THE BROTHERHOODS OF RAILWAY EMPLOYEES, JAMES GUY McLEAN AND J. L. McGREGOR — APPELLANTS;

AND

THE NEW YORK CENTRAL RAILROAD COMPANY ..... — RESPONDENT;

AND

CANADIAN PACIFIC RAILWAY COMPANY AND CANADIAN NATIONAL RAILWAY COMPANY — INTERVENANTS.

1958

*Mar. 24, 25
Jun. 26

ON APPEAL FROM THE BOARD OF TRANSPORT COMMISSIONERS FOR CANADA

Railways—Abandonment of line with leave of Board—Whether compensation payable to employees—The Railway Act, R.S.C. 1952, c. 234, ss. 168, 182—History of legislation.

When a railway, with leave of the Board of Transport Commissioners under s. 168 of the *Railway Act*, abandons operation of a line and thereby necessarily closes stations and divisional points, it is not required to pay compensation under s. 182 to employees retained in its employ who are compelled to change their residence in consequence of the closing of the line. Section 182 applies only to a "change, alteration or diversion in the railway, or any portion thereof", and not to complete abandonment of a line. This is made clear by the history of the two sections.

*PRESENT: Kerwin C.J. and Taschereau, Rand, Locke, Cartwright, Abbott and Martland JJ.

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Per Cartwright J., *dissenting*: The words "remove", "close" and "abandon" are not defined in the Act, nor are they terms of art. In their ordinary sense, they include the closing or abandonment of a station due to the abandoning of a line and neither the arrangement of the sections in the Act nor the history of the legislation furnishes sufficient reason for failing to interpret the words of s. 182 in their plain and ordinary meaning. *Riches v. Westminster Bank Limited,* [1947] A.C. 390 at 405, quoted and applied.

APPEAL from an order of the Board of Transport Commissioners[1], dismissing an application for compensation. A motion to quash the appeal was made by the respondent and was argued at the same time as the appeal. Appeal and motion dismissed, Cartwright J. dissenting.

Hon. A. W. Roebuck, Q.C., and *D. R. Walkinshaw, Q.C.,* for the appellants.

C. F. H. Carson, Q.C., and *C. Scott, Q.C.,* for the respondent.

C. F. H. Carson, Q.C., and *J. G. W. MacDougall,* for Canadian National Railway Company, intervenant.

C. F. H. Carson, Q.C., and *G. F. Miller,* for Canadian Pacific Railway Company, intervenant.

R. Kerr, Q.C., for the Board of Transport Commissioners.

THE CHIEF JUSTICE:—An order was made by a member of this Court granting leave to the Brotherhoods of Railway Employees to appeal from a decision of the Board of Transport Commissioners for Canada, dated March 13, 1957[1]. Subsequently an order was made adding James Guy McLean as a party appellant and granting him leave to appeal. The respondent New York Central Railroad Company and the intervenants Canadian Pacific Railway Company and Canadian National Railway Company moved to dismiss the appeals, upon the ground that the Brotherhoods, being an unincorporated association, had no status to appeal, and that James Guy McLean was not a proper party. The Court directed that such questions stand over but that J. L. McGregor be added as a party appellant so that the point of substance might be determined. Mr. McGregor is admittedly a proper party appellant and I therefore express no opinion as to the position of the Brotherhoods or of James Guy McLean.

[1] (1957), 75 C.R.T.C. 22.

Previous to the application now under review the respondent New York Central Railroad Company as lessee of the Ottawa and New York Railway Company and the Ottawa and New York Railway Company had applied to the Board under s. 168 of the *Railway Act*, R.S.C. 1952, c. 234, and all other relevant statutory provisions, for an order authorizing the New York Central Railroad Company to abandon its operation of the line of railway of the Ottawa and New York Railway Company and authorizing the Ottawa and New York Railway Company to abandon its line of railway which extends from Ottawa to the United States-Canada boundary near Cornwall, Ontario. Section 168 reads as follows:

> 168. The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval.

That application was granted on January 10, 1957[1], but by para. 2 of the Board's order of that date the application on behalf of the employees of the New York Central Railroad Company in respect of compensation was reserved for further consideration and order of the Board.

Such an application was made and was heard by Mr. Wardrope, Assistant Chief Commissioner, Mr. Sylvestre, Deputy Chief Commissioner and Mr. Chase, Commissioner. In the opinion of the three Commissioners the question was one of law and therefore by virtue of subs. (2) of s. 12 of the *Railway Act* the opinion of Mr. Wardrope would prevail. The other two Commissioners would have granted the application, but as Mr. Wardrope's opinion was that the employees were not entitled to compensation the application was dismissed by order of the Board dated March 13, 1957[2]. It is from that order that the present appeal is taken.

