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REPORT

OF THE

ROYAL COMMISSION

ON

TRANSPORTATION

1951

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ROYAL COMMISSION ON TRANSPORTATION

1951

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Economic Adviser

H. C. HAYES, ESQ.,
Accounting Adviser

ROYAL COMMISSION ON TRANSPORTATION

Ottawa, the 9th February, 1951.

To His Excellency the Governor General in Council.

MAY IT PLEASE YOUR EXCELLENCY:

I have the honour to hand you herewith the report of the Royal Commission on Transportation, pursuant to the Order in Council of December 29th, 1948, P.C. 6033, a copy of which is hereto attached.

Your obedient servant,

W. F. A. TURGEON,
Chairman of the Commission.

P. C. 6033

CERTIFIED *to be a true copy of a Minute of a meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 29th December, 1948.*

The Committee of the Privy Council have had before them a report from the Right Honourable Louis S. St. Laurent, the Prime Minister, stating that it has been represented to the Government that, by reason of economic, geographic, and other disadvantages, certain sections of Canada are adversely affected by transportation difficulties and by certain anomalies which are said to be found in the existing tariffs of tolls and rates.

The Committee, having taken cognizance of the aforesaid representations, has come to the conclusion that it would be in the public interest that an inquiry be made into the matters involved in order that all questions of economic policy within the jurisdiction of Parliament arising out of the operation and maintenance of national transportation, may be examined and reported upon.

The Committee, therefore, on the recommendation of the Prime Minister, advise:

1. That under and in pursuance of Part One of the Inquiries Act, a Commission do issue appointing

   The Honourable W. F. A. Turgeon, K.C., LL.D., a member of the King's Privy Council for Canada

   Henry Forbes Angus, Esquire, Professor of Economics, University of British Columbia, Vancouver, B.C. and

   Harold Adams Innis, Esquire, Professor of Political Economy, University of Toronto, Toronto, Ont.,

   to be Commissioners to inquire into and to report upon the aforesaid matters, the said the Honourable W. F. A. Turgeon to be Chairman;

2. That, without restricting the generality of the above terms of reference, the Commissioners should in particular:

   (a) Review and report upon the effect, if any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation policy may best serve the general economic well-being of all Canada;

   (b) Review the Railway Act with respect to such matters as guidance to the Board in general freight rate revisions, competitive rates, international rates, etc., and recommend such amendments therein as may appear to them to be advisable;

   (c) Review the capital structure of the Canadian National Railway Company and report on the advisability, (or otherwise), of establishing and maintaining the fixed charges of that Company on a basis comparable to other major railways in North America;

   (d) Review the present-day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting, (or otherwise), measures conducive to uniformity in such matters, and upon

other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items;

(e) Review and report on the results achieved under the Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants;

(f) Report upon any feature of the Railway Act (or railway legislation generally) that might advantageously be revised or amended in view of present-day conditions.

3. That for the purpose hereinabove stated, the Commissioners shall have all the powers vested in, or which can be conferred on Commissioners under the Inquiries Act, that all or any of the powers which can be conferred under Part Three of the Inquiries Act may be exercised by any two of the Commissioners, and that departments of the Government Service of Canada shall afford the Commission, and all persons acting under its authority, or by its direction, such assistance and co-operation in the matters of the inquiry as the Commissioners may think desirable;

4. That the Commission be further authorized to include in its examination and to report upon all matters which the Members of the Commission may consider pertinent or relevant to the general scope of the inquiry; and

5. That the scope of this Commission shall not extend to the performance of functions which, under the Railway Act, are within the exclusive jurisdiction of the Board of Transport Commissioners.

(Signed) A. D. P. HEENEY,
Clerk of the Privy Council.

THE ROYAL COMMISSION

CANADA

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS shall come or whom the same way in anywise concern.

GREETINGS:

WHEREAS by reason of economic, geographic, and other disadvantages, certain sections of Canada are adversely affected by transportation difficulties and by certain anomalies which are said to be found in the existing tariffs of tolls and rates.

AND WHEREAS it would be in the public interest that an inquiry be made into the matters involved in order that all questions of economic policy within the jurisdiction of Parliament arising out of the operation and maintenance of national transportation, may be examined and reported upon.

AND WHEREAS it is expedient and Our Governor in Council has, by Order, P.C. 6033, of the twenty-ninth day of December, in the year of Our Lord one thousand nine hundred and forty-eight (copy of which is hereto annexed) authorized the appointment, under Part I of the Inquiries Act, Chapter 99 of the Revised Statutes of Canada, 1927, of Our Commissioners therein and hereinafter named to inquire into and report upon the said matters, and without limiting the general scope of their inquiry, particularly

(a) to review and report upon the effect, if any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation policy may best serve the general economic well-being of all Canada;

(b) to review the Railway Act with respect to such matters as guidance to the Board in general freight rate revisions, competitive rates, international rates, etc., and recommend such amendments therein as may appear to them to be advisable;

(c) to review the capital structure of the Canadian National Railway Company and report on the advisability, (or otherwise), of establishing and maintaining the fixed charges of that Company on a basis comparable to other major railways in North America;

(d) to review the present-day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting, (or otherwise), measures conducive to uniformity in such matters, and upon other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items;

(e) to review and report on the results achieved under The Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants;

(f) to report upon any feature of the Railway Act (or railway legislation generally) that might advantageously be revised or amended in view of present-day conditions.

Now know ye that by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint the Honourable W. F. A. Turgeon, K.C., LL.D., a member of Our Privy Council for Canada; Henry Forbes Angus, Esquire, Professor of Economics, University of British Columbia, of the City of Vancouver, in the Province of British Columbia, and Harold Adams Innis, Esquire, Professor of Political Economy, University of Toronto, of the City of Toronto, in the Province of Ontario, to be Our Commissioners to hold and conduct such inquiry.

TO HAVE, hold, exercise and enjoy the said office, place and trust unto the said W. F. A. Turgeon, Henry Forbes Angus and Harold Adams Innis, together with the rights, powers, privileges and emoluments unto the said office, place and trust, of right and by law appertaining, and as are more particularly set out in the said Order in Council, during Our pleasure.

AND we do hereby authorize Our said Commissioners to have, exercise and enjoy all the powers conferred upon them by the said Inquiries Act.

AND we do hereby require and direct Our said Commissioners to report to Our Governor in Council the result of their investigations, together with the evidence taken before them and any recommendations which they may see fit to make in the circumstances.

AND we do further appoint the said the Honourable W. F. A. Turgeon to be Chairman of Our said Commission.

IN TESTIMONY whereof We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS: Our Right Trusty and Well-beloved Cousin, Harold Rupert Leofric George, Viscount Alexander of Tunis, Knight of Our Most Noble Order of the Garter, Knight Grand Cross of Our Most Honourable Order of the Bath, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Companion of Our Most Exalted Order of the Star of India, Companion of Our Distinguished Service Order, upon whom has been conferred the Decoration of the Military Cross, Field Marshal in Our Army, Governor General and Commander-in-Chief of Canada.

At Our Government House in Our City of Ottawa, this twenty-ninth day of December in the year of Our Lord one thousand nine hundred and forty-eight and in the thirteenth year of Our Reign.

By command,

E. H. COLEMAN,
Under-Secretary of State.

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INTRODUCTION

It is of interest to note that in the last thirty-four years four Royal Commissions have inquired into and reported upon transportation matters. These are:

1st — The Drayton-Acworth Commission which reported on April 25th, 1917;

2nd — The Royal Commission on Maritime Claims, known as the Duncan Commission, whose report is dated September 23rd, 1926;

3rd — The Royal Commission under the Chairmanship of The Right Honourable Sir Lyman P. Duff, then Chief Justice of Canada. This Commission reported on September 13th, 1932; and

4th — The Royal Commission on Dominion-Provincial Relations, known as the Rowell-Sirois Commission, whose report which is dated May 3rd, 1940, deals with transportation matters among other things.

Since each of these Reports contains a review of the history and the growth of Canada's transportation system, this ground will not be covered again on this occasion, except to the extent that it may be necessary to do so in the treatment of the various subjects set out in the Order in Council. It will be useful, however, to relate here the pertinent events which preceded the appointment of the Commission, in order to show how the demand for the inquiry arose and the nature of the problems presented.

The last general increase in freight rates occurred in 1920. This was followed by reductions made in 1921 and 1922. Thereafter no change was asked for until October 1946, when an application for a general increase of 30% was made by the railways. The actual increase granted in this case was 21%, but it did not become effective until April 1948. Therefore, a period of more than a quarter of a century elapsed without any general increase in freight rates. It will thus be observed that general increases or reductions in rates have occurred in periods of severe economic changes. There were substantial increases after World Wars I and II and reductions in periods of depression.

Two years after the beginning of World War II the Government of Canada instituted a system of price control administered by the Wartime Prices and Trade Board. This control applied to transportation charges, including freight and express rates, and its effect was to fix or "freeze" these charges. The railways and the Board of Transport Commissioners were restrained from increasing them without the concurrence of the controlling agency. Thus transportation charges remained at the same level during the war and for some time afterwards.

Before the inception of controls the cost of materials and of labour increased to some extent while transportation charges remained, with few exceptions, at their previous level. But the increased cost to the railways was more than offset by increased traffic arising from the demands of war. After controls were put into effect traffic volume reached record heights and the railways prospered. Following decontrol by the Wartime Prices and Trade Board the costs to the railways of material and labour increased and after the cessation of hostilities traffic fell off considerably. The financial position of the railways deteriorated and on October 9th, 1946, they applied for a general increase of 30% in rates subject to certain exceptions.

The application of the railways was contested by the seven provinces of Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta and British Columbia, and the resulting decision of the Board of Transport Commissioners was appealed to the Governor in Council. Although the application was presented in October, 1946, the increase in rates (21%) did not become effective until the 8th day of April, 1948.

Then followed a demand for increased wages and a threatened strike by railway employees. An "eleventh hour" settlement resulted in a 17-cent per hour wage increase which was made retroactive to March 1st, 1948.

On July 27th, 1948, a further application was made by the railways for an additional 20% general increase in freight rates, subject to certain exceptions. At this time the appeal in the 21% Increase Case was still before the Governor in Council. On October 12th, 1948, the Governor in Council made an Order of Reference back to the Board of Transport Commissioners instructing the Board to consider the two cases concurrently.

In the meantime (on April 7th, 1948) the Governor in Council had ordered the Board of Transport Commissioners to undertake a general freight rate investigation. No such investigation had been made since the one ordered in 1925. The seven provinces were not satisfied with this action. Their respective Premiers appeared before the Federal Cabinet on April 26th, 1948, not yet by way of appeal from the 21% Case (the right to appeal had been reserved) but, as they said, in order to discuss "a common problem affecting the whole of Canada," and referring to "the economic well-being of our system" and to "the unity of Canada as a whole," and asking for an investigation of Canada's transportation policy by a Royal Commission.

The Government rejected the request for a Royal Commission for reasons set out in a letter dated July 12th, 1948, from the late Prime Minister of Canada to the several provincial Premiers. The letter referred to a proposed reorganization of the Board of Transport Commissioners, to the above mentioned order for a general investigation of the rate structure, and to an application by British Columbia then pending before the Board for the removal of the Mountain Differential.

The seven provinces then appealed formally to the Governor in Council on July 29th, 1948, from the 21% increase decision on numerous grounds. They joined to their appeal a further request for the appointment of a Royal Commission as being the only means whereby a satisfactory solution of "the larger problem of establishing proper principles for equalization in rate making" could be found. They stated that the Board of Transport Commissioners "must break new ground"; they referred to the necessary establishment of "an improved uniform basic structure" and to a "revision of the Canadian freight rate structure broader and more far-reaching than anything heretofore accomplished by the Board under the terms of the Railway Act," and stated that such revision should involve a complete recasting of the statutory provisions relating to rates and of the authority of the Board with respect thereto.

Canada's two major political parties held conventions in the autumn of 1948, their principal business being to select new party leaders and to adopt "platforms". Both conventions passed resolutions complaining of "discrimination" in freight rates and of other anomalies in the transportation system. One of these resolutions asked for the appointment of a Royal Commission of inquiry and the other called for an "investigation".

On December 29th, 1948, the Order in Council P.C. 6033 appointing this Commission was approved by His Excellency the Governor General.

It appears therefore from the above recital of events and from the terms of the Order in Council that the Government was moved to institute this inquiry by certain representations made to it on behalf of those areas of Canada which lie outside the central area. These representations are twofold in character. They declare in the first place that these sections of Canada are in an unfavourable position, in comparison to the central area, because of "economic, geographic and other disadvantages" which burden them. They then go on to say in the

second place that, by reason of these disadvantages, these sections are confronted with difficulties arising out of the situation in which they are placed in respect to transportation and, in particular, "by certain anomalies which are said to be found in the existing tariffs of tolls and rates."

The Government having taken cognizance of these representations concluded that it would be in the public interest to order an inquiry to be made into the matters involved, "in order that all questions of economic policy within the jurisdiction of Parliament arising out of the operation and maintenance of national transportation may be examined and reported upon".

It follows therefore that while the inquiry was directed in the first place to a study of the economic ills complained of by those who made the above mentioned representations to the Government, this study is intended to lead on to an examination of all matters affecting Canada's economic policy in respect to transportation. It is only by an examination of this broad scope that the evils complained of by certain sections of the country can be understood and remedied.

It is to be noted, however, that while, as has just been said, the scope of this inquiry is broad, the inquiry is limited in this respect, viz. that all questions raised must be viewed in regard exclusively to their bearing upon the problem of transportation.

The Commission decided to hold public hearings in order to provide an opportunity for interested parties to appear and make representations. In view of the origin of the demand for the Commission, letters were written to the Premiers of all of the Provincial Governments indicating that the Commission would be pleased to hear their representations on the terms of reference, and asking them to set out in particular the economic, geographic and other disadvantages, if any, adversely affecting their respective Provinces or parts thereof, and the manner in which, by reason of such disadvantages, they were adversely affected by transportation difficulties or anomalies in existing tariffs of tolls and rates.

All Provincial Governments, except those of Ontario and Quebec, indicated their desire to make such representations and these were later made either at regional hearings or at the final hearings in Ottawa or in both places.

Letters were also sent to the Railway Association of Canada and to other organizations and associations which had indicated their interest in the inquiry, and public notices were issued in the press prior to the regional hearings in each of the cities where hearings were scheduled.

Regional hearings were held in every province of Canada during the summer and early fall of 1949, and the final hearings were held in November and December of 1949 and from February to the end of May in 1950.

Formal hearings lasted in all 138 days, furnishing over 24,000 pages of evidence and argument; 214 witnesses appeared supporting 143 formal submissions. Each of the eight provinces and the two railways as well as some of the associations were represented by Counsel throughout almost the entire proceedings.

It is noteworthy that while the inquiry was in progress the Board of Transport Commissioners filed its decision in the "Mountain Differential" case which brought to an end on July 1st, 1949, the differential in freight rates which had existed for many years for the haul over the mountains in British Columbia and Alberta. The Board also conducted a further hearing in the 21% Case and filed its decision along with a decision in the 20% application, resulting in a further 8% general increase in rates with certain exceptions. From this decision there was an appeal to the Supreme Court of Canada on a question of law.

The result of this appeal made necessary a further hearing before the Board which resulted in a decision increasing the 8% to 16%, and this decision was in turn later altered by the Board by raising the 16% to 20%.

In addition the Board of Transport Commissioners in preparation for its General Freight Rate Investigation proceeded with a "Waybill Study."

In the latter months of this period certain railway employees demanded higher wages and shorter hours and, after hearings before Conciliation Boards, refused to accept the majority findings of the Boards, conducted a strike vote and struck on August 22nd, 1950. The strike was ended on August 30th, 1950, by Act of Parliament, which had been specially convened for the purpose of dealing with the situation. The result is that the employees have since obtained their demands in full, viz. a 7-cent per hour wage increase and the 5-day, 40-hour week, by decision of the Arbitrator appointed under the special legislation passed at the emergency session.

It is with this background and under these circumstances that this Report is written.

The following Counsel took part in the proceedings:

Right Honourable J. L. Ilsley, K.C. (Resigned, May 1949)	Commission Counsel
F. M. Covert, K.C.	" "
Gaston Desmarais, K.C.	Assistant Commission Counsel
H. E. O'Donnell, K.C.	Canadian National Railways and Railway Association of Canada
N. J. MacMillan	Canadian National Railways
H. C. Friel, K.C.	" " "
A. K. Dysart	" " "
Graham MacDougall	" " "
A. H. Hart	" " "
C. F. H. Carson, K.C.	Canadian Pacific Railway
F. C. S. Evans, K.C.	" " "
K. D. M. Spence	" " "
I. D. Sinclair	" " "
Wilson McLean, K.C.	Province of Manitoba
C. D. Shepard	" " "
M. A. MacPherson, K.C.	Province of Saskatchewan
P. C. Cronkite, K.C.	" " "
M. A. MacPherson, Jr.	" " "
J. J. Frawley, K.C.	Province of Alberta
C. W. Brazier	Province of British Columbia
F. D. Smith, K.C.	Province of Nova Scotia and Transportation Commission of the Maritime Board of Trade
J. J. Connolly, K.C.	Province of Nova Scotia
J. Paul Barry	Province of New Brunswick
J. O. C. Campbell, K.C.	Province of Prince Edward Island
W. E. Darby, K.C.	" " " " "
P. J. Lewis, K.C.	Province of Newfoundland
Eric G. Cook, K.C.	" " "
W. J. Matthews	Department of Transport
W. P. Fillmore, K.C.	Winnipeg Chamber of Commerce and City of Winnipeg
H. S. Scarth, K.C.	Manitoba Pool Elevators
G H. Smith, K.C.	Canadian Air Line Pilots' Association

E. F. Whitmore	Regina Chamber of Commerce Saskatoon Board of Trade and Saskatchewan Associated Boards of Trade
W. W. Lynd, K.C.	Saskatchewan Coal Mine Operators
H. G. Nolan, K.C.	Edmonton Chamber of Commerce Calgary Board of Trade City of Edmonton City of Calgary Louis Petrie Limited Alberta Co-Operative Union Brock Company (Western) Limited
S. Bruce Smith, K.C.	Alberta Forest Products Association and Trans-Canada Highway System Association
Milton Owen	Union Steamship Company
H. F. MacPhee, K.C.	Associated Boards of Trade of Prince Edward Island and West Point Ferries Limited
Honourable Charles G. Power, K.C.	Canada and Gulf Terminal Railway
W. P. Power	" " " " "
F. R. Hume	Canadian Automotive Transportation Association
W. L. Rapoport	" " "
R. Kerr	Board of Transport Commissioners for Canada
R. H. Milliken, K.C.	Saskatchewan Wheat Pool
M. M. Porter, K.C.	Alberta Wheat Pool
G. F. Henderson	United Grain Growers, Limited
J. B. McEvoy, K.C.	Associated Newfoundland Industries
G. H. Steer, K.C.	United Grain Growers, Limited Alberta Federation of Agriculture
C. W. Clement, K.C.	Edmonton and Calgary Chambers of Commerce and the Corporations of Calgary and Edmonton

LIST OF BRIEFS AND WITNESSES

Brief	Witness
Abitibi — Economic Planning Council of	Lamontagne, Maurice
	Lebel, Gilbert
Alberta Associated Chambers of Commerce and Agriculture	Martin, James
Alberta Co-Operative Union	Bowlen, B. J.
Alberta Dairymen's Association	Johnstone, E.
Alberta Federation of Agriculture	McFall, J. R.
	Marler, Roy
Alberta Forest Products Association	Swanson, Robert W.
Alberta — Government of	Manning, Honourable E. C.
	Stewart, Professor Andrew
	Darling, H. J.
	Harries, Hu
	Locklin, Professor D. P.
	Morrison, Kenneth J.
Alberta Poultry Producers Limited	Kapler, K. V.
	Cook, Albert W.
Alberta Branch Canadian Seed Growers Association	Dickinson, F. L.
Alberta Crop Improvement Association	Dickinson, F. L.
Alberta Seed Growers Co-Operative Limited	Dickinson, F. L.
Alberta Wheat Pool Joint Submission of Manitoba Pool Elevators, Saskatchewan Co-Operative Producers	Wesson, John H.
Algoma Steel Corporation Limited	Fogo, Senator J. G., K.C.
Anglo-Canadian Oils Limited	Christian, R. J.
Associated Newfoundland Industries Limited	McEvoy, J. B., K.C.
	Johnson, Arthur
Bartram Paper Products Company Limited	Bolton, G. R.
Bella Coola Consumers Co-Operative Association	Gargrave, Herbert
Blowey-Henry Limited	Cairns, C. V.
Bonar & Bemis Limited	Bolton, G. R.
Bowater's Pulp and Paper Company Limited	Murphy, Gerald F.
British Columbia Federation of Agriculture	Heady, C.
British Columbia Feed Manufacturers Association	Alton, E. J.
British Columbia Fruit Growers' Association	Ewer, H. B.
British Columbia — Government of	Wismer, Honourable Gordon
	Brown, J. E.
	Carrothers, William A.
	Brown, William
	Jackson, S. K.
	Kent, Lionel P.
British Columbia Lumber Manufacturers' Association	Robson, J. G.
British Columbia — Mining Association of	Mitchell, Charles H. Ablett, E. B.
British Columbia Paper Manufacturers and Converters	Bolton, G. R.
British Columbia Tugboat Owners' Association	Lindsay, J. A.
Brock Company (Western) Limited	Harvey, John Henry
Canada and Gulf Terminal Railway	Power, Honourable C. G., K.C.
	Power, W. P.
Canada Steamship Lines Limited	Hansard, Hazen, K.C.
Canadian Air Line Pilots' Association	Eddie, A. R.

Brief	Witness
Canadian Automotive Transportation Association	Magee, John Taylor, Jack Buckman, Gene L. Goodman, J. O. Archambault, Camille
Canadian Aberdeen Angus Association	Salter, Hardy
Canadian Boxes Limited	Bolton, G. R.
Canadian Hereford Association	Salter, Hardy
Canadian Percheron Association	Salter, Hardy
Canadian Congress of Labour	Forsey, Dr. Eugene McGuire, J. E.
Canadian Co-Operative Implements Limited	Brown, John B.
Canadian Co-Operative Processors Limited	Harding, D. E.
Canadian Electrical Manufacturers' Association	Simpson, Bruce N. Reilly, Leo M.
Canadian Federation of Agriculture	Hannam, H. H. Hope, Dr. E. C.
Canadian Food Processors' Association	Robinson, Phil R. Caldwell, W. R.
Canadian Industrial Traffic League	Paul, George
Canadian Manufacturers' Association	Brown, Stuart B.
Canadian National Railways	Gordon, Donald M. Cooper, T. H. Fairweather, S. W.
Canadian Pacific Railway Company	Walker, George A., K. C. Crump, Norris R. Jefferson, C. E. Liddy, S. J. W. Thompson, James C. Newman, William Arthur McDougall, Professor J. L. Armstrong, P. C. Jones, Allen Northey Norman, Henry Gordon Elliott, Courtland Armstrong, John E.
Canadian Pulp and Paper Association	Hawkins, Charles E.
Carry, C. W. Limited	Carry, C. W.
Co-operative Vegetable Oils Limited	Friesen, David K.
Coulee — Rural Municipality of	Ward, Arthur
Creamette Company of Canada Limited	Williams, Robert Williams, George J.
Dominion Joint Legislative Committee, Railway Transportation Brotherhood (International Railway Labour Organization)	Kelly, Arthur J.
Dominion Steel and Coal Corporation Limited	Forsyth, L. A., K.C.
Dower Brothers Limited	Holt, Archie A.
Eastern Provincial Airways Limited	Blackwood, Captain E. W.
Edmonton Chamber of Commerce Calgary Chamber of Commerce, City of Edmonton and City of Calgary	Harries, Hu Hatfield, C. E. McGreer, Eric D.
Federated Co-Operative Services Limited	Purdy, W. J.
Federation of Automobile Dealer Associations of Canada	McCullough, E. A. Wilson, H. I.

Brief	Witness
"Fill-the-Gap" Association	Dudragne, Noel
Furness Red Cross Line, Furness-Warren Line and Newfoundland Canada Steamships Limited	Daley, G. McL.
	Williams, J. L.
	Barnstead, Walter O.
Gainers Limited	Neale, Walter
Garment Manufacturers' Association of Western Canada	Guttman, H. H.
Grand Prairie Co-Operative Livestock Marketing Association Limited	Allen, Hugh W.
Great West Garment Company Limited	Roscoe, R. W.
Hudson Bay Route Association	MacNeill, R. H.
	Brockelbank, Honourable J. H.
Holstein-Friesian Association (Canadian National Livestock)	Powell, John E.
	MacArthur, P. D.
	Wilson, William R.
Husky Oil and Refining Limited	Ainsworth, Fred
	Knight, A. C.
Industrial Development Board of Manitoba	Parr, W. L.
Interior Lumber Manufacturers Association	Collins, Harold B.
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, American Federation of Labour	MacArthur, A. F.
Jasper Chamber of Commerce	McKay, Donald K.
Jones, Gordon W.	Jones, Gordon W.
Latta, D. G. Limited	Dworkin, David L.
Levis, P.Q., City of	Bourget, M., M.P.
Lloydminster Petroleum Association	Watson, Harold D.
Local Council of Women — Regina	Thomson, Mrs. Mary
Louis Petrie Limited	Lewis, Harold V.
MacDonalds Consolidated Limited	Maddison, H. W. J.
Manitoba Co-Operative Wholesale Limited	Chown, E. B.
Manitoba Branch Canadian Seed Growers Association	Dickinson, F. L.
Manitoba Crop Improvement Association	Dickinson, F. L.
Manitoba Dairy and Poultry Co-Operative Limited	Goodman, F. J.
Manitoba Federation of Agriculture and Co-Operation	Wilton, J.
	McLean, J. T.
Manitoba — Government of	Campbell, Honourable D. L.
	Moffat, R. E.
Manitoba Pool Elevators	McConnell, G. N.
Maritime Board of Trade—Transportation Commission of the	Matheson, Rand H.
	Morrow, Clarence J.
	Sutton, R. D.
	Bigelow, John R.
	Fisher, C. M. P.
	French, A. R.
Mid-West Metal Mining Association	Shepherd, F. D.
Moncton — Town Planning Commission for the Metropolitan Area of Greater	Frost, S. R.
Mutch, R. E. and Company	Mutch, R. E.
National Paper Box Company	Bolton,G.R.

Brief	Witness
New Brunswick, Province of	Love, Prof. R. J.
	Crandlemire, Harold
	Tooke, Alec
	Cunningham, G. C.
	Estey, Frank D.
	MacKay, Colin
Newfoundland Board of Trade	Ayre, Lewis H. M.
	Miller, Edgar
	Brookes, Lewis
Newfoundland — Government of	Smallwood, Honourable J. R.
	McNamara, George C.
	French, Reginald M.
	Dalton, Captain M. G.
	Sparkes, Reginald F.
	Russell, Hazen A.
	Simpson, Frank
Northumberland Ferries Limited	Mutch, R. E.
Nova Scotia — Government of	MacDonald, Honourable Angus
	Egan, Harold J.
Ontario Mining Association	Harris, Alexander
Ouimet, M. Seraphin	Ouimet, M. Seraphin
Pacific Mills Limited	Bolton, G. R.
Peace River Block — Boards of Trade, Chambers of Commerce of	Turgeon, Senator Gray
(Boards of Trade of the Cariboo District)	Murray, George M., M.P.
Pioneer Electric Limited	Noonan, Richard
Prince Edward Island — Boards of Trade	Kickham, Thomas J.
	Proffit, R. A.
	Morris, P. L.
	Shaw, Gordon
	Morris, John H.
	Thompson, George P.
	Higgins, Wallace L.
Prince Edward Island — Government of	Jones, Honourable J. W.
	Rogers, B. Graham
	Offer, Elmer E.
	Scales, Austin A.
	Gorman, Eugene M.
	O'Brien, Jerome
	Reddall, Charles P.
	MacFarlane, Lorne H.
	Thompson, Colonel C. C.
Quebec — Chamber of Commerce of the Province of	La Tour, Gilbert
Quebec — City of and Chamber of Commerce of the City of	Power, Frank
	Poisson, Y.
Railway Association of Canada	Brass, J. A.
	Gaffney, F. A.
Regina Chamber of Commerce Saskatoon Board of Trade and Saskatchewan Associated Boards of Trade	Whitmore, E. F.
Saguenay Council of Economic Planning	Grenier, P.
Saint John Board of Trade	Blake, A. F.
	Mortimer, Frederick C.
Saskatchewan Branch Canadian Seed Growers' Association	Dickinson, F. L.
Saskatchewan Cattle Breeders' Association	Connell, G. F.
Saskatchewan Coal Mine Operators	Nord, F. H.

Brief	Witness
Saskatchewan Co-Operative Producers Limited	Robertson, George W.
Saskatchewan Dairy Association	Turnbull, J. S.
Saskatchewan Federated Co-Operatives Limited	Fowler, H. L.
Saskatchewan Forage Crop Growers Co-Operative Marketing Association	Dickinson, F. L.
Saskatchewan — Government of	McIntosh, Honourable L. F.
	Britnell, Dr. G. E.
Saskatchewan — Government of	Britnell, Dr. G. E.
Also Governments of Manitoba and Alberta	Harries, Hu
(re Crowsnest Pass Rates)	Moffat, R. E.
Saskatchewan Homemakers' Clubs	Wade, Mrs. Mary C.
Saskatchewan Honey Producers Co-Operative Marketing Association Limited	Pugh, Roy M.
Saskatchewan Motor Dealers' Association	Pinch, John
Saskatchewan Poultry Board	Brown, W. W.
Saskatchewan Seed Grain Co-Operative Limited	Dickinson, F. L.
Saskatchewan Stock Growers' Association	Wiebe, Herbert
Ship-by-Rail Association	Huston, H. B.
Sidney Roofing and Paper Company Limited	Bolton, G. R.
Southern Alberta Co-Operative Vegetable Growers' Association Limited	Cameron, A. A.
Southern Alberta Sheep Breeders' Limited	Benson, William S.
Surrey Co-Operative Association	Creelman, B. G.
Trans-Canada Highway System Association (Yellowhead Route)	Smith, S. Bruce, K.C.
United Farmers of Alberta Co-Operative Limited	Priestley, Norman F.
United Farmers of Canada (Saskatchewan Section) Limited	Bickerton, George R.
United Grain Growers	Brownlee, Honourable J. E.
Vancouver Board of Trade	Norris, T. G., K.C.
Vancouver — City of	Thompson, Mayor Charles E.
Vulcan Iron and Engineering Limited	Stetchishin, V. M.
West Point Ferries Limited	Pate, Peter W.
	Phillips, Sanford
Western Stock Growers' Association	Coppock, Kenneth
Western Supplies Limited	Armstrong, Henry B.
Westminster Paper Company	Bolton, G. R.
Winnipeg Chamber of Commerce	Fillmore, W. P., K.C.
and the City of Winnipeg	Walker, John
Woollings Forest Products	Woollings, E. V.
Woollings, T. S. and Company	Duffy, H. E.
Young, Edward James	Young, Edward James

Brief	Witness
Alberta Provincial Sheep Breeders' Co-Operative Association Limited	No Witness
Board of Trade, City of Montreal	"
Board of Trade, City of Toronto	"
Canadian Air Lines Dispatchers Association	"
Canadian Retail Federation	"
Consolidated Truck Lines Limited	"

Consumers of Heavy Industrial Fuel from Lloydminster	No Witness
Fort William and Port Arthur Chambers of Commerce—Joint Transportation Committee of the	"
Louisburg Board of Trade	"
Quebec Pulpwood Dealers — Association of	"
Quesnel Board of Trade	"
Royal Agricultural Winter Fair	"
Saskatchewan Association of Rural Municipalities	"
Truck Drivers and Helpers Union — Local 31	"

LIST OF CITIES WHERE HEARINGS WERE HELD

City	Dates
OTTAWA, Ontario	May 2nd, 1949
WINNIPEG, Manitoba	June 1st, 2nd and 3rd, 1949
REGINA, Saskatchewan	June 7th, 8th, 9th and 10th, 1949
CALGARY, Alberta	June 13th and 14th, 1949
EDMONTON, Alberta	June 16th and 17th, 1949
VICTORIA, British Columbia	June 22nd and 23rd, 1949
VANCOUVER, British Columbia	June 28th, 29th and 30th, 1949
HALIFAX, Nova Scotia	July 12th, 13th and 14th, 1949
FREDERICTON, New Brunswick	July 18th, 19th, 20th and 21st, 1949
CHARLOTTETOWN, Prince Edward Island	July 25th, 26th and 27th, 1949
QUEBEC, Quebec	July 30th, 1949
MONTREAL, Quebec	August 2nd, 1949
TORONTO, Ontario	August 4th and 5th, 1949
ST. JOHN'S, Newfoundland	September 27th, 28th and 29th, 1949
OTTAWA, Ontario	November 1st to December 16th, 1949, February 6th to March 31st, 1950, and April 19th to May 31st, 1950

CHAPTER I

ECONOMIC, GEOGRAPHIC AND OTHER DISADVANTAGES OF CERTAIN SECTIONS OF CANADA

Paragraph 2(a) of P.C. 6033 requires the Commission to "review and report upon the effect of economic, geographic and other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein and to recommend what measures should be initiated in order that the national transportation policy may best serve the general well-being of all Canada."

A. INTRODUCTION

The governments of British Columbia, the three Prairie Provinces and the four Maritime Provinces all appeared before the Commission and made submissions concerning economic, geographic and other disadvantages under which their respective provinces suffered in relation to transportation. No submissions were made by the governments of the provinces of Ontario and Quebec, although invitations were sent to the Premiers of both these provinces and regional hearings were held in Toronto, Quebec and Montreal. Likewise it is significant to observe that in the recent applications for increased rates made by the railways to the Board of Transport Commissioners in the years 1946 to 1950, the provinces of Quebec and Ontario were not represented, but all the other provinces (except Newfoundland which did not enter the Union until April 1st, 1949) contested the applications and appealed all the decisions to the Governor in Council.

The attitude of the Governments of the Central provinces seems to indicate that present conditions of railway services and railway charges are considered generally satisfactory in this region, and is in marked contrast with the prevalence of discontent and of the desire for changes found in the other provinces.

