such an overwhelming nature, and the necessity for stabilizing freight and business conditions is so imperative, that I think the duty owed by this board to the public should override the finer questions of legal etiquette which might seem to be involved. If in any such question can be said to exist.

Terms of Agreement.

I cannot view the agreement in the light of forever disabling the parties of this contract from reconsidering their situation and from making the necessary adjustments that business conditions now so insistently demand. The contract is between Her Majesty the Queen on the one hand, and the Canadian Pacific Railway Company on the other.

All that need be said of it for the purpose of this argument is that it contained an agreement of the part of the Crown to pay a certain specified sum of money as a subsidy to the railway company in assisting it to build the Crow's Nest Pass Railway, and in consideration of the receipt of that money, the Canadian Pacific Railway Company promised to build the line and allow certain reductions in freight rates to be charged upon specific commodities.

I am at a loss to discover upon what ground it can be said that such an agreement carried with it the necessary consequence that the parties who entered into it could never readjust their relations under the contract. The argument in support of that contention involves the supposition that under the terms of the agreement, the public immediately affected by such reduction obtained a vested interest in the continuance of these reduced rates. No such provision is contained in the agreement itself, and I can see nothing to indicate that any such intention was present in the mind of either party to the contract when it was entered into.

May Alter Agreement, He Thinks.

The Crown was acting in the public interest in this, as well as in all contracts, and I can find nothing in the agreement, or in anything which surrounds it, to lead me to the conclusion that the parties thereto were not, and are not, free to amend, rescind, or alter the contract in any way they mutually agree upon.

Under legislation enacted subsequent to the passage of the Crow's Nest Pass Railway Act and the making of the agreement under it, this board has been vested with full power to fix, determine, and enforce rates that are reasonable in the public interest, and I think that this board should proceed to consider the subject matter of these complaints with a view to removing existing discriminations and giving necessary relief, unhindered by the agreement entered into under the provisions of the Crow's Nest Pass Railway Act, and the order made hereunder is, in my opinion, the first step in that direction.

H. A. M'KEOWN,

Ottawa, October 14th, 1924.

B. C. Not Satisfied.

Victoria, B. C., Oct. 15.—Removal of the Crow's Nest Pass rates will aid British Columbia fruit growers materi-

Misfit Eyes



His right eye is blue. His left is brown. He has perfect vision. Did you ever hear of a dog like him? His name is "Differant" and his owner, Miss Sue Williams, of New York City, wouldn't sell him at any price.

the board's jurisdiction than that which has been expressed by him. It is doubtless true that those interested in the maintenance of the rates established under the Crow's Nest Pass agreement have been able to point to previous dicta—and perhaps to one decision of the board—expressing a conclusion different from that which is announced today. With regard to all the cases referred to, except that known as the Increase in Rate case, 22 C.R.C. 46, such remarks were clearly obiter and being such, cannot by any principle of construction, be held to bind the board.

With regard to the case last mentioned which was decided over six years ago and which is said to be still under appeal to the Supreme Court of Canada, responsible counsel have urged that the question involved here was not then argued before the board, that it was not necessary for a decision of the board to be made on that point, and that a pronouncement upon the subject by the board was unnecessary, and following such pronouncement appeal was immediately taken, which appeal, while still alive, has not been proceeded with because the rates provided in the agreement were suspended by statute.

Legal Etiquette.

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ORGAN RECITAL MUSICAL TREAT

An organ recital given last evening in German street church by Charles M. Courboin, famous Belgian organist, was thoroughly enjoyed by those who attended.

The programme was a progression of triumph in musical development and it is the audience caught the spirit of the organ, it responded to the instrument and the master, and applauded with eager desire to show its appreciation.

By special request of Miss Alice Hosi, organist of Centenary church, Mr. Courboin played Martin's "Gavotte" before he played the grand finale of the evening. He also played the Belgian national anthem, closing with "God Save the King." The melody was played on the organ, with all the harmonies on the organ. The audience stood for the two national hymns in rapt attention.

