

38, 1935

# In the Privy Council

No. 48 of 1934.

## ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN :

CANADIAN NATIONAL RAILWAY COMPANY

*Appellant,*

AND

CANADIAN PACIFIC RAILWAY COMPANY

*Respondent.*

## RECORD OF PROCEEDINGS

### INDEX OF REFERENCE

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
BEFORE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.			
1	Application of Canadian National Railway Company for inquiry and hearing re interpretation of agreement (dated 29 January, 1929) between Canadian Pacific Railway Company and Canadian National Railway Company.....	11 May, 1933	1
2	Reply of Northern Alberta Railways Company.....	29 May, 1933	3
3	Reply of Canadian Pacific Railway Company.....	2 June, 1933	6
4	Reasons for Judgment in connection with Order of the Board No. 50139.....	11 July, 1933	8
5	Judgment (Order of the Board No. 50139).....	12 July, 1933	13
6	Application for leave to Appeal.....	9 Aug. 1933	14
7	Order of the Board No. 50312, granting leave to appeal and containing the statement of facts.....	12 Sept. 1933	14
IN THE SUPREME COURT OF CANADA.			
8	Factum of Canadian Pacific Railway Company (Appellant in the Supreme Court) .....	... ..	21
9	Factum of Canadian National Railway Company (Respondent in the Supreme Court).....	... ..	25

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE—*Continued*

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
10	Formal Judgment.....	6 March 1934	39
11	Reasons for Judgment—		
	(a) The Chief Justice (concurred in by Smith and Hughes, JJ) .....	... ..	40
	(b) Lamont, J .....	... ..	45
	(c) Crocket, J .....	... ..	49
IN THE PRIVY COUNCIL.			
12	Order in Council granting special leave to appeal to His Majesty in Council.....	25 July 1934	54
DOCUMENTS			
13	Chapter 56, Statutes of Alberta, 1921.....	... ..	56
14	Agreement between The Grand Trunk Pacific Railway Company and The Canadian Northern Railway Company of the First Part, and the Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company and The Alberta and Great Waterways Railway Company .....	11 Nov. 1926	66
15	General Order of the Board of Railway Commissioners for Canada No. 448.....	26 Aug. 1927	72
16	Northern Alberta Railways Act (19-20 Geo. V. c. 48).....	... ..	74
17	C.N. tariff No. W. 135-C, C.R.C. No. W. 357, Supp. No. 15 .....	(Not printed)	85
18	A.G.W. tariff No. 123, C.R.C. No. 105, Supp. No. 7.....	(Not printed)	85
19	C.N. tariff No. W. 135-D, C.R.C. No. W-432, Supp. No. 8...	(Not printed)	85
20	C.N. tariff No. W-135-F, C.R.C. No. W. 546, and Supps. 1, 36 and 42.....	(Not printed)	85
21	C.P. tariff No. W. 5769, C.R.C. No. W. 2847 and Supps. 37, 41 and 43.....	(Not printed)	86
22	C.N. tariff N. W. 485-A, C.R.C. No. W. 757.....	(Not printed)	86

**Part I**  
**PROCEEDINGS**

**No. 1**

**Application of Canadian National Railway Company for inquiry and hearing re interpretation of Agreement (dated 29th January, 1929) between Canadian Pacific Railway Company and Canadian National Railway Company.**

10

IN THE MATTER of The Railway Act and in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company and the Northern Alberta Railways Company in respect of an Agreement, dated January 29th, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929.

20

A dispute has arisen between the Canadian Pacific, the Canadian National, and the Northern Alberta Railways over the interpretation of and action under Clause 7 of an Agreement, dated January 29th, 1929, between the Canadian Pacific and the Canadian National, which was subsequently ratified by and incorporated in Chapter 48 of the Statutes of 1929.

The Clause is as follows:

30

“7. The new Company shall be required to route outbound freight traffic (including grain milled or stored in transit) originating on the lines of the new Company and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties, in such a way that each of the parties shall receive on a revenue basis one-half the outbound freight traffic originating and destined as aforesaid, including such freight traffic routed by the shipper as well as such freight traffic unrouted by the shipper. Comparisons on a revenue basis of the traffic so received by each of the parties shall be made monthly, and any inequality of division in any month shall be rectified in succeeding months. The foregoing provisions in respect to Freight Traffic shall apply also to outbound Express Traffic and Telegraph Traffic respectively, originating on the lines of the new Company and destined to competitive points on or beyond the lines of the parties. For the purpose of the division of traffic in this paragraph provided for, Freight Traffic, Express Traffic and Telegraph Traffic shall be

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divided and dealt with separately.”

The “new Company” is the Northern Alberta Railways Company, incorporated by the said Chapter.

The dispute arises over the interpretation of the words, “and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties.” The Canadian Pacific and the Northern Alberta contend that the

RECORD

*Board of Railway  
Commissioners  
for Canada.*

No. 1

Application of  
Canadian National  
Railway Company  
for inquiry and  
hearing re inter-  
pretation of  
agreement (dated  
29th January,  
1929) between  
Canadian Pacific  
Railway Company  
and Canadian  
National Railway  
Company.  
11th May, 1933.

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 1  
Application of  
Canadian National  
Railway Company  
for inquiry and  
hearing re inter-  
pretation of  
agreement (dated  
29th January,  
1929) between  
Canadian Pacific  
Railway Company  
and Canadian  
National Railway  
Company.  
11th May, 1933.

word "destined" means "intended for delivery" not to the actual point to which the traffic is billed over the Canadian Pacific or Canadian National as it comes from the Northern Alberta, but to the ultimate destination which may be intended or contemplated by any person controlling its movements; and that the words "competitive points" include points beyond the lines of the Canadian Pacific or the Canadian National or their rail connections, such as all foreign points which are accessible to shipping from any ports in Canada, or at least, include all ocean ports reached by either railway and/or their connecting rail carriers; and that the language of the clause includes and applies to outbound freight traffic billed to such ocean ports in contemplation of possible ultimate export. 10

The Canadian National contends that these words include and apply only to outbound traffic which, received from the Northern Alberta, is undertaken by the Canadian Pacific or the Canadian National to be carried to a point then named as its destination and that such a point must be one common to both the Canadian Pacific and the Canadian National and/or their connecting rail carriers to which the rates from the shipping points on the Northern Alberta via both the Canadian Pacific and the Canadian National, with or without connecting carriers, are equal. 20

For example, the Canadian National carries such outbound traffic of possible ultimate export to Prince Rupert, Vancouver, and Victoria; the Canadian Pacific carries it to Vancouver, but not to the other two points. The Northern Alberta is contending that all three ports are competitive points and is including all such traffic to Prince Rupert and to Victoria in determining the total of competitive traffic and the proportion carried by the Canadian National for the purposes of effecting the equalization on a revenue basis directed by Clause 7. The Canadian National contends that of the ports mentioned, Vancouver only is a competitive point within the meaning of the clause and denies the right of the Northern Alberta to accord to the Canadian Pacific one-half of the traffic on a revenue basis so ascertained or apportioned. 30

The Northern Alberta has refused to apportion the said traffic on the basis urged by the Canadian National with the result that the Canadian National has not received that equal distribution of such traffic to which it is entitled under Clause 7.

By Clause 10 of the said Agreement, it is provided as follows: 40

"10. Disputes arising out of this Agreement in respect of any matter within the jurisdiction of the Board of Railway Commissioners for Canada shall be referred to the Board.

Disputes arising under Clauses 4, 5, 6, 7, 8 and 9 of this Agreement, not within the Board's jurisdiction, shall be submitted to two arbitrators, one to be selected by each of the parties under the provisions of the Arbitra-

tion Act of the Province of Alberta, and any decision of such arbitrators shall be final and binding on the parties hereto."

The Canadian National submits to the Board: (a) that the Northern Alberta Railways has refused to comply with the provisions of the special Act, Chapter 48 of the Statutes of Canada 1929, in respect of the matters herein set forth; (b) in the alternative that the Canadian Pacific has refused to comply with the provisions of the Act in declining to join with the Canadian National in requiring the Northern Alberta to distribute the said traffic between the Canadian Pacific and the Canadian National in accordance with the provisions of Clause 7 aforesaid; (c) in the further alternative that the Canadian Pacific and the Canadian National are in dispute as to the interpretation of Clause 7 and that the Canadian National, under Clause 10 of the said Agreement, refers the dispute to the Board for determination; (d) in the further alternative that the Canadian Pacific has committed a breach of the said agreement by refusing to join with the Canadian National in requiring the Northern Alberta to distribute the said traffic between the Canadian Pacific and the Canadian National in accordance with the provisions of Clause 7 aforesaid.

The Canadian National, therefore, claims an enquiry and a determination of the matters so in dispute by the Board and such order or direction as may be proper.

DATED at the City of Montreal, this 11th day of May, 1933.

R. H. M. TEMPLE.

## No. 2

### 30 Reply of Northern Alberta Railways Company

IN THE MATTER of The Railway Act and in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company and the Northern Alberta Railways Company in respect of an Agreement, dated January 29th, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929.

Northern Alberta Railways Company (herein called the Northern Company) in answer to the application of the Canadian National Railway states:

1. The Northern Company, though not a party to the Agreement of 29th January, 1929, recognizes that it is bound by all the provisions of that Agreement, by virtue of Section 9 of the Northern Alberta Railways Act, 1929, and submits to the Board's determination of the question in dispute.

2. The Northern Company has taken no part in the contentions of the Canadian Pacific or Canadian National regarding the interpretation of the Agreement suggested in the third and fourth paragraphs of the application.

## RECORD

*Board of Railway  
Commissioners  
for Canada.*

No. 1  
Application of  
Canadian National  
Railway Company  
for inquiry and  
hearing re inter-  
pretation of  
agreement (dated  
29th January,  
1929) between  
Canadian Pacific  
Railway Company  
and Canadian  
National Railway  
Company.  
11th May, 1933.