In the first decision of the Board filed in the 30% application on March 30th, 1948, the position of the Board with respect to its jurisdiction and powers to reduce rates to assist industry or to equalize, through the prescription of reduced rates, production costs, geographical location, or climatic conditions, was dealt with at considerable length. The following extracts from its decision indicate clearly the opinion of the Board as to its own powers and as to the discretion left to the railways concerning these matters. Quoting with approval from its previous decision in Re National Dairy Council of Canada (1924), the Board said at page 53:

> "The Board is given power to deal, inter alia, with the reasonableness of the rates. It is nowhere authorized by Parliament to be an arbiter of industrial policy. Opinions may differ as to different lines of development, but the Board's functions in approaching a rate situation are concerned with ascertaining the reasonableness of the rate, not with applying to a rate situation a preconceived opinion as to what type or method of industry should be helped by a modification of the rate.
>
> "In other words, while members of the Board may and do, as Canadians, sympathize with policies of economic development which may through increasing diversity lead to greater economic solidarity, it is not their general opinions but the powers conferred on them by the Railway Act which determine what they can do. Very wide powers, it is true, are given under the Railway Act; but the Railway Act is not to be construed as if it were a blank cheque to be filled in as members of the Board see fit. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates either on complaint or of its own motion."

Again quoting from C.N.R. vs. C.P.R. et al 39 C.R.C. 1 at pp. 25-27:

"In so far as this involves the proposition that a producer's cost disadvantage should be equalized or diminished in the freight rate . . . it may be stated that this transcends the powers or functions of the Board."

and

"It is no part of the obligations of the railways, under the Railway Act, to equalize costs of production through lowered rates so that all may compete on an even keel in the same market."

and

"Railways are not required by law, and cannot in justice be required, to equalize natural disadvantages such as location, cost of production and the like."

and

"A railway company is not called upon so to adjust its rates that the shipper will always be able to carry on his business at a profit. The rate is only one item in the shipper's costs. The obligation of the railway company is to charge a reasonable rate. It is not called upon, through the reduction of the rate, to guarantee that the business will be carried on at a profit. In other words, the needs of the business and the way in which it is carried on are not the measure of the reasonableness of the rate."

and

"The Board has held that it is not concerned with equalizing costs of production, and that in matters of rates its jurisdiction relates to reasonableness of the rates."

and

"The Board has many times said that it is not concerned with equalizing costs of production. It has many times affirmed that its jurisdiction in connection with applications is concerned with reasonableness of rates, not with the rate of profit which the applicant is making."

and

"It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions. They are concerned simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes."

and

"The Board has indicated that in the matter of rates, for example, its function is concerned with complaints as to unreasonableness or as to unjust discrimination, and that it is not empowered to put in rates simply to develop traffic; that is to say, the Board is not empowered by Parliament to act as an arbiter of industrial policy. If it were so empowered, there would need to be explicit words; and if such a power were conferred, the Board would then be able to pass upon the question whether an industry should be allowed to develop in one section or another. No such power has been conferred. The railway, subject to the inhibitions as to unjust discrimination, may give a reduced rate basis to develop traffic. It takes the responsibility of the profit or loss in connection with the transaction. The Board, under the Railway Act, has no profit or loss responsibility, and its intervention in the matter of rates must, as has been indicated, be concerned with matters falling within the broad categories of reasonableness and unjust discrimination, and not with a policy of developing industries through rate adjustments."

and

"The powers which are conferred upon the Board are regulative and not managerial. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates, either on complaint or of its own motion."

and

"It has been decided that the railways have powers in regard to developing traffic which are not held by the Board; that is to say, the railway, taking the risk of profit or loss, may put in a rate to develop traffic which it would not be justifiable for the Board to install. The railway may put in development rates with a view to increasing traffic, but such rates, I submit the Board has no power to put in."

B. Position taken by the Provinces before the Governor in Council

Following this decision the seven provincial Governments appealed to the Governor in Council. It is important to set forth here some of the representations made in the brief submitted by the Premiers of the seven Provinces to the Cabinet on July 20th, 1948, because it was mainly as a result of these representations that the Order in Council appointing this Commission was passed:

"One of the outstanding difficulties with which the Board is confronted in its efforts, since its organization, to regulate, and control Canadian freight rates, and build up a system or a rate structure, which will, in all respects, under similar circumstances and traffic conditions, be just and reasonable to all persons and localities, has been, and is, the question of geographic disadvantage, or disability of some localities. It has been laid down as a principle that the Board's functions do not extend to the removal, by adjustment of freight rates, of these natural geographical disadvantages, which, in a country of such enormous extent and widely covered area, must naturally exist."

The brief then refers to the Judgment of the Board in the 30% application where it says:

"It has been held time and again that rate-regulating commissions have no right whatever to attempt to equalize geographic, climatic, or economic conditions. They are concerned simply and wholly with the question of the reasonableness of the toll which the railway company is seeking to collect for the carriage of a given commodity, irrespective of how it is made, or whence it comes."

The brief then says:

"In view of the opinions of the Board repeatedly expressed in the above way it seems obvious to us that any inquiry by the Board under the recent Order in Council P.C. 1487 would necessarily be restricted and limited in nature.

"Further, the legalistic attitude of mind shown in these Judgments of the Board has persisted too long for the Board to change its point of view and to give the consideration which is due to vital questions of the impact and effect of increased rates from the geographic, economic and national aspect."

The brief also says:

"The general public affected by the Order of March 30, 1948, has lost confidence in the Board's approach to the problem, and it is of the utmost importance that public opinion be considered in this regard.

"For the reasons stated the Provinces represented here feel no useful or effective purpose will be served by an inquiry before the Board and are not prepared to accept the Board as a tribunal for dealing with the broad questions which have been referred to it."

The Provincial Premiers then asked for a Royal Commission:

"With wide powers of reference enabling it to inquire into all railway problems of the country as they exist in either a geographic or an economic sense with full power to recommend any amendment to existing legislation or as to the constitution, powers and duties of the regulatory body, it could do much to promote a greater sense of national and regional security in the Dominion. We feel an opportunity should be given to the Provinces to make recommendations with regard to the terms of reference of the Royal Commission."

In the aforesaid brief, reference is made to the burden that the freight rate structure imposes on certain areas because of their geographic and economic positions and it is stated that the powers given to the Board by Parliament do not "enable it to carry out the broad and perhaps (relative to the freight rate structure) almost revolutionary changes that the Government envisages it might accomplish."

C. Division into Regions

Essential differences exist in geographic, economic and other conditions in the various Provinces of Canada which might warrant a separate discussion of the disadvantages under which each Province finds itself in relation to transportation. There are, however, certain similarities in conditions in some of the Provinces which make it simpler to divide the country into sections or regions for the purposes of this chapter.

The Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island form a geographic unit, and have somewhat similar transportation problems. All three (and Newfoundland with them) enjoy the statutory advantages provided under the Maritime Freight Rates Act.

The three Prairie Provinces of Alberta, Saskatchewan and Manitoba, likewise form a geographic unit, have similar transportation problems and similar economic aspects, and all enjoy the privilege of the statutory Crownsnest Pass Rates.

The Province of British Columbia has certain advantages peculiar to itself, and likewise certain peculiar disadvantages which warrant it being treated in a separate category.

The Province of Newfoundland is a new province of Canada, and its problems, though in many respects similar to those of the three Maritimes Provinces, are sufficiently distinctive to warrant separate discussion.

The Provinces of Ontario and Quebec, because of their central location within Canada, their similar economies, and their apparently similar lack of concern both with the proceedings of this Commission and with those before the Board of Transport Commissioners in the rate cases from 1946 to 1950, can be dealt with together for the purposes of this chapter.

It will be convenient therefore to divide the country into the five regions indicated in the preceding five paragraphs.

1. THE MARITIME PROVINCES

(a) Alleged Disadvantages

1. The chief disadvantage complained of is the long haul to markets and from sources of supply which places the Maritime producers at a relative disadvantage in reaching Central Canadian markets in competition with producers in that area who have a much shorter haul. This disadvantage is said to be accentuated by the Canadian customs tariff policy because it increases the dependence of the area on Central Canada instead of the Eastern United States which is claimed by the Maritime Provinces to be both the natural market for their products and the natural source of their supplies.

2. These Provinces submit that the characteristics of their economy are: (a) a marked dependence on the production of low-valued basic commodities which are sold in large part outside the area; (b) a dependence in large measure on outside services, principally in Central Canada, for producer and consumer goods, and (c) a relatively undeveloped manufacturing industry which for the most part is small-scale and hence finds it difficult to compete with the large-scale lower cost producers of Central Canada.

3. The Maritime Provinces state that, when compared to Central Canada their economy is found to be deteriorating, and that this trend is influenced by the increased cost of transportation to Central Canada and by the contraction of foreign markets; for example the loss of markets for apples, lumber and pit props in the United Kingdom, and potatoes in the United States.

The case of the Maritimes may be summarized: At Confederation they were promised access to the Central Canadian market. Today, in view of the deterioration in foreign trade, particularly because of monetary and commercial restrictions, access to the Central Canadian market has become more important than ever. Isolation of the Maritimes from the Central Canadian area as a result of distance and of increased freight charges is one of the central themes put forward in their case. A witness for the Transportation Commission of the Maritime Board of Trade, when asked whether or not the Maritimes were willing to accept their disadvantages provided they retained their advantages, replied:

> "The national background in connection with our Intercolonial Railway was to afford persons and industries to get into the markets of Central Canada. That is the basic principle."

The Maritime Freight Rates Act is regarded as the instrument intended to facilitate access to the Central Canadian markets. It was suggested by the same witness that this instrument is losing its effectiveness:

> "The general tenor of the evidence of the Maritime approach . . . is that the changes which have taken place since the Maritime Freight Rates Act became effective in 1927 are having the effect of enhancing the difficulty of Maritime producers in reaching the highly competitive markets of Central Canada in competition with industries located closer to the markets."

Maritime shippers allege that these changes have resulted principally (1) from the increase of truck competition in Central Canada, which has had the effect of lowering rates for their competitors in that market, and (2) from the recent general horizontal increases, particularly on the long haul from the select area westward. These changes, they say, have decreased the advantages which the rates established under the Act of 1927 were intended to confer on the Maritimes.

It is argued that national customs tariff policy has operated unfavourably to the Maritimes. The following excerpt from the Report of the Royal Commission on Dominion-Provincial Relations was quoted by Maritime Counsel with approval:

> "National tariff policies have probably operated unfavourably in general, since Maritime manufacturing industries producing for home consumption have been exposed to the competition of the more advantageously located manufacturing industries in Central Canada; Maritime primary industries have been burdened with increased costs; and the great shipping, commercial and financial service industries, which bulked so large at the time of Confederation, have either found it impossible to adapt themselves to changed techniques and the framework of national policies and survive, or have migrated to Central Canada."

It is contended that without the customs tariff the Maritimes would have traded more with the United States, the United Kingdom and Central and South American countries and that new industries would have developed; and that the tariff has shifted purchases from the cheaper American to the more expensive Canadian goods. Thus, it is alleged, the customs tariff policy has subsidized one part of the country and at the same time has penalized the Maritimes.

It is therefore contended that the nature of the Maritime economy, the Canadian customs tariff policy and the deterioration in foreign markets have made the Central Canadian market of vital importance to the region. Maritime

producers are said to be at a disadvantage in this market in relation to local producers owing to the long haul from the producing to the consuming centres, and similarly Maritime costs and standards of living are said to be affected by the long haul on materials and equipment from Central Canada. It is submitted that freight charges and increases in these rates must generally be absorbed by producers and consumers in the area. Horizontal increases are said to be specially detrimental to the economy because in terms of dollars they increase long haul more than short haul rates and thus increase the competitive difficulties of Maritime producers in their principal markets. The net effect of all these factors is said to place the Maritime economy at a disadvantage in relation to local producers in the Central Canadian market.

(b) Conclusions concerning disadvantages of carload all-rail traffic of the Maritime Provinces (but not including Newfoundland)

1. Reference may here be made to the Waybill Analysis recently made by the Board of Transport Commissioners as a first important step in the conduct of their General Freight Rate Investigation pursuant to Order in Council P.C. 1487 dated April 7, 1948. This analysis is dated August, 1950, and deals with carload, all-rail traffic between points in Canada which terminated at destinations on four dates selected as representative to show the actual flow of traffic for the year 1949. This analysis does not deal with less than carload traffic which, it appears, amounts by weight to about 3½ per cent of the amount of carload traffic and to about 6½ per cent in revenue as compared with carload traffic; nor does it deal with international traffic, but only carload traffic originating in and destined for Canadian points.

The Waybill Analysis indicates that approximately 93 per cent of the freight traffic originating in the Maritime Provinces moves on commodity rates and that the average haul per ton is 319 miles, but that about 30 per cent of the 93 per cent moves on the average from 733 to 812 miles.

On the other hand, while approximately 80 per cent of the freight traffic originating in Central Canada moves on commodity rates and the average haul per ton is 234 miles, approximately 90 per cent of this, on the average, moves from 80 to 167 miles. It will thus be seen that, compared to Central Canada, the Maritimes Provinces do, at least on a large part of their originating traffic, suffer a disadvantage in respect to length of haul.

2. The economy of the Maritimes is highly specialized and may properly be characterized as an economy having a heavy dependence on markets external to the region itself. In 1946 roughly 40 per cent of the gainfully occupied were engaged in agriculture, forestry, fishing and mining, with about one-half of these in agriculture. About one-third were employed in trade and services and the remainder were distributed in smaller proportions among the other industries. Of about 9 per cent of those employed in manufacturing well over half were in the iron and steel and wood and paper products industries. The only other significant proportions in manufacturing were found in the vegetable and textile products industries. Agriculture, forestry, fishing and mining accounted for about 60 per cent of the net value of all goods produced, and manufacturing for about 24 per cent. Of the primary industries agriculture was the most important, with forestry and fishing next in order.

Measured in terms of the gainfully occupied, the fishing, forestry and mining industries are relatively very much more important in the Maritimes than in Canada as a whole. Construction, transport, service and trade are roughly of the same importance as elsewhere in Canada. The relative dependence of the region on a few primary industries is the most striking feature of the Maritime economy.

This high degree of specialization in the production of primary products implies a heavy dependence on markets and sources of supply outside the area. If these markets and sources of supply are distant it also implies heavy transportation charges. The main external sources of supply are Central Canada and the United States. Much of the imported food, machinery and equipment comes from Central Canada and feed grains from Western Canada. On the export side the United Kingdom and Western Europe have been very important as outlets for lumber and apples, the Mediterranean area, the West Indies and the United States for fish, and the United States for newsprint, pulp and pulpwood. The United States market has become the mainstay of the forestry industry. The potato markets are mainly in the United States and Central Canada. While formerly a large part of the produce of the area was sold outside Canada, in recent years these markets have been falling off because of trade and currency restrictions. Thus the Central Canadian market has become relatively more important. In this market Maritime products must meet the competition of local producers whose transportation costs are relatively lower.

It seems clear that growing dependence on the Central Canadian market and the relatively long haul from the Maritimes to this area are the principal reasons for Maritime complaints about freight rate increases.

4. As to the allegation that Canadian customs tariff policy has worked to the disadvantage of the Maritimes in that it has limited markets abroad, increased the cost of imported supplies and retarded industrial development in the Maritimes, and that in the absence of the customs tariff, the competition of cheaper American goods would have benefited Maritime purchasers, it must be said that it is not possible to determine how great the market would have been in the United States if there had been no Canadian customs tariff because one cannot assume that the United States would have admitted Canadian goods duty free.

It must be borne in mind, however, when dealing with the probable effect of the customs tariff in creating disadvantages for certain regions, that one of the tendencies of industry is to seek the centre of the community it serves, even where no tariff protection exists, because a central location provides an advantage in respect to the costs and facilities of transportation. And it is of course necessary here to reduce all the representations made (in so far as this can be done) to the aspect in which they appear in the light of the transportation problem.

5. The concern of the Maritimes with the problem of access to the Central Canadian market and of cheap transportation on goods drawn from that area has become acute as a result of the recent rate increases. This concern may be partly a result of the expansion of industry in time of war which was no doubt assisted by the freezing of freight rates, and of the desire to hold the gains made during the war.

(c) The Principal Remedies suggested

The principal remedies suggested by the Maritime submissions are:

(a) Restoration of the arbitrary over Montreal that existed on July 1, 1927;

(b) Limitations on horizontal increases;

(c) New Brunswick in particular requests that the reduction under the Maritime Freight Rates Act be made to apply to inbound as well as outbound freight and that the 20% reduction accorded by the Act be increased to 30%;

(d) Prince Edward Island asks that the reduction apply to inbound freight on certain articles entering into costs of production in that Province; and

(e) An extension of the reduction granted under the Maritime Freight Rates Act beyond Levis to points as far west as Toronto or Windsor, Ontario.

All of these matters are dealt with elsewhere in this Report.

2. THE PRAIRIE PROVINCES

(a) Alleged Disadvantages

1. The chief disadvantage complained of is the long haul to markets and from sources of supply coupled with dependence on rail transportation in the absence of truck and water competition.

2. Great stress is laid upon specialization of resources which implies dependence on outside markets for the sale of the products of the area and dependence on outside sources of supply for many consumer and producer goods. These markets and sources of supply are mainly in Central Canada, British Columbia, the United States and Western Europe.

3. The long rail haul involved in marketing the products of the area is said to be particularly burdensome because long-haul rates are high and they apply generally to low-valued bulky commodities. Moreover, many of the products are sold in markets where competing producers either have a shorter haul or have the advantage of cheaper forms of transport.

4. It was contended, too, that the Prairie economy is bordered on both the East and West by relatively barren areas that are not locally productive of rail traffic, and it was assumed that there is in consequence a heavier transportation toll on the products originating in the Prairie area—a toll which it is said the railways can levy because of their monopolistic position in that area.

5. The Provinces of Alberta and Manitoba appear to be willing to accept the disadvantage of distance as such, but complain of various features of the rate structure which they insist have intensified it.

This means that the desirability, in fixing freight rates, of mitigating the effect of distance on shippers and consignees in remote regions presents a problem of primary importance in the building up of a just and reasonable freight rate structure. Alberta further submits that rates should not be established on the basis of purely local costs and conditions.

6. A great deal was said by these Provinces about their economic disadvantages. One of the most important points made has to do with the nature of the Prairie economy arising out of the specialized character of its resources. Economic activity is mainly of a primary sort with heavy dependence on agriculture. Lack of diversification together with dependence on foreign markets for the staple products of the area means that it is vulnerable to the shocks of economic fluctuations. The prices of these products fluctuate over a wide range and the output of agricultural products is highly variable. Under these circumstances gross income fluctuates widely and net income fluctuates even more because of uncontrollable costs, including transportation costs. It is feared, therefore, that if freight rates are raised in periods of rising prices it may be difficult to have them lowered in times of falling prices. It is argued also that producers and consumers in the region bear the burden of freight charges both on incoming and outgoing traffic. For these reasons the level of freight rates has a particularly significant effect on the level of the net income of the region. These Provinces argue that the freight rate structure has impeded diversification of industry. It is asserted that transcontinental rates are detrimental to the development of local industry for distant markets in that, for example, they give Ontario an advantage over Manitoba in the British Columbia market. Alberta presented a detailed submission to the effect that rate relationships and "market rates" impede the location of secondary industry in the Province.

7. The problem of market competition is raised by the three Prairie Provinces. This problem is important for two reasons: (1) the dependence of the area on outside markets for the sale of its bulky primary produce, and (2) the long haul to these markets. For these reasons freight charges are likely to be

high in relation to the value of the products and are an important part of the cost of production and marketing. Many of the objections to specific rate practices, e.g. horizontal increases, are in part at least based on this consideration.

8. The contention that the Prairie Provinces constitute a non-competitive transportation area is put forward by all three Provinces though it is argued most fully by Alberta and Saskatchewan. It is claimed that the area is almost wholly dependent on rail transport because of the lack of water routes, the relatively undeveloped state of highway transport, and the large proportion of long-haul traffic in the area which can best be handled by rail. In other areas, it is said, and particularly in Central Canada, both highway and water competition force the railways to publish lower rates than in non-competitive areas. A greater burden of transport costs is thus imposed on the non-competitive areas since they must make up the deficiency in railway revenue when increases cannot be added to competitive rates. Counsel for Alberta stated that these things are the "core" of the transportation problem today and that they have produced a "major crisis in transportation policy."

The crisis is said to arise out of the unequal impact of carrier competition in the different regions and on different traffic movements. Alberta Counsel went on to say: "If increased costs are imposed upon the railways which are translated into freight rate increases which can be levied only on the non-competitive traffic—then I say that it would be utterly indefensible to permit the railways to extract such an increase from the non-competitive traffic and the non-competitive areas." When this point is reached, Counsel said, the non-competitive traffic must be protected from the consequences, and such protection can only come in the form of a Federal subsidy to the railways. Both Alberta and Saskatchewan appear to believe that the competitive crisis will become more serious with the passage of time. The development of the St. Lawrence-Great Lakes Waterways is considered to be a disadvantage in so far as it may result in higher local rates in the West to compensate for lower competitive rates in the East.

9. Alberta places a good deal of stress on the problem of the relation of freight rates to industrial location. The lack of secondary industry is said to be a major economic disadvantage to the province. Alberta has resources capable of local processing, e.g. livestock, and contends that the freight rate structure should not be permitted to operate against the development of secondary industry natural to the area. Certain aspects of the rate structure are said to be important. The relationship between the rates on the raw material and the finished product should be such, it is submitted, as to neutralize the effect on industrial location, i.e. the rate relationship as such should neither encourage nor discourage the development of secondary industry in a particular area. Alberta presented as an illustration examples of rates on livestock and meat products which purported to show that the rate relationships tend to encourage the export of livestock to processing plants elsewhere. It is also alleged that present methods of rate-making unfairly affect regional location of industry, e.g. long-and-short-haul discrimination, distributing rates, agreed charges, stop-off and in-transit privileges, rate groups, developmental rates and interline rates.

10. Vegetable canning in southern Alberta is cited as an example of an industry which is denied the benefit of its proximity to markets in British Columbia because vegetables canned in Central Canada can move into the West Coast market at lower rates—a case of long-and-short-haul discrimination. (This contention arises out of the existence of transcontinental water competitive rates which are dealt with elsewhere.) The existence of interline rates is said to impose a penalty on an industry which is in a location necessitating shipment to market over both railways. The existence of distributing rates is alleged to create a kind of discrimination between shipping points and shippers which may retard development at a particular location. Agreed charges are said to

discriminate against the small shipper and interfere with legitimate competition from other carriers. Stop-over or in-transit privileges are said to have an effect on industrial location, and it is urged that shippers should have the right to apply to the Board of Transport Commissioners if the railways refuse to grant such privileges. The rate grouping principle as applied to a production area is recommended in order to encourage industrial development over an area rather than at a particular point in the area.

11. It was said that generally the level of freight rates is higher in the West than in the East, and although admittedly this disparity has been considerably reduced it is contended that now, as a result of the recent increases in non-competitive rates and the non-application of the increases to competitive rates, the difference in the over-all level will increase. The inequality is said to arise mainly from differences as between East and West in the standard mileage class rates, the distributing class rates, the commodity mileage scales and the extent of low competitive rates in the East as compared with the West. The railways argue that whatever differences may exist arise out of regional economic differences relating to competition, density of traffic, differences in costs of operation and other local differences. In any case the Prairie Provinces maintain that these disparities, with the exception of those necessary to meet competition, are not justified today and that substantial equalization should prevail across the country. It is generally admitted that competition is a valid reason for regional rate differences, but it is contended that competitive rates should be under the active supervision of the Board whose duty it should be to inquire into the necessity for them and to determine whether or not they are compensatory.

12. All the Prairie Provinces contend that the benefits of national policy have not been distributed equally over the various regions and in particular that the Prairie Region has suffered from tariff policy and to some degree from railway policy. Saskatchewan argues specifically that the regional impact of national policy is of fundamental importance in assessing the economic and geographic disadvantages of the Prairie Provinces. In creating a national economy the impact of national policies is unevenly distributed and, it is said, works to the special advantage of Central Canada and to the disadvantage of the other parts of Canada.

13. Saskatchewan contends that railway policy, which was essential for the economic integration of the various regions, involved the linking of the East and West coasts by a transcontinental transportation system wholly in Canadian territory. The Intercolonial Railway and the Canadian Pacific Railway were the original means by which this was accomplished. Thus, from the beginning, the railways have been instruments of national policy, and should still be considered as such. It is asserted that artificially located railway mileage, i.e. through Canadian territory, when communication through the United States would have been more economical, has resulted in higher transportation costs than necessary. These higher costs are said to be the result of building the railway through the relatively low density traffic area between the Maritimes and Central Canada, through the high cost and low density area comprising the Precambrian Shield, through the less productive portions of the Prairie Provinces and through the Rockies by the difficult and costly passes on the southern route. While the Province of Saskatchewan did not complain of this policy as such, it did maintain that it resulted in higher rates for the shippers of the Prairie Provinces than would otherwise have been the case. This is alleged to be unjust, and Saskatchewan takes the position that where national policy has imposed higher costs of transportation on a region these costs should not be borne by the shippers but by the taxpayers in general.

14. Saskatchewan also contends that customs tariff policy has forced trade into east-west Canadian channels where it would otherwise have moved through

the United States, in which case Western Canada would have obtained a larger part of its supplies from the United States. In this respect customs tariff policy is said to be closely allied to railway policy in that it is one method of providing traffic to an all-Canadian railway system. It is claimed that this policy has forced Western Canada to buy more expensive consumer and producer goods manufactured in Central Canada rather than cheaper goods from the American Middle West. It is claimed, too, that this has accentuated the long-haul problem of the area and strengthened the monopolistic position of the railways. The effect has been higher production and living costs in the area. Again it is not argued that the national policy should have been different in aim but rather that in its execution the area should not be burdened with the high freight charges and other costs.

15. The Prairie Provinces made a basic argument of their claim that they pay freight charges on both incoming and outgoing freight. This is said to be one of the reasons why these Provinces are so concerned about the level of freight rates and their effects on the economy.

Broadly speaking, the position taken by the Prairie Provinces (with modifications in the case of Saskatchewan) is that the economic and geographic disadvantages of the region must be accepted, but that the region should not be expected to bear the burden of national policies where the effects of such policies are unevenly distributed regionally. Transportation policy, they say, should play a neutral role, i.e. freight rates as such should not be used as a means of artificially developing an area. It is contended that the rate structure should not accentuate the long-haul charges nor in any other manner make the economic and geographic disadvantages of the area more serious.

(b) Conclusions concerning Disadvantages

1. The Waybill Analysis of the Board above referred to indicates that about 90% of the freight traffic originating in the Prairie territory moves on commodity rates and that the average haul per ton is 594 miles. It is probable that between 40 and 50 per cent of this traffic is accounted for by traffic moving on the statutory Crowsnest Pass Rates. Nevertheless the average haul per ton for all carload traffic originating in the Prairie territory is 611 miles, which is considerably greater than for the Central region, and is exceeded only by that of Pacific territory which is 619 miles. It can therefore be said that traffic originating in these territories is more subject to the problems connected with long-haul movements than any other in Canada.

2. The Prairie Provinces depend heavily on the primary products of agriculture and to a lesser extent on mining, forestry and fisheries, and on the processing of the products of these industries. In 1948 those engaged in agriculture numbered about 48 per cent of the gainfully occupied, and mining, forestry and fisheries engaged approximately 3 per cent of these. More than one-quarter of the employed were engaged in trade and services and about 7 per cent in manufacture (exclusive of processing, agricultural, forestry, fishery and mineral products). About 60 per cent of those employed in manufacturing were engaged in the processing of vegetables, animal, and wood and paper products, and about 21 per cent in processing iron.

The primary industries account for about 70 per cent of the net value of goods produced. There are, of course, local differences within the region, e.g. there is much greater dependence on agriculture in Saskatchewan and a relatively greater importance of manufacturing in Manitoba than in Saskatchewan or Alberta.

3. The degree of specialization in agriculture is apparent and the Prairie Provinces are dependent on foreign markets to an extraordinary degree, particularly for agricultural products (wheat, processed meats and live cattle) and

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mineral products. Wheat has gone largely to Western Europe and to a lesser extent to the United States, South America, India and South Africa. The domestic market is the principal one for meat products, but exports to the United Kingdom have been considerable. With the falling off of the United Kingdom market the important market for Canadian livestock in the United States has been reopened. The United States is also the principal market for mineral products, newsprint and fish. The external domestic market (principally Central Canada and British Columbia) is an important outlet for dairy produce, feeds and minerals.

4. The mid-continental location of the Prairie Provinces implies a long rail or rail-and-water haul to the principal markets. As the export products are generally low-valued, transportation costs are of great importance to the Prairie economy. Nor is the situation relieved by carrier competition except on the Great Lakes system, which has undoubtedly been important in holding down freight charges on the long hauls to Eastern Canada. Thus, as in the case of the Maritimes, the relation of freight rates to market competition is an important problem.

Nevertheless, it should not be overlooked that the present rates on primary products moving out of Prairie territory show strong evidence of having been fashioned to meet these specific needs. Today the situation is taking a different turn, and it can be said that the maturing economies of the Prairie Provinces have become restive under a rate structure too closely adapted to an area of primary production. It is perhaps significant that the bulk of the rate complaints from the Prairie Provinces brought to the notice of the Commission were concerned with local movements within Prairie territory or inbound movements from other territories or from the United States. As to the outbound rates on primary commodities, there were few new complaints but there was evident concern to defend the existing rates which had been made the object of attack on the ground that they were no longer sufficiently remunerative. While primary production will continue for many years to be the mainstay of the Prairie economy, there is indication of increasing friction between the traditional rate structure and the drive for industrial development and economic diversification.

5. What was said concerning the Canadian customs tariff policy in respect to the Maritime Provinces applies with great force to the Prairies.

(c) Principal Remedies suggested

The principal remedies suggested by the Prairie Provinces are:

1. Equalization of freight rates in all regions in Canada, with the exception of Crowsnest grain rates;
2. Closer supervision of competitive rates by the Board of Transport Commissioners;
3. Alberta's proposals for new legislation to prevent long and short haul discrimination especially with respect to transcontinental rates;
4. Saskatchewan's proposals for legislation somewhat similar to the Maritime Freight Rates Act for the three Prairie Provinces, but to apply on both inbound and outbound traffic;
5. Alberta's proposals with respect to "neutral" relationships in rates on raw materials and finished products;
6. A reorganized Board of Transport Commissioners with emphasis on a larger staff of experts; and
7. Manitoba's proposals that there should be more government control over and direction to the Board.

These matters are all dealt with separately elsewhere in this report.

3. BRITISH COLUMBIA

(a) Alleged Disadvantages

British Columbia does not stress its geographic disadvantages. The disadvantage of the mountainous terrain is not dwelt upon, perhaps because the mountain differential was removed on July 1st, 1949. It should be noted, however, that the differential in passenger fares has not yet been removed. British Columbia argues that this element of rate discrimination should be eliminated also. Counsel for the Government of British Columbia states in his argument that "Undoubtedly the existing transportation facilities have played a large part in the development of our province, but at the same time they (the railways) have been more than repaid for such services and we trust that it will never be even suggested again that British Columbia should pay additional charges for national transportation facilities because of its mountainous terrain." Counsel mentions but does not stress the fact that many of the products of British Columbia must travel long distances to their markets in Central Canada, the United States or overseas, and, similarly, that a great proportion of the manufactured goods consumed in the province must come from distant sources. In fact, it is admitted that some industries in the province would welcome higher freight rates inbound because of the protection which they would afford to local industries. British Columbia's position respecting the geographic factors is stated by Counsel as follows:

> "I might say now that in the final analysis the position which British Columbia will take on the question of geographic disadvantages is, in our opinion, that we must accept them as they are, and that all parts of Canada must accept their geographic position . . . If geographic disadvantages in other parts of Canada are to be taken into consideration, then there are geographic disadvantages on our part to which consideration should be given. But we are not asking the Commission to give any weight to them."

The chief characteristic stressed by the province is the export-import character of the economy. The basic industries—lumbering, fishing, mining and agriculture—depend on other Canadian markets and on foreign markets. It is claimed that because of the disruption of international trade, British Columbia has become more dependent than formerly on Canadian and American markets. A large proportion of the food and manufactured products comes from outside the province. The export-import character of the economy emphasizes the importance of distance and transportation costs on the long haul.

The British Columbia Lumber Manufacturers' Association submit that uniform percentage increases discriminate against long-haul traffic as compared with short-haul, and consequently disturb market patterns. The Association states that while the lumber manufacturers do not ask for special treatment because of distance to markets, nevertheless they do not want their disadvantages multiplied by horizontal percentage increases in freight rates.

Reference was made to the concentration of population in the lower Fraser Valley and on Vancouver Island and in the Okanagan and Kootenay Valleys as a result of the topography of the province and the distribution of its resources. Topography has resulted in a set-up of railway facilities which is quite different from that in the Prairie Provinces and in most of the rest of Canada. The bulk of the railway system consists of main line trackage; there are relatively few branch lines. It is stated that the only important extension of rail facilities required is into the Peace River district. A great part of the trackage runs through sparsely settled areas where little traffic originates. It is contended that trucking facilities complement rather than supplement the railway system. Long haul by truck is not common. Water transportation is very important, ocean services giving relatively cheap access to foreign markets and providing competition with

the transcontinental railway system as reflected in the transcontinental rail rates. The coastal services are also very important because many settlements along the coast are served only by water transport. Complaint was made of the inadequacy of these services and of the high fares and rates charged for them. Some of them are subsidized by the Government of Canada through the Canadian Maritime Commission.

In British Columbia topography has limited the number of possible transportation routes and of necessity the economy has developed in relationship to those routes. Difficult terrain has meant also that costs of construction and operation of highway transport are high compared with other regions.

(b) Conclusions concerning Disadvantages

1. The Waybill Analysis of the Board above referred to indicates that in the Pacific territory (which prior to July 1, 1949, included British Columbia and part of Alberta, but which has for rate purposes become part of the Prairie territory since the removal of the Mountain Differential on that date) approximately 88 per cent of the freight traffic moves at commodity rates and the average haul per ton is 618 miles. While approximately 60 per cent of this traffic moves 191 miles or less on the average, the revenues accruing therefrom amount to only 25 per cent of the total revenues on traffic originating in Pacific territory.

