

THE MINISTER OF AGRICULTURE OF THE
 PROVINCE OF BRITISH COLUMBIA . . APPELLANT; 1958
 {
 *Oct. 22, 23

AND

CANADIAN NATIONAL RAILWAY COMPANY,
 CANADIAN PACIFIC RAILWAY COMPANY, THE
 RAILWAY ASSOCIATION OF CANADA, NORTH-
 ERN ALBERTA RAILWAY COMPANY, ESQUI-
 MALT AND NANAIMO RAILWAY COMPANY,
 PROVINCE OF ALBERTA, PROVINCE OF
 SASKATCHEWAN, PROVINCE OF MANITOBA,
 UNITED GRAIN GROWERS LIMITED, SAS-
 KATCHEWAN WHEAT POOL, ALBERTA WHEAT
 POOL, MANITOBA TRANSPORTATION COMMIS-
 SION AND ALBERTA FEDERATION OF AGRI-
 CULTURE RESPONDENTS. 1959
 {
 Jan. 27

ON APPEAL FROM THE BOARD OF TRANSPORT COMMISSIONERS
 FOR CANADA

*Railways—Duty of Board of Transport Commissioners to equalize freight
 traffic of same description—Whether carriage for domestic traffic and
 for export traffic is of same description within the meaning of s. 336
 of the Railway Act, R.S.C. 1952, c. 234, as enacted by 1951 (Can.), c. 22.*

*PRESENT: Taschereau, Rand, Locke, Cartwright, Fauteux, Martland
 and Judson JJ.

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The Minister of Agriculture of British Columbia applied to the Board of Transport Commissioners for an order to reduce the tolls for the carriage of grain and grain products to and from all points within the Province of British Columbia when the said grain or grain products were to be used for consumption within the said province on the ground, *inter alia*, that grain or grain products shipped from the Prairie Provinces for export through Pacific Coast ports in British Columbia were carried for lower tolls.

The application was dismissed by the Board. Leave to appeal to this Court was granted upon three questions of law which are to be found at p . . . of this judgment.

Held: The appeal should be dismissed; and it was unnecessary to answer the questions propounded.

The national policy of equalization declared in s. 336(1) of the *Railway Act* applied only to freight traffic of the same description. As the carriage of grain from the Prairie Provinces to British Columbia or from places in British Columbia to other places in that Province was not traffic of the same description as the carriage of grain from the Prairie Provinces to the western seaports for export, there was no obligation on the railways to charge the same tolls, and consequently no duty imposed upon the Board of Transport Commissioners to require them to do so.

APPEAL from a judgment of the Board of Transport Commissioners¹, dismissing an application for a reduction of tolls. Appeal dismissed.

C. W. Brazier, Q.C., and *R. J. McMaster*, for the appellant.

C. F. H. Carson, Q.C., *K. D. M. Spence, Q.C.*, and *Allan Findlay, Q.C.*, for the Canadian Pacific Railway Company, respondent.

J. W. G. Macdougall, Q.C., for the Canadian National Railway Company, respondent.

J. J. Frawley, Q.C., for the Attorney-General for the Province of Alberta, the Attorney-General for the Province of Saskatchewan, and the Attorney-General for the Province of Manitoba, respondents.

R. A. MacKimmie, Q.C., for the Alberta Wheat Pool and United Grain Growers Limited, respondents.

The judgment of Taschereau and Locke JJ. was delivered by

LOCKE J.:—This is an appeal taken pursuant to leave granted under the provisions of s. 53 of the *Railway Act*, R.S.C. 1952, c. 234, from that portion of order 89032 of

the Board of Transport Commissioners¹ which dismissed the application of the Minister of Agriculture for an order directing reductions in the rates on grain and grain products carried from the Prairie Provinces to British Columbia for domestic consumption and on such products to and from all points within the said Province, where they are to be used for consumption within its limits.

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The questions of law upon which leave to appeal was sought on behalf of the Minister and as stated in the order granting such leave are as follows:

1. Does the Board of Transport Commissioners for Canada have a discretion under Section 336, subsections (2) and (3) of "The Railway Act", Chapter 234, R.S.C. 1952, to permit railway companies subject to its jurisdiction to charge different rates or tolls in respect of freight traffic of the same description and carried on or upon like kind of cars or conveyance to different persons?

2. Does the Board of Transport Commissioners for Canada have a discretion under Section 336, subsection (4) (g) of the said Act to exempt export and import traffic through Canadian ports from the National Freight Rates Policy if such rates do not bear a fixed and longstanding relationship with rates on similar traffic through ports in the United States of America?

3. If the answer to (2) is in the affirmative, did the said Board of Transport Commissioners exercise such discretion judicially in the present case?