No. 2  
Reply of  
Northern Alberta  
Railways Company.  
29th May, 1933

## RECORD

Board of Railway  
Commissioners  
for Canada

No. 2

Reply of  
Northern Alberta  
Railways Company.  
29th May, 1933.

3. The dispute, and the whole dispute, so far as this Company is concerned, is with regard to grain shipped for export (not, as suggested by the application —“possible ultimate export”) from points on its line to Prince Rupert and Victoria.

4. The dispute is between the Canadian National and Canadian Pacific; the Northern Company is a party to it only to the extent exhibited in this answer, their position being analogous to that of a stakeholder.

5. Clause 5 of the Agreement in question requires that all officers and employees of the Northern Company shall be impartial between the Canadian National and the Canadian Pacific. 10

6. In discharging the duty imposed upon the Northern Company by Clause 7 of the Agreement, the Officers of the Northern Company charged with the performance of that duty, in accordance with their impartial judgment, and uninfluenced by any representations of the Canadian National or Canadian Pacific, have included in the monthly division of outbound freight traffic, all shipments of grain and grain products in carloads, shipped for export from points on the lines of the Northern Company to the ports of Prince Rupert and Victoria, in the same manner, and subject to the same conditions, as export grain shipped to the ports of Vancouver, North Vancouver and New Westminster, these latter ports being admittedly “competitive points on or beyond the lines of the parties.” 20

7. The reasons which governed the actions of the Officers of the Northern Company in this respect are as follows:

(a) All export grain from Northern Alberta Railways territory to Pacific Ports moves under 30

Tariff C.N.R. No. W. 135-F, C.R.C. No. W. 546; and

Tariff C.P. Ry. No. W-5769, C.R.C. No. W-2847, and supplements thereto,

the former governing the movement of grain and grain products in carloads from Stations in Alberta, British Columbia and Saskatchewan on the Canadian National and Northern Alberta Railways to New Westminster, Vancouver, North Vancouver, Victoria and Prince Rupert, B.C., for export to certain named British and Foreign Countries; the latter governing the movement of the same traffic from Stations in the same territory on the Canadian Pacific and Northern Alberta Railways to Vancouver, North Vancouver and Westminster for export to the same British and Foreign Countries. 40

(b) Both Tariffs are entitled “Special and Competitive Local and Joint Export Freight Tariff.” The rates from common points including all points

on the Northern Alberta Railways to Vancouver, North Vancouver, Westminster, Prince Rupert and Victoria are uniform and the General Rules and Conditions are, *mutatis mutandis*, identical.

RECORD  
Board of Railway  
Commissioners  
for Canada.

(c) All of the traffic in dispute is delivered to and accepted by the Northern Company as export grain, and the Northern Company is required to shew clearly on waybills that the grain or grain products are for export, and the name of the elevator in care of which the grain is shipped.

No. 2  
Reply of  
Northern Alberta  
Railways Company.  
29th May, 1933.

10 (d) Supplement No. 36 to C.N.R. No. W. 135-F, C.R.C. No. W. 546, provides specifically that the rates therein to Prince Rupert and Victoria, B.C. are competitive.

(e) The ocean rates from Vancouver, North Vancouver, Westminster, Prince Rupert and Victoria to the several British and Foreign Countries named in the Tariffs are, as the Northern Company is advised, on a uniform basis.

(f) In the opinion of the Officers of the Northern Company the routing of the traffic in dispute would be solicited by the Canadian National and Canadian  
20 Pacific, but for the prohibition contained in clause 6 of the Agreement, and the traffic is, therefore, properly subject to division under Clause 7.

(g) In making the monthly division between the Canadian Pacific and Canadian National which is prepared from transfer sheets according to the billing of each shipment as transferred to the Canadian National or Canadian Pacific, adjustments are made from month to month by the Northern Company and proper allowances made for shipments originally transferred as competitive traffic, and which may subsequently be diverted to a con-competitive destination; as well as for shipments originally transferred as non-competitive,  
30 which may ultimately reach a competitive destination.

7. The Northern Company makes no submission to the Board as to the meaning or interpretation of the Agreement in question, and is prepared to abide by the Board's judgment as between the parties to the dispute.

DATED at Calgary, this 29th day of May, A.D. 1933.

GEORGE A. WALKER,  
Solicitor for Northern Alberta  
Railways Company.

**Reply of Canadian Pacific Railway Company.**

**BOARD OF RAILWAY COMMISSIONERS FOR CANADA**

IN THE MATTER OF The Railway Act and in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company and the Northern Alberta Railways Company in respect of an Agreement dated January 29th, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929. 10

**REPLY OF THE CANADIAN PACIFIC RAILWAY COMPANY**

The railways of the Northern Alberta Railways Company are situated in the northern part of the Province of Alberta, north and northwest of the City of Edmonton. At Edmonton they connect with the Canadian Pacific Railway, and at Edmonton and Morinville with the Canadian National Railway.

The Northern Alberta Railways Company is owned and controlled by the Canadian National and the Canadian Pacific jointly, pursuant to Chapter 48 of the Dominion Statutes of 1929, and the Agreements which form Schedules "A" and "C" to that Act, a copy of which is for convenient reference forwarded herewith. The Northern Alberta Railways Company is "the new Company" referred to in Schedule "C". 20

Attention is drawn to Paragraphs 1, 2 and 11 of the Agreement, which provide, in effect, that the Northern Alberta Railways shall be acquired, held and operated by the Canadian National and the Canadian Pacific on the basis of equality of ownership and obligation, and equality of benefit and advantage. As between the parties, the benefit and advantage of control of the Northern Alberta Railways lies in carriage of interline traffic over their respective lines, since local traffic on the Northern Alberta lines is not profitable. 30

With the express object, as the Canadian Pacific contends, of giving effect as far as practicable to the declared intention of equality of benefit and advantage, it is provided in Paragraph 6 that neither party shall solicit the routing of competitive outbound traffic over their respective lines, and in Paragraph 7, that outbound freight, express and telegraph traffic shall be so routed as to yield equality of revenue. The omission in Paragraph 7 of other classes of competitive traffic may be explained by the impracticability of controlling routing. 40

Outbound traffic from the Northern Alberta Railways consists mainly of grain, the bulk of which is shipped for export from Canada through the ports of Vancouver, New Westminster, Prince Rupert and Victoria. From Northern Alberta connecting points it is carried over Canadian Pacific lines to



Vancouver and New Westminster, or over Canadian National lines to Vancouver, New Westminster, Prince Rupert and Victoria.

RECORD  
Board of Railway  
Commissioners  
for Canada

Rates and conditions of carriage of grain shipped for export from Northern Alberta points to all of these ports are identical. Reference may be made to the standard grain bill of lading and to the following tariffs: C.N.R. No. W.135-F, C.R.C. No. W.546 and supplements thereto, and C.P.R. No. W.5769, C.R.C. No. W. 2847 and supplements thereto.

No. 3  
Reply of Canadian  
Pacific Railway  
Company.  
2nd June, 1933.

- 10 Shipping from Vancouver and New Westminster to overseas destinations is in competition with shipping from Victoria and Prince Rupert.

Under such conditions grain for export is competitive and, but for the provision contained in Paragraph 6, would be the subject of solicitation by the Canadian National and the Canadian Pacific.

- 20 Upon these considerations the Canadian Pacific contends that grain shipped from stations on the Northern Alberta Railways to the ports of Vancouver, New Westminster, Prince Rupert and Victoria for export from Canada is "outbound traffic originating on the lines of the Northern Alberta Railways Company and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties," and must therefore be routed by the Northern Alberta Railways in the manner prescribed by Paragraph 7 of the Agreement.

Montreal, June 2, 1933.

W. H. CURLE,  
General Counsel.

- 30 Mr. A. D. CARTWRIGHT,  
Secretary, Board of Railway Commissioners,  
Ottawa.

RECORD

No. 4

Board of Railway  
Commissioners  
for Canada.

Reasons for Judgment (Order No. 50139) of Board of Railway Commissioners.

No. 4  
Reasons for  
Judgment (Order  
No. 50139) of  
Board of Railway  
Commissioners  
for Canada.  
11th July, 1933.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

*Application of the Canadian National Railways for an inquiry and hearing by the Board and a determination in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company, and the Northern Alberta Railways Company in respect of an agreement, dated 10 January 29, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929, the dispute arising over the interpretation of the words "and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties" contained in Clause 7 of the said Agreement.*

File No. 38702

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

The real question for decision in this matter is the interpretation of a 20 clause in an agreement entered into on the 29th January, 1929, between the Canadian Pacific Railway Company and the Canadian National Railway Company, hereinafter referred to as the Canadian Pacific and Canadian National.

The agreement in question was confirmed by chapter 48 of the Statutes of Canada for the year 1929. It involved the purchase by the Canadian Pacific and Canadian National of four railways running northerly from Edmonton. These railways were the Edmonton, Dunvegan and British Columbia Railway, the Alberta and Great Waterways Railway, the Central Canada Railway, and 30 the Pembina Railway.

From 1920 to 1926 the Canadian Pacific operated the Edmonton, Dunvegan and British Columbia Railway and the Central Canada Railway under an arrangement with the owners.

From 1926 to 1929 these roads were operated by the Province of Alberta and during that time the Canadian National was the connecting carrier.

The major portion of the traffic from these lines is wheat destined for export 40 and both railway companies were anxious to secure it. By the agreement the Canadian Pacific and Canadian National agreed to join in the purchase of these railways, each assuming one-half of the purchase price and one-half of the obligations incurred in connection with the purchase. A new company was to be formed to acquire, maintain and operate them, the capital of which was to be supplied by the Canadian Pacific and Canadian National in equal shares, and each was to be entitled to appoint one-half of the directors.

The purchase was duly completed and a new company known as the Northern Alberta Railway Company, which I will hereafter refer to as the Northern Company, was formed, which took over and operated the railways so purchased.