The application on behalf of the employees was made under s. 182 of the *Railway Act*:

> 182. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of section 181 are fully complied with, nor remove, close, or abandon any station, or divisional point nor create a new divisional point that would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

[1] (1957), 74 C.R.T.C. 334 (*sub nom. Re New York Central Railroad Co.; Ottawa and New York Railway Co. Branch*).

[2] (1957), 75 C.R.T.C. 22.

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Kerwin C.J.

The Assistant Chief Commissioner has carefully examined the history of ss. 168 and 182 and I agree with him that in view of that history and of their proper construction the employees of the New York Central Railroad Company do not have a legal right under the *Railway Act* to compensation for financial loss caused to them by change of residence necessitated by the abandonment of operation of the line or consequential closing of stations and divisional points thereon authorized by the Board's order of January 10, 1957.

I desire to emphasize my agreement with Mr. Wardrope's view that the order of January 10 was properly made under s. 168 of the *Railway Act* and that to hold now that s. 182 applies to line abandonments authorized under s. 168 and involving closing of stations or divisional points, would in effect mean that the closing and abandonment of stations and divisional points which were part and parcel of line abandonments effected prior to 1933 were and have continued to be unlawful owing to non-compliance with s. 182 as it was from time to time. A comparison of ss. 168 and 182 with the provisions of the *Canadian National-Canadian Pacific Act, 1933,* 23-24 Geo. V, c. 33, as amended by 1939, c. 37, with respect to an "adjustment allowance" as compensation for loss of employment and a "displacement allowance" shows that when Parliament intended to secure certain rights to the employees of the Canadian National or Canadian Pacific lines it did so in terms entirely different from those applicable to other railways including the New York Central Railroad Company under the general provisions of the *Railway Act.* I also agree that the previous orders of the Board relied on by the appellant have no relevancy to the point under consideration.

The appeal should be dismissed but without costs.

TASCHEREAU J.:—I agree with the majority of my colleagues that this appeal should be dismissed without costs.

I think that the law does not provide for compensation to its employees, when a railway company with the approval of the Board, under the authority of s. 168 of the *Railway Act,* R.S.C. 1952, c. 234, abandons the operation of a line.

The compensation must be paid only when the company makes a change, alteration or deviation in the railway, or

when a station or divisional point is removed, closed or abandoned, or when a new divisional point is created that involves the removal of employees.

RAND J.:—By an order of the Board of Transport Commissioners for Canada dated January 10, 1957[1], made under s. 168 of the *Railway Act*, R.S.C. 1952, c. 234, leave was given the New York Central Railroad Company, as lessee of the owner, the Ottawa and New York Railway Company, and the latter company, to abandon operation of a line of railway between Ottawa and the international boundary near Cornwall, Ontario, a distance of some 57.9 miles. The order reserved "for further consideration and determination the application on behalf of the employees of the New York Central Railroad Company in respect of compensation" under s. 182 of the *Railway Act*.

At the international boundary, the line connected with the railway of the lessee within the United States. The New York company operates other lines in the eastern portion of that country and in Ontario between the Niagara peninsula and the south-western section of the Province, all of which comprise what is known as the New York Central System. But no portion of that system apart from the line abandoned touches the Ottawa area.

On March 13, 1957, on the question reserved, the Board, denying the claim, held as a matter of law that the circumstances of the abandonment did not come within the purview of s. 182[2]. In a careful judgment, Assistant Chief Commissioner Wardrope examined the history of the section in the light of the rule long acted upon by the Board prior to the enactment of s. 168 (originally as s. 165A, by 1932-33, c. 47, s. 1) that a railway could abandon a line at any time without reference to the Board; and he distinguished such an act from the closing or removal of a station or divisional point which contemplated the continued operation of the line.

The provisions of s. 182 appeared first as s. 168(2) of R.S.C. 1906, c. 37:

> 2. The company shall not make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with. [The last preceding section provided for the filing and approval of plans, profiles and books of reference of deviations.]

1 (1957), 74 C.R.T.C. 334 (*sub nom. Re New York Central Railroad Co.; Ottawa and New York Railway Co. Branch*).

2 (1957), 75 C.R.T.C. 22.