2. Like the Maritimes and the Prairie Provinces, British Columbia is an area of specialized resources and economic activity and is located long distances from its principal external markets, though the influence of distance is moderated by the availability of water transportation to overseas markets.

3. The industrial distribution of the gainfully occupied shows a heavy concentration of more than 50 per cent in the various service industries—transportation, trade, finance and other services. Manufacturing accounts for approximately 12 per cent, forestry 11 per cent, agriculture 8 per cent, mining and fishing 4 per cent and 3 per cent respectively and construction almost 8 per cent.

In terms of net value of production manufacturing is the most important industry with approximately 30 per cent of the total value of production. Forestry accounts for approximately 25 per cent, agriculture 13 per cent, and fishing, trapping and mining 17 per cent.

The relative importance of forestry, fishing, mining, and the construction and service industries is apparent. Nearly 60 per cent of the gainfully occupied are in this group of industries. It is clear that the stability of external markets is significant in the British Columbia economy, which depends on the production and export of a few primary products. The large construction and service industries are directly affected by the degree of prosperity in the primary industries.

4. A highly specialized and competitive economy has developed because of the limitation to a few very productive natural resources. Its primary products (raw, processed or semi-processed) are produced on a large scale and markets have been in industrialized countries like the United Kingdom and the United States rather than in Canada. On the other hand other parts of Canada have been the principal suppliers of imported capital and consumer goods.

5. More than 45 per cent of the new value of production of the province was exported in 1939 and more than 40 per cent in 1947 as compared with about one-third of all Canadian production. The main exports are primary and semi-processed goods—about 60 per cent are forest products, 20 per cent non-ferrous metals and fertilizers, and 10 per cent fish and fruit. The chief markets outside Canada are the United Kingdom and the United States. In recent years the former has contracted and the latter has expanded slightly. Lumber, salmon and apples have gone largely to the United Kingdom, and pulp, paper and chemical

fertilizers to the United States. Base metals have been exported to both countries. Thus, British Columbia is subject to the usual vulnerability of a Canadian primary producer selling in foreign markets and buying in a protected market.

6. Exchange difficulties and trade restrictions which have reduced and limited the United Kingdom market since the war have turned the attention of British Columbia producers to the United States and Canada. While the American customs tariff is the principal barrier to exports to the United States, transportation costs are also important as limiting access to Canadian markets in competition with other Canadian suppliers closer to them.

7. The rest of Canada, particularly Central Canada, and the United States are the chief suppliers of iron and steel, foods, textiles and clothing. The costs of rail transportation are important in this connection and explain British Columbia's concern to establish that there is water competition between the East and West coasts so that the transcontinental railway rates will not be disturbed.

8. The dependence of British Columbia on Eastern Canadian sources of supply and the growing importance of the Canadian market for the products of the area emphasize the importance of freight charges to the economy. The long haul and market competition explain the objection taken to uniform percentage increases, but in many instances the long-haul costs to the shipper have been mitigated by the existence of transcontinental rates. Water competition has led to low transcontinental rates and British Columbia insists that this competition remains a reality.

(c) The Principal Remedies suggested

The principal remedies suggested by British Columbia are:

1. The adoption of rates based more closely on the cost of service principle rather than the value of service principle;
2. Equalization;
3. Preservation of the transcontinental rates; and
4. Elimination of the Mountain Differential on passenger fares.

All of these matters are dealt with elsewhere in this Report.

4. NEWFOUNDLAND

(a) Alleged Disadvantages

In general, the economic and geographic disadvantages of Newfoundland are similar to those of the rest of the Maritime region, though perhaps accentuated. Nevertheless it seems appropriate to make individual reference to the province because of special circumstances which are: (1) the economy is still in the process of adjusting itself to a new customs tariff area; (2) the Union with Canada took place after the appointment of this Commission, and (3) important matters dealing with the rail rate structure in Newfoundland were before the Board of Transport Commissioners during the hearings of the Commission and were decided on January 22, 1951.

Newfoundland's submissions have to do mainly with rates which are dealt with elsewhere and with facilities which are considered in this chapter.

Since over half the population lives in some 1,300 settlements scattered along the coast and in most cases is without alternative means of transportation, coastal shipping is vital. Before Union coastal service was provided by the Newfoundland Railway and is now carried on by the Canadian National Railways to whom the former Newfoundland Railway vessels were entrusted. The Cana-

dian National Railways also operates some vessels owned by the Province of Newfoundland. These services are carried on under a number of handicaps. Some of the routes are very long and difficult. Because most of the settlements lack harbours or suitable harbour facilities, cargo and mail must be transferred between ship and shore by small boats, and bad weather interferes with transfer operations. A great deal of mail including parcel post is carried, sometimes displacing more lucrative traffic. The rate paid by the Post Office is only 50 cents a ship mile regardless of the amount carried. This is the result of a pre-Union contract between the Newfoundland Railway and the Newfoundland Department of Posts and Telegraphs which was taken over by the Canadian Post Office and the Canadian National Railways without alteration. Motor boats, motor schooners, and coasting vessels offer competition to the Canadian National Railway coastal service during certain seasons of the year, but the regular coastal service is relied upon for year-round transportation of passengers and mail. Except for a few years, the service has not been profitable, and it was the policy of the Newfoundland Government prior to Union to curtail the service as deficits increased. While there has been a gradual decline in the number of boats and ports of call since 1910, ten to twelve ports of call have been added since Union and larger ships have displaced smaller ones.

Complaint is made that the service is inadequate, particularly because of overcrowding. The Province asks for additional vessels, an upward revision of the mail contracts, and the subsidization of the steamships by the Canadian Maritime Commission. The Province believes that, with the extra revenue thus acquired, the regular coastal vessels could pay their way and the service maintained or even extended. Regulation of competing vessels is not thought to be practicable or desirable.

Improvements to harbour facilities, particularly at Corner Brook, Port aux Basques and St. John's, are said to be required. The establishment of one or more national harbours is urged, and the province suggests that one of them be made a free port. The establishment of a national harbour in Newfoundland was discussed by the delegates from Newfoundland and the representatives of the Canadian Government who negotiated the Terms of Union. The Canadian Government has stated that it will, "at the request of the Province of Newfoundland, and having regard to the best interests of the province, investigate the desirability of establishing one or more harbours in the Province as 'national harbours' under the National Harbours Board." (Statement on Questions Raised by the Newfoundland Delegation (v) 11 December, 1948.)

The main line of the railway in Newfoundland runs along a semi-circular route from Port aux Basques to St. John's, a distance of 547 miles. There are approximately 160 miles of branch lines. The railway is narrow gauge and needs improvement; rolling stock is inadequate and requires modernization and replacement. Grades and curvature make for poor operating conditions and there is considerable difficulty with snow during the winter in the central (Topsails) area of the Island. The railway has shown a surplus (without allowance for depreciation or debt charges) in only five years since 1923 when it was purchased by the Newfoundland Government from a private company for $2,000,000. The Canadian National Railways budgeted for an estimated loss of about $4,000,000 on this line in 1950.

The railway has been instrumental in opening up and developing the interior of the province. The change in trade channels as a result of Union, the recognition for rate-making purposes on through traffic of the Port aux Basques-North Sydney water link as an all-rail service, and the application of the Maritime Freight Rates Act will increase the importance of the railway to the province. The province suggests that the railway be converted to standard gauge in order

that the system may be integrated more fully with the railways on the mainland, or, if this should prove impractical, that the service of the railway be improved by reducing grades and curvatures.

The Province is also concerned about the adequacy of the all-rail route by way of North Sydney and Port aux Basques. Only a comparatively small percentage of the non-bulk traffic imported from the United States and Canada in 1948 entered Newfoundland by the North Sydney-Port aux Basques route, but the province believes that this route will be more largely used in the future.

While improvements are being made at North Sydney, the province believes that it is physically impossible to increase greatly the capacity of Port aux Basques. Furthermore, in winter the harbour at North Sydney is likely to be icebound, sometimes for several weeks, and the rail route in Newfoundland is frequently blocked with snow. Over 200 cars were held at Truro during the winter of 1949-50 and subsequently the "blockade" extended to Halifax and Saint John, N.B. It is therefore urged that alternative all-rail routes be established including routes to Corner Brook and Bay d'Espoir (which with the construction of 80 to 90 miles of railroad would avoid the Topsails region) and that the rates by these alternative routes be no higher than the North Sydney-Port aux Basques route. It is contended that if Louisburg is to be used as an alternative winter port in Nova Scotia, the extra cost of handling over the Sydney-Louisburg Railway and the provision of facilities for handling freight and passengers at Louisburg should be absorbed by the Canadian National Railways. The province points out that if the rate questions mentioned above are to be settled in favour of the province, the present route will become even more inadequate since the water carriers will be unable to compete. The railway believes that, given time, sufficient improvement can be made to handle the traffic offered.

It is stated that the Island is poorly supplied with highways, but the submissions with respect to highways have been withdrawn as they fall within the jurisdiction of the province.

Under the Terms of Union of Newfoundland with Canada it is provided that a freight and passenger service shall be maintained between North Sydney and Port aux Basques in accordance with the traffic offered, that for the purpose of rate regulation Newfoundland shall be included in the "Select Territory" and that through traffic moving between North Sydney and Port aux Basques shall be treated as all-rail traffic, and that all legislation of the Parliament of Canada providing for special rates on traffic moving within, into or out of the Maritime region shall, as far as appropriate, be made applicable to Newfoundland. (Terms of Union of Newfoundland with Canada, Sec. 32, ss 1-3.)

(b) Conclusions concerning Disadvantages

1. Undoubtedly Newfoundland suffers because of its insular position, its distance from markets and source of supplies, and the time required for adjustment to the economic changes incidental to its becoming a province of Canada.

2. It is clearly established that the province depends to a great extent on the basic industries of fishing, forestry and mining with particular emphasis on fishing.

3. Its lack of agricultural land and manufactures made it necessary prior to Union with Canada to draw its food and supplies from outside sources, principally the United States and Great Britain, and now these are in the main purchased in Canada.

4. Its transportation facilities are considerably below the standards of the other provinces of Canada.

(c) The Principal Remedies suggested

The principal remedies suggested by Newfoundland were:

1. Lower freight rates;
2. Improved facilities at North Sydney and Port aux Basques including the absorption by the Canadian National Railways of the extra costs occasioned when shipping has to be diverted from North Sydney to Louisburg as sometimes occurs in the winter season;
3. Absorption by the railways of differences in handling charges due to the narrow gauge railway system, or in the alternative a uniform system of railways with that of the mainland including a railway car ferry;
4. The establishment of a "Free Port"; and
5. The construction of a military road from Gander Airport to the sea coast at Bay d'Espoir.

All of these matters are dealt with elsewhere in this report.

5. CENTRAL CANADA

As previously stated the Provinces of Ontario and Quebec did not appear in the recent freight rate increase cases and did not make any representations to this Commission although they were invited to do so.

It is to be assumed that the reason for this abstention by the central provinces is that freight rates in Central Canada are not affected by any means to the same extent as is the case in the West and the East, because Central Canadian areas are subject to the shorter haul, and in any case railway rates there are largely protected by truck competition. This central area of Canada enjoys the advantage of a great variety of resources and cheap water transport as well as extensive truck transportation. These factors have combined to make this area the most densely populated and thus the most important market area in the country, as well as the largest Canadian source of manufactured goods. Local producers have relatively shorter hauls to this market than producers at the extremities. The large market and variety of resources together have produced a highly diversified economy.

Undoubtedly the Canadian customs tariff has contributed to the economic development of this area, but, even in the absence of the tariff, it would probably have been the most populous and most industrialized part of the country.

Local producers not only have the advantage of relatively short hauls to major markets within the area but also of competing carriers.

These, however, are advantages which accrue to the area because of location in relation to markets and technical developments in transport.

Though its chief market is in the St. Lawrence Valley, as the principal producer of manufactured goods, Central Canada is faced with a long haul to markets in the East and West for some of its products. The other sections of Canada contend, however, that this is no disadvantage to Central Canada as the freight charges are borne by the purchasers in any case.

During the hearings at Toronto submissions were made to the Commission by the Canadian Manufacturers' Association, the Ship-by-Rail Association and the Canadian Industrial Traffic League. These three Associations all urged co-ordination and regulation of all forms of transport. The Ship-by-Rail Association recommends the establishment of centralized control over all transportation agencies, including trucks; the Canadian Industrial Traffic League states that railways should not be excluded from the field of air transportation and that the regulation of all civil aviation should be transferred to the Board of Transport Commissioners. They all express the opinion that the railways are satisfactorily

regulated now. The provinces outside the Central Area on the other hand have made it clear that they do not intend to surrender the provincial control of trucks and that they regard truck competition as a weapon to keep down railway freight rates.

It seems clear that the Central Provinces are satisfied with the present methods of freight rate regulation. The horizontal method of increasing freight rates appears in general to have been found satisfactory in this area. The only complaint made in this regard was that of the Algoma Steel Corporation which claims to suffer the same kind of discrimination as that asserted by Dominion Steel and Coal Corporation in Nova Scotia. The Algoma Company is located at much greater distance from the centre of the area than are its principal competitors established at Hamilton.

D. The Incidence of Freight Charges

Many briefs submitted in British Columbia, the Prairies, and in the Maritimes (but particularly those in the Prairie Provinces) contend that they "pay the freight both ways". That is to say that the producers in those regions bear the burden of freight charges on outgoing shipments of goods produced and the consumers in the same regions bear the burden of freight costs on incoming supplies. The argument was addressed particularly to increases in freight rates.

There was considerable argument between the railways on the one hand and the provinces on the other as to the validity of this contention.

No attempt to settle the argument would be of any avail, but a few general observations may be made:

1. Many articles are produced in regions in Canada which are distant from essential markets in Central Canada and which must meet the competition of similar articles produced in or nearer to this common market area. In such a situation the producer more distant from the market is likely to find the differential resulting from freight rate increases burdensome, especially if the increase is of the horizontal percentage type. It may mean a reduced net price or curtailment of output, or both, to the more distant producer.
2. Availability of other forms of transport may be a determining factor in the question as to the incidence of increases in freight rates. Increases in railway freight charges may under certain circumstances tend to shift traffic from the railways to their water or highway competitors, if such other media of transport are available. In some regions other forms of transport are not available, at least not to the same extent. Furthermore, some goods do not lend themselves as readily to movement by other forms of transport. In such cases increases in freight charges may be imposed more readily upon long-haul traffic than on short-haul traffic. An example of this was seen in the recent case where the railways did not apply the last increase of 4% to competitive rates because of the fear of losing traffic, mainly in Central Canada, to their truck competitors.
3. If the area is one of the type called a "deficit area", that is, if it must rely on outside sources for its supply of capital and consumer goods, the probabilities are that increases in freight charges will be passed on to the consumer in that area.
4. The impact of increases in freight rates will probably be more serious upon producers in areas that are highly specialized economically, that is, areas in which the producer cannot turn readily from one article of production to another, as is the case of the potato grower in Prince Edward Island. Producers in areas that have a widely diversified economy are in a more favourable position in this respect.

5. It is always difficult to foretell the long run effects of a freight rate increase because of the trends, "normal", inflationary or deflationary which may be prevalent, although not apparent, at the time the increase is made. If prices are rising an increase in freight rates will impose less hardship on producers than if prices are declining.

6. It is impossible to generalize as to who bears the increases in railway freight rates. The answer depends on whether there is competition or monopoly on the particular article; whether the article is sold in a surplus or in a deficit area; whether there are other media of transport which can carry the article to the market, and whether the competition between the railway and such other media is strong or weak; whether the demand for the goods is strong and exceeds the supply; whether economic conditions are depressed or buoyant; whether articles of the type involved can be conveniently or profitably handled by the competitors of the railways. In each case there may be a different answer to the question.

E. Ratio of Transportation Charges to Prices

It is contended that areas which produce basic commodities of low value and which are subject to long hauls to their markets suffer more from increases in freight rates than areas which produce high cost articles subject to shorter hauls.

Information supplied to the Commission establishes the following:

1. That the ratio between freight rates and prices of the goods shipped under such rates varies greatly with the goods;

2. That generally the ratio is low on high-valued goods and considerably higher on low-valued goods;

3. That the ratio, of course, changes not only with changes in freight rates but also with changes in prices of goods;

4. That for a given commodity, the ratio is higher for the long hauls than for the short hauls.

The percentage of rates to the costs of the goods shipped varies from less than 1% in the case of some manufactured products to as high as 66% in the case of straw. The rate on canned goods may be approximately 4% of the value of the goods for a haul of less than 400 miles, 15% for a haul between 400 and 1,000 miles, and more than 18% on a haul over 1,000 miles. The rate on shoes and clothing may be much less than 1% of the cost even on a haul in excess of 1,000 miles; the rate on apples for a haul of over 1,000 miles may be 25% of the cost and on steel bars over 33% and on lumber over 40%. The provinces contend that for this reason it is wrong to assume that all articles can bear the same horizontal percentage increase, regardless of the cost of the article and regardless of the length of haul.

Similarly the Saskatchewan Coal Mine Operators (while agreeing that rates should be based on what the traffic will bear, and that freight rates cannot be adjusted to relieve geographic disadvantages) argue that flat rate increases per ton on coal are unjust when applied to different grades, and contend that the increases should be based on the quality of the product and be proportionately less for longer distances. In this connection it is to be observed that the Interstate Commerce Commission in the United States did provide for a smaller increase on lignite coal than on bituminous.

F. Inter-Territorial Traffic

The Waybill Analysis of the Board shows that of 2,893 carloads of traffic originating in Maritime territory on the four days covered by the study, 1,005 or nearly 35% were for destinations outside the Maritime territory and nearly all of it for Eastern territory, that is, for Ontario and Quebec.

However, in the Eastern territory, which includes the greater part of Ontario and Quebec, of the 10,400 carloads originating there, 8,390 or nearly 82% were destined for points within the area, about 9% for the Maritimes, about 7% for the Prairies and the remainder for the Pacific and Superior territories.

In the Superior territory approximately 50% of the 1,254 carloads originating there also terminate within the territory, the average haul being only 68 miles; of the remainder, 40% is destined to the Eastern territory and about 7% to the Maritimes, and 2% to the Prairies.

In the Prairie territory, of 8,993 carloads originating, approximately 1% were destined for the Maritimes, 6½% to Eastern territory, 13% to Pacific territory and 78% to Prairie territory. It must be noted, however, that a large amount of the Prairie traffic is wheat destined for Fort William, Port Arthur and the Pacific Coast, and that Fort William and Port Arthur are in the Prairie territory.

In the Pacific territory, of 1,899 carloads originating, approximately 1% were destined to the Maritimes, 12% to Eastern territory, 27% to Prairie territory and 59% to points within the Pacific area. The distribution of inter-territorial rail traffic as revealed by the Waybill Analysis tends to confirm the analyses based on other data of the economic inter-relations of the five major territories. In summary form the inter-territorial movements show the following:

CARLOAD ALL-RAIL TRAFFIC

Number of Carloads

Destination Territories

Origination Territories	Maritime	Eastern	Superior	Prairie	Pacific	Total	Percent
Maritime	1,888	979	3	21	2	2,893	11
Eastern	918	8,390	171	769	152	10,400	41
Superior	85	489	656	24	—	1,254	5
Prairie	83	599	57	7,062	1,192	8,993	35
Pacific	19	232	12	520	1,116	1,899	8
Total	2,993	10,689	899	8,396	2,462	25,439	
Percent	12	42	3	33	10		100

From this it might be noted:

1. A close economic relationship exists between Maritime and Eastern territories, which is obviously of greater relative importance to Maritime territory than to Eastern territory.
2. There is a comparatively large interchange of traffic between Prairie and Pacific territories.
3. The high volume of intra-territorial traffic indicated in Prairie territory must be qualified by the fact that the important movement of grain and grain products to Eastern Canada for domestic use or export has been classified as an intra-Prairie movement as previously explained.

4. Local traffic within Ontario and Quebec far outweighs the inter-territorial traffic to and from this territory. This would appear to indicate a high degree of self-sufficiency in this territory vis-a-vis the rest of Canada.

G. Importance of Commodity Groups

The Waybill Analysis divides all the traffic into five main groups and the figures indicate that:

Agricultural products comprise approximately 23% of all traffic; animals and animal products 5%; forest products 13%; mine products 27%, and manufactures and miscellaneous 31%.

H. Length of Haul by Commodity Groups

The Waybill Analysis indicates the average haul per ton of the various commodities that comprise the groups indicated under Heading G above. The figures indicate the following:

1. For agricultural products as a whole the average haul for all Canada is 751 miles, and 92% of the carloads is accounted for by commodity groups having an average haul of over 650 miles;
2. For animals and animal products the average haul is 662 miles and 75% of the carloads is in commodity groups with average hauls of over 500 miles;
3. For forest products the average haul is 396 miles but about 40% is in one commodity group with an average haul of 660 miles;
4. For mine products the average haul is only 227 miles, although bituminous coal, the most important commodity in this group, comprising 30% of the carloads, moved 386 miles on the average; and
5. For the manufactures and miscellaneous items the average haul is 456 miles, but 43% of the carloads was in groups averaging less than 345 miles and 30% in groups averaging less than 275 miles.

It will be observed that agricultural products are subject to the longest average haul.

The Waybill Analysis has been dealt with at some length because of the danger of placing too much emphasis on a sample which is little better than 1% of the total, even though representative dates were selected. Nevertheless it must be fairly indicative of the points raised under headings E, F, G and H. Information of this nature will surely be of much use to the Board, to the railways and to shippers in future cases before the Board, and will make for a better understanding of the mutual problems of all parties concerned. Consideration should be given to the question of continuing the practice of making such waybill studies by the Board.

I. Summary of Final Position taken by Provinces

It is apparent from what occurred at the hearings of the Commission that the position of the seven provinces has altered considerably since they appeared before the Cabinet in July of 1948. At that time they felt that the powers of the Board should be greatly enlarged to enable it to deal with economic and geographic disadvantages. But on the contrary the submissions proposed to the Commission tended rather to limit the effective rate-making powers of the

Board; for instance, to give greater control of the Board to the Government, to have Parliament provide subsidies to bring about equalization, to extend the application of the Maritime Freight Rates Act, etc.

In fact, the following may fairly be stated to be the ultimate position taken by these eight provinces with respect to economic, geographic and other disadvantages in regard to transportation:

1. British Columbia, Alberta and Manitoba are willing to accept the consequences of their natural disadvantages (and expect to retain any natural advantages) provided there is no discrimination in treatment between regions, and provided the disadvantages are not accentuated by artificial factors, such as national policies and particularly railway policies.

2. The Province of Saskatchewan takes the position that its economic, geographic and other disadvantages cannot be overcome by readjustment of the freight rate structure or by giving additional powers to the Board, but rather that Parliament should order a 20% reduction in all rates (excepting the Crowsnest Pass Rates) in Prairie territory and pay the difference as a subsidy to the railways.

3. The Provinces of New Brunswick and Prince Edward Island apparently feel that regulation by the Board is not the answer to their disadvantages, but rather that the answer lies in further reductions under, and extension of, the Maritime Freight Rates Act.

4. The Province of Nova Scotia likewise feels that the granting of further powers to the Board is not the answer to the problems raised by its disadvantages, but that the answer lies in compelling the Board by statute to retain rate relationships as they existed prior to April 8, 1948 (i.e. before the application of the first post-war horizontal increase in rates).

5. The Province of Newfoundland did not lay any stress whatever on the regulation of rates by the Board or the giving of additional powers to the Board. The position of the Province was stated by its counsel as follows: The railway has "imposed a freight tariff in excess of the Maritime rate and justifies it on the ground that it is appropriate to Newfoundland because of the conditions of transportation. If this question is once resolved in favour of the interests who are contending that the Maritime rates apply here, then the question of freight rates generally will be solved in so far as Newfoundland is concerned. In other words we would all be satisfied if we were given the benefit of the Maritime rates including the Town Tariff, which is not now in effect in Newfoundland." The settlement of the rate problem on that basis, plus the provision of better facilities, is the main case for the new Province as put before the Commission. The decision of the Board on January 22, 1951, seems therefore to have resolved its main difficulties.

6. All eight provinces adopted as a final position that the Board should not be an "economic planning board".

J. General Conclusions

In essence the main cause of complaint is that the outlying provinces suffer a disadvantage because of the long distances which separate them from their sources of supply and also from their markets—long-haul traffic, in some cases on primary commodities of low value, subjected to horizontal increases in rates.

All these provinces ask for lower freight rates although they suggest different methods of approach to this objective. The Prairie Provinces and British Columbia favour the equalization method; in addition to this Saskatchewan proposes a scheme of subsidies. The Maritime Provinces ask for reductions under the Maritime Freight Rates Act or for extensions of that Act.

Whatever the method of approach may be, however, it is in each case an attempt by shippers and consignees to secure relief from the disadvantages attributed to increases in rates by the horizontal percentage method, and at the same time to retain any existing advantages in rates which they now enjoy. The Maritime Provinces wish to retain the advantages of the Maritime Freight Rates Act and the Prairie Provinces wish to retain the Crowsnest Pass Rates on grain and flour. British Columbia asks for the continuance of the transcontinental rates.

The railways on the other hand are anxious to preserve the horizontal method of rate increases because of its simplicity of application, because they fear that they cannot raise adequate revenue without it by reason of truck competition in Central Canada, and because they enjoy a quasi-monopoly on long-haul traffic.

It is between these two viewpoints that the clash occurs.

The Board has held that it has no power to equalize geographic ,economic or climatic conditions. This is the position taken by the Interstate Commerce Commission in the United States. There is, however, one notable distinction between the situation in the United States and in Canada. This was pointed out by the railways themselves. It is this: Canada is served almost exclusively by two great transcontinental railroad systems, whereas the United States is served by several hundred regional railways. In the United States it is in the interest of each of the many railways to promote the business of producers on its line who are competitors with the producers on other lines running into the common market. In the language of counsel for the Canadian Pacific:

> "The situation in Canada is quite different. The two main railway systems usually serve all of the various areas. It is therefore not to the same extent in their interest to say that one area more distant than another is entitled to compete with the producing areas closer to the market, nor is it necessary to obtain traffic for its line that it should ensure that the more distant producer gets into the market at no greater increase in rates than the nearer producer. In these circumstances the Canadian railways have not themselves promoted the idea of exceptions to horizontal percentage increases. The situation is quite different in the United States."

The situation thus created is disadvantageous for Canadian shippers and localities when compared with those of the United States. It means that short regional lines are more beneficial to the communities which they serve than are our two great systems, which do not feel called upon "to promote the idea of exceptions to horizontal percentage increases," because their "region" is the whole country within which they act, in this respect, non-competitively since they unite in asking for the same horizontal increases.

It is true, of course, that in considering this question, the great difference in fundamental conditions between Canada and the United States must be taken into account. The Canadian shippers and consignees who complain of the effect of horizontal percentage increases are (1) producers who are situated at a great distance from the markets they seek to reach and (2) consumers who are far removed from their sources of supply; and in some cases the same person or corporation may be both a producer and a consumer. Producers and consumers in the United States with its large population have the advantage of a great number of widely distributed market and supply centres. The long haul is less in evidence there than in Canada. In this country, on the other hand, it is noticeable to what extent Central Canada, that is the eastern portion of Ontario and the western portion of Quebec, has become both the market centre and the supply centre for the rest of the country. Hence the long haul and the adverse effect of horizontal increases applied without abatement over the full length of that haul. Hence also the inevitable result of the continuance of this flat horizontal increase

policy: (1) a greater and greater concentration of industry in Eastern Canada (because freight rates are one of the factors in such cases), and (2) consistently rising prices for goods shipped to consumers in distant regions.

In attenuation of the disadvantageous position of Canadian producers and consumers outside Central Canada the following facts are pointed out:

First, "American freight rates since 1946 have been advanced by an average of 60 per cent, while Canadian rates have been advanced by an average of 42 per cent."

But whatever advantage this lesser average increase may have brought to Canadians in general, this statement of it does not dispose of the complaint of discrimination within Canada resulting from horizontal increases.

Second, "Canadian rates on some important articles of transportation were tapered off by the railways much more rapidly in relation to distance than corresponding American long-haul rates and it may thus be said that they already had 'maxima' incorporated into them when they were fixed."

Here again, while the original tapering may have been applied generously, the horizontal increase upon those tapered rates has the same discriminatory effect as in the case of all other rates. If these increases had themselves been "tapered," that is, limited by the application of maxima as will be explained later, the situation would have been more satisfactory.

This last statement appears to point out the problem seeking solution. The position of shippers and consignees in the regions of Canada outside the Central region is bound to deteriorate with the continued application from time to time of rate increases which by their nature must become more and more burdensome as they spread out from the shorter to the longer distances. Since tapering was found to be fair and feasible in setting the original rates on certain important articles of transportation, it would seem to follow that, to some extent at least, increases in those rates ought to have been tempered by a similar process. The railways should be able to plan and should have planned their revenue applications accordingly.

It appears therefore that the answer to the question raised lies mainly with the railways themselves, since the means of removing the cause of dissatisfaction is within their own initiative. It has been pointed out to the Commission that in this regard railway management in the past has often proceeded, in fixing freight rates, without sufficiently considering the interest of the community to be served, and without even showing a proper conception of the long-run interest of the railway.

There is no better evidence of the disturbed feeling in the country caused by the nature of the present freight rate structure than the fact that the seven provincial governments have united to complain of it; while on the other hand the two central provinces raised no protest whatever. There is no such thing as a freight rate grievance in Central Canada to arouse the people of that area as the people of the West and the Maritimes have been aroused.

The seven provincial governments were not the only ones to take notice of the general discontent prevalent in many parts of Canada.

In the summer and autumn of 1948 the two major Canadian political parties held conventions in Ottawa. In each case responsible delegates from the whole of Canada were present. These conventions likewise took notice of the discontent prevailing in many parts of the country over the freight rate situation and called for the holding of an investigation. At the Liberal Party's Convention, which

took place in August, 1948, a resolution was adopted unanimously, the beginning of which is as follows:

> "The Liberal Party recognizes that transportation has been a major economic problem of Canada. The overhead cost of linking East and West together has been a national concern from the earliest days. While great material achievements have been made, changes in operating costs and new methods of transportation are continually affecting the situation. The Liberal Party stands for:
>
> '(1) The maintenance of the integrity of the Canadian National Railways and the Trans-Canada Air Lines as publicly-owned and publicly-controlled services;
>
> '(2) The appointment of a royal commission thoroughly to review and investigate the whole Canadian transportation rate problem other than (a) the prescriptions contained in the proviso to subsection five of Section 325 of the Railway Act and in the Maritime Freight Rates Act, and (b) the application now pending before the Transport Board for a removal of the mountain differentials in order amongst other things (i) to prepare recommendations for an improved uniform basic rate structure for Canada, and as to accounting problems in so far as they affect uniformity of accounts, and the segregation of railway assets from non-railway assets and their incidence on fixed charges, dividends and other income, and (ii) to consider and report upon the principles and finding of facts upon which the recent order of the Transport Board for a twenty-one per cent increase in freight rates was based, etc.' "

In October, 1948, the Progressive Conservative Party in convention adopted the following resolution:

> "To Remove Freight Discrimination
>
> "The Progressive Conservative Party supports an investigation of freight rates, particularly in the relation to discrimination between the several geographical areas of the Dominion.
>
> "Our view is that the national policy requires that the several geographic divisions of this country shall share the benefits of and assume responsibility for a transportation system which will permit every part of this country to enjoy the benefits of our national and industrial resources without discrimination."

Among those who complain of existing conditions, nobody expects distance to be obliterated; nobody asks for a pooling of freight charges. It is fully recognized that those farther away must pay more than those nearer at hand. It is the relative position in which the parties are left by the present method of applying increases in freight rates that arouses the protest of unjust discrimination.

It would be most unfortunate for all concerned if the freight rate controversies of the last few years were to go on and on without end. These controversies have led to great expenditures of time and money, to expensive delays in the making of rate adjustments, and to the maintenance of an unhealthy feeling of unjust treatment in large sections of the country's population. There is no reason why, with judicious management, the relations between the railways and the people they serve might not be as friendly in the East and in the West as they are in Central Canada. The people of outlying regions should no longer find themselves in the position they have been in so far where, as appears from a study of the proceedings in the 21% Case, they stand between a Board which has to say that it has no information upon which it can order anything other than a flat percentage increase, and the railways, who, although they should possess all the necessary information for a reasonable planning of a fairly distributed increase (as is shown by the manner of their own rate adjusting), seem to be unable to do anything about it. The reforms recommended in the Chapter on "Accounting and Statistics" will no doubt prove helpful in this regard. The whole subject of horizontal increases is dealt with in another chapter.

Other measures which will prove helpful, if adopted, to the alleviation of the disadvantages of distance are those recommended in the Chapters on "Equalization", on "The Rail Link between East and West" and in various other chapters of this report.

Fortunately there is now an occasion at hand which justifies hope for the setting up of a better all-round state of things than now exists. This reference is to the general freight rates investigation which the Board is conducting. The policy on which the Government bases its commitment to the Board under Order in Council 1487 is there set out as being:

> "The establishment of a fair and reasonable rates structure . . . so as to permit the freest possible interchange of commodities between the various provinces and territories of Canada, etc."

The outstanding complaint today is that the present rates structure, especially since the application of the recent 45% increase, does not provide this "freest possible interchange of commodities".

* * *

The following three chapters deal in the main, although not exclusively, with matters arising out of paragraph 2(b) of Order in Council P.C. 6033, which reads as follows:

> "(b) Review the Railway Act with respect to such matters as guidance to the Board in general freight rate revisions, competitive rates, international rates, etc., and recommend such amendments therein as may appear to them to be advisable."

CHAPTER II

QUESTIONS ARISING OUT OF REVENUE CASES

1. HORIZONTAL INCREASES

The method of applying a uniform percentage increase to all rates is known as the "Horizontal Percentage Increase."

The seven provinces which opposed the 30 per cent and 20 per cent increase applications before the Board from 1946 to 1950 and attacked the horizontal increase method continued their attack before this Commission. Many submissions were made criticizing this method and asserting that it works great hardship upon shippers in the provinces subject to long haul on their traffic.