The provision of the agreement which has created the difficulty is paragraph 7, which reads as follows:—

10 “The new company shall be required to route outbound freight traffic (including grain milled or stored in transit) originating on the lines of the new company and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties, in such a way that each of the parties shall receive on a revenue basis one-half of the outbound freight traffic originating and destined as aforesaid, including such freight traffic routed by the shipper as well as such freight traffic unrouted by the shipper. Comparisons on a revenue basis of the traffic so received by each of the parties shall be made monthly, and any inequality of division in any month shall be rectified in succeeding months. The foregoing provisions in respect to freight traffic shall apply also to outbound express traffic and telegraph traffic respectively, originating on the lines of the new company and destined to competitive points on or beyond the lines of the parties. For the purpose of the division of traffic in this paragraph provided for, freight traffic, express traffic, and telegraph traffic shall be divided and dealt with separately.”

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The difficulty arises in connection with the interpretation of the words “and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties.” The Canadian Pacific contends that the words “competitive points” include points beyond the lines of the Canadian Pacific or Canadian National, or their railway connections, such as foreign points which are accessible to shipping from any ports in Canada. The Canadian National, on the other hand, contends that the words “competitive points” mean points common to both the Canadian Pacific and Canadian National, or their connecting rail carriers, to which the rates from the shipping points on the Northern Company’s lines via both the Canadian Pacific and Canadian National, with or without connecting carriers, are equal.

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The real dispute settles around the ports of Prince Rupert and Victoria, both of which are served, so far as the export grain traffic is concerned, by the Canadian National alone. The Canadian National carries outbound export grain traffic from the lines of the Northern Company to Prince Rupert, Victoria and Vancouver. The Canadian Pacific carries to Vancouver, but not to the other two ports. The Canadian Pacific contends that export freight traffic to Prince Rupert and Victoria is outbound freight traffic destined “to competitive points . . . beyond the lines of the parties” within the meaning of clause 7. The Canadian National contends that Vancouver alone of the three ports is a competitive point within the meaning of clause 7, and denies the right

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RECORD  
*Board of Railway  
Commissioners  
for Canada*

No. 4  
Reason for  
Judgment (Order  
No. 50139) of  
Board of Railway  
Commissioners  
for Canada.  
11th July, 1933.

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 4  
Reasons for  
Judgment (Order  
No. 50139) of  
Board of Railway  
Commissioners  
for Canada.  
11th July, 1933.

of the Northern Company to take into consideration traffic going to the ports of Victoria and Prince Rupert in effecting the equalization referred to in clause 7.

The rates and conditions of carriage of grain shipped for export from points on the Northern Company to all three of the ports above referred to are identical. The question is, what did the parties mean by the use of the words "competitive points on or beyond the lines of the parties"? I have always understood "competitive points" in railway parlance to mean points in respect to which two or more lines compete for traffic. In other words, a point at which two or more railways have facilities and are prepared to handle traffic at equal rates. Reading the words in the ordinary way, I think there can be no doubt that "competitive points on or beyond the lines of the parties" means points on the lines of the parties or their connecting carriers, and have no reference to any point other than one on a railway. 10

As I understand Mr. Tilley's argument, he contends that "beyond" may refer to a point in a foreign country, to which commodities may be carried. I do not think that the words can possibly bear any such interpretation.

Mr. Tilley says:—

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"You cannot whittle down that 'on or beyond' to say that they are on railway lines either those of the railway company or other connecting carriers. The point of that description is to say in the broadest possible way that so long as it is outbound freight traffic originating on the lines of the new company, if it is destined to competitive points it matters not where that competitive point is, it may be on the railways or any place beyond."

Though he did not say so in express words, his argument must go the length of asking us to hold that all points to which commodities may be exported are competitive points. For example, it is said that grain carried over the Canadian National to Victoria and shipped thence to the United Kingdom or the Orient is outbound freight traffic to competitive points beyond the lines of the companies because both destinations are competitive points. We are not told in what sense they are competitive points. We know that so far as concerns the carriage of this traffic by these railways, namely for that portion of the haul from points on the Northern Company to Victoria, the Canadian Pacific does not compete. 30

The word "competitive" as used in the agreement must have reference to competition between railways. The parties were only interested in securing the carriage of grain to a port. What becomes of it afterwards did not in the least interest them. If the parties intended what Mr. Tilley now contends they did, they should have said so, and this is particularly true when one considers the meaning which both parties had, long prior to the agreement, given to the words "competitive traffic." 40

In the Board's General Order No. 252, *re* interswitching, it is set out that "nothing herein contained shall prevent the line carrier from absorbing the entire toll, or tolls, charged for interswitching competitive traffic, provided that the traffic and movements so treated are clearly defined in its tariffs." Turning to the tariffs of the Canadian Pacific and Canadian National as in effect in both Eastern and Western Canada, covering rules and regulations governing interswitching charges, they are found to all contain the following definition of competitive traffic:—

RECORD  
Board of Railway  
Commissioners  
for Canada  
No. 4  
Reasons for  
Judgment (Order  
No. 50139) of  
Board of Railway  
Commissioners  
for Canada.  
11th July, 1933.

10 DEFINITION OF COMPETITIVE TRAFFIC

*At Point of Origin.*—When the railway performing the switching service can handle the shipment in road-haul movement from the origin station at equal rate.

*At Destination.*—When the railway performing the switching service could have handled the shipment in road-haul movement into the destination station at equal rate."

20 Another definition found in the tariff of the Canadian Pacific, Western Lines, having to do with absorption of cartage charges rather than the question of interswitching, concerning competitive carload traffic, reads:—

"Competitive traffic is defined as having both its origin and destination at points reached by other railroads, which may also be reached by the lines of this company or its connections."

When the agreement was entered into the Canadian National alone was carrying grain from points on the Northern Company to both Victoria and  
30 Prince Rupert. The Canadian Pacific had no line to Prince Rupert, and while it had facilities at Victoria it had declined to put in a through rate for export to this point. In fact, one of the first applications I heard after becoming a member of the Board was an application to compel the Canadian Pacific to put in such a rate. The Company refused to do so, chiefly on the ground that it was too expensive to carry grain to Victoria for export at the rates which would have to be put in. The Canadian Pacific, notwithstanding it refused to carry grain to Victoria, now insists that any grain carried there by the Canadian National shall be apportioned under the agreement. In other words, that  
40 for every car the Canadian National hauls over its lines to Victoria a car shall be apportioned to the Canadian Pacific for carriage to Vancouver.

It will be seen then that the Canadian National prior to the making of the agreement had certain exclusive rights with regard to the carriage of traffic routed to Victoria or to Prince Rupert. If the contention of the Canadian Pacific is right the Canadian National deliberately abandoned these exclusive rights. I can find nothing in the agreement to justify such a position.

Mr. Tilley based his main argument on clauses 2 and 11 of the agreement. Clause 2 reads as follows:—

“Each of the parties hereto shall assume the payment of and be liable for one-half of the purchase price payable (with interest) and one-half of the obligations to be assumed by the purchasers under the said agreement and shall be entitled to one-half of the benefits to be derived therefrom, it being the intention of the parties that the said agreement shall be for their equal benefit and advantage.”

Clause 11 reads as follows:—

“The parties agree to co-operate with fairness and candour toward each other, and to give effect to this agreement in the most liberal and reasonable manner to the intent that each of them shall receive its full and equal share of the benefits of the joint undertaking, subject to the provisions of clause 4 hereof.”

Referring to the agreement, he said:—

“The document is clearly one that sets up a sort of partnership arrangement, an agreement to co-operate on certain lines, each company pledging itself to carry out the spirit of the arrangement. As far as could be done in a practical sense there was to be a fifty-fifty arrangement between the two railway companies.”

And again:—

“Then when you look at clause 2 it confirms that view. Each of the parties shall assume the payment of and be liable for one-half of the obligations to be assumed by the purchasers and shall be entitled to one-half the benefits to be derived.”

True, under the agreement the parties are to have equal benefits because they are taking equal shares in the new company, but equal benefits in what? Surely the benefits referred to are the benefits to be derived from the operation of the new company. There is nothing in the agreement to suggest that it applies to benefits to be derived from the operation of their own lines apart from the clause which provides for the equal apportionment of outbound traffic destined to competitive points.

I would give the words in the agreement the meaning which those words are ordinarily understood to convey among railway men, and hold that Prince Rupert is not a competitive point within the meaning of the agreement. I hold further that until such time as the Canadian Pacific files a through tariff for export wheat to Victoria, the latter point is not competitive within the meaning of the agreement.

C. P. FULLERTON.

July 11, 1933.

S. J. McLEAN.

No. 5

Judgment (Order of Board of Railway Commissioners No. 50139).

Order No. 50139.

RECORD

Board of Railway Commissioners for Canada

No. 5

Judgment (Order of Board of Railway Commissioners for Canada No. 50139). 12th July, 1933.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA  
WEDNESDAY, THE 12TH DAY OF  
JULY, A.D. 1933.

IN THE MATTER OF THE application of the Canadian National Railways for an enquiry and hearing by the Board and a determination in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company and the Northern Alberta Railways Company in respect of an Agreement, dated January 29th, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929, the dispute arising over the interpretation of the words "and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties" contained in Clause 7 of the said Agreement: File No. 38702.

10 HON. C. P. FULLERTON, K.C.,  
Chief Commissioner.  
S. J. McLEAN,  
Asst. Chief Commissioner

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UPON hearing the application at the sittings of the Board held at Ottawa, July 4, 1933, in the presence of Counsel and representatives for the Canadian National Railways, the Canadian Pacific Railway Company and the Northern Alberta Railways Company, and the arguments of Counsel—

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THE BOARD DECLARES, for the reasons set out in the Judgment, that Prince Rupert is not a competitive point within the meaning of Clause 7 of the Agreement, and that, until such time as the Canadian Pacific Railway Company files a through tariff for export wheat to Victoria, the latter point is not competitive within the meaning of the said Agreement.