With due respect to the conventions of organ programmes, a selection from Bach opened the evening and gave prophecy in the variety of much that was to come later. The Cesar Franck selection in A Minor was one of the tone stories that depicted many emotions, tender, grave, sad, and at last peaceful in massive chords that rang with faith. There was glad response to the beautiful picture of "The Bells of St. Anne de Beaupre," by Alexander Russell. The chimes were exquisite, and those who have heard the old bells of the old basilica, now gone, recognized their tones at once.

Robert Schumann in happy mood was heard in his Sketch in D Flat, and Mr. Courboin played with exquisite skill the dainty passages and imparted a thought of happiness that left the audience smiling reminiscently long after his last note sounded. Wagner was heard again in his classic "Liebestod" when Isabelle is recruited to her dead lover, Tristan, singing her triumphant song of love and adoration.

One of Mr. Courboin's transcriptions of the famous Debussy, "The Afternoon of a Faun" was orchestral in its effect. It gave great opportunity for the organ to show its power, when guided by its master. "The Marche Heroique" of Saint Saens, the great French master, who died in 1921, ended the formal programme.

Mr. Courboin will leave this afternoon for Montreal where he will play on Thursday evening. He then leaves for New York, but expects to return to Canada very soon, to play in Hamilton, Ont. He makes a concert tour of 25 engagements every year. It was through the efforts of J. E. LeDoux, of this city, that this treat for excellence was granted the music lovers of St. John.

TRIBE IN THE PHILIPPINES

HAS CALENDAR ALL ITS OWN

Manila, Sept. 12.—(Associated Press by Mail)—The Ifugao, an industrious non-Christian tribe inhabiting the mountain province, have a calendar all their own, according to Dr. H. Otley Beyer, head of the department of anthropology of the University of the Philippines. When an Ifugao wants to know what day of the month it is, he does not consult an almanac, but asks the "Tumunoh," the clan astronomer, calendar keeper and model husbandman. There are some 60 Ifugao clans and each has its "Tumunoh," who is considered the most important personage in the tribe.

Their calendar has 18 months divided into 28 days each. They know there is one day more in each year and this extra day is called "Tungo," the last day of the year. The "Tumunoh" cultivates certain plants in an isolated spot where the temperature is relatively uniform, and from the budding of these plants he claims to tell the exact date of the month or year. He knows that 365 days a year is not exactly correct when he leap year comes around, but he keeps silent and does not tell his people about the extra day.

The "Tumunoh" advises the people of the date to begin planting and the date to begin the harvest.

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WILL BUILD THE RETAINING WALL

Common Council Authorizes \$6,700 Expenditure in Prince Edw. St.

The City Council yesterday afternoon authorized Commissioner Frink to proceed with the erection of a retaining wall in Prince Edward street and ordered the street lighting bills for the month of September paid.

Commissioner Frink reported that he had looked into the matter of a lot applied for by J. G. Lake, being on the street area in Crown street and found that by order-in-council in 1910 it had been decided to extend Crown street from Leinster to Meadburg streets and this lot would be on the street if this order were carried out. The report was referred to the Commissioner of Lands.

Bills from the Civic Power Commission for the street lighting for the month of September, amounting to \$2,874.17, were ordered paid.

Commissioner Frink moved that a retaining wall be erected in Prince Edward street, from the corner of Richmond street toward Clarence for a distance of 173 feet at an estimated cost of \$6,700.00 and that the sum of \$3,600, being an unexpected balance of the bond issue for the Haymarket Square paving, be applied to this work, bonds to be issued for the balance. This carried.

Mayor Potts read a letter from the Board of Trade stating that in February, last, the council of the board had considered the matter of a vocational school and at that time had adopted a resolution to the effect that, while they were in favor of vocational education, they felt that the present was not the time to impose additional financial burdens on the citizens and that a copy of this letter had been sent to Hon. H. A. McKeown, late chairman of the School Board.

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ST. JOHN, N. B.