Examples of the Effect of Horizontal Increases

In order that the real grievance of the long haul shipper or consignee may be better understood, it should be pointed out that the disturbed relationship complained of is the actual money, (not the rate relationship), which is considered unfair. For instance, two shippers or consignees have, before the increase, a money difference between them of $10 brought about in this way:

Long haul shipper pays $20;
Short haul shipper pays $10.

Both shippers having their rates increased by 50 per cent, the following money relationship is established:

The $20 shipper now pays $30;
The $10 shipper now pays $15.

The difference between them after the increases is $15 instead of $10 as previously.

Practical illustrations can be drawn from different classes and different scales, e.g.:

5th Class traffic on Eastern "Schedule A" Scale

Former rate for 170 miles	32 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	47 cents
Former rate for 750 miles	63 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	91 cents
Rate difference before increase	31 cents
Rate difference after increase	44 cents

In addition to the complaint that there is too great a burden cast upon the long-haul shipper as compared with the short-haul shipper there is also the complaint that since rates are higher in the West than in the East the horizontal increase method further accentuates the disparity, e.g.:

5th Class traffic on the Western Distributing Scale

Former rate for 170 miles	36 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	53 cents
Former rate for 750 miles	93 cents
Apply increases of 21% and 20% (compounded) and this rate becomes	136 cents
Rate difference before increase	57 cents
Rate difference after increase	83 cents

The Railways' Submissions

The views of the Canadian National Railways are summed up in their submission as follows:

> "The Canadian National considers that a horizontal increase is the only satisfactory method of dealing with general increase cases and of distributing the burden equitably. This general statement must admit of exceptions as in the case of competitive rates and rates on certain specific commodities."

The Canadian Pacific Railway Company in its submission dealt with the matter at considerable length, but their views on the subject may be summarized as follows:

1. While admitting that there have been a number of exceptions in the application of percentage increases in the United States, the situation is different there where there are a large number of small railways whose interest lies in inducing new industries to locate on their lines;
2. Allegations made against horizontal increases do not take into account general increases in wholesale prices;
3. It is only by percentage increases that the competitive relationships between various producers can be maintained;
4. Alternative methods favour the more distant producer;
5. Exceptional cases should be adjusted on complaint at a subsequent hearing; and
6. Uniform percentage increases are the only rational answer because wholesale prices constitute the major reason for changing rates.

The Canadian Pacific dealt fully with the subject both by expert evidence and in argument of Counsel and claimed (a) that no legislative changes were required; (b) that the Board had full power to deal with the matter, and (c) that the Commission should make no recommendation with respect to horizontal increases.

Complaints of the Provinces and Others

The complaints about the horizontal increase method were many and varied, but may be summarized as follows:

That the application of rate increases by the horizontal increase method:

1. Disturbs existing "relationships";
2. Accentuates existing disparities;
3. Aggravates the disadvantage already suffered by long haul shippers;
4. Destroys existing "differentials";
5. Assumes that all traffic can bear the same percentage increase when this is not the case; and
6. Worsens the competitive position of manufacturers subject to long haul, especially when they have to bring materials in for fabrication. Many suggestions were made as to alternative methods. Among them were:

(a) That the amount of the increase should vary with the quality of the product and that it should be less for longer distances;

(b) That the horizontal method should only be applied if some limit is placed on the amount of the increase for "long hauls";

(c) That the Board should limit the increases by the application of maxima in cents per 100 pounds;

(d) That horizontal increases should not be permitted, and that the prohibition should be by statute;

(e) That the Board should provide for lower percentage increases on long haul traffic; and

(f) That all horizontal increases should be subject to the application of flat maxima on long haul and low valued traffic.

Treatment of the Subject by the Duncan Commission

The following excerpts from the report of the Duncan Commission seem to indicate the importance of this subject.

In the report which was made in September 1926 appear the following statements:

> *"Incidence of 'Horizontal' War Increases"*
>
> "There is one further very important feature of the railway situation, as it affects the Maritimes, which calls for special mention. In one sense it is connected with the problems that we have been discussing, but its immediate incidence is not so interconnected with the general problem as to make it impossible to deal with it separately. Indeed the reaction of the burden which it imposes is so great that, in our view, it should be dealt with as a special problem. We refer to the system under which, during the late war, flat percentage increases (known as 'horizontal increases') were added to railway rates."

The report sets out a table showing rates on iron and steel articles from Trenton, N.S., and Hamilton, Ont., to various points in Ontario, and shows the results of the application of percentage increases to the rates, which, though similar in percentage, are vastly different in dollars per gross ton, e.g. $5.60 from Trenton, N.S., compared with $1.79 from Hamilton to Georgetown, Ont.

The report then states:

> "By the mere operation of railway increases—and having no relation to any other business considerations—the burden which a Trenton plant has to meet now as compared with a Hamilton plant is much greater in money than it was formerly.
>
> The railway administration, in giving evidence before us, agreed that long-distance traffic, particularly heavy traffic, had been seriously prejudiced by the operation of the horizontal increase. It was, they said, their opinion that even on the present level of class rates, and considering expenses, the higher class goods are not carrying their full share of the expense of operations. They had made the suggestion to the Board of Railway Commissioners some two years ago—at a time when a reduction in class rates was being considered—that instead of reducing the class rates they should select what was considered basic commodities, such as grain, forest products, coal, iron and steel. The Railway Board, we were informed by the railway administration, felt themselves prevented from working out the proposition in that way, since when the advances were made they were made horizontally, and some declaration had been made at the time that when reductions came they also would be made horizontally.
>
> In view of the importance of railway rates to long-distance and heavy traffic, we have no hesitation in recommending that the matter should be taken into fresh consideration by the Railway Commission, that they should be relieved from the necessity of regarding themselves as bound by any such declaration as is referred to, but should be free to consider the whole question on its merits."

Attention must be given to these statements because one of the witnesses appearing before this Commission stated that, although the Duncan Commission and the railways themselves (as stated to the Duncan Commission) had acknowledged that horizontal increases are sometimes unsound, neither the railways nor the Board of Transport Commissioners has done anything about it.

The Canadian Experience

Since the Board was created in 1903 (and came into being in 1904) it has handed down several decisions dealing with rates generally—that is as distinguished from cases affecting only particular rates. Most of these may be and generally are referred to as "Revenue Cases".

1. In *1905* the Board ordered a general revision of class and commodity rates on all export traffic in Eastern Canada to the Atlantic seaboard. This may be called a "Reduction" Case.
2. In *1907* the Board, in the "International Rates Case" ordered a general reduction of the "Town Tariff" class rates in Eastern Canada, effective January 1, 1908.
3. In *1914* the Board, in the "Western Rates Case", ordered a reduction of approximately 10% in class and commodity rates in Western Canada.
4. In *1916* in the "Eastern Rates Case", the Board authorized increases in rates in the East, generally estimated to amount to a 5% increase. This may be called the first "Increase Case".
5. In *1918* in the case of "In re Increase in Passenger and Freight Tolls", the Board authorized a general increase in rates across Canada—approximately 15%.
6. In *1918* in the "25% Increase Case", pursuant to a report from the Board to the Government and an Order in Council passed under the War Measures Act, rates were increased generally throughout Canada by 25%.
7. In *1920* in the "40% Increase Case", the Board authorized increases of approximately 40% in the East and 35% in the West to be effective only until December 31, 1920, and on January 1, 1921, the increases were to be 35% in the East and 30% in the West.
8. In *1922* in the "7½% Reduction Case", the Board ordered a reduction of 7½% on certain basic commodities.
9. In *1927*, pursuant to the General Freight Rates Investigation, ordered by the Government in 1925, the Board ordered some reductions in distributing class rates in the West, and in export rates from Toronto and West to Quebec, and on rates on grain and grain products.

Following World War II the railways made applications for increases in rates of 30% and 20%; these two applications were dealt with in four decisions resulting in four increases.

10. In (a) an increase of 21% (1948).
11. (b) a further increase of 8% (1949).
12. (c) a further increase changing the 8% granted in 1949 to 16% (1950).
13. (d) a further increase changing the 16% granted in 1950 to 20% (1950).

So that the 30% application brought about a 21% increase and the 20% application brought about a 20% increase.

For the purpose of considering the question of "Horizontal Increases", it is important to examine only what the Board has done in the Increase cases.

The increases have taken place as a result of the following decisions:

I. The Eastern Rates Case in 1916.................... No. 4 above.
II. The 15% Case in 1918............................ No. 5 above.
III. The 25% Case in 1918........................... No. 6 above.
IV. The 40% Case in 1920............................ No. 7 above.
V. The 21% Case in 1948............................ No. 10 above.

VI. The 8% Case in 1949 .... No. 11 above.

VII. The 16% Case in 1950 .... No. 12 above.

VIII. The 20% Case in 1950 .... No. 13 above.

In the above eight cases the following points should be noted:

I. *In the Eastern Rates Case in 1916* the increases were *not* made by the "Horizontal Percentage Increase" method; the Board dealt with many individual items in the tariff and said, "Some articles may reasonably stand a greater lift in the schedules than others; on the other hand, the advances asked for in some items may be deemed too great, or even inadmissible. *Each item of the application must therefore be considered on its merits.*"

The Board proceeded to do so at great length and almost all of the increases granted were in cents per 100 pounds.

II. *In the 15% Increase Case in 1918*, which seems to be the first application for a straight 15% increase, the Board allowed it subject to several important exceptions:

1. In the case of all-rail movement from the east to the west where an increase of 15% was allowed in respect to the territory west of Port Arthur, but the increase was held down to 10% on the eastern balance of the through rate.
2. In the case of coal and coke, a flat increase not exceeding 15¢ per ton. The Board said: "This flat advance on the *long hauls* will, of course, be a great deal less than a percentage increase of 15%; but on the other hand, on the shorter hauls, it will be larger than the 15% increase would be. The flat rate will, however, bear less harmfully on the consumers generally."

   It should be pointed out, however, that the Board acted on its own initiative in changing the railways' request for a 15% increase to a flat increase of 15 cents per ton. It would appear that the Board was acting in the public interest in doing so, rather than in the interest of long-haul consumers when it added these words:

   "The necessity of this 15-cent increase *on a commodity of urgent necessity to the public* is much to be regretted. It is, however, inevitable. In order to increase railway revenues to an appreciable extent commodities constituting a large share of the tonnage carried must bear an appreciable share of increased rates."
3. Common clay and sand, gravel and crushed stone: increases "not more than 5¢ per ton."
4. Lumber rates: the Board refused to apply either a horizontal percentage increase or a flat increase in cents per hundred pounds, but applied different increases on rates to different destinations, varying from 3¢ to 5¢ per 100 pounds, and a straight 15% in others; all to maintain "rate differences" and to put the lumber rates "upon a more scientific basis than it has been in the past".
5. Transcontinental class rates: increase of 10%.
6. Transcontinental commodity rates: "I would not at the present advance . . . unless these rates are advanced in conformity with advances made by the American lines."
7. In the Pacific Territory "an increase of only 10% should be allowed, but, of course, no rates to be lower than the prairie rates as increased".
8. No increase on tolls and tariffs applicable to switching, weighing, demurrage, refrigeration, heated car service, storage or other special services.

III. *The 25% Case in 1918:* In this case the increase arose out of the increase in wages in Canada resulting from a similar wage increase in the United States following upon the McAdoo Award.

The Board in its report to the Government on July 25, 1918, pointed out that the McAdoo Award "is popularly supposed to increase rates 25%", but "that in a large number of instances, owing to maximum advance limitations and to a flat rate increase, which, while advancing in a higher percentage the rate for shorter mileages, holds down all longer movements, the increase of 25% is not obtained".

The Board's report dealt in Sections 1 to 20 with the territory east of Fort William and in Sections 21 to 37 with the territory west of Fort William, and in Sections 38 to 44 with such matters as rates between Eastern and Western Canada, export and import rates, differentials, etc.

In the result, class rates in the East were increased by 25%; and although they were also increased in the West by 25%, the increase in the West by 25% was applied to the rates in existence prior to the 15% increase case above referred to and the prior increase was cancelled.

In the case of commodity rates a 25% increase was granted both in the East and West, but in the same manner as in the increase on class rates, i.e. in the West the increase granted in the 15% case was cancelled and the 25% increase applied only to the rates in existence prior to the date of the 15% case.

There were, however, a large number of exceptions to the horizontal increase:

1. *In the East.* On coal and coke the increases were in cents per 2,000 pounds, depending on the amount of the existing rate, e.g. on rates up to 49¢ the increase was 15¢; on rates from 50¢ to 99¢ the increase was 20¢. (These increases also differed as between coal and coke.)

2. On stone, sand, gravel, brick, lime, plaster, cement, the increases were in cents per 100 pounds, e.g. sand and gravel, 1¢; lime and plaster, 1½¢; cement, 2¢.

3. Lumber increased by 1¢ per 100 pounds added to the tariff before the 15% Case, then increased 25%, subject to maximum of 5¢ per 100 pounds, and the increases granted in the 15% Case cancelled.

4. Pulpwood: increased 25%, not exceeding 5¢ per 100 pounds.

5. Cordwood, slabs, etc.: 1¢ per 100 pounds.

6. Wheat: striking out the 2¢ increase granted in the 15% Case and adding 25%, not to exceed 6¢ per 100 pounds.

7. Grain, flour, milled products: same as wheat.

8. Livestock: 25%, not exceeding 7¢ per 100 pounds.

In the West: There were somewhat similar exceptions on:

1. Coal and coke.
2. Certain oils.
3. Stone, sand, gravel, brick, cement, lime.
4. Lumber.
5. Grain and grain products.
6. Livestock.

The important thing to observe is that the Board in its report did consider numerous items in the tariff and granted substantial exceptions.

IV. *The 40% Increase Case in 1920.* In this case the Board allowed a 40% increase in the East and a 35% increase in the West to continue only until December 31, 1920, and on January 1, 1921, the increase was to be 35% in the East and 30% in the West.

There is one important observation by the Board which it is desirable to set out in full:

"In some industries the amount of increases in the rates themselves, is a consideration secondary to the preservation of the rate relationships from the points of production. For example: the maintenance of the existing spreads between the rates from the various mills in British Columbia was urged at the hearing by the lumber interests of the province. *While the principle of percentage increases must necessarily disrupt these relationships to some extent, it is considered important that in the working out of the tariffs such recognized differentials as have been referred to should be preserved so far as may be practicable,* even though certain rates may result which are lower or higher than they would otherwise be."

In granting the increase, the Board also made four important exceptions to the general increase:

1. No increase was permitted on sand, gravel, and crushed stone;
2. Increases on coal were limited to 10 cents, 15 cents or 20 cents per ton depending on the current rates;
3. The increase on cordwood, slabs, edgings and mill refuse was limited to 10%; and
4. No increase was permitted on milk rates.

V. *The 21% Case* (*March 30, 1948*). The Board's decision dealt almost entirely with the revenue requirements of the railways, and apart from coal and coke, and grain and grain products did not deal with specific commodities.

In the case of coal and coke a flat increase of 25¢ per ton was authorized regardless of existing rates.

In the case of domestic grain and grain products between points in Western Canada, and feed grain rates, the Board said "to increase these rates with no increase in the others (grain rates to the head of the lakes, etc.) would create a spread in the rates which it is considered would be unreasonable".

On the question of Horizontal Increases the Board had this to say:

"Strong exception was taken by the respondents to the granting of a straight percentage increase in freight rates. But, as I view the matter, this is the only workable and practical method of dealing with the question in order to provide the additional revenue required by the railways.

There were submissions that if increased rates were authorized there should be varying percentages of increase, the lowest percentage of increase being made on long hauls and the highest percentage of increase on short hauls; it was also suggested that maximum increases should be provided in order to avoid a very large increase upon relatively high rates from distant points of production to important markets. One difficulty with respect to the adoption of a varying or maximum increase is apparent, namely the lack of reliable traffic statistics from which to determine the additional revenue which would accrue from flat or maximum increases on particular commodities. Further there is not on record anything to enable any determination concerning the commodities and sections of the country and even the individual rates which could best bear the burden of an increase."

The inference here is that the Board would have considered the adoption of a method other than the horizontal method if it had had the necessary information before it.

In effect then the only exception to the Horizontal Increase was on coal and coke.

VI. *The 8% Case* (*September 20, 1949*). Again this judgment dealt almost exclusively with the railways' revenue requirements, and not with rates on specific commodities.

An 8% horizontal increase was authorized.

Coal and coke were excepted and subjected to an increase of 8 cents per ton.

In dealing with Horizontal Increases the Board said:

"At this time the Board is not in a position to give a final determination in respect to this contention because this matter is already the subject of a direction to this Board set out in Order in Council P.C. 1487 of April 7, 1948, in which Order in Council the Board was directed to make a thorough investigation of the rates structure of railways and railway companies which are under the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rates structure which will under substantially similar circumstances and conditions be equal in its application to all persons and localities subject to such special statutory provisions as affect freight rates."

VII. *The 16% Case (March 1, 1950).* This case cancelled the 8% increase authorized in the September 20, 1949, decision, and authorized a 16% Horizontal Increase.

The 8¢ per ton increase in coal and coke rates was increased to 16 cents.

The decision dealt almost entirely with the subject of railway revenue requirements, and the only reference to the question of Horizontal Increases is that contained in the decision of Commissioner MacPherson, who said:

"I concur in the Judgment of the Assistant Chief Commissioner although I would prefer to see some relief given by way of maximum increases on basic materials where the markets are long distances from the source of supply. I realize, however, that the Board cannot deal with the over-all revenue requirements and limit the increase in certain cases. To do so would entail a much more complete study of individual types of traffic than the Board is able to do at the present time. I also realize that the same revenue requirements would necessitate placing a higher burden on other traffic if maximums were to be prescribed.

"There is, however, an opportunity to consider this feature in the General Freight Rate Investigation. Furthermore, it is the privilege of anyone at any time to lodge a complaint with the Board as to any specific rate considered to be unreasonable or unjustly discriminatory. I would also think that the railways will, in their own interests, give careful consideration to any pleas for relief if such are made."

VIII. *The 20% Case (May 11, 1950).* This case simply increased the 16% authorized in the March 1, 1950, decision to 20% but did not increase the rates on coal and coke.

No specific rates were dealt with.

Nothing was said concerning the horizontal percentage method of increasing rates.

It will therefore be observed:

1. That during and following World War I and following World War II substantial increases in rates were made;
2. That, although in the early cases a substantial number of exceptions were made, and the same practice was adopted as that followed by the Interstate Commerce Commission, a different method was pursued in the later cases where the only exception to the horizontal increase was the flat increase made in regard to coal and coke;
3. That following World War II the Board seems to have treated the applications purely from the revenue point of view and without considering the ability of different commodities to bear the increases; and
4. That the chief reason for the Board's failure to depart from an almost rigid adherence to horizontal percentage increases is, on its own statement, that, in the cases before it, it did not have the necessary information. This is a situation which calls for reform, and it is to be noted from the quotations made that the Board seems to be about to institute this reform.

THE PRACTICE IN THE UNITED STATES AS INDICATED BY THE DECISIONS OF THE INTERSTATE COMMERCE COMMISSION

In Ex Parte 115 (208 I.C.C. 4) in 1935 the rail carriers applied for a 10% increase subject to maxima in certain cases, and exceptions in others. The Commission in its decision referred to the railways' departure from the uniform percentage plan. It is noteworthy that the application of maxima was on rates on products of agriculture, animals and animal products, products of mines, forests and various manufactured articles and miscellaneous items. The general application was denied, but permission was granted the railways to establish certain specified increases in rates and charges, some on a horizontal basis subject to maxima, until June 30, 1936, in view of the emergency then confronting the railroads.

In Ex Parte 123 (226 I.C.C. 41) in 1938 the rail carriers sought to increase all existing rates subject to certain exceptions. The Commission referred to the diversity of views with which they had "long been familiar", between the long haul shipper, who fears that a percentage increase will drive him out of business and who accordingly asks for a stated or flat increase, and the short distance competitor, who demands the benefit of his location and insists that the only equitable basis is one which imposes increased costs ratably with increased distance of movement. The Commission stated that there were objections to rates made on extended mileage scales with inflated gradations and including differentials resulting in the long haul shipper suffering most severely and the advantages of the short haul competitor being increased.

The Commission stated that the present attempt by the railroads to allocate the necessary increased revenue in flat amounts to be added to existing rates would be hazardous in its possible revenue results and would unduly ignore the element of distance as a measure of costs.

It also found that it would be unjust and unreasonable to impose upon certain recognized groups of commodities, namely products of agriculture and forests and certain products of mines, the same full basis of increase in rates as upon remaining commodities and accordingly applied a lesser amount of increase upon such commodities. It accordingly granted a 10% increase except upon products of agriculture, and upon animal products on which a 5% increase was granted. Flat increases of cents per 100 pounds were granted on anthracite; no increases were granted on bituminous coal, coke, iron ore, etc. Commissioner Lee said:

> "Percentage changes disrupt relationships and disturb business. The long haul shipper suffers and the advantage of the short haul shipper is increased where increases are based on percentages."

In Ex Parte 162 (264 I.C.C. 695) in May 1946, the Class I railroads filed a petition for a 25% increase subject to important exceptions as a result of a 16¢ per hour wage increase, increased costs of material prices and a decline in traffic and revenue.

The railways suggested the application of maxima on products of agriculture, and graduated increases ranging from 15¢ to 40¢ a ton on products of the mines, and they also proposed maxima on products of the forests.

The railways proposed that the increases should be made effective on one day's notice.

The Commission found that it had not been shown that an emergency measure was necessary and that some increases were justifiable but solely as a temporary measure pending further hearing.

The case was further heard in October 1946, in *Ex Parte 162* (266 I.C.C. 537). The Commission found that there should be substantial increases in the

basic freight rates and charges of the railways. All basic rates were increased by 20%, class rates and less-than-carload rates and commodity rates were, in the main, increased by 25% within "official territory" and 20% and 22½% between other territories. The record was held open for the purpose of giving consideration to any necessary readjustments or corrections warranted by the circumstances. The Commission pointed out that in the previous case the temporary increases were in general 6% on all commodities except basic commodities, where the increase generally was 3%, and that in official territory the increase was 5%.

Reference was again made to the contentions of competing long and short haul shippers and producers of many commodities as to the relative fairness of flat increases as against uniform percentage increases or combinations of percentage increases and maximum amounts of increase, and to the fact that many stated frankly that rate relations are more important than the amount by which rates may be increased.

It is important to note that in the Appendix to the decision, wherein are shown the actual increases granted, the increases, in instance after instance, are subject to maxima.

In Ex Parte 166 (270 I.C.C. 403) submitted in December 1947, upon further consideration increases in basic freight rates and charges as previously authorized were modified in certain respects, the modifications including both increases and decreases. The petitioners in their original application sought increases of 25% and 15% in different territories, but by a later amendment in September 1947 asked that these be increased to 38% and 28% respectively, and then by a further amendment on December 3, 1947, the increases sought were raised to 41% and 31%.

The Commission pointed out that the increases granted in Ex Parte 162 had not been upon a uniform basis; some flat increases were allowed and some percentage increases were subject to maximum amounts.

The Commission made some important observations which are here set out:

> "The outlook of the Commission and its powers must be greater than the interest of the railways or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. In view of the dominant role which the railways have played in the development of the country, these rate structures have been the product primarily of the many forces which have played on rail transportation. They have not been perfect but they have had a common purpose to accommodate the needs of commerce which possess an ever-present tendency to grow in volume and in the variety of commodities which compose it and to expand the radius of its distribution. Shippers have constantly manifested a desire to reach out farther and farther into distant markets. In no other country has there been such a degree of freedom of movement of commodities over great distances.
>
> Rail rates, still the backbone of all transportation rates, are geared into the economic life of every section of the country . . . Many producers, traders and consumers are wholly or mainly dependent on rail transportation. Rate adjustments in these circumstances must be worked out primarily in terms of rail transportation. Rail rate structures are a matter of delicate balance . . . It is impossible, as a matter of law or of economic policy, completely to disregard the way in which these rate structures have been developed and the purposes they serve . . . The problems cannot be approached with the interests of only one class of the community in view . . .
>
> As in all general rate increase proceedings, there has been acute disagreement between long haul shippers and those who are close to their markets . . . There are many competitive situations where no recognized differential relation of rates has been established but where nevertheless rates have been made to reflect competitive conditions and such situations greatly outnumber those in which fixed relations have been established. The application of a percentage increase to both long and short haul

competing shipments results in widening the amount of the difference between the rates, often to such an extent as to exclude the long haul shipper from the common market or compel him to reduce his prices so that he has no profit.

Carriers transporting for long haul shippers are also concerned with the maintenance of fixed differentials or differences, or at least in preventing increasing them to such an extent as to stifle competition and movement.

Contrariwise, shippers located so that their traffic moves shorter distances, pay or absorb a lower basic rate, and are subjected to a lesser amount of increase if the same percentage is applied to their rates as to the rates charged the competing long-haul shippers. This advantage they consider as justly due to their geographical situation and as properly to be insisted upon by them.

In resolving this conflict, both the carriers and the regulatory commission must have regard to the effect of the manner of increase upon the movement of traffic . . .

In this proceeding, it is shown that the petitioners, in formulating their proposals, decided upon a combination of percentage increases adjusted to regional needs with certain maximum limits to preserve traffic and lessen the unfavourable effect upon existing commercial relations and in some cases, stated flat amounts of increases . . . The system of making increases devised was generally similar to that employed by us in certain previous general rate proceedings . . .

There are also other situations where the allowance of any increases of substantial size must disturb pre-existing relations beyond the possibility of remedial correction so as to maintain the former competitive status.

We have the assurance of the petitioners of their intention to proceed by voluntary discussion and co-operation with the shippers and representatives of markets to devise and endeavour to put into effect such measures as will restore former competitivé relations as completely as possible. We expect full and prompt compliance with these representations . . ."

In the result the Commission granted increases from 20% to 30% in different territories but it is interesting to note that on almost every item maxima were fixed.

In Ex Parte 168 (272 I.C.C. 695) in December 1948, there was an application for interim increases, upon short term notices, in all basic freight rates and charges. The increases varied in certain territories, e.g. 6% in eastern and southern, 5% in certain western territories, and 4% in others, etc.

Immediate interim increases were granted. Maxima were imposed on such items as fruits, vegetables, lumber, sugar, etc.

In Ex Parte 168 (276 I.C.C. 9) submitted in May 1949, as a result of further hearing after the interim case the Commission granted increases in basic freight rates of 10%, 9% and 8% in different territories. The railroads had applied for 8% in the first instance but later by amended petition asked for 13%.

The case reviews the history of the eight increases since the early days of World War II and it is of interest to note the increases in particular commodity groups, e.g.

70% increase on manufactures;

48.8% increase on products of the mines;

54.7% increase on agricultural products;

66% increase for both animal products and products of the forests.

The Commission referred to rate differences which exist between competing areas "which are not of the dignity of being differentials but which are of much importance to the trade".

It referred to rates on lumber "previously designed to preserve existing rate relations" between western and southern lumber in the principal consuming territory.

It also stated:

"The petitioning carriers have the burden of initiating and maintaining rates that comply with the Act. The burden is on them in good faith and with all possible promptness and in a spirit of co-operation to devise and suggest, for the consideration of the shipping public, the rates which, in their judgment, will correct maladjustments."

It is noteworthy that maxima were imposed on iron ore and anthracite coal, and also that lignite is treated differently from anthracite. Maxima were also imposed on fruits, vegetables, sugar, lumber and on combination rates.

The decisions of the Interstate Commerce Commission have been dealt with here at considerable length not only because some of them were cited in argument at the hearings, but because they illustrate the similarity of the problems presented in both countries and the difficulties to which these problems give rise.

In 1946 when the Interstate Commerce Commission granted a 20% increase it made the following statement:

"There are here involved all the freight rates and charges, and all the passenger fares of the railroads and many other carriers of the Nation, large and small. What we do will *directly affect production and distribution* in the industries of the Nation, and the *welfare of its various regions*, as well as the transportation industry. It will have its effect upon the forces tending to economic stabilization or the reverse . . . No case has ever received from us more earnest study." (Ex Parte 162, 266 I.C.C. at 613.)

Basic freight rates were authorized to be increased by 20% but there were numerous exceptions, e.g. products of agriculture 15%, animals and animal products 15%, and many items were subjected to maxima in cents per 100 pounds.

This statement is impressive as also is the action which followed. The case expresses both the importance of action taken by regulatory tribunals dealing with freight rates, and the possible effects on production, distribution and the welfare of regions.

Conclusions

1. Applications for uniform horizontal increases to all freight tolls assume that all freight can, under all conditions, bear an equal burden of increase. This is an incorrect assumption.
2. Horizontal increases, although preserving rate relationships percentage-wise, disturb them in cents per 100 pounds (or other unit) in so far as shippers and consignees are concerned, and this is of much importance to them.
3. Horizontal increases aggravate the disadvantage already suffered by long haul shippers and consignees.
4. The remedy does not lie in the prohibition, statutory or other, of horizontal increases, but is in the hands of the railways themselves. The railways should make studies of traffic conditions in all their bearings and should present to the Board, (in accordance with the foregoing precedents) proposals showing not only their maximum percentage increase requirement, but also, among other particulars, varying percentage increases on different commodities, flat, instead of percentage increases when these are more suitable, and maxima in appropriate cases in cents per 100 pounds or other unit. Special attention should be given to long haul traffic and to rates on basic (or primary) commodities. The Railways should be in a position to do this especially in the light of new statistical procedures. But if the railways do not approach the task in this way, it ought to be the duty of the Board to see that they do so. Presumably an examination of the "waybill study" undertaken by the Board will help to provide it with the requisite "reliable traffic statistics" which it stated were lacking in the 30% application.

5. Legislative amendment to bring about the desired result is not necessary, and it would be difficult to provide an adequately detailed procedure by statute. Each case must stand on its own merits; different considerations will apply under different economic conditions; and undoubtedly different considerations apply in the case of small, as compared to large, increases. It is the sudden shock to the economy caused by large horizontal increases that raises the problem, and this fact should receive the close attention of both the railways and the Board.
6. Commissioner MacPherson's statement in the 16% Case, quoted above, appears to put the question in its true perspective.

Recommendations

No legislative amendment dealing with horizontal increases is recommended. The Railway Act in its present form gives to the Board ample power to deal with matters of this kind.

In all future increase cases it is to be hoped that the Board and the railways will pay due regard to the considerations referred to in this section.

2. RATE BASE AND RATE OF RETURN

The Canadian Pacific Railway asked the Commission to recommend that a subsection be added to Section 325 of the Railway Act to provide as follows:

> "Rates shall not be deemed to be just and reasonable unless, taken as a whole, they are sufficient to provide a fair return upon the investment in the railway property of Canadian Pacific Railway Company and the Board may from time to time determine the investment in railway property upon which the return is to be calculated and the rate of such return."

The proposal arose as a result of the submissions of the Canadian National Railways concerning its recapitalization. The Canadian Pacific stated that the Canadian National's recapitalization proposal constituted a potential threat to the continued existence of the Canadian Pacific as a private enterprise. The amendment is intended to meet that threat.

In introducing the amendment Counsel for the Canadian Pacific made the following statement:

> "If, in the public interest, Canadian Pacific is to continue as a privately owned system, and I submit it should so continue, then the capital invested in Canadian Pacific must be protected and additional capital attracted to the enterprise."

In support of the proposed amendment the Canadian Pacific Railway Company contended:

1. That the "requirements method" which has been used in recent rate cases is too uncertain and contentious to be a fair or equitable method of determining the general level of rates, and that "the most expeditious and satisfactory method of determining a just and reasonable level of freight rates is on the basis of a fair return on a reasonable rate base";
2. That the use of the rate base and rate of return for determining just and reasonable rates would be of great benefit to the Board, to the public and to the railways;
3. That the adoption of the rate base and rate of return technique would eliminate many of the problems and disputes which have arisen in recent cases in connection with the treatment of other income and the apportionment of interest and dividends and, consequently, the Board would be able to deal with rate cases much more expeditiously than has been the case in the past; and
4. That the requirements method is unfair in that it does not take into account the surplus earnings which have been plowed back by the shareholders and invested in rail property and on which the shareholders are entitled to a return.

The Canadian National Railway Company opposed the proposed amendment as did also all of the Provinces appearing before the Commission except Prince Edward Island and Newfoundland, neither of which discussed the proposal.

Position taken by the Provinces with respect to the continued existence of the Canadian Pacific Railway Company as a free enterprise

With the exception of Prince Edward Island, which urged unification of the two major railways under government ownership, and Newfoundland, which did not discuss the matter, all the Provinces stated that the Canadian Pacific Railway Company should continue to operate as a free enterprise. This is pointed out because the basis of the proposed amendment seems to be to safeguard the position of the Canadian Pacific Railway Company as a free enterprise.

Past Decisions of the Board of Transport Commissioners

In 1911 in the case of Dawson Board of Trade v. White Pass and Yukon Railway Company, 11 C.R.C. page 402, the Board said:

"It should hardly be necessary to say that it is equally the duty of this Board to protect the capital actually put into a railway by its shareholders, as it is to protect the public against unjust charges by those who operate the railway for the stockholders. If it were shown that the tolls heretofore in existence upon this line of railway only produced sufficient revenue to pay the proper expenses of maintenance of way and equipment, traffic, transportation, general expenses, and fixed charges, and a fair dividend to the stock-holders upon the money actually put into the road, I should refuse to be a party to reduction of tolls, even if they were the highest in the world."

It was also stated:

"No controlling commission has the right to make an order that would have the effect of destroying the earning power of the capital that honestly went into the utility—the capital invested should be permitted to earn fair and reasonable dividends."

In 1914 in the Western Tolls Case, 17 C.R.C. 123, the Board said:

"Indirectly, of course, consideration is or always should be given to the necessity of enabling railways to obtain additional capital extensions of service, betterment of facilities; and the enlargement of terminals has from time to time to be made often in the old settled districts of the country, and apart from any questions of fairness to the railways themselves; but as a matter of public policy, railway rates should be rates of such a character as to attract investment and to render railway securities marketable."

And in dealing with the contention of Counsel that rates must be based on the returns of the weakest line:

" . . . rates should be considered having regard to the traffic necessities of Western Canada and a fair return to the carrier apart entirely from any question of reserves of the company on the one hand or liabilities of the company on the other."

and

"Any industrial enterprise has the right to a reasonable surplus over and above its fixed charges and dividends. A railway is also entitled to a reasonable surplus."