(Sgd.) C. P. FULLERTON,  
Chief Commissioner,  
Board of Railway Commissioners for Canada.

40

BOARD OF RAILWAY COMMISSIONERS  
FOR CANADA

Examined and certified as a true copy under  
Section 23 of "The Railway Act."

(Sgd.) A. D. CARTWRIGHT,  
Sec'y, of Board of Railway Commissioners  
for Canada.

Ottawa, July 13, 1933.

No. 6

RECORD

Board of Railway Commissioners for Canada

Application for leave to appeal.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

No. 6 Application for leave to appeal. 9th August, 1933.

IN THE MATTER OF the application of the Canadian National Railways for an enquiry and hearing by the Board and a determination in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company and the Northern Alberta Railways Company in respect of an agreement dated January 29th, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929, the dispute arising over the interpretation of the words "and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties" contained in Clause 7 of the said agreement. 10

No. 7 Order of Board of Railway Commissioners No. 50312 granting leave to appeal and containing Statement of Facts. 12th Sept., 1933.

The Canadian Pacific Railway Company hereby applies to the Board for leave to appeal to the Supreme Court of Canada from the decision or order of the Board pronounced in the above matter on the 12th day of July, 1933, Order No. 50139, upon the question of law and statement contained in the draft order attached hereto. 20

W. H. CURLE, General Counsel.

Montreal, August 9, 1933.

(NOTE: Draft order is not printed, order as issued being printed as No. 7.)

No. 7

Order of Board of Railway Commissioners for Canada No. 50312 granting leave to appeal and containing Statement of Facts. 30

Order No. 50312.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

TUESDAY, THE 12TH DAY OF SEPTEMBER, A.D. 1933.

HON. C. P. FULLERTON, K.C., Chief Commissioner. S. J. McLEAN, Asst. Chief Commissioner.

IN THE MATTER OF THE application of the Canadian National Railways for an inquiry and hearing by the Board and a determination in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company and the Northern Alberta Railways Company in respect of an agreement, dated January 29th, 1929, and the provisions of Chap- 40



ter 48 of the Statutes of Canada, 1929, the dispute arising over the interpretation of the words "and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties" contained in Clause 7 of the said agreement,

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 7  
Order of Board of  
Railway Com-  
missioners No.  
50312 granting  
leave to appeal  
and containing  
Statement of  
Facts.  
12th Sept., 1933.

10

AND IN THE MATTER OF the application of Canadian Pacific Railway Company under Section 52 (3) of the Railway Act, for leave to appeal to the Supreme Court of Canada from the Order of the Board No. 50139, issued upon the above application on the 12th day of July, 1933, upon a question which, in the opinion of the Board, is a question of law;

20

File No. 38702.

UPON hearing the application in the presence of Counsel for Canadian Pacific Railway Company and Canadian National Railway Company, and what was alleged—

IT IS ORDERED that the Applicant, the Canadian Pacific Railway Company, be and it is hereby granted leave to appeal to the Supreme Court of Canada from Order No. 50139 of the Board of Railway Commissioners for Canada pronounced on the 12th day of July, 1933, upon the following question which, in the opinion of the Board, is a question of law, viz.:—

Whether upon the Agreement made between the Canadian National Railway Company and the Canadian Pacific Railway Company on the 29th day of January, 1929, and the facts and circumstances hereinafter set forth, grain shipped from stations on the Northern Alberta Railways to Prince Rupert or to Victoria for export, and exported from either of those ports to say the United Kingdom, is to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under Article 7 of the Agreement as not being "outbound freight traffic destined to competitive points on or beyond the lines of the parties" as the expression is used in said Article.

The question arises upon the Agreement above mentioned, and upon the following facts and circumstances:

1. The Northern Alberta Railways comprise lines of railway situated in

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 7  
Order of Board of  
Railway Com-  
missioners No.  
50312 granting  
leave to appeal  
and containing  
Statement of  
Facts.  
12th Sept., 1933.

the northern part of the Province of Alberta, connecting with the Canadian Pacific Railway at Edmonton and with the Canadian National Railway at Edmonton and Morinville.

2. They are the property of the Northern Alberta Railways Company, the Capital Stock of which is held by the Canadian National Railway Company and the Canadian Pacific Railway Company, jointly acquired by them under the authority of and pursuant to Chapter 48 of the Dominion Statutes of 1929, and the Agreements which form Schedules "A" and "C" to that Act, a copy of which is attached to this Order.

10

3. The chief industry of northern Alberta is agriculture, and the principal traffic on the Northern Alberta Railways consists of grain shipped for export from Canada, which each of the Railways, the Canadian National and the Canadian Pacific, has at all times been desirous of securing for transport over its lines from the Northern Alberta Railways to the seaboard.

4. The Pacific Coast seaports from which grain is exported from Canada were and are Vancouver, New Westminster, Victoria and Prince Rupert, in the Province of British Columbia. Of these, Vancouver and New Westminster 20 are reached by both the Canadian Pacific Railway and the Canadian National Railway, and Prince Rupert by the Canadian National alone. Victoria is reached by transporting the loaded cars of grain on barges from Port Mann on the Canadian National Railway near Vancouver, the distance thereto being 78 miles. The Canadian Pacific does not undertake the carriage of grain to Victoria by such a service. The bulk of the grain carried by each railway to these ports for export is taken to and exported from Vancouver.

5. The Canadian National's line to Prince Rupert was originally part of the Grand Trunk Pacific Railway, and its line to Vancouver was originally part 30 of the Canadian Northern Railway System. On September 2nd, 1925, coincidentally with the construction of the Government elevator at Prince Rupert, the Canadian National Railways issued a tariff of export grain rates from stations on its railway to Prince Rupert and these rates were the same as the export grain rates from the same stations to Vancouver (tariff No. W.135-C, C.R.C. No. W.357, Supplement No. 15). Under the same date export grain rates from points on the Alberta and Great Waterways Railway to Prince Rupert via the Canadian National Railways were also put into effect on a parity with similar rates via Canadian National Railways to Vancouver (A.G.W. No. 123, C.R.C. No. 105, Supplement No. 7). Upon the termination 40 of the Alberta Government Agreement in 1926 the Canadian National published to Prince Rupert from points on the Edmonton, Dunvegan and British Columbia, Alberta and Great Waterways and Central Canada Railways, export rates on the Vancouver basis. (C.N. tariff No. W. 135-D, C.R.C. No. W. 432, Supplement No. 8.) On October 12th, 1927, the Canadian National Railways published similar rates from points on the Pembina Valley Railway to both Vancouver and Prince Rupert, as shown in Supplement 1

to C.N. Rys. tariff W. 135-F, C.R.C. W. 546.

6. At the time of their acquisition in 1929 the Northern Alberta Railways were owned or controlled by the Government of Alberta; part of them, known as the Pembina Valley Railway, having been constructed by the Government, and the remainder, consisting of the railways of The Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company and the Alberta and Great Waterways Railway Company, having come into its hands through the insolvency of those Companies.

10

7. From 1920 to 1926, as the result of the Agreement set out in Chapter 56 of the Statutes of Alberta, 1921, joint rates on grain shipped for export from stations on the Edmonton, Dunvegan and British Columbia and Central Canada Railways were established and maintained exclusively in connection with the Canadian Pacific Railway, and joint rates from stations on the Alberta and Great Waterways Railway Company in connection with both the Canadian Pacific and Canadian National Companies. In 1926 the Government terminated the Agreement and all joint tariffs in connection with the Canadian Pacific were cancelled, and from that time until the acquisition of the lines by the Northern Alberta Railways Company in 1929, under agreement dated November 11, 1926, a copy of which is attached hereto, joint rates were maintained in connection with the Canadian National Railway Company exclusively.

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8. Since 1929 joint rates on grain have been published by the Northern Alberta Railways Company and the Canadian Pacific Railway Company from stations of the former to Vancouver and New Westminster for export, and by the Northern Alberta Railways Company and the Canadian National Railway Company to Vancouver, New Westminster, Victoria and Prince Rupert for export (present C.N.R. Tariff No. W.135-F, C.R.C. No. W-546 and supplements 36 and 42 thereto, and C.P.R. Tariff No. W-5769, C.R.C. No. W-2847 and supplements 37, 41 and 43 thereto). The rates in the foregoing tariffs from Canadian National and Canadian Pacific points to Vancouver were made under Order of the Board of Railway Commissioners No. 448 of August 26, 1927. The mileage from Edmonton to Vancouver via the Canadian National Railways is 765 miles, and via the Canadian Pacific is 836 miles. The mileage from Edmonton to Prince Rupert is 957 miles. In the calculation of the rates to Vancouver, the Canadian National mileage from Edmonton to Vancouver is taken by the Canadian Pacific as its mileage from Calgary to Vancouver. By reason of competition, the Canadian Pacific accepts for carriage via its line from Edmonton to Vancouver the same rate as the Canadian National receives for carriage via its shorter mileage. In order to place Prince Rupert on an equality with Vancouver, the Canadian National published the same rates to Prince Rupert as were effective over its own line to Vancouver, thus extending lower rates to Prince Rupert than required by General Order No. 448.

40

RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 7  
Order of Board of  
Railway Com-  
missioners No.  
50312 granting  
leave to appeal  
and containing  
Statement of  
Facts.  
12th Sept., 1933.

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 7  
Order of Board of  
Railway Com-  
missioners No.  
50312 granting  
leave to appeal  
and containing  
Statement of  
Facts.  
12th Sept., 1933.

9. These rates, and the terms and conditions of rail carriage, are the same from any Northern Alberta Railways station to all these seaports whether routed via Canadian National Railway or Canadian Pacific Railway.