The grounds for the application to the board, in addition to claiming that the then existing rates unjustly discriminated against shippers of grain and grain products to British Columbia where the shipments originated in other provinces of Canada, as well as when such shipments originated in the province, include the following:

Grain and grain products are carried for lower tolls on the said lines or railway in and upon like kind of cars or conveyances, passing over the same line or route and under the same or substantially similar circumstances and conditions.

As the record indicates, the grain referred to is grain shipped from the Prairie Provinces for export through Pacific Coast ports in British Columbia and the basis of the complaint is the interpretation placed by the appellant upon s. 336 of the *Railway Act*.

Both of these complaints were argued before the board and are dealt with in the reasons for judgment delivered by the former Chief Commissioner, Mr. Justice Kearney. When

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the matter came before this Court however, the matter of the alleged unjust discrimination was not argued, the appellant restricting its argument to the second ground which is above quoted.

Section 336, as it now reads, was introduced into the *Railway Act* by c. 22 of the Statutes of 1951. The matters which led up to the passage of this amendment are described in the judgment of the board which, following its enactment, dealt with the equalization of class rates¹.

Subsection (1) of s. 336 which, in my view, is the only portion of the section which requires consideration in dealing with this appeal, reads:

336. (1) It is hereby declared to be the national freight rates policy that, subject to the exceptions specified in subsection (4), every railway company shall, so far as is reasonably possible, in respect of all freight traffic of the same description, and carried on or upon the like kind of cars or conveyances, passing over all lines or routes of the company in Canada, charge tolls to all persons at the same rate, whether by weight, mileage or otherwise.

Following the amendment to s. 336, the board, in addition to dealing with the equalization of class rates generally, held hearings and dealt with domestic mileage rates on grain and grain products in Western Canada. The reasons for the judgment of the board dealing with the latter matter are reported².

Subsection (1) declares the national freight rates policy to be that, subject to the exceptions specified in subs. (4), every railway company shall, so far as is reasonably possible, *in respect of all freight traffic of the same description* carried upon the like kind of cars or conveyances, charge tolls at the same rate. If the carriage of grain from the Prairie Provinces to British Columbia or from places in British Columbia to other places in that Province is not traffic of the same description as the carriage of grain from the Prairie Provinces to the Western sea ports for export, the questions of law propounded do not arise in these proceedings.

The carriage of goods of whatever description to Canadian ports for export is properly described as export traffic, and the carriage of goods imported through such sea ports to their destination in Canada as import traffic. These descriptions are used in subs. (4)(b) which declares one of the

exceptions to the policy of equalization of rates. As contrasted with these descriptions of traffic, the carriage of goods of whatever nature by rail where the shipments commence and terminate within Canada is properly described as domestic traffic. For the purpose of rate fixing, the Board of Railway Commissioners, and their successors the Board of Transport Commissioners, have always differentiated between these two classes or descriptions of traffic for reasons which are explained at length in the judgment of the Chief Commissioner in the present matter, and in the judgment delivered in the General Freight Rates Investigation¹.

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The national policy declared in subs. (1) of s. 336 applies only to freight traffic of the same description. There is thus no obligation on the railway companies to charge the same tolls in respect of these different descriptions of traffic and, consequently, no duty imposed upon the board to require them to do so.

The appeal, therefore, fails. As to answer the questions propounded is unnecessary for the disposition of the appeal, I express no opinion as to any of them. In the circumstances, any answers made would be simply *obiter*.

I would dismiss this appeal with costs.

The judgment of Rand, Cartwright, Fauteux, Martland and Judson JJ. was delivered by

RAND J.:—This appeal arises out of s. 336 of the *Railway Act*, R.S.C. 1952, c. 234, enacted in 1951, which is as follows:

336. (1) It is hereby declared to be the national freight rates policy that, subject to the exceptions specified in subsection (4), every railway company shall, so far as is reasonably possible, in respect of all freight traffic of the same description, and carried on or upon the like kind of cars or conveyances, passing over all lines or routes of the company in Canada, charge tolls to all persons at the same rate, whether by weight, mileage or otherwise.

(2) The Board may, with a view to implementing the national freight rates policy, require any railway company

(a) to establish a uniform scale of mileage class rates applicable on its system in Canada, such rates to be expressed in blocks or groups, the blocks or groups to include relatively greater distances for the longer than for the shorter hauls;

¹ (1927), 33 C.R.C. 127.

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(b) to establish for each article or group of articles for which mileage commodity rates are specified, a uniform scale of mileage commodity rates applicable on its system in Canada, such rates to be expressed in blocks or groups, the blocks or groups to include relatively greater distances for the longer than for the shorter hauls; and

(c) to revise any other rates charged by the company.