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A new subsection was substituted in 1913 by c. 44, s. 2, of that year which read:

> 2. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, or remove, close, or abandon any station or divisional point without leave of the Board; and where a change is made in the location of a divisional point the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

In the *Railway Act,* 1919, c. 68, a further change was made in the replacement of s. 168 by s. 179:

> 179. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, or remove, close, or abandon any station, or divisional point or create a new divisional point which would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

In the general revision of 1952, c. 234, this latter appears as s. 182:

> 182. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of section 181 are fully complied with, nor remove, close, or abandon any station, or divisional point nor create a new divisional point that would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

From this statutory evolution it is seen how experience gradually extended the subject-matter of compensation; but before considering the application of the section to the situation here the law of abandonment prior to 1933 and the assumption underlying s. 182 must be examined.

As the Assistant Chief Commissioner shows, in a series of decisions of the Board reaching back to 1922, it was consistently held that in the absence of any contractual or statutory duty to continue operations, a railway company was at liberty, without reference to and independently of the Board, to abandon the operation of the whole or any part of its line. That this, with only rare exceptions, would involve stations and divisional points is obvious. An exception existed in cases where spur-lines accommodating industries had been ordered by the Board under the facilities clauses, in which leave to abandon was required. But even under a contractual or statutory duty it is patent that if a

railway in its entirety is unable to pay its way the private individuals constituting the company are not obligated to furnish money to maintain operations.

This rule of the common law was not challenged on the argument and it is significant to the interpretation of s. 182. The latter, in requiring leave of the Board before a station or divisional point can be abandoned or removed, is dealing with operational facilities serving both the public and the railway's own interest. But, by the nature of the changes envisaged, the controlling consideration is the underlying assumption that operation generally is to continue; and that continued operation is the background against which the compensation provisions of s. 182 are to be interpreted. The result was that for cases of abandonment of a line no compensation was provided even though the closing of stations and divisional points was included; if that had not been so, for all practical purposes the enactment of s. 168 would have been unnecessary.

That being the interpretation up to the year 1933, has it been affected by the new section, 168, then 165A? The fact that abandonment of a line, which means the complete closing down of railway operations, the ceasing to be a railway, is dealt with separately itself carries some import. It recognizes the rule of the common law and restricts the liberty of action of the company under it. Considering the *Railway Act* alone, s. 168 is wholly consistent with the original limitations of s. 182; in the one case the railway is making operational changes, in the other it is ceasing so far to be a railway. Under s. 168 the proposed *abandonment,* and only that word is used, is to be approved by the Board; the considerations which the Board is to take into account concern the interests of the company and of the public; and in the light of the conditions existing in 1933, the former may be in fact features of the latter. Aspects of the results of abandonment are indicated by claims for compensation by industries which the proposed action will deprive of transportation, to which, as the Board has held, the *Railway Act* gives no right. Nor, in my opinion, is it possible to construe s. 168 so as to raise an implication that in some way it is brought within the effect of s. 182. In providing, on the footing that operation generally is to continue, that a station shall

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not be closed unless leave is obtained, that assumption of s. 182 would be contradicted by holding that the word "leave" had drawn within its scope the "approval" required by s. 168. The operation of s. 168 is distinct and disparate and I am unable by any interpretation to increase the content and meaning of s. 182. There may seem to be little, if any, distinction logically in fact or in policy between cases where employees are to be retained and transferred upon the closing of a station as a facility and upon its closing by the cessation of total operation; but in this as in every Court we are bound by the language of the statute as it is and not as in factual logic or policy it might be thought it should be. Abandonment under s. 168 may undoubtedly entail a change of residence by employees; but it may also and just as obviously entail the dismissal of employees and change of residence for others not caused by the closure of stations or divisional points, cases for which, as in that of industry, no compensatory allowance is provided. The omission of that for these virtually inevitable consequences of abandonment is of the same order as that of failure to enlarge the scope of s. 182 as it was prior to 1933.

Certain provisions of the *Canadian National-Canadian Pacific Act, 1933,* 23-24 Geo. V., c. 33, which is limited to measures, plans and arrangements entered into jointly between those two systems, were drawn into the discussion. By para. (*a*) of s. 2

> that part of section one hundred and seventy-nine of the *Railway Act* [now s. 182] which relates to compensation of employees for financial loss caused to them by removal, closing or abandonment of any railway station or divisional point . . . shall not be deemed to be inconsistent with the provisions of this Act or to be in any manner affected thereby.

