

An application heard at Toronto, April 28th, 1909, and re-heard at Ottawa, March 15th, 1910.

W. M. German, K.C., for the applicant.

John Pullen, for the respondent.

MCLLEAN, COMR.:—The original attack on the rates concerned was on the ground that they were discriminatory. I have endeavoured to give full weight to the argument presented by Mr. German at the re-hearing, but am unable to see that the opinion I had already expressed in this matter should be changed.

The proposition contained in the draft order is in effect that the Auburn rate "via Niagara frontier," less two cents per hundred pounds, shall be taken as the maximum on shipments from Welland. This is subject to the qualification that when existing commodity or fifth-class rates from Welland to shorter distance points are less than would be given by the Auburn basis as reduced, the aforesaid rates shall apply as maxima.

I have already expressed my opinion regarding the Auburn rate basis in the following words:—

"It is, however, alleged by the railways that there is no movement of binder twine from Auburn into Canada. The applicants do not controvert this statement. It follows, then, that under existing conditions and notwithstanding the lower rate basis there is no competition. The rate is, in effect, a paper rate and cannot be used as a measure of the reasonableness of rates from Welland to intermediate Canadian points. If a different state of facts arose, it would be pertinent to consider the Auburn rate."

I do not understand that the situation is so changed as to justify a consideration of the Auburn rate. The application as to discrimination failed; the relief proposed is by way of finding that the existing rates are unreasonable per se. Concerning this phase of the matter, I express no opinion. Without derogating from the Board's power to act in the matter of its own initiative and to give such remedy as to it seems proper, it does seem to me that in a case formally launched as this was, and presented by counsel who had the assistance of a skilled traffic expert, the Board should not relieve the applicants from the preliminary burden of establishing that the rates are unreasonable per se.