(3) The Board may disallow any tariff or any portion thereof that it considers to be contrary to the national freight rates policy, and may require the company, within a prescribed time, to substitute a tariff satisfactory to the Board in lieu thereof, or may prescribe other tolls in lieu of the tolls so disallowed.

(4) Subsections (1), (2) and (3) are subject to subsection (6) of section 328 of this Act and to the *Maritime Freight Rates Act*, and do not apply in respect of

(a) joint international rates between points in Canada and points in the United States of America;

(b) rates on export and import traffic through Canadian ports, where in practice such rates bear a fixed and longstanding relationship with rates on similar traffic through ports in the United States of America;

(c) competitive rates;

(d) agreed charges authorized by the Board under Part IV of the *Transport Act*;

(e) rates over the White Pass and Yukon route;

(f) rates applicable to movements of freight traffic upon or over all or any of the lines of railway collectively designated as the "Eastern lines" in the *Maritime Freight Rates Act* as amended by *The Statute Law Amendment (Newfoundland) Act*, chapter 6 of the statutes of Canada, 1949;

(g) where the Board considers that an exception should be made from the operation of this section.

The submission of Mr. Brazier can be stated thus. Subsections (1) and (2) require the board to equalize the domestic mileage commodity rates on grain from the Prairie Provinces to British Columbia points with the export rates on the same commodity from the same points to the export ports of the Province. To Vancouver, for example, the domestic rate from Calgary is 54c per 100 lbs. and the export rate 20c. The commodity rates result from the equalization required by the board under subs. (2)(b). This equalization is country-wide and it can at once be seen that the acceptance of the contention would have repercussions of a most drastic and unpredictable nature. Conversely, if, instead of lowering the domestic rate to the export level, the export rates to British Columbia, which are taken by all parties not to be within subs. (4)(b),—a matter on which I express no opinion—were, to any extent,

raised in an equalization with the domestic basis, it would mean that, as the eastern export rates by the subsection remain fixed, shipments of grain through Vancouver would cease. That either consequence could be taken to have been within the contemplation of Parliament can, without any hesitation, be rejected.

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Prior to the enactment of the section in 1951 and for nearly 40 years before that, the level of domestic class and commodity rates in western Canada, because of what were considered to be different circumstances and conditions, was substantially higher than that in the east; and in the several general investigations by the board beginning with that of 1914, the *Western Rates Case*, there had been a progressive reduction of the spread between them. Finally, a Royal Commission was appointed to enquire into equalization throughout the Dominion, the report of which was made to the government in 1950. It is the recommendations of that report that underlie the enactment of the section in 1951.

By s. 331 of the Act the issue of freight tariffs is dealt with and four classes of rates are recognized: (a) class, (b) commodity, (c) competitive, and (d) special arrangement, rates. Class rates are on a mileage basis related to classes of commodities as set forth in a formal classification, and by subs. (2)(a) they may be directed by the board to be equalized. Commodity rates are, as the expression indicates, related to named commodities, and may be on a mileage scale applicable between points generally, the equalization of which may also be directed under subs. (2)(b); or they may apply only to and from specified points, carrying specific rates related to significant factors of each case, cost of service, promotion of traffic, interests of industry and the public, among them; or they may be export and import rates in general related to competing United States lines and ports, and to export and import trade, which, as indicated by the examples given to Vancouver, are ordinarily, and in many cases, substantially lower than domestic commodity rates.

Apart from those on a mileage basis within subs. (2)(b), commodity rates are gathered up by subs. (3). They are to be dealt with by the board, in carrying out the national

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policy, in such manner and on such considerations as, in its opinion, will achieve most nearly the object sought. The reason for the difference is clear; in mileage rates there is a determinative factor, a unit of distance, which except in special instances can be extended to the entire field of the traffic. In specific and export-import commodity rates there is no such controlling factor; they are the product of judgment in the individual case, and although in making them mileage will, generally, be a factor, in some cases it plays an insignificant part or none directly at all.

By subs. (4)(b) certain export and import rates are excluded from the application of the section, rates which in practice "bear a fixed and long-standing relation with rates on similar traffic through ports in the United States". This is a provision within which, as mentioned, the export rates to British Columbia ports are assumed by all parties not to come.

At the threshold of the discussion, Mr. Carson takes the ground that export traffic in grain is not "traffic of the same description" as traffic in grain under domestic commodity rates, as the words appear in subs. (1). Mr. Brazier's argument is that the word "traffic" refers exclusively to the commodity; that neither export-import traffic nor its rates are of a recognized class for the purposes of classification or tariffs; and that domestic commodity rates on grain, on whatever basis they may be, must be equalized with rates on export shipments through Pacific ports regardless of ultimate destination, competition or other circumstance or condition affecting the latter.