I take this to mean simply that nothing in c. 33 in any manner affects s. 182. The latter, as it applies to the two major railways, is left as it was before the enactment of c. 33. It is conceivable that the draftsman doubtfully assumed the language of s. 182 to extend to the closing of a station involved in an abandonment which, by reason of the requirement of s. 182 for leave, might be brought within its terms. This is only speculation, but if it were the fact, the answer clearly is that an erroneous assumption of that sort by a draftsman can effect neither the legal rule nor the interpretation of another statute.

An amendment to c. 33 was made in 1939 by 3 Geo. VI, c. 37. Paragraph 6(*a*) of the schedule, substituted for para. (*a*) of s. 2, prescribes a code for compensation to "*any employee* who is continued in employment and who is required by the employing company to change his place of residence as a direct result of any *such measure, plan or arrangement*", *i.e.* between the National and Pacific systems. (The italics are mine.) Specific items of compensation follow: travelling and moving expenses of the employee and his family, working-time lost, financial loss in the sale of his home for less than its fair value, and damage suffered through holding an unexpired lease of the dwelling occupied by the employee as his home. This paragraph was introduced by the qualification:

> Notwithstanding the provisions of section one hundred and seventy-nine of the *Railway Act* which relate to compensation of employees for financial losses caused to them by removal, closing or abandonment of any railway station or divisional point . . .

The purpose and effect of this clause is the same as in para. (*a*) of s. 2: s. 182 of the *Railway Act* remains unaffected; and as in the earlier provision there is nothing that can be tortured into a necessary implication that s. 182 is, by the language used, to be deemed thereby to be enlarged.

Both in 1933 and in 1939 the question of compensation was present to the mind of the draftsman of the legislation and yet there is not a word in either statute or in the *Railway Act* by which compensation resulting from abandonment, apart from a "measure, plan or arrangement" between the two systems, is provided for. If that had been the intention in relation to either the Canadian National, the Canadian Pacific, or any other railway acting independently under s. 168, it would have been the simplest matter to provide so. It could have been done by the mere statement that the provisions of s. 182 should be deemed to apply, where the facts warrant it, to abandonments under s. 168; but that step was carefully avoided. The case is one in which a feature of compensation has not been brought within a statutory provision and this Court is powerless to supply it.

I would, therefore, dismiss both the appeal and the motion without costs to any party.

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The judgment of Locke, Abbott and Martland JJ. was delivered by

MARTLAND J.:—Under s. 168 of the *Railway Act*, R.S.C. 1952, c. 234, the Board of Transport Commissioners, on January 10, 1957[1], granted leave to the respondent, as lessee of the owner, the Ottawa and New York Railway Company, and to the said owner, to abandon operation of the line of railway between Ottawa and the international boundary, near Cornwall, Ontario. By its order, the Board reserved "for further consideration and determination the application on behalf of the employees of the New York Central Railroad Company in respect of compensation".

The application out of which this appeal arises, which was made under s. 182 of the *Railway Act*, was that the financial loss, if any, involved by the removal of New York Central employees from the Ottawa division to other portions of the New York Central Railroad be paid by the company. It was refused by the Board[2], which held, as a matter of law, that the respondent, having obtained approval of the Board to abandon operations pursuant to s. 168, was not bound by the requirements of s. 182 pertaining to compensation of employees.

The relevant sections of the *Railway Act*, ss. 168 and 182, provide as follows:

168. The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval.

182. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of section 181 are fully complied with, nor remove, close, or abandon any station, or divisional point nor create a new divisional point that would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

The contention of the appellants is that these two sections can be read together, the former being for the protection of the public and the latter for the protection of railway employees. It was argued that s. 182 is divided

[1] (1957), 74 C.R.T.C. 334 (*sub nom. Re New York Central Railroad Co.; Ottawa and New York Railway Co. Branch*).

[2] (1957), 75 C.R.T.C. 22.

into two parts, the first part dealing with any change, alteration or deviation in the railway, and the second part dealing with the removal, closing or abandoning of any station or divisional point. It was argued that if, as a result of the abandonment of a line, made pursuant to s. 168, any station or divisional point was removed, closed or abandoned, compensation became payable under s. 182.

The contention of the respondent is that the words "any such change," which follow the semicolon in s. 182, must relate back to the words "change, alteration or deviation" at the beginning of the section. It contends that compensation is payable under s. 182 only if there has been a change, alteration or deviation of the kind contemplated by s. 181, which section is specifically referred to in s. 182.