In 1920 in the Edmonton, Dunvegan and British Columbia v. Central Railways, 26 C.R.C. 153, the Board said:

"The burden of increased rates is one which should be imposed only when there is a thoroughly established justification therefor. At the same time, in the present application launched by the railways for a general increase in rates, much material was submitted re-enforcing what is a matter of common knowledge, namely that in the period which has elapsed since 1914 railway costs of operation have practically doubled while rate increases have been very much less. The weighty responsibilities imposed upon the Board by Parliament compel the conclusion that rates inadequately remunerative are not only detrimental to the railway concerned but in a wider and more important phase are detrimental to the public served by the railway, because if the rates do not adequately remunerate for the service the efficiency will tend to deteriorate, and there will be progressive difficulty in obtaining those adequate facilities which are essential if traffic is to move."

Again in 1920 in the case, Governments of Manitoba and Saskatchewan v. Railway Association of Canada, 26 C.R.C. 298, the Board said:

"Further if the rates fixed are not fair and reasonable to the railways as well as to the public, the public will suffer inasmuch as no railway compelled to operate on a non-paying basis can furnish either efficient service or adequate facilities for the handling of traffic."

and

"It will, I think, be admitted that an honestly organized and efficiently managed railway should be in a position to earn annually, over and above its operating expenses and costs of maintenance, such a sum as will enable it to pay its interest and other proper charges, and generally to maintain its credit and standing in the financial world."

In 1927, in Re General Freight Rates Investigation, 33 C.R.C. 127, the Board said:

> "There is no occasion to labour the question that the railways must receive sufficient revenue to efficiently operate, to provide for all legitimate needs, and to make fair return to those whose money is invested in such business undertaking. The duty of the Board in this regard is recognized and was openly expressed even by those who, in individual instances, have asked for decreases in tolls levied upon themselves, or their business. We are all agreed that rates cannot be reduced to a level which would cripple the operation of the roads, or would make it impossible for them to effect such yearly increases in mileage and equipment which the growing necessities of the country demand."

And

> "For a rate controlling body, as this Board is, created by Parliament, for the express purpose, as recited in the Order in Council, of fixing, determining and enforcing just and reasonable freight rates, based upon the principle of fair return, to make or to recommend reductions or readjustments in freight rates, which would bring any one railway company, giving vast transportation service in this country, to a state of financial condition where it has to face the possibility of a deficit, or shortage, in amount required to pay fixed charges and dividends . . . would be entirely subversive of the principles of its constitution, of the highest interests of this country and of the true spirit and meaning of the Committee of the Privy Council, which delegated to this Board the duty of investigating the whole freight rate structure."

The implications from the statements made in the decisions above referred to are: (1) that the Board has over the years acted on the basis that no order would be made that would imperil capital funds actually invested in the transportation systems; (2) that the Board has for a considerable period at least recognized the principle of a "fair return" to the carrier "on capital that honestly went into the utility"; (3) that the capital invested should be permitted to earn "fair and reasonable dividends"; (4) that the rates should be of such a character as to attract capital; (5) that a railway is entitled to earn a reasonable surplus, and (6) that rates should enable the railway to maintain its credit and standing in the financial world.

The Board has, however, made it equally clear that this is not its only function; the rates must be just and reasonable not only to the railways but also to the shippers and consignees.

In the 21% Case decided on March 30, 1948, the decision of the Chief Commissioner dealt with the question of Rate of Return, and after referring to the practice in the United States he said:

> "The Railway Act of Canada does not lay down specific directions as to how we are to proceed, or what the Board is to take into account in fixing rates. The duty of the Board under the Railway Act is 'to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require'.
>
> "In previous steam railway rate cases the Board has not based its decisions on the relationship of net railway operating income to the investment in railway property used in transportation services. Nor do the railways in their present application ask the Board to fix a rate of return on their investment in railway property used in transportation services.
>
> "I think, however, that we might appropriately have some regard to the rate of return on the amount invested by the railways in railway property used in transportation services, as a test by which the reasonableness of the rates may be judged. One difficulty, however, is in ascertaining the value of the railway properties so used in transportation services.
>
> "The determination of the value of investment in railway property used in transportation services in Canada has never been undertaken. And the question is much too extensive and complicated a problem to be taken into consideration at this time.

"The Canadian National Railways and Canadian Pacific Railway Company, as an indication only, in their foundation exhibits, submitted to the Board that even with a thirty per cent increase in freight rates at the level of traffic anticipated, at the time such exhibits were prepared, the rate of return would only slightly exceed three per cent. A desirable rate of return for all Class 1 United States Railroads is considered to be in the vicinity of five and one-half per cent."

He then proceeded to consider the "financial requirements" of the Canadian National and Canadian Pacific railways and dealt with such matters as fixed charges and dividends, additions and betterments, maintenance of way and structures, maintenance of equipment, depreciation and estimates of railway operating income, and under the heading "Financial Need of Railways" said:

"It is abundantly clear that the applicant railways have established financial need for greater revenue, to enable them to continue to furnish for the country as a whole adequate and efficient transportation services, the necessity for which is vital and is acknowledged by everyone. This need has not been occasioned by fault of the railways, but by greatly increased operation costs brought about by most substantial advances in cost of materials and increases in the levels of wages and salaries. This situation can only be met by permitting an advance in rates and tolls.

"The next question for consideration is the determination of which, if any, of the railways should be taken as controlling the rates question.

"The Canadian National Railways and the Canadian Pacific Railway are the only two railways operating throughout the whole of Canada. The examination of the financial situation of the railways has been directed throughout the proceedings almost entirely to these two large transcontinental systems. The transportation operations of the other several railways are largely confined to somewhat restricted areas. It would, therefore, seem apparent that no one of these other railways can appropriately be taken as a guide or measure by which to determine what would be just and reasonable rates. That is rates just and reasonable to both the users of the railways who have to pay the rates, and to the railways."

The Chief Commissioner then made an estimate of the "Deficiency in Revenue" of the Canadian Pacific Railway based on the "Requirements" of that company for dividends, fixed charges and allowance for surplus, and estimated that it would require an increase of 21% in rates "to give the Canadian Pacific Railway Company the additional revenue required," and said: "Consequently I would allow the railway companies a general advance in freight rates . . ." He expected that this would give the Canadian Pacific an "even balance sheet at the end of its present fiscal year of 1948 and a small surplus on its railway transportation operations; but it may leave the Canadian National Railways somewhat short of their full requirements".

In the decision of the Board handed down on September 20, 1949, which constituted a review of the 21% Case and a consideration of the 20% application of the Railways the matter of a Rate Base and Rate of Return was again dealt with and the Chief Commissioner said:

"Counsel for the Canadian Pacific Railway endeavoured to show that a rate base had been established as a result of proper deductions from Exhibit 49-49 and the evidence in its support. The respondents refused to consider it open to the applicants on the hearing of this application to found their application on a rate of return on a rate base. The applicants did not when such objection was made by the respondents, apply to amend their application so that there would be before the Board as an alternative to the dollar requirements of the Canadian Pacific Railway a full discussion of a fair rate of return on a rate base. However, in view of the importance attached to the evidence and argument respecting rate base by counsel for the applicants I think it proper to make this brief comment.

"It is important to bear in mind that the introduction of the evidence and exhibits relative to the suggested rate base constituted a feature introduced into this application which feature was not submitted for consideration in the 21% Case. In the present

application the railway has introduced considerable further evidence pertaining to the value of its property and has asked the Board to make a finding as to what, in the circumstances, is a fair rate base and a fair rate of return. The railway contends that such a finding would fully justify the reasonableness of the rate increase now applied for to both the shippers and the railways."

Then after dealing with the railway company's exhibit he said:

> "There may be advantages in being able to accept the statements of the company and disadvantages, from the standpoint of all parties, in making a rate base determination by other means. However I do not believe that such considerations justify me in determining without further evidence and investigation that the investments have been prudently made, and that the revenues have been sufficiently accounted for. Notwithstanding, therefore, the very able and learned arguments advanced by counsel for the Canadian Pacific Railway and notwithstanding the evidence of the learned experts, I accept the arguments advanced for the Province of Saskatchewan and the Maritime Transportation Commission that much more evidence than that adduced will be necessary to justify this Board in deciding that from this exhibit and the evidence in its support a rate base had been established for the purposes of dealing with this application."

Again in this case the "financial requirements" of the Canadian Pacific Railway were considered and the 8% interim increase granted was arrived at by considering the revenue deficiency of the Canadian Pacific taking into account its requirements to meet fixed charges, dividends and allowance for surplus.

The 8% increase was subsequently further increased to 16% by a decision of the Board rendered on March 1, 1950, following an appeal to the Supreme Court of Canada, and later was further increased to 20%—in each case based on estimated deficiencies in the revenue of the Canadian Pacific Railway to meet the financial "requirements" of that company.

To summarize the foregoing:

1. At no time in the history of rate regulation in Canada has the Board determined the level of rates for Railways in Canada on the basis of Rate Base and Rate of Return.
2. The Board in the post-war increase cases has used the Canadian Pacific Railway Company as the "yardstick" or guide or measure in determining the amount of the increase to be granted to the railways of Canada, even though it has said that the requirements of the Canadian National Railways should not be entirely disregarded and "some regard must ... be had to the needs of all the railways".
3. The Board said in its decision of September 20, 1949, that it did not have sufficient evidence before it to enable it to determine a "rate base" or the "investment in railway property" of the Canadian Pacific Railway upon which a fair return could be calculated.

The Practice in the United States

In 1920 the Transportation Act was passed. That Act was described as "radically constructive," and its provisions with respect to the rule of rate making were hailed as a "solution" to the railway problem.

This rule which was incorporated in the Interstate Commerce Act as Section 15a read as follows:

> "In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish or adjust such rates so that the carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient and economical management and

reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different portions of the country."

For the first two years Congress set as a rate of return 5½% but authorized the Commission to add up to ½ per cent for capitalizable improvements or betterments.

(The constitution of the United States provides that private property shall not be taken without the payment to its owner of due compensation. Hence the necessity which is felt to ensure that this safeguard to property rights shall be respected in legislation. Constitutional limitations of this kind do not exist in Canada. Parliament is free to prescribe any form of regulation which appears to it to be fair and reasonable.)

This rule of rate making failed to provide the railways as a whole a fair return on the fair value of their property and in 1933 Section 15a was replaced by the following (which is practically identical with the present Section 15a):

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical and efficient management, to provide such service."

It is interesting to note that in the years 1921 to 1933 (both inclusive) the rate of return on investment, arrived at by the process of valuation, of Class 1 Roads in the United States varied from 1.24% to 4.96% and from 1933 to 1944 from 1.43% to 5.5%, and in no year during that period did the return equal 5¾%.

Although the railways failed to earn the stipulated rate of return, the Interstate Commerce Commission in 1922 instead of raising rates, ordered a reduction, and denied proposed increases in 1926 and 1931 because of depressed conditions, and in the five-year period from 1931 to 1935 at no time did the rate of return equal even 2%.

While it is true that the net railway operating income is used by the Interstate Commerce Commission to determine the rate of return for the railways as a whole on their investment in railway property used in transportation service, and that valuations of railway properties have been made at tremendous expense and over a period of many years, and that the Commission has consistently referred to the ratio of net railway operating income to investment in railway property, nevertheless it has not been found practicable to provide rates which would yield a fair return to the railways as a whole in that country.

To summarize the experience in the United States:

1. The Act of 1920 which attempted to make a statutory "fair return" rule was found to be unworkable;
2. The Commission found that it was impossible to prescribe rates which would give the railways as a whole a fair return on investment in railway property; and
3. The Commission gives consideration to the return on railway investment, but it is neither the main nor only test used in determining just and reasonable rates.

Present Powers of the Board of Transport Commissioners

No one appearing before this Commission seemed to doubt that the Board, under existing legislation, has the power to determine just and reasonable rates on the rate base and rate of return method. Indeed the Canadian Pacific Railway Company in its submission stated (before the introduction of the proposed amendment) that:

1. The Board is equipped to adjust the general level of rates from time to time and to determine the fairness of such rates to both shipper and railway;
2. No amendment is necessary to apply the principle of fixing general rate levels on the basis of a fair return; and
3. The determination and rate of return should be left to the Board, and such rate should be adjusted from time to time to reflect changing economic conditions, and the Board's discretion should not be limited by Act or otherwise.

The Board itself has never questioned its right to base its decisions on the rate base and rate of return method, but as late as 1948 pointed out that the determination of the value of investment in railway property used in transportation services has never been undertaken and said: "The question is much too extensive and complicated a problem to be taken into consideration at this time." It will be observed that the Board has specifically "left the door open" for consideration in the future.

It has been held by the Judicial Committee of the Privy Council that the Board's jurisdiction is "of the widest possible nature; its discretionary powers almost absolute in their breadth and freedom".

The question then of whether any amendment to the Railway Act is necessary to give the Board power to fix and determine just and reasonable rates on the rate base and rate of return method, must be answered in the negative. The Board has such power without amendment to the Act.

The Board has power to use the requirements of the Canadian Pacific as a yardstick or measure in determining what the level of the rates is to be. The Board likewise has power to use the rate base and rate of return method as applied to the Canadian Pacific Railway. Therefore no amendment is required to the Railway Act.

Conclusions

The questions raised by the proposed amendment, in the final analysis, are:

(a) Should the Canadian Pacific be made the yardstick by statute? and

(b) Should there be a statute which in effect places a "floor" for just and reasonable rates as a whole, the floor being a fair return on investment in railway property?

1. The Commission knows of no country where one railway is by statute made the yardstick for the determination of rates, not only on that railway itself, but on all other railways. The reasons would appear to be obvious: (a) conditions may change; (b) the proposed principle would involve the assumption that the railway so chosen is and will continue to be efficient and a proper yardstick under all circumstances; and (c) it would also assume that its adoption is in the interest of the country and of all other railways as well as the railway so chosen. But changing conditions may well be a reason for changing the yard-

stick, and the assumptions in (b) and (c) above cannot properly be made. For these reasons it would be unwise to fetter the Board by a statutory yardstick of this kind.

2. The experience in the United States as outlined above shows clearly that a statutory floor based on a fair return is impossible of achievement. It must be obvious to all that there may be periods of economic distress when no matter what the Statute provides in the way of a floor of the kind proposed, the Board could not set rates which would yield a fair return on property investment.

3. The present Section 325 which recognizes the powers given to the Board "to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require", are broad and sweeping and they should remain so and should not be limited in the manner suggested by the Canadian Pacific's proposed amendment.

4. Rate making is of importance both to the public and to the railways. The purpose of regulation is to ensure fair rates to the public and to the railways since it is through rates that the railways carry on and earn a profit. If rates are too low adequate service is endangered and this is against the public interest. If rates are too high traffic may cease to flow and this is against both the interest of the public and of the railways. It is for these reasons that regulatory bodies are expected to fix and determine just and reasonable rates. The Board must determine both (1) the general level of rates and (2) the justness and reasonableness of particular rates. All rates must be quoted with a view to a preconceived total return. They have a tendency to remain for long periods at a certain level which is altered only to meet changes in economic conditions throughout the country. Rates are considered at such times as a whole rather than individually.

The task of the Board in fixing, determining and enforcing just and reasonable rates, involves a duty to both the railways and to the public; the Board must therefore be in a position that will enable it to determine, in so far as possible, the balance which will bring about this desired end. But since economic conditions may be such that different considerations exist under one state of affairs than under another, it is not proper to lay down the priority which should be given to the principles which guide the Board. The Canadian Pacific by its proposed amendment, asks that priority be given to the principle of a fair return on investment; yet experience has shown that such a factor may not be the guiding factor, it may be one which in times of economic depression must give way to other considerations. The procedure of rate making must be left flexible, and this flexibility now exists under the Railway Act.

5. If the proposed amendment submitted by the Canadian Pacific Railway were adopted it would tend to make the Board mere computers of a rate base and a rate of return, and calculators of the amount of increases necessary to bring about that rate of return. The Board should not be so atrophied. The Board's duty is to consider the justness and reasonableness of rates not only as a whole, but in particular as well. Fair return on property investment may be one of the tests; it must not be either the sole or guiding test.

Recommendations

The Commission does not recommend the amendment to Section 325 of the Railway Act as proposed by the Canadian Pacific Railway Company.

3. DELAYS IN FREIGHT RATE REVENUE CASES

The Canadian Pacific Railway alleges that the great delay in the disposition of general revenue applications made by the railways constitutes a major problem for them.

The Company prepared and submitted memoranda containing a list in chronological order of the outstanding events that occurred in respect to the recent rate applications both in Canada and in the United States. These are annexed hereto as Appendices "A" and "B" respectively.

They pointed out that one proceeding in Canada (now known as the "21% Case"), induced by a wage increase that came into effect on June 1, 1946, was pending from October 9, 1946, to April 8, 1948.

They compared the time taken in the Canadian application with that taken in similar applications in the United States before the Interstate Commerce Commission where, for example, in Ex Parte 162 in 1946 an interim increase was granted sixty-six days after the application was filed and the permanent increase became effective seven months and twenty days after the filing of the application. Similar comparisons in Ex Parte 166 in 1947 showed lapses in time of three months and three days for the first interim increase, two months and twenty-three days for the second interim increase, three months and fifteen days for the third interim increase, and three months and fourteen days for the permanent increase. These proceedings before the Interstate Commerce Commission in the United States were contrasted with the delay encountered before the Board in Canada in the aforesaid 21% case, where no interim increase was granted and the permanent increase was not made effective until nearly eighteen months after the filing of the application.

Both railways indicated that one of their major problems during the last four years was the "imbalance" between operating revenues and operating costs resulting from the "time lag" between rising costs and rate adjustments. Estimates were submitted of losses suffered by the railway companies amounting to many millions of dollars (for both railways in excess of $150 million) as a result of this so-called "time-lag". Counsel for the Canadian Pacific, referring to its deficiency in rates stated: "So there is about $80 million that is now water over the dam that can never be recouped by rate increases."

It was stated that there was criticism in the United States even of the much shorter periods of delay by the Interstate Commerce Commission.

Conclusion

It is necessary in the public interest that the Board should proceed with the utmost possible expedition when dealing with general revenue applications, whether made by the railways for increases or by the shippers for reductions in rates.

These applications are always made having regard to conditions existing at the time. If their determination is allowed to drag over a long period of months or even years, there is a probability of irreparable injury being done to those concerned. In the long run nobody benefits from such a state of affairs.

Recommendations

It is recommended accordingly:

That where the railways on the one hand, or applicants for reduction on the other, make out a prima facie case of need for increases or decreases in tolls,

the Board should consider the desirability of granting interim relief at the earliest possible date pending the final disposition of the application. The recommendations made in another chapter regarding uniform accounting and statistics will facilitate this desirable procedure.

No legislation is required to implement the recommendation made here on this most important subject. It is a matter of procédure which, under the Railway Act, the Board has power to regulate of its own motion.

APPENDIX "A"

MEMORANDUM OF DATES

Date	
1946	
October 9	— Railway Association launched application for 30% increase in freight rates (general wage increase to railway employees amounting to 10¢ per hour about to become effective retroactively to June 1, 1946. Estimated that such increase would add approximately $40,300,000 per annum to railway operating payroll of all the companies affected).
1947	
February 11	— Opening of hearings before Board.
February 11 to May 9	Hearings before Board in Ottawa.
May 22 to July 10	Regional hearings in Saint John, N.B. Halifax, N.S. Charlottetown, P.E.I. Regina, Sask. Vancouver, B.C. Edmonton, Alta. Winnipeg, Man. Toronto, Ont. Montreal, P.Q.
July 14 to August 14	Hearings in Ottawa.
September 22 to October 17	Hearings in Ottawa.
November 10 to December 17	Hearings in Ottawa.
December 17	— Judgment reserved after 150 days consisting of 122 days of evidence and 28 days of argument.
1948	
March 30	— Judgment delivered authorizing 21% increase. Order No. 70425 — Formal Order of the Board.
April 2	— Wire, Premier of B.C. to Prime Minister requesting suspension of 21% increase.
April 3	— Wires, Premier Manitoba and Maritime Board of Trade to Governor in Council requesting suspension.

April 5 — Tariffs filed effective April 8 increasing rates 21%.
Wire, Premier Alberta to Prime Minister requesting suspension.
Further wire, Maritime Board of Trade to Governer in Council requesting suspension.

April 7 — Wire, Premier Saskatchewan to Prime Minister requesting suspension.
P.C. 1486 declining to suspend 21% increase.
P.C. 1487 directing Board to conduct general investigation.

April 8 — 21% increase went into effect.

April 12 — Announcement by Board of General Freight Rate Investigation.

April 26 — Provincial Premiers meet Federal Cabinet and submit brief.

July 14 — Wage increase 17¢ an hour announced, retroactive to March 1st, 1948.

July 20 — Provincial Premiers again meet Federal Cabinet in Ottawa and submit further brief and also lodge Petition of Appeal.

July 27 — Railway Association launched application for 20% increase (15% interim) and requested the Board to set application down for hearing "at the earliest possible date in September next".

September 9 — C.P.R. received notice of motion of provinces dated August, 1948, for order staying all proceedings in 20% application pending disposition of appeal to Governor in Council.

September 21 — Hearing of motion of provinces to stay and application of railways for early date for hearing. Chief Commissioner stated that the Board's engagements would not permit it to fix a date for the hearing before end of year and fixed Tuesday, January 11th, to commence hearing.

September 27 and 28 — Hearing of appeal before Governor in Council.

October 12 — P.C. 4678 directing review in 21% Case.

December 29 — P.C. 6033 appointing Royal Commission.

1949

January 11 to February 24 — Hearings before Board on review of 21% Case and on 20% application.

March 28 to April 5 — Continuation of above hearings.

April 5 — Judgment reserved after 21 days of evidence and 7 days of argument.

September 22 — Judgment delivered authorizing 8% interim increase.

October 6 — Notice by Canadian Pacific of application to Board for leave to appeal to Supreme Court of Canada.

October 11 — 8% interim increase went into effect.

October 27 — Board granted leave to appeal.

October 31 — Chief Justice of Canadá made order that Case on Appeal be filed on or before November 21, 1949, Factums of the parties to be filed on or before November 30, 1949, and that appeal be set down for hearing on December 5, 1949.

December 5, 6, 7 and 8 — Argument of Appeal before Supreme Court of Canada. When judgment reserved on December 8th, Chief Justice announced judgment would be delivered December 22nd.

December 22 — Judgment of Supreme Court of Canada to effect that Board had failed to perform its duty under Railway Act in not finally determining 20% application.

December 23	—	Upon application by Railway Association, Chief Commissioner fixed February 2nd for hearing of final determination, subject to representations of provinces to be heard on January 3rd, 1950.
1950		
January 3	—	Hearing before Board when February 2nd confirmed as date for hearing.
February 2, 3, 6 and 7	—	Hearing before Board on application for final determination. Judgment reserved on February 7th.
March 1	—	Board delivered judgment authorizing 16% increase in place of 8% interim increase.
March 10	—	Notice by Railway Association of application to Board for Order changing, altering or varying Order dated March 1, 1950, by substituting 20% for 16%.
March 17	—	Petition by Provinces to Governor in Council under Section 52 of Railway Act by way of appeal from 8% Order dated 20th September, 1949, and from 16% Order dated March 1, 1950.
March 23	—	16% increase went into effect.
April 17	—	Hearing before Board of Application by Railway Association for 20% in place of 16%.

APPENDIX "B"

RECENT DECISIONS OF INTERSTATE COMMERCE COMMISSION UPON RATE APPLICATIONS OF UNITED STATES RAILROADS

EX PARTE No. 162 — 264 I.C.C. 695; 266 I.C.C. 537.

April 15, 1946	—	Application filed for 25% increase, to be effective May 15, 1946, pending hearing.
April 26	—	Case re interim increase assigned for hearing.
May 6-10	—	Hearing of evidence re interim increase.
May 11 and 13	—	Hearing of argument re interim increase.
June 20	—	Interim increase granted (Ex Parte 148 rates made effective and certain rates increased by an additional 5%) — *264 I.C.C. 695.*
July 22-Sept. 20	—	Regional hearings re permanent increase.
Sept. 23-28	—	Argument re permanent increase.
Oct. 25	—	Case submitted for decision.
Dec. 5, 1946	—	Permanent increase 20-25% granted, *266 I.C.C. 537.*

EX PARTE No. 166 — 269 I.C.C. 33; 270 I.C.C. 81; 93; 403.

July 3, 1947	—	Application filed for 15 to 25% increase.
July 23	—	Application amended.
Sept. 5	—	Application further amended to 28-38%.
Sept. 9	—	Motion at opening of hearing for interim increase of 10%.
Sept. 9-18	—	Hearing of evidence.
Sept. 18-19	—	Hearing of argument.
Oct. 6	—	Interim increase of 10% granted, *269 I.C.C. 33.*

Nov. 3-Dec. 13	— Hearings, regional, etc.
Dec. 15-20	— Argument.
Dec. 29, 1947	— Additional 10% interim increase granted, *270 I.C.C. 81*.
April 13, 1948	— Interim increases 20-30% granted in lieu of those of Oct. 6 and Dec. 29, 1947. *270 I.C.C. 93*.
July 27, 1948	— Permanent increase granted, readjusting upwards and downwards the interim increases. *270 I.C.C. 403*.

EX PARTE No. 168 — 272 I.C.C. 695; 276 I.C.C. 9.

Oct. 1, 1948	— Application for increase of 8%.
Oct. 12	— Application amended to 13% with request for interim increase of 8%.
Nov. 30-Dec. 7	— Hearing of evidence.
Dec. 8-10	— Hearing of argument.
Dec. 29, 1948	— Interim increase 4-6% granted. *272 I.C.C. 695*.
May 21, 1949	— Case for permanent increase submitted for decision.
August 2, 1949	— Permanent increase 8-10% granted. *276 I.C.C. 9*.

4. APPEALS TO THE GOVERNOR IN COUNCIL

The Canadian Pacific Railway Company urged the Commission to recommend the repeal of Section 52(1) of the Railway Act which provides as follows:

"The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made inter partes or otherwise, and whether such regulation is general or limited in its scope and application; and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties."

The Company dealt with the subject at length but the following quotations from the argument of its Counsel contain the main reasons submitted by it for justifiaction of such recommendation. Counsel stated:

"The existence of Section 52(1) presents in my submission, two simple alternatives—

"(1) Its repeal would remove the decisions of the Board from the possibility of political interference. The Board, feeling its new independence, would gain courage, strength and impartiality, and soundness and dependability of judgment would soon develop;

"(2) The second alternative is its continuation. Its continuation would only serve to perpetuate the weakness and uncertainty of administration that must now unconsciously beset the Board. There would be no relief from the stimulation of political pressure for results that may have popular public appeal with certain sections of the country, regardless of the serious injury that may in the ultimate result be caused to the economy of the country as a whole."

"Prior to 1903, railways in Canada were regulated by the Railway Committee of the Privy Council. This body was first constituted by the Railway Act of Canada 1868 (Sections 23-47). The Railway Committee of the Privy Council was composed of elected representatives of the Canadian people. Its members were charged with all the responsibilities of Ministers of the Crown, as well as their duties regarding regulation of Canadian railways. The Committee had not the time, nor the opportunity, nor the facilities for taking up questions respecting the control and regulation of traffic upon railways and the rates and tolls to be charged by them. This work could be more efficiently performed by a tribunal specially constituted for that purpose."

"... the prime purpose of establishing the Board was to remove railway regulation from the political arena and to place it in the hands of an administrative tribunal with the necessary technical training and assistants. As previously indicated, the Appeal to the Governor in Council from the Board was retained on the theory that it was necessary to preserve ministerial responsibility. Canadian Pacific submits that the retention of the Appeal, justified as it may have been in the transition period following the formation of the Board, no longer exists."

"The Railway Act provides for an appeal from the Board to the Supreme Court on matters of law and jurisdiction. The decisions of the Board of Transport Commissioners are final on questions of fact but Section 52(1) allows the Governor in Council to review, vary or rescind decisions whether of law or fact. Canadian Pacific submits that there is no necessity for an appeal on questions of fact from the Board. The Board, assisted by their experts and with their knowledge of transportation problems, and after hearing evidence, is the only body that can intelligently and equitably deal with disputes between the public, government bodies and the railways. The protection of the public interest does not require an appeal from the Board to the Governor in Council. If the Board issues orders which are truly contrary to the public interest of Canada, the public is protected by the ability of the Minister to refer matters to the Board, by the ability of the Governor in Council to refer matters to the Board, and by the overriding ability of Parliament at all times to amend railway legislation."

Counsel also stressed the point that there is no appeal in the United States to a body comparable to the Cabinet and appeals in that country lie only to a court of law.

Counsel further referred to various statutes in provinces in Canada where Public Utilities Commissions had been established, and pointed out that the only appeal provided for in these statutes is to the Supreme Court in the Province and this only on questions involving jurisdiction or other points of law.

The Company proposed an amendment to Section 52(2) of the Railway Act, which Section reads as follows:

> "An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction, upon leave therefor being obtained from a judge of the said Court upon application made within one month after the making of the order, decision, rule or regulation sought to be appealed from or within such further time as the judge under special circumstances shall allow, and upon notice to the parties and the Board, and upon hearing such of them as appear and desire to be heard, and the costs of such application shall be in the discretion of the judge."

Counsel for the Company said:

> "Under the Act as it now stands, an appeal to the Supreme Court of Canada upon any question of law can only be had if the Board decides that the question is one of law and grants leave to appeal. If, on the other hand, an appeal is desired on a question of jurisdiction, an appeal may be had upon leave being obtained from a judge of the Supreme Court or upon leave being obtained from the Board. It would not seem to be right that the Board which rendered a decision that involves a question that may be one of law, should be the only tribunal to determine whether such question is one of law and whether an appeal should be had. The problem that arises in determining whether a particular question is one of law or of fact is often a difficult one."
>
> "It is therefore submitted that your Commission should recommend that subsection (2) of Section 52 should be amended by inserting after the words 'question of jurisdiction' in line 2 thereof the words 'or upon a question of law'.
>
> "So that we could go to a judge of the Supreme Court, or the provinces could go to a judge of the Supreme Court, and have them decide whether there was a question of law upon which leave to appeal should be granted."

THE SUBMISSIONS OF THE PROVINCES

The Provinces of Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia and the Maritime Board of Trade all strenuously opposed the repeal of Section 52, subsection (1), and argued that the appeal to the Governor in Council should remain. Their arguments may be summed up as follows:

(a) The Provinces would never be satisfied to have the Board of Transport Commissioners the final court;

(b) The railways are instruments of national policy and the Federal Cabinet should be able to review decisions which affect the economy of the whole country;

(c) The small number of appeals allowed by the Governor in Council indicates that the Governor in Council has not unduly interfered with the Board's decisions;

(d) The principles enunciated by the Governor in Council have been judicial in character and the Governor in Council has only interfered when the Board has proceeded on some wrong principle or has otherwise been subject to error;

(e) There is no evidence that any decisions have been given otherwise than upon the merits and upon the evidence; and

(f) It is in the public interest that the right of appeal should continue as the first object of the railways is revenue.

THE EXPERIENCE UNDER THE ACT

(i) *Formal Hearings before the Board*

The Board in the 47 years (1904-1950 inclusive) has heard over 2300 cases at formal hearings.

In the last 14 years (1937-1950 inclusive) it has received and dealt with over 28,400 applications and complaints or an average of over 2,000 per annum.

In the same 14 year period, 651 cases have been dealt with at public hearings—an average of approximately 47 per annum.

Approximately 98 per cent of all applications and complaints were disposed of without the necessity of formal hearings.

(ii) *Appeals on jurisdiction or other questions of law to the Supreme Court of Canada*

In the 47 year history of the Board (1904-1950 inclusive) there have been 79 appeals to the Supreme Court of Canada; of this number 16 were allowed and the others dismissed, withdrawn or abandoned.

In addition the Board has referred 7 matters to the Supreme Court for opinions.

(iii) *Appeals to Governor in Council*

(a) *Number of cases appealed*

The following tabulation will summarize the history of the working of Section 52 of the Act providing for appeals, throughout different periods since the Board came into being in 1904.

TABLE SHOWING THE NUMBER OF CASES APPEALED FROM THE BOARD TO THE GOVERNOR IN COUNCIL AND THE DISPOSITION THEREOF AS AT DECEMBER 31, 1950

—	Total Number of Appeals	Number Dis-missed	Number Referred back to Board	Number Aban-doned	Number Allowed	Number With-drawn	Number Pending
For the 20 year period 1904-1923 (incl.)...........	36	19	8	6	2	1	0
For the 15 year period 1924-1938 (incl.)...........	13	7	3	1	1	1	0
For the 12 year period 1939-1950 (incl.)...........	5	1	1	0	0	0	3
Total for the 47 year period 1904-1950 (incl.)...........	54	27	12	7	3	2	3

It will be observed:

(1) That in 47 years only 54 cases were appealed to the Governor in Council;

(2) That in the first 20 years there were twice as many as in the last 27 years;

(3) That in the last 12 years there were only 5 appeals;

(4) That 50% of the appeals were dismissed;
22% referred back to the Board;
16% abandoned or withdrawn;
6% *allowed*, and
6% still pending; and

(5) That only 3 appeals have been allowed in 46 years and only one appeal allowed in the last 26 years.

(b) *Nature of the cases appealed*

An examination of the cases which have been appealed to the Governor in Council discloses that:

(1) With few exceptions every decision of the Board granting a general increase in tolls or increased rates on grain has been carried to the Governor in Council; there have been 5 appeals from general increases: 2 were dismissed, and 3 referred back. There were 3 appeals relating to Crowsnest Pass rates, rates on grain to the Pacific Coast and rates on grain and grain mill feeds: 1 was allowed, 1 dismissed, and 1 referred back;

(2) A large number of appeals (26 in all) have had to do with such things as abandonments, location of crossings, sidings, spurs, grade separations, viaducts, location of lines, stations, facilities, etc.;

(3) A considerable number of appeals (20 in all) have had to do with details of the rate structure such as rates on lumber and forest products, glass bottles and jars, cream, ice cream, classification of ice cream, export arbitraries on flour; and with miscellaneous matters such as passenger service, branch train service, rates on small railways such as the Yukon Railway, express rates, telephone rates, overcharges, etc.;

(4) That of the 3 appeals allowed by the Governor in Council, 1 dealt with a crossing, 1 with an increase in rates on cream and 1 with the Crowsnest Pass Rates; and

(5) In no case has the appeal been allowed in a general revenue case except in the way of reference by the Governor in Council back to the Board.

