

Telegraph Companies Responsibility for Failure to Transmit Messages.

Complaint of the Canadian Manufacturers' Association, per J. E. Walsh, Toronto, Ont., against the Board of Railway Commissioners' general order 162, and the matter of relieving telegraph companies from responsibility for failure to transmit messages. File 136224.

Commissioner Boyce of the Board of Railway Commissioners, gave the following judgment Oct. 7: Complaint is made by the Canadian Manufacturers' Association that the conditions of contract with telegraph companies impose no obligations or penalties for failure to transmit messages received by the company for transmission, and provision is sought (by amendment to the conditions of traffic sanctioned by order 162, Mar. 30, 1916), for the imposition of penalties for non delivery in such cases as are due to gross negligence of the company, even though the message is not repeated.

The whole wide question of the liabilities attaching to telegraph companies, involving the point complained of, was fully considered by the board upon the application which resulted in order 162. The question was further, incidentally, considered by the board on the application of the Great North Western Telegraph Co., the C.P.R. Co.'s Telegraph, and the Grand Trunk Pacific Telegraph Co., for an order approving conditions varying those approved by order 162, the object of such application being to vary the conditions so sanctioned in a manner which would more fully relieve the companies from liability, to sender or addressee, whether from negligence or otherwise, in respect of receipt, transmission, and delivery of messages.

The application last referred to, was heard at Ottawa April 17, 1917, and, following a considered judgment of the then Chief Commissioner, dated July 14, 1917, order 26,378 was passed July 26, 1917, dismissing the application, but reserving to the applicants leave to apply for a stated case, in writing, for the opinion of the Supreme Court of Canada, upon the questions of law involved in the application.

A stated case has never been presented to the Supreme Court—has not been settled by the board—but a draft case has been submitted to the applicants, who have not yet concurred in it, although by written memorandum they suggested that the case to be submitted for the opinion of the Supreme Court of Canada, should contain the following questions, viz.:

"1. Was the board right in holding that a condition in the contract purporting to limit the company's liability to the addressee of a telegram is, under the law of the Province of Quebec, ineffectual for that purpose?"

"2. Has the board power by regulation—independently of the contract—to limit the liability of the company to the addressee of a telegram?"

"3. Would such a regulation be effectual for such purpose under the law of the Province of Quebec?"

In the ex-Chief Commissioner's judgment, upon the application above referred to, the law is fully discussed with regard to the applicability of the Quebec Civil Code of article 1,053, as distinguishing liability affecting the transmission and delivery of telegraph mes-

sages from that settled by legal decisions of our courts, and of the English courts, referred to in the ex-Chief Commissioner's judgment. It is open to some doubt, as the ex-Chief Commissioner concludes, as to whether (at any rate with regard to the conditions discussed in the previous application), the Quebec Civil Code referred to may not operate, or intervene, in a special manner to regulate and refine liability upon these telegraph messages as between the company and the sender (possibly and addressee) in a manner different from that laid down by the courts, and, for the purpose of settling this important question and looking towards obtaining a decision which will secure uniformity, leave was reserved to state the case referred to for the opinion of the Supreme Court. Pending the submission of such a case and the answers of the Supreme Court thereupon, there must still remain the doubts expressed by the ex-Chief Commissioner with regard to the law, especially as regards the Province of Quebec. In his judgment, above referred to, the ex-Chief Commissioner said: "In so far as the contracts under which telegrams are dispatched are concerned, it was admitted at the hearing that the contract settled by Mr. Scott throws a greater liability on the telegraph company, and of course, increased the liability over that which previously existed in Canada."

My view is that, the board having settled conditions of transmission which contain, I think, reasonable and adequate provision to guard against errors and to insure correctness in the transmission and delivery of messages, and in view of the questions of law which are raised and which are standing for the opinion of the Supreme Court of Canada, and which, inferentially at least, affect the questions which we are now asked to decide, I think it would be extremely inadvisable for the board to go any further in the sanctioning of additional conditions. I would dismiss the complaint.

The judgment was concurred in by the Chief Commissioner, Assistant Chief Commissioner and Deputy Chief Commissioner.

Enquiry Re Telegraph Rate Increases.

In connection with the application by telegraph companies for increased rates of tolls, which is before the Board of Railway Commissioners, the board issued a statement Oct. 24, as follows: "The Board of Railway Commissioners has decided to hold an extended series of sittings over different portions of Canada for the purpose of obtaining the views of the public on the application of the telegraph companies for an increase of practically 20% in the present telegraph rates. The board will sit in Ottawa on Nov. 11 and 12; at which sittings representatives will be heard from the Quebec and Ontario. They will be in Winnipeg on Nov. 17 and 18; at Vancouver, Nov. 22 and 24, and at Victoria on Nov. 25. On the return trip, sittings will be held at different points in the western provinces, the exact dates of which will be made public within a very short time. It is also their intention to proceed to the Maritime Provinces after returning from the west, where sittings will be held at one or more points, of which notice will be given. As the question is of very great importance to the business

interests of the whole country, it is to be hoped that the boards of trade and the people generally, will avail themselves of this opportunity of expressing their views at the time and places above mentioned."

Among the Express Companies.

The Canadian National Ex. Co. has opened offices at Ardill, Sask., and Darwell, Alta.

H. H. Carr, heretofore route agent, Dominion Express Co., Truro, N.S., has been appointed its agent there.

The Canadian National Ex. Co. has closed its offices at Cap Rouge, and Neuville, Que., Pine Orchard, Ont., and Hepburn, Sask.

Lieut.-Col. T. R. McKenzie, formerly of Richmond, Que., has been appointed route agent, Dominion Ex. Co., Truro, N.S., vice H. H. Carr, transferred.

The Central Canada Express Co.'s bylaw, authorizing C. Hope, Assistant Superintendent, to issue tariffs of tolls, has been approved by the Board of Railway Commissioners.

The Canadian Ex. Co. is reported from London, Eng., to have entered into an arrangement with the Handley-Page Air Service for the carriage of millinery between Paris and London, for quick transportation to Canada.

The Canadian Association of Ice Cream Manufacturers' application for a reduction in express classification of ice cream from 1st class to 2nd class, has been dismissed by the Board of Railway Commissioners.

The board of conciliation, appointed recently to deal with the differences between the Canadian National Express Co., and its employes at Winnipeg, consists of Mr. Justice Metcalfe, Chairman; W. T. Sweatman, representing the company, and F. Bancroft, Toronto, on behalf of the employes.

The Canadian National Ex. Co.'s employes have been awarded overtime payments dating from Sept. 1, 1918, to the date when the 8-hour day was put into effect. The board of conciliation award was unanimous except as to the reinstatement of J. H. Watson, chairman of the union at Winnipeg, who was discharged after the recent sympathetic strike there.

A Winnipeg press dispatch stated recently that the Manager of the Winnipeg Board of Trade's Transportation Department had been advised by the Board of Railway Commissioners that demurrage charges on car loads of goods left standing on tracks would be reduced shortly from \$25 a day after the first 24 hours to \$15 a day and that where a refrigerator or baggage car is used the charge would be \$10. The demurrage rates referred to are evidently those to be charged by express companies from Nov. 17, the companies having adopted the Board of Railway Commissioners' Chief Traffic Officer's recommendation with respect thereto, without the necessity of any order being made. The express companies tariff in regard to this will read as follows: "Detention charges. On cars held by shipper or consignee for loading, unloading, forwarding directions or for any other purpose, 24 hours (one day) free time shall be allowed. When for any reason for which the express company or the railway company, is not responsible, cars in express service are held