10. Export rates are lower than the domestic rates.

For example:—The rate on grain and grain products, in carloads, from Grande Prairie on the Northern Alberta Railways to New Westminster and Vancouver via either the Canadian Pacific or the Canadian National, and to Victoria and Prince Rupert via the Canadian National, for export is 28 cents per one hundred pounds, while the domestic rate via either the Canadian Pacific or Canadian National is 52½ cents per one hundred pounds to New Westminster and Vancouver, 55½ cents per one hundred pounds to Victoria, and via the Canadian National to Prince Rupert 58 cents per one hundred pounds. 10

11. Ocean rates on grain are not uniform, but by force of competition tend to equality.

12. Grain shipped to any of the above mentioned ports for export is discharged by the railway into elevators at the said ports and there stored with grain of the same grade, and is no longer earmarked as grain of that shipment. When the shipper desires to export his grain an equivalent amount of grain of the same grade is subject to his order. The same practice is followed in all cases where grain is milled or stored in transit. 20

13. The port of Churchill on the Canadian National Railways is a port of export on the Atlantic Coast to which grain from points on the Northern Alberta Railways may be carried under C.N. tariff No. W-485A, C.R.C. No. W.757. Outbound freight traffic to Churchill for export is dealt with by the Northern Alberta Railways Company for the purposes of Article 7 of the Agreement as being in the same category as similar traffic to Prince Rupert and Victoria. 30

14. The question of law above stated came before the Board for determination upon the application of the Canadian National Railway Company. A copy of the application, the answers of the Northern Alberta Railways Company and the Canadian Pacific Railway Company respectively, and the Order of the Board and its reasons therefor, and the tariffs above mentioned, are appended to this Order. 40

(Sgd.) C. P. FULLERTON,  
Chief Commissioner,

Board of Railway Commissioners  
for Canada.

Board of Railway Commissioners  
for Canada.

Examined and certified as a true  
copy under Section 23 of "*The  
Railway Act.*"

(Sgd.) A. D. CARTWRIGHT  
Sec'y of Board of Railway Com-  
missioners for Canada.

OTTAWA, SEPTEMBER 12, 1933

10

RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 7

Order of Board of  
Railway Com-  
missioners No. 50312  
granting  
leave to appeal  
and containing  
Statement of  
Facts.  
12th Sept., 1933.

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# In the Supreme Court of Canada

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ON APPEAL FROM THE BOARD OF RAILWAY  
COMMISSIONERS FOR CANADA

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10 BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY,

*Appellant.*

— AND —

CANADIAN NATIONAL RAILWAY COMPANY,

*Respondent.*

20

## FACTUM OF THE APPELLANT

### PART I

#### STATEMENT OF FACTS

This is an appeal on a question which, in the opinion of the Board of Railway Commissioners for Canada, is a question of law, and which is set out in Part II hereof.

30

The appeal has to do with the interpretation of an agreement dated the 29th day of January, 1929, between the Canadian Pacific Railway Company (herein called the Canadian Pacific) and the Canadian National Railway Company (herein called the Canadian National), which forms Schedule "C" to Chapter 48 of the Dominion Statutes of 1929.

40

The agreement provides in effect that the Northern Alberta Railways, which connect with both the Canadian Pacific and the Canadian National and which comprised the Edmonton, Dunvegan and British Columbia Railway, the Alberta and Great Waterways Railway, the Central Canada Railway and the Pembina Valley Railway, shall be acquired, held and operated by the Canadian Pacific and the Canadian National on the basis of equality of ownership and obligation, and equality of benefit and advantage.

The facts and circumstances out of which the matter in dispute arises are succinctly set out in the Order granting leave to appeal and in the various documents set out in the Case. pp. 14 to 18.

RECORD

*In the  
Supreme Court  
of Canada*

No. 8  
Factum of C.P.  
Railway Co.

RECORD

*In the  
Supreme Court  
of Canada*No. 8  
Factum of C.P.  
Railway Co.**PART II**

The Question is as follows:

Whether upon the agreement made between the Canadian National Railway Company and the Canadian Pacific Railway Company on the 29th day of January, 1929, and the facts and circumstances hereinafter set forth, grain shipped from stations on the Northern Alberta Railways to Prince Rupert or to Victoria for export, and exported from either of those ports to, say, the United Kingdom, is to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under Article 7 of the agreement as not being "outbound freight traffic destined to competitive points on or beyond the lines of the parties" as the expression is used in said Article. 10

**PART III**

## ARGUMENT

The principal benefit and advantage to the Canadian Pacific and the Canadian National of control and ownership of the Northern Alberta Railways lies in the carriage over their respective lines of the traffic originating on that system. 20

p. 16

p. 16

The principal traffic from the Northern Alberta Railways is grain shipped for export from Canada and both the Canadian Pacific and the Canadian National have at all times sought to secure its transportation to the seaboard.

Prior to the joint acquisition of the Northern Alberta Railways the exclusive control of practically all of this traffic was enjoyed during different periods by either the Canadian Pacific or the Canadian National to the exclusion of the other. 30

pp. 47 to 49

The agreement of 29th January, 1929, was consummated with the express object (so declared therein) that the purchase should be for the equal benefit and advantage of the new owners. The parties expressly agree (Par. 11) to co-operate with fairness and candour toward each other and to give effect to the agreement in the most liberal and reasonable manner to the intent that each of them shall receive its full and equal share of the business of the joint undertaking. 40

The provisions of Paragraph 5 in regard to impartiality of officers and employees; of Paragraph 6 in regard to solicitation of outbound competitive traffic, and of Paragraph 7 in regard to the division of outbound competitive traffic, were all inserted for the purpose of ensuring the equality of benefit and advantage above referred to and should be given a broad and liberal interpretation in keeping with the purposes which they are designed to serve.



The agreement is perpetual and should be interpreted, having in view not only present circumstances and conditions but future developments of traffic, under which the channels of export for grain and other outbound traffic may be materially altered by the opening up of new routes to the seaboard operated exclusively by one or other of the owning companies.

RECORD  
 In the  
 Supreme Court  
 of Canada  
 No. 8  
 Factum of C.P.  
 Railway Co.

By Paragraph 7 the new Company is required to route outbound freight traffic (including grain milled or stored in transit) originating on its lines and destined via Edmonton or Morinville to competitive points on or beyond the lines of the Canadian Pacific and the Canadian National, in such a way that each shall receive on a revenue basis one-half of such traffic.

p. 47

Grain shipped by rail to a British Columbia port for furtherance by vessel to, say, Liverpool, must on any fair interpretation of the agreement be regarded as freight traffic destined to a competitive point on or beyond the railway. It is unnecessary to consider whether the port of export or the port of ultimate destination is to be regarded as the competing point within the meaning of the agreement. The ports themselves are competing points for export traffic and it is fair to say that the British Columbia seaboard from which the transit may be continued by vessel is a competing point on the railways. Certainly Liverpool is a competing point beyond the railway. To hold that traffic shipped to the seaboard for export and there stored awaiting furtherance to its destination is not to be considered in the equal division is to fail to "give effect to this agreement in the most liberal and reasonable manner to the intent that each shall receive its full and equal share of the benefits of the joint undertaking." (Paragraph 11.) Export grain, which is the bulk of the traffic received from the Northern Alberta Railways, was certainly within the contemplation of the parties when they made the agreement. It comes within the very words of the agreement and there is no justification for placing a narrow meaning on the language used in order to exclude it. To do so would do violence to the whole agreement. It is also to be observed that it is traffic which, but for the prohibition contained in Paragraph 6 of the agreement, would be solicited by each party for carriage over its line to the seaboard for furtherance by vessel to ultimate destination, which confirms the view that the receipts from it should be included in the comparison to be made under Article 7.

Practically all this traffic naturally moves to the Pacific seaboard and each of the owning companies has, by equalizing the export rates to these ports from Edmonton, sought to facilitate the movement via the ports which it undertakes to serve.

For example: The Canadian Pacific publishes a tariff of competitive joint export rates on grain and grain products from stations on the Northern Alberta Railways to Vancouver, North Vancouver and Westminster, B.C., for export to Africa, Asia, Australia, Central America, Europe and other countries named therein; the Canadian National publishes a tariff of export rates on

grain and grain products from stations on the Northern Alberta Railways to Vancouver, North Vancouver, Westminster, Victoria and Prince Rupert for export to the same countries. (See tariffs filed with Case.) The rates to these ports for export are on a lower basis than for domestic consumption, being regarded as part of the through rates to the country of ultimate destination. But for the prohibition contained in Paragraph 6, such export traffic would be the subject of solicitation by the Canadian Pacific and Canadian National. The case of grain destined to Prince Rupert for consumption there is quite different.

Paragraph 6 is complementary to Paragraph 7, and both together are designed to secure the equal benefit to the parties from the acquired system. 10

Under Paragraph 7 the ultimate destination of the traffic is the important feature. Its first movement may be to a point served by only one of the two owning railways, but ultimately it is forwarded to a point reached by both, either directly or through rail or inland or ocean water connections. Under the agreement it makes no difference whatever whether such ultimate destination is reached by land or water. If the character of the traffic is such that either of the owning companies could participate in its carriage towards such ultimate destination, then the traffic is destined within the meaning of the agreement to a competitive point. The grain may be stored or milled en route and such storage or milling point may be either in the interior or at the seaboard. 20

The language of Paragraph 7 should be interpreted in accordance with its natural and ordinary meaning, consistent with the intent of the agreement as a whole. There is nothing in the agreement to restrict the ordinary meaning of the words "on or beyond the lines of the parties." The purpose and intent of the agreement require a broad rather than a narrow interpretation of this phrase. The Board erred in restricting its meaning by reference to the definition of competitive traffic contained in the General Interswitching Order and in the tariff of this appellant dealing with absorption of cartage charges. Such definitions have to do entirely with the purpose of the documents in which they are contained and have no relationship whatever to the matter in controversy in this case. There is no ambiguity in the agreement, and therefore it would be quite improper to turn to extraneous sources for its interpretation. 30

W. N. TILLEY, 40

W. H. CURLE,  
 Of Counsel for the Appellant.

No. 9

Factum of Canadian National Railway Company

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE BOARD OF RAILWAY  
COMMISSIONERS FOR CANADA

RECORD  
*In the  
Supreme Court  
of Canada*  
No. 9  
Factum of  
Canadian National  
Railway Company

IN THE MATTER of The Railway Act and in the matter of a dispute  
between the Canadian National Railway Company, the Canadian Pacific  
Railway Company and the Northern Alberta Railways Company in respect  
of an Agreement, dated January 29th, 1929, and the provisions of Chapter 48  
10 of the Statutes of Canada, 1929.