THE PRINCIPLES ON WHICH THE GOVERNOR IN COUNCIL ACTS IN DISPOSING OF APPEALS

The Governor in Council has in various Orders in Council enunciated the principles which have been recognized as governing the exercise of his jurisdiction on applications made under Section 52 of the Railway Act. In an Order in Council made in 1933 and reported under the title "Re Railway Freight Rates in Canada" 40 C.R.C. page 97, it is stated:

> "The Committee deem it proper, in connection with the said appeals, to call attention to the principles that have in the past been recognized as governing the exercise of the jurisdiction of the Governor in Council on applications made to him under the provisions of Section 52 of the Railway Act. As has been pointed out in previous Orders in Council, 'the intent of the legislation is to invest His Excellency in Council with judicial powers by which he may in his discretion aid in securing and enforcing the provisions of the Railway Act, having due regard to the method of railway rate regulation by an independent commission which was the outstanding innovation in the Railway Act of 1903 and which has been preserved throughout succeeding revisions of the Act to the present time.' (Order in Council P.C. 2166, dated the 24th day of October, 1923.) . . .

Further, that 'in appeals to the Governor in Council from the Board of Railway Commissioners a practice has grown up not to interfere with an Order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle, or that it has been otherwise subject to error. Where the matters at issue are questions of fact depending for their solution upon a mass of conflicting expert testimony, or are otherwise such as the Board is peculiarly fitted to determine, it has been customary, except as aforesaid, not to interfere with the findings of the Board.' (Order in Council P.C. 1170, dated the 17th day of June, 1927.)"

It would seem clear (a) that the enunciated policy of the Governor in Council is not to interfere with an Order of the Board unless it seems manifest that the Board has proceeded upon some wrong principle or that it has been otherwise subject to error; (b) that the practice of the Governor in Council has followed the enunciated policy; and (c) that the record over the years discloses clearly that not only have there been a very limited number of appeals but that in only three cases have such appeals been allowed.

Conclusions

1. The history of the legislation in this country indicates that Parliament has always felt that the Government should take an active interest in both the railways and the regulatory body. Examples of this may be found in Sections 36 and 38 of the Railway Act which provide as follows:

"36. The Board may, of its own motion, or shall upon the request of the Minister, inquire into, hear and determine any matter or thing which, under this Act, it may inquire into, hear and determine upon application or complaint, and with respect thereto shall have the same powers as, upon any application or complaint, are vested in it by this Act.

"38. The Governor in Council may at any time refer to the Board for a report, or other action, any question, matter or thing arising, or required to be done, under this Act, or the Special Act, or any other Act of the Parliament of Canada, and the Board shall without delay comply with the requirements of such reference."

These Sections would seem to indicate that the Government is to keep in touch with matters relating to railways. Particular attention is called to the language of these Sections and the words "any matter or thing which under this Act" and "any question, matter or thing arising or required to be done under this Act."

2. In this country relations between Parliament and the Government on the one hand and the railway companies on the other, have always been such that Government supervision over railway matters cannot be altogether abolished. Canadian railways have been projected and built as manifestations of public policy, usually with financial assistance recommended by the Government, agreed to by Parliament and paid for by the people of the country.

For all these reasons it is extremely difficult to recommend that the Government should disassociate itself entirely from the activities of the railways and the performance by the Board of Transport Commissioners of its duties.

3. The parties should have the right of applying either to the Board or to a judge of the Supreme Court of Canada to determine whether a question of law is in dispute. The problem that arises in determining whether a particular question is one of law or fact is often a difficult one; in such cases the parties before the Board should have an opportunity to have this question decided by a judge of the Supreme Court.

Recommendations

1. It is not recommended that Section 52(1) of the Railway Act be repealed or amended.
2. Section 52(2) should be amended by inserting after the word "jurisdiction" in line 2 thereof the words: "or upon any other question of law."

5. CONTROL OF THE BOARD OF TRANSPORT COMMISSIONERS BY THE GOVERNMENT

Manitoba contended that railway transportation is too vital a factor in the national economy to be regulated only by an independent tribunal without the ultimate responsibility for regulation resting upon Parliament and the Government. Although Parliament may alter the Railway Act, Manitoba argued that this control is "somewhat less than what is desired," and urged that the Governor in Council be given power to direct the Board and to "ensure that the actions of the Board are not inconsistent with what is in the best interests of Canada from the standpoint of the best economic policy."

The Province proposed amendments to Section 38 "to enable the Governor in Council to give directions to the Board in respect of policy," and to Section 52(1) "to make it clear that the Government has the power to remit and to remit with directions." Subsequently Manitoba withdrew the first of these amendments.

Section 52(1), if amended as proposed, would read as follows:

> "52(1). The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made inter partes or otherwise, and whether such regulation is general or limited in its scope and application, *and remit any matter to the Board with directions respecting the disposition thereof;* and any order which the Governor in Council may make with respect thereto shall be binding upon the Board and upon all parties."

The words in italics constitue the only change in the existing section.

Manitoba intimated that the power to give "directions" would give the Governor in Council power to dictate matters of "policy". The Province, however, was unable to offer an interpretation of the word "policy" definite enough to justify asking to have it embodied in legislation.

Conclusions

Prior to 1903 the railways in Canada were regulated by a "Railway Committee of the Privy Council". Parliament decided after thorough inquiry that for various reasons this was not satisfactory. Among the reasons given were:

1. The Government has a dual function—political and administrative;
2. There is no continuity of tenure;
3. There is lack of technical training for the work;
4. The lack of migratory organization renders it impossible to deal effectively with smaller complaints; and
5. The distance to be travelled by the complainants makes the expense great.

For these reasons Parliament created a body to deal with the regulation of rates, etc.

The constitution of the Board as an independent regulatory tribunal was hailed as a step in the right direction. Manitoba's proposal would be a long step backward toward the situation which Parliament attempted to correct in 1903.

Parliament has given to the Government adequate control and responsibility under the Statute as it now stands: Sections 36, 38 and 52 of the Railway Act. These sections afford the Government ample power to inquire into and obtain reports on any "matter or thing arising, or required to be done" under the Railway Act, and enable the Governor in Council to vary or rescind any order, decision, rule or regulation of the Board. Examples of the extent to which the Government has gone in exercising these directive powers may be found in Order in Council No. 1487 respecting equalization and in Order in Council No. 4678 referring the Board's judgment in the 21% Case back to the Board for consideration in the light of certain changes in conditions referred to in the Order in Council.

It is the expressed desire of all the parties appearing before the Commission, including Manitoba, that the members of the Board be of the highest ability and character devoting their whole time to the often difficult work of regulating transport in the interest of shippers, consignees, railway companies and the Canadian people as a whole. Any suggestion that the part to be played by the Board is to be reduced in responsibility far below that which is placed upon it today would surely tend to prevent the acceptance by the proper class of men of positions on that tribunal.

RECOMMENDATIONS

The amendment proposed by Manitoba to Section 52(1) of the Railway Act cannot be recommended.

CHAPTER III

PARTICULAR FREIGHT RATE PROBLEMS

1. STANDARD MILEAGE CLASS RATES

Standard Mileage Class Rates have been aptly described as the "ceiling" rates — they constitute the maximum tolls above which the railways are not permitted to go.

The amount of freight now hauled under these rates is estimated to be less than 1% of the total traffic.

It has therefore been suggested that these rates are of little practical value to shippers and provide very little additional revenue to the railways.

It is probable that they have outlived whatever usefulness they may once have had.

All the Western Provinces as well as other parties appearing before the Commission asked that in any event these rates be made uniform across the country. Manitoba and Alberta went further and suggested that they be abolished and that the traffic presently moving under them be hauled under rates established by a uniform distributing or town tariff scale, which would then become the "ceiling" rates.

The carriers made no serious objection to the proposal to abolish the standard mileage class rates. They did state, however, that these rates are the "key" on which other rates are based and that they are necessary to preserve flexibility in the rate structure.

Conclusions

Since such a small proportion of freight moves under standard mileage rates it does seem illogical that they should be the "key" rates or form the basis for other rates. Moreover, it seems equally illogical that there should be more than one class rate scale. The standard mileage class rates have outlived their usefulness and should be abolished.

Recommendations

It is recommended that Section 328 and all other pertinent sections of the Railway Act be amended to provide for the abolition of standard mileage tariffs.

2. COMPETITIVE RATES

Competitive rates are lower than the normal rates which would ordinarily be charged on the same commodities and are made by the railways for the purpose of obtaining or retaining traffic which would otherwise be forwarded by competing transport agencies.

Competition has always existed between the railways and steamships operating on the St. Lawrence River and Great Lakes, and along the coasts of the Maritime Provinces and British Columbia. In addition intercoastal competition for transcontinental traffic has been active for many years.

The water competition in Eastern Canada originally influenced the setting of the so-called "normal" rates in that area in a downward direction.

Competition of steamships with the railways still prevails and another competitive factor appeared in the 1920's when, with the improvement of highways, motor vehicle services were established between communities.

Competition from trucks has become serious because of their faster service and flexibility of operation. A rate structure emphasizing low rates on low grade articles and high rates on high grade articles leaves the railways in a particularly vulnerable position.

As a result of competition from steamships and trucks the railways have been compelled to introduce competitive rates in areas influenced by competition while leaving rates unchanged between intermediate points or within other areas not so influenced.

The final type of competition which has influenced rates has aptly been termed "market-competitive".

It arises out of the efforts of the producer at a distant point to sell his goods in a market which is also served by a producer with a short haul. It also involves the efforts of the manufacturer or consumer to obtain his supplies of raw materials, and semi or fully processed products at as many points of origin as possible, and of the railways to secure long-haul business. This particular form of competition has resulted in pressure upon the rate structure.

A different type of market-competitive rate is one published to meet competition of extraneous sources; for example, a rate on glass from Ontario points to Vancouver to meet the competition of similar glass imported direct from Belgium by steamship to Vancouver.

The Authority for Competitive Rates

The Railway Act of 1903 recognized competition, and the present Act still provides authority for tariffs of competitive rates under Sections 314(5) and (6), 328(c), 329(4) and 332.

Such rates do not apply at intermediate points where there is no competition, and are not considered as discriminatory when compared with other rates where the traffic conditions are not the same. The "long-and-short-haul" clause of Section 314(5) contains the authority for permitting the charging of a higher rate to short-haul points on the same line or route, than to a farther distant point, provided the Board is satisfied that owing to competition it is expedient to allow such toll; subsection (6) of the same section authorizes the Board to declare that any places are competitive points within the meaning of the Act and Section 329(4) permits competitive tariffs to specify rates to or from any specified point or points which the Board may deem or has declared to be competitive points not subject to the "long-and-short-haul" clause.

In numerous judgments the Board has held that it is entirely within the discretion of a railway company whether it will meet the competition in tolls of other transport agencies, subject to the prohibitions in the Railway Act with respect to unjust discrimination: *B.C. Sugar Refining Company v. C.P.R.* (*1910*). *10 C.R.C. 169.* Conversely, a shipper is not entitled to less than normal tolls because of competition which a railway in its discretion does not choose to meet: *Blind River Board of Trade v. G.T.R.* (*1913*) 15 C.R.C. 146. It is also within the discretion of a railway company to restore rates to the normal basis when competition ceases: *Regina Board of Trade v. C.P.R.* (*1917*) *22 C.R.C. 315.* The railway company's right to meet or disregard competition is subject to one qualification: That if it decides to lower its rates to meet competition it must not cause unjust discrimination. This means that if two stations adjacent to each other on the same line or route are subject to the same competition the railway may not give the reduced rate to the shippers at one station without giving it also to the shippers at the other station in the same common district: *Salada Tea Company v. C.F.A.* (*1924*) *30 C.R.C. 153 at 164.*

The Complaints

All the Western Provinces contended that the railways have reduced their normal rate level in Ontario and Quebec by the publication of competitive rates. They said that the railways necessarily have to recover their reduced intake on competitive eastern traffic by charging higher rates on non-competitive and long-haul traffic in Western Canada.

It was also contended that many competitive rates in the East are lower than the cost of carrying such traffic, and that this throws an additional burden on Western traffic.

It was further contended that the Board allows the railways too free a hand to institute competitive rates and that once established, these rates are left in the tariffs long after the conditions which caused their publication have disappeared. It was also stated that the railways do not always advance competitive rates when general increases have been authorized by the Board, thus throwing an unduly high proportion of the increases upon the non-competitive rates.

A collateral complaint was that of the Maritime Provinces. This complaint was to the effect that the reductions in railway rates to meet competition in Ontario and Quebec without corresponding reductions in Maritime rates had partially destroyed the 20% preference under the Maritime Freight Rates Act. This subject is dealt with elsewhere.

The Present Situation

Similar complaints with respect to competitive rates were addressed to the Board by the Western and Maritime Provinces in the hearings in the 21% Increase Case, even before the rates were released from Wartime Prices and Trade Board control in September 1947, but the complaints have lost much of their substance today. Since release from price control and also during the course of this inquiry the railways appear to have done a great deal of "house-cleaning" of their competitive rates.

Senior railway traffic officers said that they would not knowingly publish a competitive rate that did not return its operating costs and something more. They would forego the traffic to competitors rather than accept it at a loss.

The Railways state that competitive rates have, generally speaking, been advanced percentage-wise as much as or more than ordinary rates, although the railways did not apply the final 4% general increases to these rates.

By way of emphasis the railways submitted that the only rates not now compensatory are those which the railways are under constraint to maintain at their present levels. These are:

1. The Crowsnest Pass Rates on grain;
2. Rates on coal from Alberta to points in Ontario; and,
3. The ex-lake export grain rates to Saint John and Halifax.

Crowsnest rates are statutory and are dealt with elsewhere in this Report. Rates on coal were introduced in 1925 by arrangement with the Federal Government and reduced to $8.00 a ton in 1934 as an emergency measure to relieve unemployment in Alberta. At present the rate is $8.40 of which the shipper pays $5.90 and the Government $2.50. The normal rate from Drumheller to Toronto is $13.10.

The ex-lake export grain rates to Saint John and Halifax are rates on grain which has come down the lakes by steamships, mainly from Western Canada, and which moves by rail from ports on Georgian Bay to Montreal, Saint John

and Halifax for export. These export rates are maintained at a low level by reason of the national policy, collaborated in by the Railways, which seeks to ensure the passage of this traffic through Canadian seaports.

The Railways also submitted that competition with highway carriers is becoming stronger on the Prairies, in British Columbia and in the three Maritime Provinces, and that it is growing in intensity as more paved highways are being built. This it is said will have the effect of introducing more competitive rates in those areas; in fact some of the present lowest competitive rates in Canada are those on less-than-carload merchandise between Calgary and Edmonton.

The Suggested Remedies

Although throughout the course of the hearings very restrictive remedies were suggested, including the giving of approval by the Board before the Railways could publish competitive tariffs, all parties, before the conclusion of the hearings, admitted that the Railways should be free to publish competitive tariffs to meet competition from other transport agencies, and that the remedy ought to be found in a closer supervision of the rates by the Board to ensure:

(a) That the competition actually exists;

(b) That the rates are compensatory; and

(c) That the rates are not lower than necessary to meet the competition.

Conclusions

Competitive rates are an important factor in the rate structure. No one who appeared before the Commission advocated their abolition.

The Railways should neither be denied the right to meet competition nor, when once they have decided to publish competitive tolls in one area, be forced by law to apply these same tolls to other regions where competition between transportation agencies is non-existent.

Requiring competitive tariffs to be approved by the Board before they became effective would hamper the railways in their efforts to increase their revenue.

Recommendations

The following recommendations are concerned only with carrier-competitive (and not market-competitive) tariffs. It is not recommended that formal applications be submitted to the Board whenever it is desired by the Railways to meet competition. Such rates are frequently made in agreement with shippers, and no shipper is likely to withhold shipments from other modes of transportation while the railway makes applications to the Board and obtains the necessary authority, sometimes after considerable delay, to publish the rates agreed upon.

The Board already has some regulations with respect to competitive rates and it is suggested, in view of the complaints which have come before the Commission that these regulations should provide that whenever a railway files a competitive tariff or an amendment thereto, it shall simultaneously supply the Board with information similar to that now filed with applications for the approval of agreed charges. This information includes (a) the name of the competing carrier or carriers; (b) the route over which they operate; (c) the rates charged by the competitors with proof of such rates as far as ascertainable; (d) the tonnage normally carried by the railway between the points of origin and destination; (e) the amount of tonnage diverted from the railway or which will be diverted if the rate is not made effective; (f) the extent to which the net revenue of the railway will be improved by the proposed changes; (g) the revenue per ton-mile

and per car-mile at the proposed rate; (h) the corresponding averages of the system or of the region in which the traffic is to move, and (i) any other information regarding the movement which will serve to justify the proposed rate.

This recommendation, if adopted, will provide the Board with data from which to judge the strength of competition and the necessity of taking action to suspend or disallow any competitive rate if such rate, in the Board's judgment, should become unnecessary; or, to suspend, disallow or order an increase in such rate if in the Board's judgment it is not compensatory or is lower than necessary having regard to the competition to be met.

Competitive rates will of course continue to be subject to challenge by any shipper or representative body of shippers who may consider them unduly preferential or unjustly discriminatory.

The Railway Act should be amended to give the Board powers to act as suggested herein.

3. DISTRIBUTING CLASS RATES

In Eastern Canada distributing rates apply on freight moving both out of and into the distributing centre or town; these rates are called "Town Tariff" or "Schedule A" rates.

In Western Canada the comparable rates are called "Distributing Rates" and they apply only to shipments from the distributing centre outward and not to shipments from outside points to the distributing centre, though there are some exceptions to this rule.

The purpose of these Town Tariff or Distributing Rates is to provide cheaper transportation on shipments from distributing centres to outlying points within the area. The railways have so far considered that the greater volume of shipping from these distributing points warranted the lower rates.

Many submissions were made and were unanimous in asking that this regional difference be abolished and that there be uniformity in the rates both inbound and outbound to and from the distributing points in the West as in the East.

There were also submissions concerning the application of standard mileage class rates on goods from the United States crossing the international boundary at points in the West such as Emerson in Manitoba and Coutts in Alberta. It was asserted that shipments from these stations to points in Western Canada should be charged distributing class rates rather than standard mileage class rates.

Conclusions

The question of the application of lower rates from border points is not strictly a matter of distributing rates but rather one affecting the reasonableness of the rates now applied. In any event it is a matter peculiarly for the Board to deal with and may be automatically solved by the proposals made in the chapter on Equalization.

There appears to be complete unanimity among those appearing before the Commission that there should be uniformity in distributing class rates throughout the country and that regional differences in such rates should be abolished.

The time has come for the abolition of regional differences of this character. This would be effected by implementation of the recommendations respecting one uniform equalized class rate scale as proposed in the Equalization chapter.

4. AGREED CHARGES

An "agreed charge" is a rate agreed upon by a carrier for the transport of all or any part of the goods of any shipper or group of shippers.

In Canada agreed charges were first authorized in 1938 by the provisions of Part V of the Transport Act enacted in that year. The Canadian Act follows legislation enacted in the United Kingdom in 1933, known as the Road and Rail Traffic Act; but our legislation is more restrictive in character.

The Board of Transport Commissioners since the Act came into force, and until the 31st December, 1950, has approved 45 agreed charges for the railways of Canada, 38 of which were made to meet highway competition and 7 to meet water competition. Of this number 23 were in force on December 31st, 1950, involving 73 shippers. The gross revenue from agreed charges by the two major railways, in 1950, was in the vicinity of $10 million.

The Transport Act requires that the agreed charge must be approved by the Board, but the Board is not to give its approval if in its opinion the object of the agreement can be secured by means of a special or competitive tariff of tolls under the Railway Act. When the transport is by rail from or to competitive points, or between competitive points on the lines of two or more rail carriers, the Board's approval cannot be obtained unless both (or all) such carriers join in the making of the agreed charge.

The Act contains provisions for (a) the filing of the agreement with the Board; (b) the publication of notice of application for approval in the Canada Gazette and in such other manner as the Board may direct; (c) the hearing of all interested parties on the application for approval; and (d) the right of any shipper who considers that his business will be unjustly discriminated against by the agreed charge to apply for a fixed charge for the transport of his goods if they are the same as or similar to those covered by the agreed charge.

The Act provides that the agreed charge "shall be made on the established basis of rate making and shall be expressed in cents per one hundred pounds or such other unit as the Board may approve; and the carload rate for one car shall not exceed the carload rate for any greater number of cars".

The Act also provides that on any application "the Board shall have regard to all considerations which appear to it to be relevant and, in particular, to the effect which the making of the agreed charge or the fixing of a charge is likely to have, or has had, on —

(a) the net revenue of the carrier; and

(b) the business of any shipper by whom, or in whose interests, objection is made to approval being given to an agreed charge, or application is made for approval to be withdrawn".

Complaints

Complaints were made against the principle and administration of agreed charges. Briefly they were on the following grounds:

1. By the Province of Manitoba: (a) that the agreed charge method of rate making might eliminate truck competition rather than meet it; (b) that the agreed charge favours the larger shipper; and (c) that the power which the railways have to file competitive tariffs is sufficient without resorting to the agreed charge; the Province accordingly asked for the repeal of Part V of the Transport Act;

2. By the Province of Alberta: that the agreed charge puts the small shipper at a disadvantage, and that all shippers, regardless of size, should be treated alike; Alberta also asked for the repeal of Part V of the Act.

3. By the Canadian Manufacturers Association: that the agreed charge method enables the large shipper to "make a deal" with the railways which the smaller shipper may not be able to make because of his inability to agree to the same terms, and that the railways should not be able to say, "We will give you a better rate if you give us all your business";

4. By the Canada Steamship Lines Limited: (a) that the agreed charge is an exceptional method of rate making, and is really a private contract whereby the carrier undertakes to transport the goods of an individual shipper on terms more favourable than those offered by the carrier to the general public, and (b) that its effect is to deny to other competing carriers the opportunity of competing for the business while the agreed charge remains in force. The company expressed the view that, having regard to the exceptional method of rate making which the agreed charge allows, the safeguards now contained in the Act are the very minimum necessary; that delay and publicity ought to be inherent in so radical a departure from normal rate-making methods; and that unrestricted use of the agreed charge by the railways "would force water carriers to the wall".

Position Taken by the Railways

The Canadian Pacific Railway Company states that the present provisions of the Transport Act with respect to agreed charges are satisfactory and, while it would not object to "greater flexibility", no amendment is suggested. The company presented evidence to show that agreed charges are compensatory, and the Waybill Analysis supports this view. The company contends that the agreed charges are not unfair to the small shipper, because any shipper may obtain the benefit of agreed charges granted to another shipper provided the goods are the same or of similar kind in both cases and are offered for carriage under substantially similar circumstances and conditions.

The Canadian National Railway Company contends: (a) that Part V of the Transport Act is unsatisfactory in its present form; (b) that the purpose of the Act is to enable the railways to meet the competition of other transport media, particularly of motor trucks, and that the Act had failed in this purpose; (c) that delays in securing approval of the Board have been protracted, extending from thirty-four days to as long as a year and ten months; (d) that since any carrier regulated by the Act can be heard in opposition to the application for approval, a water carrier, a portion only of whose own rates may be under regulation, has the right to object to the agreed charge on the ground that its business will be prejudiced by it; and that this is unreasonable and unfair to the railway. The Judicial Committee of the Privy Council in C.N.R. v. Canada Steamship Lines Limited et al, in 1945, 58 C.R.C. 113, interpreted the Transport Act as providing that the Board may, upon an application for approval of an agreed charge, regard as a relevant consideration the effect which the making of the agreed charge is likely to have on the business or revenues of other carriers under the Act including steamship lines.

The Canadian National accordingly proposed an amendment to the Transport Act which would repeal the present Section 35 and substitute the following:

"35. Notwithstanding anything in the Railway Act, or in this Act,

(1) A carrier may make such charge or charges for the transport of goods of any shipper or for the transport of any part of his goods as may be agreed upon between the carrier and that shipper. Provided that when the transport is by rail from or to a competitive point, or between competitive points on the lines of two or more carriers by rail, such competing carriers by rail shall be permitted to enter into negotiations and shall have the right to join in making the agreed charge.

(2) A duplicate original of the agreement setting out the particulars of the agreed charge shall be filed with the Board within seven (7) days after the date of the agreement, and the agreed charge shall become effective thirty (30) days after the date of such filing.

(3) Any shipper who considers that his business will be unjustly discriminated against if an agreed charge is made by the carrier, or that his business has been unjustly discriminated against as a result of the making of an agreed charge, may at any time apply to the Board for a charge to be fixed for the transport of his goods (being the same goods as or similar goods to and being offered for carriage under substantially similar circumstances and conditions as the goods to which the agreed charge relates) by the same carrier with which the agreed charge is proposed to be made, or is being made, and, if the Board is satisfied that the business of the shipper will be or has been so unjustly discriminated against, it may fix a charge (including the conditions to be attached thereto) to be made by such carrier for the transport of such goods.

(4) The Board, in fixing a charge, may fix it either for such period as it thinks fit or without restriction of time, and may appoint the date on which it is to come into operation, but no such charge shall be fixed for a period beyond that for which the agreed charge complained of by the shipper remains in effect.

(5) All agreed charges shall contain a cancellation clause giving either party the right to cancel the agreement upon specified notice."

It will be observed that this amendment would:

1. Do away with the necessity of prior approval by the Board;
2. Make it unnecessary for a rival rail carrier to join in the agreed charge;
3. Eliminate the requirement that the agreed charge must be made on the established basis of rate making;
4. Eliminate the requirement that the carload rate for one car shall not exceed the carload rate for any greater number of cars;
5. Eliminate the provision that the Board shall not approve the agreed charge if, in its opinion, the object may be secured by means of a special or competitive tariff of tolls under the Railway Act;
6. Prevent objection to agreed charges by a water carrier regulated under the Act; and
7. Prevent any objection to the agreed charge by a shipper; instead the shipper who considers that his business will be unjustly discriminated against is merely permitted to apply for a fixed charge.

The proposed amendment is admittedly very far-reaching but the Canadian National Railways endeavoured to justify it by contending:

(a) That the agreed charge is fundamentally nothing more than a special form of competitive rate and should therefore not require prior approval of the Board;

(b) That trucks in Canada are not regulated as the railways are, and that they accordingly "pick and choose" the traffic, and generally take the higher-rated goods while the railways must carry the low-rated goods;

(c) That so long as the trucks are unregulated the railways need the agreed charge procedure to be used as a "weapon" to enable them to cope efficiently with the trucks; and

(d) That the present Act does not give sufficient freedom to the railways and that consequently the trucks are getting business which the railways should get and which they could handle more economically.

The Canadian Automotive Transport Association in referring to agreed charges said that they "catered to big business", that the Canadian National proposal was a reversion to the "law of jungle", and that, although the railways should be permitted to use competitive rates, they should not be permitted to

use the agreed charge. The Association admitted, however, that truckers might enter into agreements which would be similar to agreed charges, but stated that it is not their practice to do so.

Representations in Support of Proposed Amendment

The representations made on behalf of the Canadian National Railways in support of the proposed amendment are in effect as follows:

1. That admittedly the agreed charge practice needs some reasonable control, but that the present control procedure is too cumbersome and should be replaced by a more workable one;
2. That the proposed new practice would enable the railways to deal more effectively with truck competition;
3. That beyond a limited zone the truck is a more expensive medium of transport than the railway and consequently if the railways were free to use their full strength in the larger competitive zone and to reduce their rates on the higher class goods to the railway cost level, plus some profit, the trucks would be unable to operate beyond the limited zone within which they admittedly have an advantage; and
4. That the average out-of-pocket cost to the railways is one cent per ton-mile, while that of the truckers is not less than three cents and probably as much as four or five cents per ton-mile, and that if the railways brought their rates down to an all-inclusive cost of one and one-quarter cents (which they could do) no truck company could meet this competition outside the limited zone.

The position of the Canadian National Railways therefore is (1) that there is need of rational and reasonable control of the agreed charge practice, and (2) that the railways' requested amendment would undoubtedly place in its hands an extremely potent weapon capable of driving the trucks out of business in what is referred to as the "competitive" zone.

Attempts to Reconcile the Position of the two Major Railways

Following the hearings, and because of the sweeping nature of the amendments proposed by the Canadian National Railway Company, that company and the Canadian Pacific Railway Company were asked to consult together in order to see whether they could agree on proposed legislative amendments. For a long time they were unable to do so. When, however, the Canadian National did agree that an agreed charge should not be made without the concurrence of competitive railways when the transport is by rail from or to a competitive point, or between competitive points on the lines of such railways, the two railways came very close to agreement.

The Canadian National admits that its proposed amendment may have gone too far in excluding the Board's power to disallow an agreed charge, but says that the agreed charge should become effective not later than thirty days after it is filed with the Board, and that thereafter the Board might be given power to disallow it, if after complaint and hearing it decided that the agreed charge was unjust and unreasonable. The company says that its proposal is, in effect, that an agreed charge might be disallowed by the Board only on the ground that the rates charged under it are not compensatory.

The Canadian Pacific thinks the shipper should be able to object either before or after the agreed charge becomes effective but only if the rate is not compensatory or is otherwise unreasonably low; if the complaint is that the rate is discriminatory, then the shippers' only remedy would be to secure a fixed charge; the Board would not disallow the agreed charge.

THE FINAL REASONS GIVEN FOR THE AMENDMENT

The Canadian National submitted the following reasons for seeking relaxation of the present provisions of Section 35 of the Transport Act:

1. "To get around the Privy Council Decision in the Canada Steamship case";
2. "To simplify the procedure";
3. "To avoid the delays"; and
4. "To strengthen our competitive position in respect to trucks."

Each of these reasons must be carefully examined.

1. *The decision of the Privy Council* above referred to held that the Board is not precluded, in the present statute, from regarding as relevant considerations, in granting or refusing its approval, the effect which the making of the agreed charge between a shipper and competing carriers by rail is likely to have on the business and revenues of the other carriers mentioned in the Act.

Under this interpretation a water carrier regulated under the Transport Act can object to an agreed charge made between a shipper and the railways, and the Board can, in deciding whether or not it shall approve the agreement, take into consideration the effect which such agreement will have on the business and revenues of the water carrier.

The railways ask that both the right of objection and the consideration of the effect on the business and revenue of the water carrier be taken away.

The question involved is: Should the railways be entitled to enter into an agreed charge regardless of the effect on the business and revenue of the water carriers regulated under the Transport Act?

Parliament, by the present legislation, recognized that the water carrier plays an important role in the transportation of goods and did not intend to give the railways absolute freedom to make agreed charges regardless of the effect on the business and revenue of the water carriers. It would be unwise to amend the Act in this respect. If the agreed charge is aimed chiefly at the trucks (and this is what the railways say) it is hard to see what there is to prevent the railways and the water carriers from entering together into agreed charge contracts on the basis of proper traffic differentials. However, the water carriers in such a case should be left free to join, or not to join, with the railways.

2. *Simplification of procedure.* The proposed amendment goes much further than to provide a mere simplification of procedure. It imposes upon a complainant the burden of proving that a railway rate is non-compensatory thus practically putting him out of court.

The point involves a question of whether the procedure should be simplified when the power granted to the railways is such an extraordinary one. The agreed charge method of rate making, even under the present practice, is contrary to well established principles of rate making under the Railway Act. It binds the shipper by agreement to ship all or an agreed portion of his goods by the carriers with whom he makes the agreement for a long period, usually for at least a year, and it gives the shipper a rate lower than the rate in the tariffs published under the Railway Act. This extraordinary procedure should be accompanied by the publicity and safeguards now required by the Transport Act. It must be remembered that the Railway Act now gives to the railways power to meet competition by the publication of competitive tariffs with a minimum of delay. The Transport Act adds to this power and empowers the railways to enter into agreed charges where the publication of competitive tariffs or special tariffs will not secure the object of the agreed charge. Such a power should not be exercised without close supervision. The procedure should

not be simplified. It is important also that shippers and carriers should have an opportunity of being heard, so that the Board may be made aware of all aspects of the question. The present procedure permits of this being done; the proposed procedure would enable the agreed charge to come into effect automatically within thirty days after the filing of the agreement with the Board, only to be disallowed if it is shown to be non-compensatory.

3. *Avoidance of delays.* The railways suggested that great delays had been encountered in securing the approval of agreed charges and referred to one case where it had taken one year and ten months.

Particulars have been obtained of all 45 agreed charges which were approved by the Board and 2 which were not approved (totalling 47 submitted) between March 15, 1939, (the date the first application was received) and December 31, 1950. It is found that there were 37 uncontested cases and 10 contested cases. Of the latter 2 were not finally approved. The time consumed between the date on which the application was received by the Board and the date of the order of approval or disapproval is as follows:

Uncontested		Contested			
Number of Cases Approved	Number of Days	Number of Cases Approved	Number of Days	Number of Cases Not Approved	Time taken for final Disapproval
1	27	1	37	2	About 5 years
1	33	1	50		
3	34	2	55		
5	35	1	111		
8	36	1	112		
5	37	1	227		
4	38	1	686		
1	40				
1	41				
2	42				
1	44				
2	47				
1	50				
1	86				
1	133				
37		8		2	

It will be observed that in 29 cases the time taken to secure approval was 40 days or less; that in 8 other cases the time taken was 50 days or less, and that in 2 uncontested cases it took 86 and 133 days respectively to obtain approval.

Thus in 35 of the 37 uncontested cases the average time taken to secure the Order was only about 37½ days, and even including the two exceptional cases the average time for all 37 cases is only 41 days.

The facts appear to disclose an entirely satisfactory record warranting no criticism. It is shown that in the uncontested case which took 133 days the Board was not satisfied, without study by its Economics Bureau, that the agreed charge was compensatory and accordingly investigated the matter at some length.

As to the contested cases 4 were approved in 55 days or less and the 4 others consumed 111, 112, 227 and 686 days respectively before the Board's Order was granted. These cases must be regarded as exceptional.

It is to be observed that two agreed charges which were not approved took over five years before final decision was rendered by the courts. These two cases involved appeals by the railway company to the Supreme Court of Canada and

to the Judicial Committee of the Privy Council in England. It is significant too that Section 35(4) of the Transport Act authorizes the Board to approve the date on which the charge shall become operative "or as from which it shall be deemed to have become operative", but such date shall not be earlier than the date on which application for approval was lodged. The record shows that the Board has in almost all cases caused the approval of the agreed charge to be retroactive to the date the agreement was lodged with the Board.

