

has no jurisdiction, and which they may amend or cancel as may best suit their purpose.

This Board of Trade is of the opinion that, in amending paragraph 30, Section 2, Parliament must have had in view the vesting in the Board of Railway Commissioners of the necessary power to not only control the toll, but also the service on which the toll applied, otherwise the Board's control of the toll could be rendered abortive by a Railway ignoring an Order of the Board for the adjustment of a toll by simply withdrawing the service.

To cite a number of instances where the Board has found the lack of the necessary jurisdiction:—

Judgment of the Board rendered in connection with an application of the Montreal Board of Trade for an Order directing the Canadian Pacific Railway Company to furnish tariffs covering milling-in-transit arrangement on corn received at Montreal by rail from Georgian Bay elevator ports and from Detroit, etc. Order No. 9 (32) (B.R.C. File 12384) reading in part:—

We cannot require a railway company to establish a milling-in-transit rate on anything; it is optional with them to do it. If they choose to do it themselves, then they may get under our jurisdiction if it discriminates against anybody. But in the absence of any milling-in-transit rate on corn for local consumption, I do not see how it can get under our control at all. We cannot require them to put in such a rate as I understand it. If they do and then if discrimination follows, it would come under the discrimination clause.

It would appear to this Board of Trade that even the discrimination clause referred to in the foregoing extract from the judgment could be rendered abortive by a railway ignoring an Order of the Commission to establish a similar service for a person or persons by withdrawing a service in effect in another locality to the detriment of such locality, and in respect to which they were quite willing to publish up to the issuance of an order requiring its extension to other districts.

Also:—

Judgment of Mr. Commissioner McLean (B.R.C., File 19666), attached to Order No. 18825, in the matter of the application of Simcoe Fruits, Ltd., for stop-over, for completion of carloads of fruit, in transit, in which appears the following:—

It is established by various decisions of this Board as well as by decisions of the Interstate Commission that the transit practice is a privilege, not a right.

Judgment of Assistant Commissioner Scott (B.R.C. File, 1966), shipping of fruit to concentration points for storage and inspection, in which appears the following:—

I believe there is sufficient doubt about the Board's power to make such an Order (referring to Order No. 18825 of March 5, 1913) to warrant us in referring the matter to the Supreme Court.

Judgment of Mr. Commissioner McLean (B.R.C. File 18663) in the matter of cartage arrangements in Eastern Canada, as rendered September 25, 1913, in which the following statement is made:—

The Board has no power under the Railway Act to order it (the railway) to make arrangements as to this cartage service with bodies over which it has no control whatever.

We submit that the sections of the Act giving the Board power to control the toll, and to remove discrimination as between shippers and localities are