BETWEEN :

CANADIAN PACIFIC RAILWAY COMPANY

Appellant,

AND

CANADIAN NATIONAL RAILWAY COMPANY

Respondent.

FACTUM OF RESPONDENT  
THE CANADIAN NATIONAL RAILWAYS

PART I

20 STATEMENT OF FACTS

This is an appeal from the Judgment of the Board of Railway Commis- p. 13  
sioners rendered on July 12th, 1933, declaring Victoria and Prince Rupert  
not to be competitive points within the meaning of an agreement dated  
January 29th, 1929, between the Canadian National Railway Company  
(hereinafter called the National) and the Canadian Pacific Railway Company  
(hereinafter called the Pacific). (No. 16.)

This agreement provides for the joint purchase by the National and the p. 83  
Pacific of certain railways in Alberta, running northerly from Edmonton.  
They were formerly known individually as :

- 30 The Edmonton Dunvegan & British Columbia Railway  
The Alberta and Great Waterways Railway

The Central Canada Railway  
The Pembina Valley Railway

and prior to 1929 had come under the control of the Government of Alberta, from which they were purchased by the National and the Pacific under an agreement dated February 6th, 1929. (No. 16.)

Following that agreement, and under the authority of the *Northern Alberta Railways Act 19-20* George V, Chapter 48, a new company was formed called the Northern Alberta Railways Company (hereinafter called the Northern), to which the several railways were transferred. From Edmonton, the Edmonton Dunvegan & British Columbia Railway ran in a generally northwesterly direction; the Alberta and Great Waterways Railway in a generally northeasterly direction; the Central Canada Railway and the Pembina Railway were minor extensions.

The Edmonton Dunvegan & British Columbia and the Alberta and Great Waterways unite a few miles north of Edmonton; the connection between the railways of the Northern and the National is at Morinville (a few miles north of Edmonton) and at Edmonton, and with the Pacific at Edmonton.

Prior to 1920 the administration of the railways of the Northern was local. Between 1920 and 1926 the Edmonton Dunvegan & British Columbia and the Central Canada Railways were managed by the Pacific under an agreement dated July 21st, 1920. (No. 13.) During that period exclusive traffic connections were maintained between the Pacific on the one part, and the Edmonton Dunvegan & British Columbia and the Central Canada on the other; traffic connections were maintained between the Alberta and Great Waterways and both the National and the Pacific. In 1926 that agreement was terminated and a new arrangement was made between the National on the one part, and the Edmonton Dunvegan & British Columbia, the Alberta and Great Waterways and the Central Canada on the other, whereby exclusive traffic connections were established between the National and those lines. (No. 14.) These relations continued until the agreement was superseded by that of 1929, out of which the present controversy arises.

By paragraph 7 of the 1929 agreement, provision was made for the equal division between the National and the Pacific of all outbound freight traffic originating on the lines of the Northern and destined to competitive points on or beyond the lines of the National and the Pacific.

Grain for export is carried via the National to Prince Rupert, Victoria, Vancouver, New Westminster and Churchill; by the Pacific to Vancouver and New Westminster. Prince Rupert and Churchill are points on the National; Vancouver and New Westminster are points on both the National and the Pacific; Victoria, in respect of export grain, is reached by the National by barge from Port Mann. The Pacific does not undertake to carry export grain to Victoria.

The question arising is whether grain, intended for export from Northern points, carried by the National from Edmonton to Victoria or Prince Rupert is "outbound freight traffic destined to competitive points on or

p. 77

p. 74  
p. 80

p. 57

p. 17, l. 11

p. 17, l. 11

p. 66

p. 83, l. 46

p. 16, l. 18  
p. 18, l. 27

p. 16, l. 20

p. 16, l. 25

beyond the lines of the parties " within the meaning of paragraph 7. The Board has held that it is not and that therefore such traffic is not to be taken into account in the equal division provided for by paragraph 7.

PART II  
 POINTS OF LAW

The Judgment of the Board is right and should be affirmed.

PART III  
 ARGUMENT

(1) The history of the relations between the National and the Pacific  
 10 on the one side and the constituents of the Northern on the other, together with the railway situation in Canada in 1929 generally, present the background to the agreement and throw into relief the broad ends designed to be attained. These were in short :

(a) The even distribution of the burdens of and interest in the Northern : the operations of the lines of the Northern had been carried on in deficit ; neither the National nor the Pacific was anxious to assume the full responsibility and control, but neither could stand to see the other do so ; and with the price brought within the reasonable reach of the two companies, joint action became the inevitable step :

20 (b) The equitable enjoyment by the National and the Pacific of the subsidiary benefits resulting from the internal management of the Northern :

(c) The impartial administration by the Northern in respect of its external relations with the National and the Pacific as carriers.

The first objective is represented in the equal investment in the property and the equal share in the capital stock of the Northern by the National and the Pacific.

30 With respect to the second, primarily the essential interest of the Northern was to be served ; secondarily, where the individual interest of the shareholders became affected, an administration fair and equitable to both companies was intended. For example, the operations of the Northern would necessarily call for the purchase of supplies : large quantities of, say, coal must be supplied ; this coal could be obtained from many mines in the Province of Alberta, some of which are served by the National, some by the Pacific and some by both. In the choice, one or other of the two railways must receive the benefit of the carriage of that coal to the Northern and the intention behind the agreement was that such a subsidiary benefit was to be bestowed with an even hand.

The third, the prescription of a role of impartiality in the railway relations of the Northern, appears by the provision of paragraph 7, in which  
 40 the matter of the present controversy lies.

In essence, therefore, there was the assumption of an equality of financial responsibility and interest in the new venture and the provision for such an

administration as would be attained by an impartial direction in the bestowal of benefits within the gift or power of the Northern, and in its public dealings with the connecting railways.

(2) There was no intention, however, of bringing about an equality of realization or return or enjoyment by each of the controlling railways in respect of their transportation relations with the Northern. Whatever was local or individual to each line was to remain so; each railway was to enjoy the fullest measure of what its peculiar situation made possible. These transportation relations lie in the carriage of traffic from and to the Northern. There are eight possibilities of that traffic: inward (a) and outward (b) freight (c) and passenger (d) traffic to and from competitive (e) and non-competitive (f) points. If there had been the slightest intention to pool all these interline revenues, obviously the agreement would have most specifically done so. But it does not: of those eight possible classes of freight and passenger traffic, one only is singled out for specific treatment, namely, "outbound freight traffic to competitive points on or beyond the lines" of the two railways, as in paragraph 7 provided: and the stipulation for an equality of distribution in respect of that class constitutes not only a complete negation of any intention to bring about a general equalization of transportation benefits, not only an absolute retention of the advantages of local situation and all benefits incidental to or accruing from that, but also the conclusive evidence that as to these connecting transportation relations what was aimed to be secured on the part of the Northern was an impartial administration of that connecting traffic field: in other words, what in this field a body, bent on such a conduct of those relations as would be just and impartial to both controlling railways, would do, is indicated to be prescribed as the rule of conduct for the Northern. Speaking of this preservation of local position, the Chief Commissioner uses the following language:

"It will be seen then that the Canadian National prior to the making of the agreement had certain exclusive rights with regard to the carriage of traffic routed to Victoria or to Prince Rupert. If the contention of the Canadian Pacific is right the Canadian National deliberately abandoned these exclusive rights. I can find nothing in the agreement to justify such a position."

(3) In the conception of an impartial administration as between the two controlling railways it follows that only in situations in which choice or election may be exercised would the function be called into activity. This would seem to be obvious. The real competitive antagonisms of the past had not arisen out of activities in which only one of these railways was competent to engage; the rivalry lay rather in the field of common functions which each railway was able and willing to undertake, but as to which performance by one only was possible.

(4) The conception of competition as related to railways has many facets and it is essential to keep their distinctions in mind and to have the utmost regard to the precise language which is under consideration. We speak, among other forms, of competitive rates, competitive markets, competitive

services, competitive traffic, competitive routes, competitive ports and competitive points, the last of which signifies the true carrier competition. There is a common characteristic running through them all but the use of any one in a given contest must obviously be the subject of discrimination and precision if we are not to have blurred outlines and confused notions.

In the matter of the *Maritime Freight Rates Act* 1933 S.C.R. 436.

(5) We must keep in mind also that we are here dealing with two railways whose carriages as contemplated by the law governing them are in a real sense bounded by the limits of Canada and of the United States. The *Railway Act* makes provision for transportation both local, in Canada, and international, with our foreign neighbor; the transits however stop at the sea-board. We have sea-borne export carriage from Canada but there is between that and the carriage to the continental boundary a total severance: and although we do, in a loose way, or for purposes confined to the purely continental function, conceive the two carriages in a related form, it must at all times be kept clearly in mind that in practice of Canadian railways and the Canadian railway law, in the setting of which this contract is placed, transportation rates and relations are confined to land as distinguished from ocean activities and connections.

20 (6) (a) Let us come now to paragraph 7 of the agreement: the language out of which the dispute arises is as follows:

“The new Company shall be required to route outbound freight traffic (including grain milled and stored in transit) originating on the lines of the new Company and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties, in such a way that each of the parties shall receive on a revenue basis one-half of the outbound freight traffic originating and destined as aforesaid including such freight traffic routed by the shipper as well as such freight traffic not routed by the shipper. Comparisons on a revenue basis of the traffic so received by each of the parties shall be made monthly and any inequality of division in any month shall be rectified in succeeding months.”

(b) The requirement is “to route—to competitive points on or beyond the lines of the parties” and the central fact in every transaction is the “point” to which the goods are to go: we must ascertain that as the first step in every determination.