Delay under these circumstances cannot justify any change in the legislation.

4. *Strengthening the Railways' Competitive Position.*

The argument of the railways on this point may be shortly and fairly put as follows:

(a) The railways are regulated, the trucks are not regulated;

(b) The trucks can pick and choose the traffic and take the high-rated traffic;

(c) The railways must take all the traffic offered to them, both high-rated and low-rated; and

(d) The railway policy has been to carry the low-valued traffic at low rates and make their profit on the high-valued traffic; the trucks are now taking away the profitable traffic which means that the low-valued traffic will have to bear higher rates which it perhaps cannot afford.

The main complaint is that the trucks are not regulated, and one of the railway witnesses stated that truck regulation is not the answer in any event because, if they were regulated, persons and industries would buy their own trucks. From this he concludes that the use of the agreed charge method of rate making is the only answer to the problem raised by what he terms "the erosion of the profitable rail traffic by motor trucks".

The problem is a serious one, and exists not only in Canada. Attempts to solve it in other countries have not been successful. The agreed charge has not solved the problem in Britain, and in that country there is not the problem of division of jurisdiction over the respective competitors that exists here.

The problem is not essentially one of regulation on the one hand and non-regulation on the other. The main reason for the regulation of railways in the first instance was their monopolistic position coupled with the fact that they supply an essential service which, if not satisfactorily carried out, cannot be supplied by anyone else because of the facilities of operation which would be required. The position of the trucker who offers his truck for hire is entirely different. He has not only competition from other forms of transport, but has many competitors in his own field, and from private truckers as well. If the price for his services is too high, persons and industries can, with comparative ease and small cash outlay, purchase their own trucks. This problem is dealt with elsewhere in this Report, but is outlined briefly here simply to show the relationship of agreed charges to the problem of truck regulation.

The problem before the Commission is simply this: Should the railways be given an extraordinary weapon which might have a serious effect on the trucking industry far beyond that of "meeting" its competition?

The agreed charge if widely used could bind shippers to the railways for unrestricted periods of time by an agreement which would exclude the trucks from participating in the traffic of such shippers.

This might prevent the growth of a form of transport which may be of great value to the commerce of the country. Two instances of the value of the trucks to Canada have occurred in recent years, the first during the last war, and the

second during the recent railway strike. Any weapon which might seriously endanger or bring about the elimination of the trucking industry must be guarded with close restrictions.

It is to be borne in mind that although their rates are regulated, considerable freedom is left to the railways in regard to competitive rates, and this freedom should not be impaired substantially. The object is to permit the railways to meet competition, not to destroy or eliminate it.

The danger in the proposed amendment lies in the power it would give to stifle competition. The Act as it now stands gives to the railways an extraordinary power (one which has not been accorded to the railways in the United States) and one which should not be extended.

Conclusions

1. One of the main principles of railway rate making is that a railway must charge equal tolls for like services. Parliament in authorizing the agreed charge created an exception to this general rule to enable the railways to meet the unregulated competition of trucks. Nevertheless in enacting the provisions of Part V of the Transport Act it took great care to surround the exceptional power which it had granted with restrictions to prevent the improper use of agreed charges.

2. It appears obvious that Parliament did not intend the agreed charges to be a weapon to destroy or eliminate competition but rather to enable the railways to meet competition. This is clear from a reading of Section 35(1):

   > "... the Board shall not approve such charge if, in its opinion, the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the Railway Act or this Act."

3. The present Act has not yet had a fair trial. It was first introduced in 1937 and enacted in 1938, when economic conditions were vastly different from those existing today. Then followed the period of the war and the "freezing" of rates until September 15, 1947. Since then the country has enjoyed a period of comparative economic prosperity which has perhaps made extensive use of the agreed charge unnecessary.

4. It would be unwise:

   (a) To eliminate the existing requirement that competing rail carriers must join in making the agreed charge;

   (b) To eliminate the provision that the agreed charge shall be made on the established basis of rate making and shall be expressed in cents per 100 pounds or such other unit as the Board may approve; and that the carload rate for one car shall not exceed the carload rate for any greater number of cars;

   (c) To eliminate the provision that the Board shall not approve such charge if, in its opinion, the object can adequately be secured by means of a special or competitive tariff of tolls under the Railway Act;

   (d) To eliminate the required approval by the Board of an agreed charge; and

   (e) To eliminate the right of other regulated carriers to object to the agreed charges.

5. It is to be observed that as the law now stands truck competitors (since none of them are included in the Transport Act) are not entitled to object to an agreed charge made by rail or water carriers.

Recommendations

None of the amendments to the Act proposed by the Provinces or by the railways can be recommended.

5. TERMINAL RATES

On freight moving in Western Canada out of and into Port Arthur, Fort William and Armstrong in Ontario, Churchill in Manitoba, and Vancouver, New Westminster, Victoria and Prince Rupert in British Columbia, the applicable class rates are called "terminal rates". The difference in nomenclature arose by virtue of the so-called "Manitoba Agreement" of 1901 entered into between the Province of Manitoba and the Canadian Northern Railway, under which the Province gave to the Railway a subsidy to build a line from Winnipeg to Port Arthur, and the Company agreed to reduce the class rates between these two points by a certain percentage. When the rates were published, their effect was to make the new rate from Fort William to Winnipeg (a distance of 420 miles) the same as the existing standard mileage rate for 290 miles. Thus for the purpose of computing the distributing rates from the Head of the Lakes to points on the Prairies, 130 miles were deducted. This arrangement was accepted by the Canadian Pacific and later by the Grand Trunk Pacific. It was applied to and from the coast by the Board and voluntarily applied to and from Churchill.

Complaints were made that this constructive mileage rule unduly favours Manitoba, because the benefit of the deduction of 130 miles diminishes as one goes westward. To illustrate: by virtue of the arrangement the terminal rate on first class traffic between Fort William and Winnipeg is 21% less than the standard mileage rate; at Regina it is 13% less; at Calgary 7% less, and at Vancouver 2% less.

Conclusions

This is another contentious feature of the rate structure with which the Board has power to deal. It is pointed out in the chapter on Equalization that the elimination of so-called terminal class rates in Western Canada would tend towards the attainment of the goal of equalization.

6. TRANSCONTINENTAL RATES

Transcontinental rail freight rates apply on traffic hauled by the railways across the continent in competition with steamships which operate through the Panama Canal or direct to the Pacific Coast ports. They are competitive rates, but unlike most competitive rates, they apply generally from or to a large area in Eastern Canada and to or from the "port area" surrounding the Pacific Coast ports.

Transcontinental rates apply particularly to products on which water competition is keen but not to perishable commodities on which speed of delivery is important, and rail rates are usually somewhat higher than steamship rates because the railways are able to charge more for greater speed and scheduled time of delivery.

Territory Involved

Transcontinental rates apply generally from the whole of Eastern Canada; shippers or receivers in the entire triangular area between Montreal, P.Q., Windsor, Ont., and Sault Ste. Marie, Ont., usually enjoy the same transconti-

nental rate. At points east of Montreal small "arbitraries" are added to the Montreal rates for the additional distance; thus anyone using the railway throughout the whole of Eastern Canada has available transcontinental rates, which are in effect the entire year. During the summer period there are additional transcontinental rail and water rates available at a slightly lower differential than the "all rail" rate, for example, by rail to Port McNicoll or Sarnia thence by steamship via the Great Lakes to Port Arthur and Fort William and by rail to the Pacific; or a still lower rate via the river and lake steamships direct by water between ports on the St. Lawrence and Great Lakes to Port Arthur or Fort William thence by rail.

The territory covered by transcontinental rates in Eastern Canada is so extensive because ocean steamships, with connecting river and truck services, between lake ports and inland centres, can take traffic out of or into the entire eastern half of the continent. It is not uncommon for articles destined to the Pacific Coast to be moved from Toronto, Hamilton or Windsor to Montreal for furtherance by intercoastal vessels to Vancouver; and under favourable water-rate conditions a shipment could be moved from as far west as Fort William to Montreal for furtherance to the Pacific Coast by intercoastal steamship, although this would be an extreme case. Movements to Montreal for ocean transit are carried by rail, water or truck. Intercoastal steamships operating between Montreal and Vancouver make a practice of absorbing some of the charges of the trucks or railways from points in Quebec and Ontario to the port of Montreal.

At the other side of the continent the transcontinental rates apply only at the Pacific Coast ports and the trucking areas surrounding those ports; the rates are confined to this comparatively small area because there are no navigable inland waterways to provide competition with the railways in that territory. Transcontinental rates, being carrier-competitive, are not applied from or to intermediate points on the prairies and in Eastern British Columbia. There are, however, exceptions made by the railways because of market-competitive pressure; for example, on canned meats from Winnipeg to the Pacific Coast, and on canned fruits and vegetables from the Okanagan Valley to Eastern Canada.

Complaints

None of the steamship interests complained of the practice of the railways in publishing transcontinental rates; nor did the railways complain of the low steamship rates through the Panama Canal.

The complaints have come mainly from Alberta on behalf of consumers and distributors in that province, especially at Calgary and Edmonton, who object to the anomalies existing in some striking examples of these competitive rates from the East to the Pacific Coast compared with the normal rates to intermediate points.

The avowed policy of the railways has been to publish transcontinental rates applicable to commodities which ordinarily move from coast to coast and which are suitable for transportation by steamship. Many of these rates are higher than the rates to intermediate points and, therefore, cause no complaints. Others are very little lower than the rates to intermediate points. There are, however, some transcontinental rates (relatively few in number) which are very low in comparison to the rates to intermediate points. These have given rise to bitter complaints. A few examples will make the situation clear:

4—80075

Item	Present all-rail rate to Calgary or Edmonton	Transcontinental rate to Vancouver
	Per 100 pounds	
Canned Goods	*V $2.65	$1.40
Structural Steel *C	*S 2.07¼	1.32
Structural Steel *E	*S 2.36¼	
Cast Iron Pipe *C	*V 1.73	1.00
Cast Iron Pipe *E	*V 1.85	
Cooking Oils	2.88	1.65
Flannelette Blankets	*A 6.58	3.31

Rates are as of December 31, 1950.

*A — Any quantity, carload or less.
*C — To Calgary.
*E — To Edmonton.
*S — From Sault Ste. Marie, Ontario only.
*V — Combination on Vancouver.

Most of these articles are especially suited to water transportation as they are heavy in relation to their bulk and the intercoastal steamships can afford to carry them at low rates which, as shown, have a drastically competitive effect on the railway rates.

AUTHORITY AND JUSTIFICATION FOR TRANSCONTINENTAL RATES

The Railway Act, Section 314, ss. 5-6, has permitted the establishment of transcontinental rates without necessarily applying them from or to intermediate points; this statutory authority is known as the "long and short haul" clause.

Transcontinental rates have been justified on precisely the same grounds as other competitive rates. If the railways cannot get business at normal charges, they may properly offer lower rates. As long as the reduced tolls yield something more than the transportation costs, the railway is better off than if it had refused to reduce the normal rates and had lost the business entirely; the railways obtain some net revenue they would not have otherwise received and this net, however small, reduces the amount which the non-competitive business would have to contribute in order to provide the carrier with its necessary total income.

While there always has been (save in exceptional circumstances such as war) some steamship service to the Pacific Coast which has affected railway rates from the East, the acute period of competition with the Canadian transcontinental railways occurred after the opening of the Panama Canal in 1914.

The competition at the Pacific Coast is threefold: (1) from steamships between eastern Canada and west ports; these steamships, like our railways, carry goods of Canadian origin, e.g. Canadian canned fruits and vegetables; (2) from steamships plying between other countries and Canada's Pacific Coast, carrying direct imports from the United Kingdom, Europe, the United States, the West Indies and the Orient, e.g. British cast iron pipe in competition with Canadian pipe from Toronto or Trois Rivières, and (3) from American railways (such as the Great Northern penetrating British Columbia from the south) which carry United States goods at low rates to compete with American steamship services, via the Panama Canal, e.g. stoves from Ohio in competition with stoves from Toronto.

Any one of these factors compels the Canadian railways to publish transcontinental rates if they are to keep a share of the traffic.

The Province of Alberta has made this complaint one of its important issues in this inquiry, no doubt for the reason that some transcontinental rates create outstanding anomalies compared with normal rates at intermediate points such as Calgary and Edmonton. The normal rates between the east and the Prairies, because of the long distance, are high in dollars and cents. Frequently there are only "class" rates to intermediate points such as Calgary and Edmonton, and the publication of a low competitive rate to Vancouver results in a considerable disparity between the two rates.

It is really the size of this disparity in dollars and cents per 100 pounds, in the instances mentioned, that is the cause of the complaints; if the difference were only a few cents per 100 pounds the disparity would scarcely be noticed. It seems difficult at first to understand why a rate on canned vegetables from Toronto to Calgary should be $2.65 per 100 pounds when the rate on the same article to Vancouver is $1.40 per 100 pounds.

For many years the extreme anomalies created by transcontinental rates have been a sore point in the Province of Alberta, particularly in Calgary and Edmonton which pay the highest intermediate rate of any distributing point short of Vancouver.

Alberta does not deny that the railways, when there is active water competition to be met, may publish transcontinental rates, and concedes that rates to Vancouver may in some cases properly be lower than the rate to intermediate points; the real complaint is that the disparity between some transcontinental rates and the rates to the intermediate point is unreasonable.

Saskatchewan and Manitoba have also been affected to a lesser degree. The Province of Manitoba raised the point that the low transcontinental rates give the Eastern manufacturer and the Pacific Coast distributor an advantage against the Winnipeg manufacturer and distributor who pay normal rates into and out of Winnipeg on raw materials and finished goods destined to the Pacific Coast. The Manitoba complaints, however, were limited to a few instances such as shipments of electric batteries and workmen's clothing.

The Remedy Proposed

The Province of Alberta submitted that the Board should regularly examine the conditions lying behind transcontinental tariffs and that it should not permit such rates unless (a) competition is active, compelling and beyond the control of the railways, and is present at the competitive point and absent at the intermediate points; (b) the rate to the competitive point is no lower than necessary to meet the competition which is present there; (c) the rail rate to the competitive point is such that the net earnings would be greater than they would be in the absence of such rates, and (d) that the rate to the intermediate point is just and reasonable under the circumstances. Alberta proposed an amendment intended to bring about this result.

Conclusions

The problem should be considered in the following manner:

To obtain the direct benefits of the lower costs of ocean traffic, the trader or consumer in Alberta, in the absence of competitive rail rates to the sea coast, must order his goods from Eastern Canada to Vancouver by steamship and then add the full cost of inland railway rates from Vancouver to such points as Calgary or Edmonton; but when the railways meet the ocean competition at the Pacific coast by publishing low rail rates from Eastern Canada they confront the Alberta trader or consumer with a different situation.

The distributor at the coast then has the benefit of both types of transportation, either ocean or rail; he has two strings to his bow; he can, if it suits him, use the slower ocean service at low rates or he can use the reduced rates of the railways and obtain rail transportation at less (and sometimes much less) than the normal railway rates. In reality he occupies a bargaining position between two competitors.

The distributor or consumer at Calgary or Edmonton now has no such advantages; he must pay to the railways either the full normal rate from the East to Calgary or Edmonton, or at best the combination of the transcontinental rate to the Coast and the full normal railway rate from the Coast to Calgary or Edmonton. He could in some instances obtain this combination by having his goods forwarded by rail to the Coast and reshipped back, but in practice the railway hauls the car only to Edmonton or Calgary and charges a rate equal to the combination, if it is lower than the published rate to Calgary or Edmonton.

As long as the competition exists the railways should be permitted to meet it. But when meeting the competition creates anomalies of the character indicated above and causes such long standing grievances, it is desirable that a solution be found which will enable the railways to meet the competition and at the same time eliminate, at least to a substantial degree, the anomalies created.

To apply transcontinental rates as a ceiling to intermediate points would in effect be placing such points as Calgary and Edmonton at the sea coast for rate purposes. Alberta does not suggest that extreme remedy. It says in effect that if a low rate is established to the sea coast then the rate to intermediate points such as Calgary and Edmonton should not be higher than a fair and reasonable rate established by comparison. This, according to Alberta, means that if the railways can make large reductions in a rate direct to the sea coast, on a basis related to the lower cost of steamship service and still make some profit, the rate to the intermediate points such as Calgary or Edmonton cannot be twice as high as the rate to Vancouver, without indicating an exorbitant profit.

A similar situation was dealt with in the United States by denying all long and short haul relief to the American railways, so that if they desire to participate in transcontinental traffic they must apply the transcontinental rate as a maximum to intermediate points.

Such a course is not called for here; it would probably result in the cancellation of some transcontinental rates from Eastern Canada to the Pacific Coast on which the railways have heretofore been afforded statutory protection, and on which communities in the Pacific coastal area have relied for many years — the low rates on iron and steel, for example. The railways might not desire to apply low coastal rates to the intermediate points (especially if the traffic were in greater volume to such intermediate points) and might in the face of a prohibitory "intermediate point" rule, decide to cancel the low rates to the coast.

Recommendations

On the main issue, it seems reasonable to conclude that when the railways give the trader and consumer at the Pacific Coast the benefit of fast railway service at rates that are very little more than ocean rates and thus provide them with two alternate services at almost the same price, the consumers in Alberta and other intermediate provinces are entitled to share in an equitable degree in the beneficial condition thus created by the railways.

The influence of any transcontinental rate from the East to the British Columbia Coast should be carried back in the rates to the intermediate provinces (including points in British Columbia east of the coast) on a basis not more than one-third greater than the transcontinental rate to the sea coast. This is a logical and simple solution to the matter, one that is readily calculated and

applied; it recognizes the influence on Alberta of intercoastal competition, but at the same time does not lead to the extreme conclusion that Alberta should have sea coast rates. It should also have a restraining influence on the railways in lowering rates to meet sea coast competition, because they will know that they can only obtain rates at intermediate points not more than one-third above the rate to the sea coast. If they choose to cut their rates in two to the Pacific Coast, they may charge only one-third more at the intermediate points, not 100 per cent more, as they now do in the case of canned goods and flannelette blankets to Calgary and Edmonton.

The effect of this proposal is indicated by the following examples of rates on carload lots which add a third to the table previously given:

Item	Present all-rail rate to Calgary or Edmonton	Present trans-continental rate to Vancouver	Rate to Calgary or Edmonton resulting from proposal
	Per 100 pounds		
Canned Goods	*V $2.65	$1.40	$1.87
Structural Steel *C	*S 2.07¼	1.32	1.76
Structural Steel *E	*S 2.36¼		
Cast Iron Pipe *C	*V 1.73	1.00	1.33
Cast Iron Pipe *E	*V 1.85		
Cooking Oils	2.88	1.65	2.20
Flannelette Blankets	*A 6.58	3.31	4.41

Rates in the first and second columns are as of December 31, 1950.

*A — Any quantity, carload or less.
*C — To Calgary.
*E — To Edmonton.
*S — From Sault Ste. Marie, Ontario only.
*V — Combination on Vancouver.

The provinces east of Alberta will likewise benefit from the proposal which is outlined above, since the maximum rate to all points between the point of origin and the Pacific Coast area will be subjected to the ceiling of 133⅓% of the transcontinental rate.

The same principle should apply to eastbound competitive transcontinental rates.

This is all that can usefully be recommended in regard to this much debated question of transcontinental rates and their relation to rates at intermediate points.

The Railway Act should be amended to provide that when competitive transcontinental tariffs are published by the railways, such tariffs shall contain a provision that the rates to or from intermediate territory shall not exceed the transcontinental rates by more than one-third.

The legislation here recommended would bring about a change in the manner in which transcontinental rates have heretofore been treated by the Board. It has so far been held that the interests of shippers and consignees at intermediate points did not touch the principle of transcontinental rates: In re General Freight Rates Investigation, 33 C.R.C. page 127.

7. INTERNATIONAL RATES

There are three types of International Rates:

TYPE I Rates on traffic between points in Canada and points in the United States in either direction;

TYPE II Rates on traffic between two points in the United States through Canada; and

TYPE III Rates on traffic between two points in Canada through the United States.

As to Type I: These rates must be published in printed tariffs which are "filed" with the Board of Transport Commissioners in Canada and with the Interstate Commerce Commission in the United States. In neither country are the railways compelled by law to agree to joint international rates; the agreement is voluntary, but when made, the tariffs publishing such rates must be filed. They then become subject to both the Railway Act of Canada and the Interstate Commerce Act of the United States. The Board controls the rate over such portion of the through rate as lies within Canada, and the Commission controls the rate over the portion in the United States.

The legal jurisdiction over such rates is thus divided, neither country having complete control over the entire rate in an international rate tariff.

As to Type II: The freight tariff must be filed with both regulatory bodies by virtue of the provisions of Section 339 of the Railway Act and the provisions of the Interstate Commerce Act.

As to Type III: The freight tariff must be filed only with the Board in Canada, as the Interstate Commerce Act does not require such tariffs to be filed with the Commission.

In this section Types I and III are dealt with.

Where there are no joint international rates the traffic is carried at the lowest combination of local rates.

The publication of joint international rates avoids the difficulty of ascertaining the lowest of numerous combinations of rates to and from various junction points, thus simplifying the quoting of rates. It also usually results in lower charges, thus stimulating international traffic.

THE PRESENT SITUATION

Where the amount of international traffic is large joint international rates are generally published, e.g. between points in Eastern Canada and points in the Eastern United States. On the other hand where there is a relatively small flow of international traffic there are few international rates, e.g. between Western Canada and the United States, and between Canada and the Southern and Western States.

Along the Atlantic and Pacific coasts of both countries many international rates are published because of the common interest of railways in meeting intercoastal water competition.

As joint international rates are the result of the desire of railways in two different countries to institute them, and can only be published after an agreement, there is no jurisdiction in either regulatory body to compel their institution. The joint rates come about only where, in the opinion of the railways in the two countries, there is a sufficient volume of traffic to warrant them, or when to meet competition the railways of both countries agree upon and publish international rate tariffs.

When rate changes are authorized by the Interstate Commerce Commission, the practice is, and for a long time has been, for the Board to permit increases or reductions in the Canadian portion of the international rates (a) at the same time and (b) of equivalent amount as granted by the Commission on the United States portion of the rates.

General rate increases within the United States may, and usually do, take place before similar increases occur within Canada, and the amount of the increase in the United States may be greater than the increase in Canada. Consequently international rates are often raised more than domestic rates and the Canadian portion of the international rate is allowed by the Board even though the rate of increase is higher than on other rates in Canada.

Since a joint international rate is one unit, and not divisible at the boundary in so far as the shipper is concerned, the whole through rate must be advanced in both countries at the same time to keep the international rate on a parity with other rates within the United States. If this practice were not followed the American shippers would be discriminated against within their own country by the lower international rates on shipments to or from Canada. This may best be shown by an example: If Canadian railways did not increase their rates on lumber from Vancouver to Boston simultaneously with the American railroads' increase on lumber from Seattle to Boston, mill owners at Seattle would complain of loss of markets and unjust discrimination. Railways in the United States, to protect shippers along their lines as well as to protect their own revenues, would then withdraw their concurrence in the joint international rate from Vancouver to Boston. The rate which would then apply from Vancouver to Boston would be the relatively higher one, namely the sum of the local rates. Canadian shippers would be out of the Boston market and would be worse off than if Canadian railways had advanced their rates exactly as American carriers had done. Another, although different example: freight originating in Trois-Rivières, P.Q., destined to Buffalo, N.Y. may be hauled by a Canadian railway and delivered to American lines at Montreal, P.Q., Prescott, Ont., or Black Rock, N.Y. The through rates by the various routes are now equal. If an increase were permitted only on the United States portion of these through rates, the increase in cents per hundred pounds would not be the same over the various routes because the mileage within the United States differs. The total charges and therefore the relationship between the various gateways would be disturbed, and the flow of trade across the border thrown into a state of confusion.

Complaints and Suggestions

The complaints and suggestions made may be summarized as follows:

(1) There are many joint international rates in the East and few in the West;

(2) The Canadian railways' portion of international rates is too high and should be reduced;

(3) The present level of some international rates is prohibitive and jeopardizes export trade, particularly in pulpwood;

(4) The Board permits the increases as a matter of routine, does not hold hearings in respect to them and does not exercise sufficient control over them;

(5) Proportional rates should be established in the West between interior points in Canada and international gateways to foster trade with all sections of the United States; and

(6) A closer liaison should be established between the Board and the Interstate Commerce Commission either informally or through a joint international board.

The Railways expressed the following views:

(1) That no legislative changes would be effective, because the American railways would simply refuse to join in tariffs if the rates were not raised to the same level in Canada as in the United States;

(2) That the rates must be a matter of negotiation between the railways involved; and

(3) That the continuity of joint international rates is necessary for the maintenance of this traffic through all gateways.

The alternative would be to move this traffic on combination rates which would not benefit shippers or consignees.

Conclusions

1. No one was able to suggest any legislative remedy which would cure any of the complaints, and as far as can be determined all admit the importance and necessity of joint international rates to shippers, consignees and railways.

2. The Board's present practice of permitting the increases granted by the Interstate Commerce Commission to be applied on the Canadian portion of the through rate appears to be the only feasible one to follow. To do otherwise would mean the withdrawal by American railroads from joint international rates. That this is evident is perhaps best illustrated by the fact that Boards of Trade in Montreal and Toronto have actually joined in applications to the Board favouring this procedure in order to preserve the continuity of international traffic.

3. While the publication of joint international rates between all points in Canada and all points in the United States would be most desirable, it cannot be brought about by legislation or regulation in Canada for the simple reason that American carriers cannot be compelled to join in international rates against their will.

4. Publication of lower proportional rates between interior points in Canada and the international boundary on traffic destined to or received from the United States would only result in reducing railway revenue in Canada without a corresponding reduction by proportional rates within the United States.

5. The paucity of joint international rates in the West as compared with the East is something over which the Board has not and cannot be given any effective control by legislation.

6. Reduction by Canadian railways of their portion of the through rate would not benefit Canadian shippers or consignees, but would simply reduce the revenue of Canadian railways and thus place a higher burden on other rates.

7. It does not appear that the creation of a Joint International Board would be either practicable or desirable. This proposal has, in the past, been considered by American and Canadian authorities and been discarded by them. No new or additional reasons have been advanced which warrant a recommendation to set up such a body.

8. During the discussion of International Rates Alberta proposed an amendment to Sec. 338 of the Railway Act which would compel Canadian railways to apply to traffic moving wholly within Canada, lower rates corresponding to those which might be brought about by the application of a combination of rates between two points in Canada on traffic passing through the United States. Legislation which would have the effect of having a combination of American rates (over which the Board has no control and which are not filed with the Board) govern a normal Canadian rate, cannot be recommended. Competitive or other conditions in the United States may affect the American rates, but if such competitive or other conditions do not exist in Canada, it would not seem

proper to have the American rates in such a case act as a ceiling for the Canadian rates as Alberta's amendment proposes. Even within Canada competitive rates in one region do not govern non-competitive rates in another. The complaint to which the proposed amendment is directed seems really to arise out of the situation in respect to transcontinental rates within Canada. This latter problem is dealt with elsewhere in this Report.

Recommendations

No legislative amendment is to be recommended with respect to international rates or to the establishment of a Joint International Board to deal with them or to alter the Board's present practice in dealing with such rates.

8. EXPORT AND IMPORT RATES

These are Special rates, usually lower than domestic rates, and are made to encourage export and import trade through Canadian ports.

Fundamentally they are competitive because they are designed to place various seaports, shippers through these ports and the railways which serve them, as nearly as possible on a basis of equality with ports, shippers and railways in the United States.

The Port of New York has many advantages over its competitors such as Montreal, Philadelphia and Baltimore, and if the latter ports are to participate in foreign shipping, the railways serving them must give shippers along their lines favourable rates. After long and bitter rate wars in the past the railways agreed some years ago on a system of differentials, which, broadly speaking, equalized disasdvantages of various ports as compared with New York.

The Export rates to Philadelphia are two cents per hundred pounds less on freight generally, and one cent less on grain and grain products than the Export rates to New York. On this basis New York is content to allow Philadelphia to obtain its "fair share" of oceanic trade.

Export rates to Montreal are normally the same as to Philadelphia. Export rates through Halifax and Saint John are normally the same as they are to New York. The practical effect of the relationship is that normally Montreal takes Philadelphia rates which, as stated, are two cents lower generally than to Saint John and Halifax, which take the New York rates. Import rates are normally made on the Baltimore basis.

To preserve relationships, rates on export and import traffic are altered in Canada in precisely the same manner as export and import rates are altered in the United States, and in recent years the normal export rates have been increased to New York, Halifax and Saint John, and also to Montreal and Philadelphia, so that the two-cent differential relationship is maintained.

However, the tariff provides that the normal export rates, which it sets out, are to be superseded by the domestic rates plus port charges when the sum of these latter is less. In such case the domestic rate (plus port charges) becomes in effect the export rate.

Since 1946 rates on domestic traffic within Canada to Montreal have been increased less than corresponding domestic rates in the United States. The result is that the domestic rates plus port charges on shipments to Montreal have become with a few exceptions the export rates to that port. Hence by the application of the Canadian domestic rates to that port the differential under Saint John and Halifax has become much wider than two cents.

The Maritime Board of Trade alleged that the two-cent differential over Montreal to Halifax and Saint John constituted a "differential relationship"

which was disturbed by the recent increases on domestic rates. It was submitted that this relationship should be restored by reducing the export rates to Halifax and Saint John so that the differential to these two ports over Montreal would be only two cents per hundred pounds instead of 21 cents, as it was for example, on Fifth Class traffic from Toronto at the 12th January, 1949. (The Canadian and American rates have changed since that date.)

The railways stated that the lowering of export and import tolls through Halifax and Saint John would disturb long standing and mutually satisfactory inter-relationships between various ports in Canada and the United States. If such rates were lowered the American railroads could and undoubtedly would retaliate by withdrawing the joint rates on exports and imports to and from the United States via Saint John, Halifax and Montreal. They said such action would be prejudicial to Canadian ports generally and to the ports in the Maritime Provinces in particular. They pointed out that the situation arising out of the differences in increases in domestic rates in the United States and Canada was one beyond their control, and this had brought about the greater spread in the rates between Montreal, Halifax and Saint John.

Conclusions

1. American and Canadian railways have reached a tacit understanding with respect to export and import rates after bitter rate wars, and port relationships have been adjusted accordingly. It is well understood by the American railways that Canadian railways can use normal domestic rates plus handling charges as a basis for export rates and this will incite no retaliation, but if normal domestic rates were abandoned for distances east of Montreal of from 500 to 800 miles and replaced by an arbitrary of two cents with the intention of diverting traffic to Canadian maritime ports (and this is the effect of the Maritime proposal) then the agreement of American railroads could no longer be counted upon. The result would almost certainly be a rate war in which all Canadian Atlantic ports would find themselves in a very vulnerable position.

2. Rate relationship in export and import rates between ports in Canada and the United States developed over a long period of years should not be disturbed, and the present practice of the Board in maintaining such relationships should not be altered.

3. The increase in the differential between Maritime ports over Montreal is not due to a change in port relationships in export and import rates, but rather to increases in domestic rates being less in Canada than in the United States.

4. It is to be observed that the Board in dealing with these rates follows the same practice as that adopted by the Interstate Commerce Commission. In the recent Canadian increase cases the Board has specifically excepted from such increases "Export and Import rates to and from Canadian ports which are on a parity with rates to or from United States ports".

No amendment is recommended in regard to legislation governing export and import rates.

9. INTERLINE RATES

An interline rate is one which applies between stations on the lines of two or more different railway companies. As a rule these rates are less than the sum of the local rates but more than the rate for the same distance over a single line of one company.

The justification given for the higher rate is that there are additional clerical, switching and other costs when two or more railway companies are involved.

The complaints and suggestions may be summarized as follows:

1. That there are insufficient facilities at interchange points and that these should be established at all points where two or more railways serve them;
2. That all interline rates should be on a single line basis;
3. That railways should be compelled to quote joint interline rates over the most direct routes;
4. That the lack of joint rates makes the resultant combinations in certain instances unreasonable; and,
5. That in some instances joint rates are almost as high as the combination of local rates and are therefore excessive.

The railways' position with respect to the complaints is as follows:

1. The establishment of facilities at all interchange points would increase the capital costs and operating expenses without significantly assisting the public through better service or lower tolls. Essential facilities are built whenever the volume of traffic is large enough to warrant the expense, and joint rates are then published;
2. To put all joint rates on a single line basis would reduce the revenue of the railways, would be contrary to long and well established rate-making practice and would not take into account the additional costs to the railways incurred in joint hauls;
3. To compel the railways to quote joint interline rates over the most direct routes might mean compelling a railway to short-haul itself, and would also result in the breakdown of some existing single-line rates;
4. If the combination rates are unreasonable, the Board can order joint rates and fix the tolls and determine the route; and,
5. If joint rates are unreasonable the Board can also deal with the matter.

Conclusions

1. As to provision of facilities, the Board has ample power under Sections 312 and 313 of the Railway Act to deal with all cases which come before it. Each case must be judged on its own merits, and the Board is the proper forum.

2. Regarding joint interline rates, the Board, under Sections 336 and 337 of the Railway Act, has power to order joint rates, to fix the tolls and to determine the route, and under Section 325 of the Railway Act the Board has power to fix, determine and enforce just and reasonable rates.

3. The Board has held that if one carrier has a route over its own rails which is reasonable and practicable, joint tariffs are not required. The determination of matters of this kind should be left to the Board as each case must be decided on its own merits and after a careful examination of all pertinent facts.

4. The question of increased costs for joint hauls is and must be one for the Board to decide in each case. Obviously if it costs the railways more to carry goods over the lines of two railways than it does over the lines of one railway, the companies involved should not be expected to publish a single-line rate. The amount of the additional costs, if any, to be added is again a matter for the Board to determine in each case.

Recommendation

The proper procedure would appear to be that in any case where joint interline rates are charged the burden should be placed on the railways to show that additional costs are involved, and that they should be permitted to charge joint rates higher than on the single line basis only when they can discharge this burden.