In the determination of this issue, the historical development of the section which is now s. 182 is of significance.

Section 120 of *The Railway Act,* 1888 (Can.), c. 29, made provision for a change of location of a line of railway in any particular part, for the purpose of lessening a curve, reducing a gradient or otherwise benefiting such line of railway, or for any other purpose of public advantage, with the approval of the Railway Committee. All provisions of the Act were to apply as fully to the part of the line so changed as to the original line.

In 1900, by c. 23, s. 4, s. 117 of the Act was repealed and re-enacted, to provide that:

> 117. Except in accordance with the provisions of section 120 or 130, no deviation shall be made from the located line of railway, or from the places assigned thereto in the map or plan and book of reference sanctioned by the Minister under the provisions of section 124.

Section 120 is the section of the Act previously mentioned. Section 130 required the submission, for the sanction of the Railway Committee, of a map or plan and profile of the section of railway proposed to be altered and a book of reference.

In 1903, by c. 58, the Act was repealed and re-enacted and it was provided in s. 131 as follows:

> 131. The company shall not commence the construction of the railway, or any section or portion thereof, until the provisions of sections 123 and 124 are fully complied with; and shall not make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with.

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The "last preceding section," *i.e.*, s. 130, contained provisions similar to the present s. 181 of the Act, requiring the submission, for the sanction of the Board, of a plan, profile and book of reference of the portion of the railway proposed to be changed.

Changes, alterations or deviations of the railway were dealt with in a separate subsection (subs. (2) of s. 168) in the *Railway Act*, R.S.C. 1906, c. 37, which read:

2. The company shall not make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with.

Again the reference to the "last preceding section" (s. 167) is to a section in terms similar to those of s. 181 of the present Act.

In 1913, by c. 44, s. 2, the following was substituted for subs. (2) of s. 168:

2. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, or remove, close, or abandon any station or divisional point without leave of the Board; and where a change is made in the location of a divisional point the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

In 1919, c. 68, the section in question became s. 179 and read as follows:

179. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, or remove, close, or abandon any station, or divisional point or create a new divisional point which would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

The section in R.S.C. 1927, c. 170, read as follows, and substantially in the same form as s. 182 of the present Act:

179. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of the last preceding section are fully complied with, nor remove, close, or abandon any station, or divisional point nor create a new divisional point which would involve the removal of employees, without leave of the Board; and where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

The significance of this historical development is that, initially, no reference is made in it to the subject of compensation. Later, compensation is referred to in the section, but as a part of that section. The 1913 amendment provided for compensation "where a change is made in the location of a divisional point". The 1919 amendment brought the section, substantially, into its present form and enlarged the scope of its provision as to compensation.

Section 168 was first enacted (then as s. 165A) by 1932-33, c. 47, s. 1.

Prior to that year railway companies could, unless there were a contractual or statutory duty to continue operations, abandon the operation of the whole or any part of their lines without the approval of the Board.

It should be noted that s. 168 appears in the Act as one of a group of sections headed "*General Powers*" under a main heading "POWERS—CONSTRUCTION OF RAILWAYS." Section 182, together with s. 181, is under the heading "*Deviations, Changes and Removal*" under a main heading "LOCATION OF LINE".

In the light of the foregoing, it appears to me that the compensation provisions of s. 182 were intended to provide for financial loss caused to employees by a change of residence necessitated by the decision of a railway company to make a change, alteration or deviation in its lines or to remove, close or abandon any station or divisional point or create a new divisional point on such lines. The first reference to compensation appears as an addition to a section dealing with change, alteration or deviation in a railway. The present compensation provisions appear in the section which deals with that subject-matter.

At the time the compensation provisions were being added to the sections which preceded s. 182, and were being increased, there was no provision requiring the approval of the Board to the abandonment of a line.

My conclusion is that the compensation provisions of s. 182 are a part of a section which deals only with change, alteration or deviation of an existing and continuing line and with the removal, closing or abandonment of any station or divisional point and the creation of a new divisional point upon such a line. Abandonment of a line, on

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the other hand, is dealt with as a separate matter under the Act. The line is discontinued. The approval of the Board is required under s. 168 but no compensation is payable.

I would, therefore, dismiss the appeal without costs.

CARTWRIGHT J. (*dissenting*):—Pursuant to an order of the Board of Transport Commissioners for Canada, dated January 10, 1957[1], giving it leave to do so, the respondent abandoned operation of a line of railway, to which I shall refer as "the abandoned line", 57.9 miles in length, running from Ottawa to a point on the international boundary near Cornwall where it connected with the system operated by the respondent in the United States. This, of course, involved the closing of any station or divisional point situate on the abandoned line, and the order of the Board provided that the application on behalf of the employees of the respondent in respect of compensation should be reserved for further consideration.