40 (7) (a) Let us take first the matter of competitive points “on the lines of the parties.” What are they? Are they strictly carrier competitive points, i.e., common to both railways to which each is willing to carry on the same terms: or are they points which in a secondary or other than a carrier sense are competitive, such as a market or a commercial competition? For example, at Trail, B.C., on the Pacific, is a huge smelting plant which sends its products either directly or mediately to consuming markets generally. Let us suppose that at Prince Rupert, on the National, a similar plant should be established which would serve the same markets; can it be seriously suggested that in such a sense Trail and Prince Rupert would be “competitive

points on the lines of the parties ” for the purposes of local shipments of the ore which is later to be distributed in a manufactured form to those competing markets? In other words, does the plurality of the expression “ competitive points ” include one point local to one line and another point local to the other line or is it intended only to distribute a plurality of common points? If the former were so, before the requirement of “ routing ” could be carried out, an elaborate inquiry would first have to be instituted to examine the whole competitive field, the production, the markets of consumption, the extent of field common to any two or more industrial plants on the lines of the railways: and these “ points ” would be competitive only in respect of the peculiar commodities or materials which might ultimately meet in the common market. That inquiry would in effect necessitate a survey over each of the two railways to ascertain whether any given point on one in respect of a given commodity for a given purpose was or might be ultimately competitive with similar points and commodities on the other; and so would the process go on until the function of the Northern would be not to “ route ” but to determine the economic status of all commercial and industrial activities at all points on both lines. The foregoing situation is simply one aspect of general furtherance from an initial destination which is dealt with further in Section 8 of this factum. 10 20

(b) Here we have the competitive characteristic attached not to a “ point ” but to “ commodities ”; but as to them the carrier’s role in any competitive sense is secondary. It is not “ traffic ” to “ competitive points ”; it is rather “ traffic in competitive commodities.” But we are dealing not with competitive commodities—unless railway service can be so termed, in which case the same conclusion follows—but with two agencies who compete with each other in respect of the carriage of goods to “ points.” What then are the “ competitive points ” to them or as between them? For any serious and practical purpose there can be only one answer: “ competitive points ” are necessarily “ common points.” 30

(c) Here may it be observed that the distribution on an equality basis is one that is, in practice, to go on to a substantial degree concurrently with the flow of traffic. From day to day the division, so far as practicable, will be made: otherwise a dislocation of the operations on either line might work serious inconvenience. Furthermore the daily determinations are to be made by practical operating administrators of the Northern; they are not intended to be a tribunal whose scope of inquiry is to embrace an examination of the markets of the world. They are practical railway men who know what in a railway sense “ competitive points ” are, who can read tariffs and who can say without hesitation from an examination of their own data and records what their decisions from shipment to shipment must be. 40

(d) It may be suggested that in the case of milling and storage in transit (which will be more fully dealt with later) the immediate and final determination cannot always be made; that is a fact; there is the possibility that the ultimate shipment to a competitive point may be somewhat delayed and the rectification in division so postponed. The actual practice will meet other



cases such as reconsignment which also may necessitate subsequent rectification; but these indicate merely the minor departures from the normal, practical, current allocation.

(8) (a) It is submitted therefore that "competitive points on the lines of the parties" are common points on those lines to which each railway, from the common point of Edmonton, undertakes to carry on equal terms. Let us next consider the words "or beyond the lines of the parties." Do these words carry with them the same sense of common point and are those common points limited to destinations to which each line, by means of itself and its connections, undertakes to carry? Or do they include any point beyond the ambit of railway carriage which goods may ultimately reach by means of a new and disconnected agency, where the only element on which carriage competition can be predicated is the fact that from the starting point the goods might have reached the ultimate destinations by means of another route composed likewise in part of another railway and in part of another disconnected agency? For example, grain may be carried from the Northern ultimately to Liverpool: it might conceivably, under appropriate arrangements, have gone via Vancouver, Prince Rupert, Victoria, Churchill, Saint John, Halifax, or any United States port. In the railway sense the transit ends at the sea port: from thereon a new and dis severed service enters. Can it be said that Liverpool in the case put is a "competitive point beyond the lines of the parties" because the shipment might in certain circumstances have reached that destination via another port? If that is so, then the necessary conclusion is that every point that can be reached by water carriage from any port served by either the National or the Pacific is a "competitive point." This assumes that from every port in Canada there is potential carriage by water to every non-Canadian port in the world; this must include the time and cost factors also; and the final statement to which we are driven is that any export shipment made from a Canadian port to a foreign destination could at the same time and at the same rates have been made from any other Canadian port.

(b) Now there is no uniformity of ocean shipments in time, vessels or rates. They are all—except in the case of scheduled liner service—dependent upon the fluctuating conditions of transport and commerce. The kind or extent of space required for a given shipment may or may not be available from a given port at a given time; the rates have no fixity: they may vary for different consignments of the same commodity in the same vessel and voyage. But these variables are the elements out of which the stabilized traffic "to competitive points" is built up by the appellant.

(c) Such a view is in fact the basis on which the Northern is acting and it is summed up in a short statement that all export traffic is to "competitive points" within the meaning of paragraph 7. That basis appears clearly in the treatment of shipments to Churchill. The rates to Churchill are not the same as those to any other port; there is no question of competition between Churchill and one port more than another; they are all to a degree "competitive ports"; but the mere fact of shipping through Churchill is sufficient for its being treated as being "to competitive points" under the agreement.

(d) Although "export traffic" only has been so far dealt with, the principle underlying goes beyond shipments from Canada. It necessarily applies to all furtherance from the initial railway destination. For instance, shipments may be sent either to Vancouver or to Prince Rupert and furtherance intended to a coastal point intermediate between the two. Under the principle urged by the appellant upon actual furtherance to that coastal point from, say, Vancouver, we are entitled, as in the case of export from Canada, to assume a potential competitive water service to that coastal point from Prince Rupert and we make from that the final deduction that the original railway shipment is therefore of traffic to a "competitive point" beyond the line of the railway. 10

(e) It is the fact that the principal traffic from the Northern is grain intended for export. That forms the bulk of the shipments. That fact was known to all parties concerned with the making and drafting of the agreement; it was to them the salient fact in the whole negotiation. Yet there is not one word in the agreement that deals with export traffic as such or so much as hints at such a characteristic as being significant for the purposes of the agreement. On the contrary, there is a carefully defined and limited specification in language familiar to persons engaged in railway work, and it is to the limits of that language that we must confine ourselves. 20

(f) The foregoing is shown indubitably by the reference to "grain milled or stored in transit." What this means is obvious; in the practice of railways it is permitted to shippers to consign grain to intermediate points, discharge it there, either mill or store it and subsequently reship to railway destinations on the basis of a rate from the original point to that ultimate destination, plus a small charge for stoppage in the course of the transit. This has been established for many years; it is part and parcel of the normal crystallized railway practice of Canada; it is conceived as involving only a temporary or suspensive interruption of a carriage from the initial point to the ultimate railway destination: and yet it was felt necessary, notwithstanding the generality of the practice, to make specific mention of it in the agreement. Under the language of the paragraph, without the interpolation, such shipments could undoubtedly have been treated as having a single transit to the ultimate railway destinations; but to assure that even here there would be no room for doubt, the express reference is incorporated. And yet it is suggested that a shipment to a terminal port at which the railway's connection with it is, by delivery to the elevator, for all purposes ended and, after storage, a new subsequent carriage by water with which the railway has not the remotest connection, are to be linked together as a single transit from the point on the Northern to the ultimate foreign destination and by *implication* to be treated as being "to competitive points" under the agreement. In other words, a transit suspension of the grain at Medicine Hat for milling or storage purposes preparatory to a re-shipment to Toronto is such an interruption as must have an express stipulation for its inclusion; but a detention at Prince Rupert preparatory to a new shipment to Hong Kong may be implied. Nothing could more clearly indicate the real intention of the paragraph. 30 40

(g) It may be contended that the terminal ports themselves are transit points and that this parenthetical clause is intended to include them. An argument so extreme implies that if it is not valid the fact about which it centres is virtually conclusive against the proposition which it is being advanced to support. The language "milling or storage in transit" has a too well recognized meaning in railway parlance to admit of any doubt. Here the words are used between two railways and the sense is the railway sense. The language deals with a stoppage in the course of the railway transit and between the railway termini of the carriage; it could mean  
 10 nothing else: but the attempt to give it an extension to include a storage or milling at Victoria in the course of ultimate transit to Shanghai indicates again the rather extraordinary considerations to which the appellant is driven to support its thesis.

(9) (a) Next let us consider what the Northern is to do: "to route outbound freight traffic to competitive points, etc." This means that the route, i.e., National or Pacific, is to be given the shipments prior to their leaving the lines of the Northern. It implies an alternative in the choice: the Northern may give the shipment a directional way over one or other of the two railways. We do not speak of "routing" to a local point; it would  
 20 be rather absurd to require the Northern to "route" in such a sense to Prince Rupert or Churchill; the Northern would *ship* to these points, not *route* to them.

*Canadian Cannery vs. Perc Marquette Ry.* 35 C.R.C. 166.

(b) That the foregoing is so, clearly appears from the language of lines 4 and 5, paragraph 7: "including such freight traffic *routed* by the shipper as well as freight traffic *unrouted* by the shipper." This implies that the shipper may, or may not, have elected by which *route* he would ship to his  
 30 *destination* and it is the similar act of election which the Northern is required to perform. In any other sense, the word "unrouted" would mean that goods might be shipped without a destination.

(c) Here it may be well to emphasize the distinction between a route and a destination. The determination of the destination of a shipment is a function of the shipper, with which the carrier has nothing to do; that determination depends upon the commercial situation, the considerations present to the shipper and his own purposes; and it is not until after that destination is fixed upon that the interest of the carrier arises at all. For instance, the decision of a shipper to send his grain to Churchill is one made without reference to any question of railway preference; the railway rates, the storage rates, the insurance, financial and commercial connections, the ultimate destination,  
 40 and many other factors are determinative of that decision; but until it is made the railway's function is passive. If the destination so determined should be a point to which two or more railways are prepared to carry on similar terms, then comes the second question of *routing*; there is a choice to be made and here enters the function of traffic solicitation.