"Traffic" is defined by s. 2(33) as "the traffic of passengers, goods and rolling stock". As given in the Oxford dictionary, the word in its substantive sense means the transportation of goods in trade, and more widely, trade itself, communication, dealings, the passing to and fro of persons or vehicles, the amount of business done by a railway in the transport of passengers and goods; nowhere is it said to designate merely the things carried.

Subsections (1) and (2) provide for two sets of classes or categories, those of traffic and those of rates. A class of the former is of "traffic" of the same description, and the nature of the latter is exemplified in subss. (2)(a) and (b).

Is, then, "traffic" mere "commodity"? Subsection (4)(b), in speaking of "export and import traffic", recognizes a class of traffic and negates such a meaning. Those adjectives introduce a special element into the concept which, through long established railway practice, has become the determinant of a new class or description of traffic. The same words are used also to characterize the corresponding rate class, "export and import rates", uniformly used in tariffs for export and import traffic. The official classification of freight traffic adds various characteristics to commodities, for example, bulk shipment as against shipment in containers, different sizes and kinds of containers, different minimum weights in carload traffic, to which mileage class rates are directly related and for the purposes of equalization under subs. (2)(a), the classes of the classification determine the "traffic of similar description". By their nature commodity rates are not so related; but these examples show that traffic characteristics may be part of the description of traffic. So in export and import; the special features that the carriage of such goods is only a portion of the total transportation from origin to ultimate destination, that the traffic, particularly export, bears little or no element of competition with domestic business, and that it is related to various national trade and transportation interests and policies, have come to differentiate the traffic category of the same commodity.

Subsection (1) provides for equality of rate basis only within each traffic class in the application of each rate class: to equalize different traffic classes or different rate categories as between themselves would reduce both groups to one class each, and disrupt wholesale the country's economy. As subss. (a) and (b) demonstrate, each traffic class in relation to each rate class is to be put as near as reasonably possible on the same basis; but the classes *inter se* are to remain intact.

The categories of rates and classes of traffic are the creations of railway practice over generations, and it is in relation to them that the legislation is intended to operate. The reference in subs (4)(b) to "similar traffic" is to a similar "class" of traffic and is indistinguishable in its effect from that of "traffic of the same description" in

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subs. (1). That these rates have always been dealt with as relating to a separate and distinct traffic category is put beyond doubt by the judgments of the board over the years.

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The scheme of the section thus meets the obvious demand to put all sections of the country on an equality in the transportation of goods while preserving the structure of classification of traffic and rates as it has been built up in the course of a century. In each traffic class all are to be served alike or substantially so; those who in British Columbia bring in grain from the prairies for domestic use will face the same basis of charges as grain shipped to Ontario for similar use; and export through Vancouver, as between that port and other ports, subject to the effect of subs. (4)(b), will enjoy a like parity. Several rate classes may, of course, be related to each traffic class, but each of both groups maintains its identity.

This legislation places upon the board the highly responsible duty of carrying out a national policy. The policy is expressed in subs. (1), necessarily, in broad, general terms. So far as reasonably possible, specific direction was made as in subss. (2)(a) and (b). But subs. (4)(g) recognizes that in such a complicated and interwoven structure built up over many years to serve the country's economy, the resultant of many factors, competition, cost of service, return to the railways, national, commercial and other policies, directions, general or specific, can never become absolute. The duty of the board is, in the words of subs. (1) "so far as is reasonably possible", to see that tolls on the groups of the classified traffic shall bear equally, in a relative sense, upon all. Underlying this responsibility, subs. (4)(g) reserves to the board an ultimate discretion to be exercised in unique situations that have been overlooked or cannot reasonably be fitted into a strict or rigid scheme. But the question whether or not the matter here could be brought within that subsection is obviated by the interpretation I have given to the section.

The conclusion reached renders it unnecessary to answer either question, and I would, therefore, dismiss the appeal with costs.

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Appeal dismissed with costs.

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Solicitor for the appellant: C. W. Brazier, Vancouver.

Solicitor for the Canadian Pacific Railway Company, respondent: K. D. M. Spence, Montreal.

Solicitor for the Canadian National Railway Company, respondent: J. W. G. Macdougall, Moncton.

Solicitor for the Province of Alberta, respondent: The Attorney-General of Alberta.

Solicitor for the Province of Saskatchewan, respondent: The Attorney-General of Saskatchewan.

Solicitor for the Province of Manitoba, respondent: The Attorney-General of Manitoba.

Solicitors for the Alberta Wheat Pool and United Grain Growers Limited, respondents: Allen, MacKimmie, Matthews & Wood, Calgary.