At the hearing of the application for compensation there arose the question whether on the true construction of the relevant provisions of the *Railway Act*, R.S.C. 1952, c. 234, employees who had been retained in the employment of the respondent and whose removal was involved in the closing or abandonment of any station or divisional point on the abandoned line were entitled to be compensated by the respondent for any financial loss caused to them by change of residence necessitated thereby. This question was properly regarded as one of law and consequently the opinion of the Assistant Chief Commissioner that it should be answered in the negative prevailed over those of the Deputy Chief Commissioner and Mr. Commissioner Chase both of whom would have answered it in the affirmative[2].

The claim to compensation is based upon s. 182 of the *Railway Act* which reads as follows:

182. The company shall not, at any time, make any change, alteration or deviation in the railway, or any portion thereof, until the provisions of section 181 are fully complied with, nor remove, close, or abandon any station, or divisional point nor create a new divisional point that would involve the removal of employees, without leave of the Board; and

[1](1957), 74 C.R.T.C. 334 (*sub nom. Re New York Central Railroad Co.; Ottawa and New York Railway Co. Branch*).

[2](1957), 75 C.R.T.C. 22.

where any such change is made the company shall compensate its employees as the Board deems proper for any financial loss caused to them by change of residence necessitated thereby.

The claim of the employees appears to me to fall within the words of the section construed in their ordinary meaning. The company has in fact removed, closed or abandoned every station and divisional point which was situate on the abandoned line. Those of its employees previously employed at any station or divisional point thereon who have been retained in its employment have been removed to other situations in its railway system and it has been necessary for them to change their residence. The section does not appear to have been drafted by a meticulous grammarian; but it is reasonably plain that what is conditionally forbidden by that part of the section commencing with the words "nor remove" in the fourth line, and, if permitted, gives rise to the right to compensation, is such a removal, closure or abandonment of a station or divisional point as would involve the removal of employees and necessitate a change of their residence.

The learned Assistant Chief Commissioner has held in effect that the words of s. 182, last referred to above, touch such removals, closures or abandonments as are consequent on deviations, changes or alterations made pursuant to s. 181 or occur in situations other than the abandonment of the operation of a line, but do not touch removals, closures or abandonments consequent on an abandonment made pursuant to s. 168. I am unable to find any sufficient reason for this differentiation. The words "remove", "close" and "abandon" are not defined in the Act nor are they terms of art. In their ordinary meaning they describe the action taken by the respondent in regard to the stations on the abandoned line. The effect upon the class for whose benefit the part of the section under consideration was passed, *i.e.*, employees retained in a company's service and moved by reason of the abandonment of a station, is the same whether the portion of the line on which the station was situate is continued in its existing location or is abandoned or is relocated. In one sense every relocation of part of a railway involves an abandonment of the part for which the relocated line is substituted and in principle there is little difference between on the

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one hand abandoning altogether a line which forms only a fraction of 1 per cent. of a company's total system and on the other hand removing it and substituting for it a line in a different location. In either case there is a change in "the railway" viewed as a whole.

In my opinion, neither the arrangement of the sections in the *Railway Act* nor the history of the legislation furnishes sufficient reason for failing to give to the words of the section what appears to me to be their plain and ordinary meaning.

In *Riches v. Westminster Bank Limited*[1], Lord Simonds says at p. 405:

> My Lords, while I am ever prepared to consider any statute in the light of pre-existing law, I must admit to a reluctance to be diverted by the shadow of the past from the plain meaning of plain words.

I would allow the appeal, set aside the order of the Board of March 13, 1957, and refer the matter back to the Board to determine, in accordance with these reasons, the compensation to which the employees are entitled. As, however, the majority of the Court are of opinion that the appeal fails, no useful purpose would be served by my considering what order should be made as to costs or as to the motion questioning the standing of the unincorporated Brotherhoods to be parties to the appeal.

Appeal and motion dismissed without costs, CARTWRIGHT J. *dissenting.*

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Solicitors for the respondent: Aylen, Scott & Aylen, Ottawa.

Solicitor for Canadian National Railway Company, intervenant: J. W. G. MacDougall, Montreal.

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1 [1947] A.C. 390, [1947] 1 All E.R. 469.