Section 336 of the Railway Act should be amended by adding thereto:

"4. Where the rates in the joint tariff exceed the rates in a single-line tariff for the same or similar distances in the same locality the burden of proof shall lie upon the companies to show to the satisfaction of the Board that there are greater costs involved in the joint movement, and only in such case may the rates in the joint tariff be permitted to exceed the rates in the single-line tariff."

10. DEVELOPMENTAL RATES

The only proposal made in regard to these rates was by the Province of Alberta which proposed that the following new Section be added to the Railway Act:

> "The Company may, for the purpose of assisting an industry or of developing traffic which otherwise might not exist, establish tolls lower than the tolls for traffic of the same description: Provided that such lower tolls shall not remain in effect for a period of more than three years without the approval of the Board, and the Company shall have the right to cancel or amend such lower tolls at any time."

The Railway Companies objected to the proposed amendment in their briefs and argument. The Canadian National Railway brief states:

> "The Canadian National considers that the matter of publishing special rates to assist or develop industry should be left to the discretion of the Railways and that there should be no restrictive or mandatory legislation in this regard. This method has proven satisfactory in the past and there seems no reason why it should not work satisfactorily in the future."

Counsel for the Canadian Pacific Railway Company said:

> "Canadian Pacific is opposed to the proposed legislation, because it would permit preferential rates to new industries and the imposition of unjustly discriminatory rates on existing industries and cause industrial dislocation and wasteful transportation services. Under the proposed legislation the revenue position of the Railways would also be adversely affected."

Conclusions

Developmental rates are usually initiated by action of the railways who grant a special commodity rate to new industries or to existing industries which are developing new lines of traffic. In these cases care is said to be taken by the railways to ensure: (a) that all such rates are compensatory, and (b) that all industries are treated on the same basis of equality to prevent charges of unjust discrimination or undue preference. There does not appear to be any objection to this practice. Nobody suggested that developmental rates were non-compensatory or that the railways were practising discrimination by the use of them.

There is, therefore, no reason to discourage the present practice nor to recommend legislative restrictions upon it. The initiation of these rates should be left with the railways.

11. EXPIRY RATES

These are rates which are limited by a date of expiration in the published tariff. They have been used by the railways to meet two dissimilar situations: first and principally, as seasonal water and truck competitive rates, and second, as a concession to particular traffic such as seed grain and livestock for exhibition.

Complaints were made in regard to expiry rates granted as a concession, which are continued from year to year, over a long period of time and then allowed to expire suddenly, whereupon the higher normal rates become effective. This is said to create hardship because shippers have come to regard these rates as permanent in character.

It was contended that while these expiry rates might be made subject to general freight rate increases, they should not otherwise be altered without an order of the Board after a public hearing.

The railways contended that, because of financial needs, they had been forced to raise all rates, including these expiry rates, and that the adoption of restrictive measures in regard to these rates would unduly hamper them in maintaining a proper and necessary flexibility in the making of rates.

Conclusions

The very nature of these rates is that they are to begin at a certain date and terminate at another. If the expiry date set out in the published tariff is to be considered ineffective and the rate is to remain in force until otherwise ordered by the Board, the railways, in granting such a rate, would be putting the period of their duration out of their own hands. Such a state of affairs would not be conducive to the granting of these rates which no doubt are beneficial to shippers.

There is no useful legislative amendment to be recommended in this matter.

12. RATE GROUPING

When rates to or from all points within an area from or to a point outside that area are identical that area is said to constitute a rate-group. Clarity demands that each of four types of rate-group should receive separate consideration.

The first type exists when rates are fixed in blocks of a number of miles. Grouping of this sort avoids a multiplicity of point to point rates and is a common feature of a rate structure. It is consistent with proposals for uniform rate scales throughout Canada which have been discussed elsewhere. Blocks are usually short when the length of the haul is short, and long when the length of the haul is long. The technical difficulties involved in this type of grouping are not of concern here.

The second type is compelled by carrier competition, usually that of a carrier by water. As competition is a recognized exception in any plan for uniform rate scales, provided the rules, if any, applying to competitive rates are met, this type of rate-group presents no special difficulties.

The third type is created for other purposes. For example, if an industry is diffused throughout an area, it may be considered desirable to treat all competitive enterprises engaged in that industry alike when quoting rates to or from points outside that area.

The fourth, a variant of this type, exists when adjacent territory not itself affected by carrier competition is included for convenience in a group designed primarily to meet such competition.

It is with rate-groups of the third and fourth types that submissions made to this Commission have been concerned. Proposals for uniformity might outlaw rate-groups of these types or might make express exception for them. If they are permissible in the future, as they have been in the past, they will inevitably be demanded from time to time in various regions, on the ground that concessions made in one part of the country should, under appropriate conditions, be made in all parts. Two cases of this sort were referred to by counsel for the Province of Alberta.

Alberta asked that rate groups be established in Western Canada; that Magrath, Taber and Lethbridge be grouped together for the purpose of making the rates on canned goods to Edmonton, and that Calgary, Red Deer, Alix and Edmonton be grouped for making rates on butter to Eastern Canada.

It is alleged that the method of making one large group (the Montreal-Windsor-Sudbury group) in the East, while refusing to make groups in the West, is a discrimination against the West.

Prince Edward Island is generally divided into two zones for rate-making purposes: an inner zone extending from Borden to Summerside and Charlottetown, and an outer zone comprising stations on the lines on both sides of the inner zone. The provincial government asked that one zone be established for the whole province. It would be most desirable to have this request complied with.

New Brunswick, on the contrary, asked that the Minto coalfields in that province be grouped separately from those in Nova Scotia.

In Western Canada the rates on butter and on canned goods are based on the class rate groupings, and these rates apply from point to point within 10 or 25 mile blocks depending upon the length of haul.

With respect to Prince Edward Island, the Board of Transport Commissioners now has under consideration an application for the consolidation into one zone of the two now in existence on the Island, but this application has not been set down for hearing.

The Minto coalfields in New Brunswick are already grouped separately from those in Nova Scotia and the complaint was made under a misapprehension. The rates from Nova Scotia are water competitive and therefore approximate the revenue per ton of the Minto rates, thus causing the complainants to believe that the rates were grouped together.

The Province of Alberta suggested that the freight rate structure should recognize the principle of rate-groups, i.e. the principle of establishing common rates from the same production area to common market points. No particular legislation was asked for.

Conclusions

1. The submission of the Province of Alberta is, in substance, that any plan for the equalization of rates which the Board of Transport Commissioners may approve, should permit of exceptions being made for rate-groups designed to place all competitive enterprises within some suitable area on an equality in respect of the freight rates charged for transporting their products to points outside the area. There is no legislative enactment forbidding the formation of such rate-groups, and Order in Council No. 1487 does not suggest that they would be inconsistent with the revision of the rate structure contemplated by it. Rate-groups of this type inevitably involve some marked discrimination against points immediately outside the area which they comprise. They are, therefore, best suited to areas with clear-cut natural boundaries. The purposes which this kind of rate-groups could serve can be achieved to some extent by other methods, which may well be better suited to the actual conditions of Alberta.

2. As has been pointed out in discussing competitive rates, it does not appear that publishing a competitive rate from an area where carrier competition exists would require the establishment of the same rate from a neighbouring area where no competition exists.

3. The Royal Commission on Coal which investigated the position of the producers in the Minto field in 1946, advised them to discuss their complaints with the railways and, if necessary, pursue them before the Board. No evidence was submitted that this had been done.

4. The use of 766 miles, which is the Edmonton-Vancouver distance via the Canadian National Railways, for fixing the export grain rates from the Prairies to the Pacific coast, is not regarded as a "constructive mileage". It is in fact an approximate average of the distances from Calgary and Edmonton to

the Vancouver and Prince Rupert port areas. No one complained about this method of computing the westbound export grain rates, and there appears to be no reason to change it. This is mentioned in order to make clear that the general recommendation against the use of "constructive mileages" is not intended to apply to this situation.

Recommendation

No legislation is recommended on the subject of rate-grouping; but it is suggested that the situation which has led to the demand for larger rate-groups may be one which the Board can deal with by the use of a uniform scale of rates involving distance grouping, including, in the case of very long hauls, large rate groups of 100 or even 200 miles in extent, in addition to the rate groups of 10, 20, 25, 40 or 50 miles which now exist for shorter distances.

13. TAPERING OF FREIGHT RATES

The progression of freight rates in regard to distance is one of the most important factors in the rate structure. It is also one of the most difficult and technical matters in the fixing of rates. The tapering of rates is the process by which rates mile for mile are less for longer than for shorter distances or rates per ton-mile decline as mileage increases.

As already pointed out, transportation in Canada requires the movement of traffic interprovincially, and even within a province, for great distances. A haul of 4,506 miles is possible between two points on one railway in Canada (between St. John's, Newfoundland, and Prince Rupert, British Columbia).* The average length of haul of traffic between Eastern and Western Canada is in the neighbourhood of 1,800 miles. The average haul of all traffic on the Canadian railways in 1949 was over 400 miles per shipment. In the United Kingdom in 1948 it was only 72 miles.

The tapering of rates is of special interest to the Western Provinces, as they are an immense area stretching 2,000 miles from Port Arthur, Ontario, to Prince Rupert, British Columbia. Since the Western Provinces are largely dependent on rail transportation the tapering of freight rates for these long distances is of great concern to them.

Another part of the same problem, also of great interest to the West, is the tapering of rates in relation to the freight classification. There are ten broad classes in the freight classification, the highest valued goods being included in the first class and the lowest in the tenth class. The grading of the freight rates in a descending ratio from first to tenth class is of special interest to Western Canada, because a large volume of shipments of their basic products is comprised within the lower classes. It is therefore of great concern to them, for illustration, whether the tenth class rate is 30 per cent of the first class rate, or 25 per cent.

It should be noted in reading the following paragraphs that the term "rapid" or "greater" tapering of rates means that the rates for longer distances are relatively lower; on the contrary "low" or "less" tapering results in higher rates for the longer distances—in other words, the rates do not "taper off" so rapidly as other rates.

The principal complaints were made with respect to the "class" rates, i.e. rates which are made subject to the ten classes of the Canadian freight classification. Other complaints, however, were made with respect to the tapering of "commodity" rates, which are special rates lower than the class rates given on certain specific articles.

*Including 100 miles by sea.

The complaints and suggestions may be summarized as follows:

1. That in constructing a new uniform rate scale for the whole of Canada, the tapering of the class rates which exists in Western Canada is preferable to the tapering of class rates in Eastern Canada.
2. That the class rates on traffic moving between Western and Eastern Canada have a distorted scale of tapering, with the result that these through rates are higher than if the tapering now used locally in Western Canada were extended through to the East.
3. Saskatchewan and Alberta complained that the "terminal" class rates between those provinces and the head of the lakes on both eastbound and westbound traffic do not taper off as rapidly as between Manitoba and the head of the lakes.
4. The Western Provinces complained that some "commodity" rates do not taper sufficiently as distance increases.

The Canadian Pacific in connection with its proposals for equalization of rates submitted that the relationship between the classes (i.e. the tapering from first class for classes two to ten) should be established on the following basis:

"It is proposed that the following relationship shall be established:

First Class	100%	Sixth Class	40%
Second Class	85%	Seventh Class	35%
Third Class	70%	Eighth Class	35%
Fourth Class	55%	Ninth Class	40%
Fifth Class	45%	Tenth Class	30%"

With respect to tapering for distance the Canadian Pacific said:

"The third step is to work out the appropriate rate of taper due to distance. This will probably be done by applying to the equalized first class rate a minimum for distances of 40 miles and less and by adding amounts for each five-mile block up to and including 100 miles; for each ten-mile block up to and including 500 miles; and for each twenty-five mile block up to and including 3,000 miles.

"After study it was not found practicable to take the average rate of taper of the existing Eastern and Western standard mileage scales. Neither is it deemed fair, as suggested by Alberta in its brief, to accept the rate of taper in Western territory as the rate of taper on the equalized scale. This is because the rate of taper on the Prairie standard scale is much sharper than in the Eastern standard scale."

It will be noted that in the Canadian Pacific proposal classes six and nine are the same, and seven and eight likewise. There does not seem to be any object in making different numbered classes with the same rates.

Conclusions and Recommendations

A suitable rate of tapering for the entire country should be an integral part of a uniform class rate scale.

The progression of the scale must, of course, be properly constructed, both as to (1) tapering for the longer distances over the shorter distances and (2) tapering, or relationship, between the classes.

From what has been said herein, it is obvious that these two conditions should not be combined to produce the compound reduction which would occur by adopting (1) the most rapid tapering for distance and (2) the most rapid tapering between the classes. The effect of such a combination would tend to be unduly prejudicial upon railway revenues.

It therefore appears that there should be incorporated in the new scale a compromise between the higher western rates with their more rapid tapering

of classes, and the lower eastern rates with their less rapid tapering. A scale based on such principles would eliminate the anomalies to which attention has been drawn.

No legislation is required to bring about these results. The general freight rate investigation which the Board is now conducting will include the question of the tapering of rates and classes.

14. STOP-OFF PRIVILEGES

Railway companies have voluntarily provided certain stop-off privileges on a number of commodities. Such arrangements have been considered as concessions to meet special circumstances in the case of certain movements of traffic.

The origin of the privilege in Canada is to be found in the handling of the grain crop of the Western Provinces. The stop-off privilege for milling grain in transit was inaugurated primarily for the purpose of encouraging the milling of grain and the establishment of industries for the preparation or manufacture of by-products in Western Canada.

The object of the privilege is to enable the shipper to have his goods stopped in transit at some point to be milled, stored for inspection, branded, sorted, cleaned, etc., and to be reshipped from that point; but instead of being subjected to two local rates, the goods are carried at an ultimate through rate plus a charge for the stop-off. Apart from this object the stop-off privilege would have no reason to exist.

These concessions have been extended and today the tariffs of railway companies in Canada provide for stop-off privileges at specified points, in the following cases among others:

Apples for storage and inspection
Butter for storage, inspection and re-shipment
Canned goods for completion of load
Cheese for storage, branding or inspection and re-shipment
Lumber for dressing, drying, re-sawing, sorting and re-shipping
Eggs for storage, inspection and re-shipment
Grain for milling, cleaning, bagging, etc. in transit
Living poultry for completion of load in transit
Livestock for completion of load in transit, and
Potatoes for bagging, sorting and re-shipment.

It will be observed that these privileges apply in most cases to the movement outbound from the producing centres to the large wholesale or manufacturing markets or for export.

Prior to 1919 applications involving the question of stop-off privileges were dealt with upon the basis of whether or not the granting of such privileges in some cases, and the withholding in others, constituted unjust discrimination within the meaning of the Railway Act, and the Board held that it was entirely within the discretion of the railways to grant or withhold stop-off privileges, and that it was without jurisdiction to direct that the privilege be given unless unjust discrimination were established. In the Railway Act of 1919 clause (e) was added to sub-section (1) of Section 312. This clause provides that the company shall, according to its powers, "furnish such other service incidental to transportation or as is customary or usual in connection with the business of a railway company, as may be ordered by the Board".

The Board has held that clause (e) of sub-section (1) of Section 312 has not extended its jurisdiction by empowering it to compel railway companies to grant a stop-off privilege where no unjust discrimination had been shown to exist, and

that the arrangement was wholly a privilege and not a right. A shipper to bring himself within said clause (e) must show that the service he is applying for is a customary or usual service in connection with the business of a railway company.

In the case of Western Livestock Shippers Association versus C.P.R. and C.N.R., 51 C.R.T.C., page 321, the Board said "the granting of transit privileges is a managerial prerogative" and the Board's intervention is limited to any remedial action "necessary to remove unjust discrimination or unreasonableness".

The complaints made were: (a) that there are too few of these privileges; (b) that they are only granted in the discretion of the railways; and (c) that, as the Board has no power to equalize economic conditions, there is no appeal to the Board when a railway refuses to grant a new stop-over arrangement proposed by a shipper, except on a showing of unjust discrimination on the ground that some other shipper of similar goods has received the privilege.

The complaints with respect to this matter came from shippers in Manitoba and Alberta. One processing firm in Winnipeg complained that it should have a processing-in-transit privilege on fresh eggs to be shelled and frozen-in-transit. The Southern Alberta Sheep Breeders Association contended that there should be a stop-off arrangement for completion of carloads of wool in transit. It was claimed that wool is now shipped in less-than-carload lots to concentrating points, where a sufficient quantity is accumulated for a carload. The privilege suggested in this case is that a car be started at some point with a partial load, and stopped-off at one or more other points to pick up additional small quantities until the car is filled.

The position taken by the Province of Alberta is summed up in a statement of its Counsel as follows:

> "The present situation with regard to stop-off and in-transit privileges is that, subject to the power of the Board to remove discrimination, it is the prerogative of the railways to grant or refuse these privileges.
>
> "Today, if a shipper seeks either of these privileges he must go to the railway and ask for it. If the railway refuses to grant the privilege, the shipper has no recourse to the Board on the ground of the reasonableness of his request. The Board has said that such a matter is the railways' business and if they say no that is the end of it.
>
> "We want that situation changed. We believe that there should be recourse beyond the refusal of the railroad. We ask this Commission to recommend that the Board of Transport Commissioners be required to decide, on the basis of reasonableness, the application of any shipper for a stop-off or an in-transit privilege; the application for such privilege having been first made by the shipper to the railways and refused by them."

Conclusions

The reasons for the establishment of stop-off (or in-transit) privileges are stated above, and it must be borne in mind that these privileges are concessions made by the railways.

To carry out the proposal suggested by Alberta would lead to the introduction of claims for further stop-off privileges on the grounds of analogy to existing cases and in turn to reductions of revenue to the railways. It is presumed that the railways are competent to determine what stop-off privileges are in their interests and it would be dangerous to permit the Board to compel them to act against their interests and to commit them to indefinite losses.

15. RATES GRADUATED ACCORDING TO VALUE

Rates which vary with the price of an article at any given time are rarely found in the Canadian freight rate structure. The principal rates of this kind are on ores of antimony, copper, gold, lead, molybdenum, silver, zinc and mica,

which are classified in the Canadian freight classification as 7th Class when the declared value does not exceed $100 per ton. For a distance of 100 miles the 7th Class rate was 20 cents per hundred pounds (or $4.00 per net ton).

Mining companies claimed that this rigid classification was unsatisfactory and an agreement was made for special commodity rates in British Columbia which were graduated in accordance with the following table:

Not exceeding the Value per ton of	Rate for 100 miles (Per net ton)	Not exceeding the Value per ton of	Rate for 100 miles (Per net ton)
$ 5	$1.60	$ 50	$3.00
10	1.70	60	3.30
15	1.80	70	3.60
20	1.90	80	3.90
25	2.10	90	3.90
30	2.50	100	3.90
40	2.70		

The values are ascertained by smelter assays based on the selling prices of the metal at the time of out-turn from the smelter.

The only complaint with respect to this matter came from the Mining Association of British Columbia which contended that originally this tariff pricing method may have had merit but that the increased prices of metals, coupled with the 21% increase (now 45%) had caused a double increase and that "the mines of British Columbia appear to be paying a greater share of transportation charges than is just and reasonable, compared to what other shippers are paying".

The association, therefore, asked that the "escalator clause" be removed from the tariffs.

The position of the railways is that they need not have charged less at any time than the 7th Class rate as fixed by the Board; that they gave the reductions originally to help the mining industry in times of low prices; that the industry had enjoyed such benefits for many years; that when prices of metals increase it is only equitable that the shippers should pay rates in accordance with such increased values, and that even with the 21% (now 45%) increase, the increased value of the ore was much greater than the relative increase in freight rates.

Conclusions

Presumably the rate would revert to the 7th Class basis (unless otherwise ordered by the Board) if the escalator clause providing for lower rates on ores valued at less than $100 per ton were cancelled; it does not appear therefore that such cancellation would help the mining industry.

The percentage increase in freight rates on the rate for 100 miles on ore originally valued at $25 per ton, which is now valued at $50 per ton is as follows:

	Freight Rate at $25 per ton	Freight Rate at $50 per ton
Original Rate.........	$2.10 per ton	$3.00 per ton
Plus 21% equals......	$2.54 " "	$3.63 " "
Plus 20% "	$3.05 " "	$4.36 " "

The total compound freight rate increase is therefore $2.26 per ton (i.e. from $2.10 to $4.36) compared with an increase of $25 per ton in value of the ore.

The complaint in reality is that the present rates are unreasonable. The adjustment of alleged unreasonable rates is a matter entirely within the functions of the Board. The mining association at the time of the hearing had neither taken their complaint to the Railways nor to the Board. Information obtained since the complaint was made shows that one mining company submitted a case to the Board on the ground that it could not continue to mine ore and ship it at the existing railway rates. As a consequence, the railway jointly with the mining company made an agreement which resulted in a general adjustment of the rates and the case was withdrawn from the Board. The agreement, however, still operates with an escalator clause.

16. INDUSTRIAL LOCATION

(Critical Relationship of Freight Rates)

Industries are usually located at points which are considered by those who establish them to be the best location having regard to sources of raw material, water and power supply, labour and markets. The availability of transportation and the level of freight rates have a definite bearing upon location. This subject in its broad aspects would require lengthy treatment. It is dealt with here only in the one concrete form in which it was presented to the Commission, viz. the presentation made by Counsel for Alberta.

Alberta contended that the relationship between the rates on the raw material and the finished product should be such as not to discourage the location of processing plants near the source of production of the raw material.

In the submissions made by that Province there were several examples given of rate relationships which it was alleged discourage "producer location". The example with which Alberta is most concerned is relationship between rates on live cattle from Alberta to Vancouver, Winnipeg, Toronto and Montreal on the one hand and those on packing-house products from Alberta to the same points on the other. It is alleged that the rates on livestock are low in relation to the rates on the finished products, and this encourages the shipment of the livestock and discourages the processing in packing plants at Calgary and Edmonton.

Alberta referred to a relationship in freight rates which would not discourage producer location as the "critical" relationship, one which, if properly balanced, would be neutral in its effect upon the location of industries.

The Province maintains that the Board of Transport Commissioners should, in fixing rates, take into account this critical relationship, but that it does not do so.

Alberta asks that the Railway Act be amended to provide that the Board shall upon the application of an interested party establish rates on raw materials and processed products so that the relationship between the two shall not *per se* hinder the processing of the raw material at or near the point of production of such raw material. Alberta's proposed amendment is as follows:

> "*Section 321A*
>
> The Board shall, upon application by an interested party or parties prescribe or direct the company to establish tolls on raw materials and tolls on products made in whole or in part from such raw materials, in such manner that the relationship between the tolls on raw materials and the tolls on products made therefrom shall not per se hinder the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials: Provided that the onus shall be upon the applicant to satisfy the Board that the existing relationship between the tolls hinders per se the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials."

The cause of the complaint in the example of livestock and meat products is said to be the low rates on livestock resulting from a reduction made by the railways in 1921 to assist the livestock industry in that trying period. The rates on processed products were not similarly reduced at that time. The railways recently filed tariffs which were to have become effective October 2, 1950, putting an end to the reduction. Complaints against this intended increase were immediately filed by many organizations in the West including the Governments of the Prairie Provinces. Public hearings were held and the Board granted the increase which was made effective from December 15, 1950. This increase was unwelcome to the western livestock industry, but it diminished the imbalance between livestock and meat tariffs.

The Board has considered the question of relationship between rates on raw material and finished products on previous occasions. The Board's views in the matter were clearly stated in the case of *Alberta, Saskatchewan et al v. C.P.R. and C.N.R.* reported in (1928) 18 J.O.R. & R. 356. The chief commissioner in that case, in referring to the contentions made by the western packers, Gainers Limited, that there should be a constant relationship between the rates on livestock and packing-house products and hides from Edmonton eastbound to Toronto, Montreal and Chicago and westbound to Vancouver and Seattle, said:

> "While I am not convinced of the necessity, nor indeed the propriety, of establishing a percentage relation between these two sets of rates, nevertheless it is not difficult to see that a condition could arise in which special rates on livestock being accorded to eastern packing companies, would operate to the disadvantage of western packers in marketing their finished products in competition with eastern packing houses."

He went on to say:

> "The equalization above contended for would involve a rearrangement whereby the combined rates on livestock in, and on meat and packing-house products outward, would produce through transportation charges equal for all Canadian packers. *As a matter of tariff construction this would seem to be impracticable,* and would resolve itself into an attempt to create such a condition regardless of the reasonableness of the rates per se, or of the anomalies that would be created."

It would appear from the foregoing that the Board has considered the matter and has recognized the very problem raised by Alberta, and felt, at least in 1928, that there were serious difficulties involved in fixing a definite relationship between the rates on raw materials and finished products.

On its face the amendment poses numerous practical difficulties, for example: (1) when is a product a "finished product"? A finished product to one producer may not be "finished" to another, e.g., rough lumber may be a finished product at a sawmill but may be the raw material for a woodworking plant; is there to be a critical relationship established in each case? (2) How is one to determine whether or not the relationship between the rates "hinders" or "discourages" the processing of the raw material at or near the source of production? It might hinder or discourage one producer but not another. (3) What will constitute "at or near the point of production"? The relationship might hinder production at one point and not at another which was "near" but not "at" the point of production.

The difficulties are pointed out, perhaps as aptly as possible, in the case of *John Morrell & Co. v. New York Central Railroad* 104 I.C.C. at page 138 where Commissioner Hall said:

> "I am not persuaded that rate relationship between live animals and the various products of animals can be based on fact. A mixed carload of fresh meats, all moving at the same rate, may contain beef, pork, mutton, veal, and lamb cut from animals which when living moved at different rates. Still less can glue, fertilizer, bristles, hair, hides, pelts, wool, leather, ham, bacon, lard, soups, and neat's foot oil—to name but a

few of the hundreds of articles which move in commerce and once formed part of the live animal—be assigned rates which bear any necessary or appropriate relationship to rates on the live animal. Many of them are more closely related from a transportation standpoint to commodities not of animal origin. Instead of saying here, as we said in the Sinclair Case, that fixed relationships are desirable but we are not in a position to fix them, we may better get back to the solid ground on which we stood in Investigation of Alleged Unreasonable Rates on Meats, 22 I.C.C. 160. There we were asked to so adjust rates on livestock, fresh meats, and packing house products that the combined in and out transportation charges at the different localities would be equal, and our answer was:

"Each one of these rival packing houses is entitled to a reasonable rate upon the live animal from various points of production, and those rates should be fairly related one to another. Each packing house is also entitled to a reasonable rate upon its product to various markets of consumption, and these rates, again, should be fairly adjusted with reference to one another. Any locality which remains at a disadvantage after this has been done must sustain that burden, which is due to its location with respect to this business."

Conclusions

There seems to be no doubt that the Board of Transport Commissioners has the power to deal with the kind of cases put forward by Counsel for Alberta as effectively as the Interstate Commerce Commission has done in similar cases.

No useful amendment to the Railway Act can be recommended.

17. COST OF SERVICE PRINCIPLE

The Province of British Columbia submitted that rates should be fixed and determined more closely to a cost of service basis than to the value of service basis. The province suggested that rates should be based on the average cost of providing the service throughout Canada but without making any allowance for regional differences in costs. Under its proposal rates might vary from one class or commodity to another but only because of differences in costs based on the type of equipment used, the weight of the contents per car, whether it is loaded or unloaded by the shipper or consignee or employees of the railway, and the amount of special services performed, for example, refrigeration. It was conceded that rates might be varied because of competition.

Counsel for the province stated: "We have at no time suggested that the cost of service principle should be applied rigidly and we have not done this simply because of the difficulty of determining costs with accuracy and because also it would seem not unreasonable to assume that the mark-up on costs, or in other words the profit, would vary somewhat from one class or commodity to another."

The province proposed an amendment to Section 325(5) of the Railway Act so that it would read as follows:

"Notwithstanding the provisions of Section 3 of this Act the powers given to The Board under this Act to fix, determine and enforce just and reasonable rates *in relation to cost of service* and to change and alter rates, etc."

The only change proposed in the Section is the insertion of the words in italics.

Counsel agreed that there were several difficulties in the way: (1) the definition of the words "cost of service" (which does appear to be a difficulty of a fundamental nature); (2) the difficulty of applying the principle to low density lines—"The factor of density does make it more difficult to apply this principle."

Conclusions and Recommendations

The proposal submitted by British Columbia has not been shown to be a practical one. The amendment is expressed in terms which might have a more far-reaching effect than appeared to be in contemplation by Counsel. It might, indeed, lead to much higher rates than at present being charged on low-valued primary commodities. It is important that these rates should be kept relatively low. Shippers have come to depend upon them and it would be a dangerous experiment to upset the present value of service principle in favour of the untried cost of service principle. The proposed amendment cannot be accepted.

18. REPARATIONS

While the Railway Act provides penalties for departures from tolls in the published tariffs, it does not authorize the Board to order reparations to be paid by the railways if they have received tolls which the Board has subsequently found to be unreasonable. Reductions ordered by the Board apply only to future shipments when the reduced rate comes into effect.

In the United States under the Interstate Commerce Act, the Commission is authorized in certain cases to order a refund to the shipper when a rate which has been in effect is subsequently found by the Commission to have been too high.

The Canadian Manufacturers' Association and others made submissions recommending an amendment to the Railway Act which would empower the Board to order railways to refund to shippers the difference between rates actually paid and the amounts which the Board subsequently found to be reasonable tolls for the service performed. The proposal would compel the Board to examine particular tolls upon complaint in order to ascertain whether they were unreasonable (although legal) at the time they were charged.

In the final argument the three Prairie Provinces and the railways opposed the amendment. The Provinces opposed it on the ground that, generally speaking, the consumer who buys the article from the shipper or consignee has paid the freight as part of the purchase price, and that therefore any reparations allowed would benefit the shipper or consignee only, who has already collected the higher toll when selling the article to the consumer. The railways in opposing the amendment said that (a) it is unnecessary; (b) refunds are always promptly made if by mistake the shipper is charged more than the legal rate; (c) reparations are in essence legal rebates and subject to abuse; (d) in the United States where the practice exists there are reparations claims now outstanding of amounts so great (in excess of two billion dollars) that they would, if allowed, imperil the financial stability of the railways, and (e) it would be unfair to have reparations work only one way, i.e. the railways say their rates have not been high enough, yet they have no claim for reparations against shippers.

Conclusions and Recommendations

There is no evidence to warrant a recommendation for the adoption of the practice of granting reparations in Canada.

The importation of such a practice into our railway law would not be a beneficial one. There is no room in our rate structure for the imposition of something which virtually amounts to retroactive rebates. There would be a danger of great instability in the whole mechanism of our rates if such a practice were instituted in Canada.

No change is recommended in the existing law or practice.

19. MIXING RULE

The Mixing Rule (Rule 10 of the Classification) enables a shipper in the East to obtain a carload rate even though the goods making up the carload are in various classes. In the West, however, a shipper may obtain a carload rate only if the goods are listed in the classification under the same distinctive heading. Distinctive headings refer to various trade goods and the following is an example of the working out of the differences between the application of the Rule in the two territories: Groceries of different classes may be mixed together in the same carload both in the East and in the West; and in the East groceries may be mixed with hardware in carloads, but in the West hardware may not be mixed with groceries at carload rates.

The Mixing Rule is described as restricted in the West and wide open in the East. This distinction has existed since 1904.

Many submissions have been made urging that there should be a uniform Mixing Rule for general application throughout Canada. There was practical unanimity in the submissions (save in the case of some wholesalers in the West) that conditions have changed and that therefore differences in treatment are no longer justified.

The attitude of the railways may be summed up as follows: the Canadian National favours "a uniform Mixing Rule for general application throughout Canada". The Canadian Pacific adopts a neutral attitude and says that the Board should decide after hearing all parties.

Conclusions and Recommendations

There should be uniformity of mixing privileges throughout Canada. It is lack of uniformity in things of this kind that leads to regional claims of differences in treatment. This should be avoided whenever possible.

It is recommended that the Board, in its general investigation of the rate structure, consider the adoption of a uniform Mixing Rule of general application throughout Canada.

No legislative amendment is required.

20. THE FREIGHT CLASSIFICATION

The Canadian Freight Classification divides or classifies all articles which may be carried by the railways into ten broad classes. The articles in each particular class are grouped together because of some common characteristic, such as value, bulk, and susceptibility to damage. The first class bears the highest rate and the tenth class the lowest rate; other classes are graded roughly in varying percentages below the first class.

There are also some articles which are classified as "multiples of first class", e.g. double-first class (meaning twice the first class rates). The volume of traffic under these items is so negligible, however, that the classification is ordinarily referred to as containing 10 classes.

The present classification is uniform throughout Canada, and has been since about 1884, except (a) for the ratings applied on traffic carried in mixed carloads (this matter is dealt with elsewhere) and (b) for the White Pass and Yukon Railway which owing to special circumstances has a special classification called "The Northern Classification".

The main complaints were:

(a) that there is an insufficient number of classes in the classification;

(b) that the present classification is outmoded due to changed conditions and circumstances; and

(c) that there are too many special freight tariffs on commodities taken out of the class rate tariffs so that in respect to these the classification means nothing.

There were also specific complaints that certain articles are wrongly classified, and such complaints were supported by comparison with the classification accorded to other articles.

The main remedies proposed were:

1. That additional classes should be provided lower than the current 10th Class.
2. That all classes should bear a fixed percentage of the first class which would be designated as Class 100. For example, third class would always be 70% of the first class and could be called Class 70; 10th Class might be 30% and would be called Class 30; low grade articles which are now published in special commodity tariffs would have classes established lower than Class 30, for example, Class 25.
3. That there should be a complete revision of the entire classification which would take into account changed circumstances and conditions, especially with respect to values of goods.

Conclusions

It has been demonstrated that there are anomalies in the classification, arising out of changed circumstances and conditions and particularly values. For instance, some articles, considering their present-day values and characteristics, are classified too low and could yield more revenue to the railways; conversely other articles, considering their value, lack of susceptibility to damage and their convenient packaging, are classified too high. This is a clear indication that a general revision of the freight classification is called for and will no doubt be dealt with by the Board in its General Freight Rate Investigation. The Board possesses all the powers necessary to dispose of the matter, under Section 322 of the Railway Act.

The Board is the proper body to deal with revisions of the freight classification. It has the knowledge and experience which are essential in order to avoid the danger of so elaborate a classification that the element of flexibility, which commodity rates afford, would be sacrificed for the sake of the apparent simplification, which, it is said, can be secured by numerous classes each bearing a percentage relation to the First Class or Class 100.