(d) Since, therefore, the shipper determines what his railway destination shall be, the "routing" which the Northern is required to perform could not

disregard that destination. If for instance the "competitive points" were the overseas destinations, then to those destinations the Northern would be required to *route* via the National or the Pacific so as to equalize revenues. In other words, the Northern could say for instance: "This shipment to Liverpool shall go via the Pacific to Vancouver" although the destination determined by the shipper was Prince Rupert. The Northern is bound to select routes; that is its duty; and if the "competitive points" were overseas that power would include the determination by the Northern of the ports through which the shipments would pass. This obviously would be absurd. In the first place, the Northern knows nothing of the export destination; it cannot therefore "route" to such a point; and in the second place, the shipments must be carried to the railway destination designated by the shipper, which would be the port selected by him. 10

(e) Then it may be suggested that Vancouver, Prince Rupert, Churchill and the other ports are themselves the "competitive points" intended. "Competitive points" between railways are potentially competitive as to all commodities carried; but would it be suggested that local traffic to Vancouver, in so far as carriage is concerned, is in any sense competitive with similar traffic to Prince Rupert? To put the question is to answer it. The competitive characteristic here attaches not to the carriage but to the traffic. But these ports are points "on the lines" of the parties and from this standpoint they have already been dealt with. (Section 7). 20

(f) What in all this view is vaguely sensed is the fact that the total route to foreign points via one port is in a remote degree "competitive" with the total route passing through another port. From Edmonton to Liverpool grain may conceivably, in certain circumstances, be carried by a different total route for every port in Canada and the United States to which the National or Pacific, either directly or through connections, reaches and each such route is in one sense and to a degree competitive with every other. Similarly every point on those routes will obviously seek to bring as much traffic to pass through its terminals, or otherwise to enjoy the activities connected with that traffic within its community as can be brought about. So we have "port competition" and the whole pull of community competition: and we properly speak of "competitive ports." Railway carriers in a general and secondary sense share in this local interest; but such a generalized concern is not what we are here dealing with. What in every case must be dealt with is the "point" to and not the route by which the traffic goes. 30

(g) It may be urged that the fact that the rates from Edmonton and points on the Northern to Prince Rupert are the same as from those points to Vancouver indicates that the railways themselves look upon these ports as "competitive points" and in support of this reference may be made to certain notations in the tariffs of such rates to the effect that the rates to Prince Rupert are competitive. Such a notation, however, is merely a feature of tariff making mechanics. So far as it is contained in the National Northern tariffs, it is intended to indicate a relationship between Vancouver and Prince Rupert as local stations on the National and in no sense is it related to a 40

competitive Pacific service to Vancouver. This is conclusively shown by the fact that the rates from purely local points on the National from which there is no connection with the Pacific whatever, carry the same sign or notation of their being competitive. The reason for this is that under General Order 448 the National would be justified in putting in a higher rate—due to a longer mileage—to Prince Rupert than to Vancouver: for obvious reasons of policy, however, it was considered that all British Columbia ports should be placed on a rate equality; and the “competitive” sign is for the purpose of indicating that the rate is lower than it is required to be. This prevents,

10 for example, a claim from another point for a lower rate on the basis of the low mileage rate so established to Prince Rupert: it also reserves the power to reinstate the authorized rate. Such an element of the technique of tariff compilation is obviously a matter within the peculiar understanding of the Board and the fact of the notation was wholly and properly disregarded by the Board. But it is to be observed that what the tariffs say is that the “rates” to Prince Rupert are “competitive”; not that Victoria and Prince Rupert are “competitive points” on the National.

(h) Nor is the equality of rate to these two ports itself of any significance. Throughout Canada and the United States, the policy of general equalization

20 of ports in the matter of rates has long been applied so that from points within large blocks every port is equally available or substantially so in respect of railway carriage costs. Some ports, such as New York, have recognized differentials over others, such as Philadelphia, but this itself is based upon and justified by other equalizing factors, such as terminal, lighterage, insurance and other charges. If a higher rate should be applied to Prince Rupert than to Vancouver, justified by reason of compensating advantages on ocean carriage, say, to Manchuria, would Prince Rupert, in respect to that traffic, cease to be “a competitive point”? The answer is supplied by a consideration of the situation of Churchill.

30 (i) But the fact of substantial rate equality does not render ports “competitive points” on railways. Those with which we are dealing are not common points, which they must be, to be “competitive points on the lines of the parties”; and in relation to the ultimate carriage to foreign points they are simply points on through routes of no more significance in a carrier competition sense than any one of an infinite number of points intermediate between the original shipping point and the ultimate destination.

(10) Next it is to be observed that the Northern is to route to the competitive points so that “each party shall receive, on a revenue basis, one half of the outbound freight traffic.” First, this means the total revenue

40 from the shipping point to the competitive points; the rates must be known to the Northern and the full charge made against either the National or the Pacific, whether the competitive point destination is reached by it alone or through railway connections. The Northern knows nothing about the ocean or water charges, neither does either railway. “Revenue” therefore cannot include charges to destination beyond the lines of the two railways and their railway connections.

(11) (a) In the next place the manner of equalizing the revenue is of importance. According to the argument advanced by the Appellant, all traffic to Prince Rupert, Victoria and Churchill must be brought into a competitive pot. If for instance 100 cars are sent by shippers to Prince Rupert, an equivalent revenue must be awarded the Pacific. But how? Only by means of allocating an equivalent revenue on shipments directed by the shippers to Vancouver. In other words, the equal share of all export traffic to which the Pacific claims to be entitled must, or will in practice, be appropriated out of Vancouver shipments. To these three points—Victoria, Prince Rupert and Churchill—the Pacific is either unable or unwilling to carry and yet it claims the right to appropriate Vancouver traffic to the extent of the shipments to these destinations. 10

(b) Let this be emphasized. A shipper presents a car of grain for shipment to Victoria. The Northern, as impartial administrator, offers the car for carriage to the Pacific; that company is physically able to perform the carriage but it answers "We will not carry grain for export to Victoria":

*City of Victoria vs Canadian Pacific Ry. Co.* 38 C.R.C. 224.

The Northern then turns the car over to the National, which accepts it. The next car is one for Vancouver: the Northern can send this by either the National or the Pacific; each company is ready and willing to carry it: but the Pacific claims under the agreement to be entitled to that car because the National carried the first car to Victoria. To an impartial administrator there could be no such basis for such a claim by the Pacific. The judgment deals with this feature as follows: 20

"When the agreement was entered into the Canadian National alone was carrying grain from points on the Northern Company to both Victoria and Prince Rupert. The Canadian Pacific had no line to Prince Rupert, and while it had facilities at Victoria it had declined to put in a through rate for export to this point. In fact, one of the first applications I heard after becoming a member of the Board was an application to compel the Canadian Pacific to put in such a rate. The company refused to do so, chiefly on the ground that it was too expensive to carry grain to Victoria for export at the rates which would have to be put in. The Canadian Pacific, notwithstanding it refused to carry grain to Victoria, now insists that any grain carried there by the Canadian National shall be apportioned under the agreement. In other words, that for every car the Canadian National hauls over its lines to Victoria a car shall be apportioned to the Canadian Pacific for carriage to Vancouver." 30

(c) If the contention of the appellant were sound, that the Pacific is entitled to an equalization out of shipments to Vancouver or even to other common points, of the traffic to all ports, then the language of paragraph 7 instead of being: 40

"The new company shall be required to route outbound freight traffic—destined to (all) competitive points—in such a way that

each of the parties shall receive on a revenue basis one-half of (all) the outbound freight traffic originating and destined as aforesaid."

where, it is submitted, the word "all" is implied, as indicated in the brackets would now read :

"The new Company shall be required to route outbound traffic destined to (some) competitive points—in such a way that each of the parties shall receive on a revenue basis one-half of (all) the outbound freight traffic designated and destined as aforesaid."

10 (d) The results of such a distribution can easily be imagined. For reasons of governmental policy shipments via Churchill or Prince Rupert might be encouraged with the result that the total to these points would be equal to one-half of all of the shipments to Vancouver. The resulting division would mean that every bushel to Vancouver would be carried by the Pacific.

20 (12) No form of administration of the Northern could affect the right and the power of the National to exclusive carriage to Prince Rupert and to Churchill. If the Pacific were the sole owner of the Northern that carriage could not be affected. The National does not receive such traffic in the way of benefit or favor from the Northern; it receives that traffic as of right; it receives it by reason of its local situation and advantage or disadvantage; no agreement was necessary to secure it; and its carriage is as much the retained local right and privilege to the National as the advantage of any local point on the Pacific, as, say, Medicine Hat, a milling point, is to that railway.

30 (13) (a) Reference may be made to paragraph 6 of the agreement respecting the solicitation of outbound competitive traffic over the lines of the two railways. The language here is somewhat different: it is not "outbound freight traffic to competitive points" but rather "the routing of outbound competitive traffic." The first difference to be noted is that paragraph 7 is confined to freight traffic whereas paragraph 6 would include passenger traffic as well. As to freight, it may be considered that such a clause should be included simply as supplementary to the intent of paragraph 7. Then although outbound traffic under paragraph 7 is to be divided equally "whether routed or unrouted by the shipper", there might have been a desire to reduce the difficulties of equal division by minimizing the shipper routed portion of the traffic. p. 83, l. 43

40 (b) It may be contended that the National would be disposed to solicit for carriage to Prince Rupert or Churchill, or Victoria, but such a suggestion is not based on realities. As emphasized before, the selection of a destination is a shipper's function exclusively. What, for instance, could the National urge, in any effective way, for the shipment of grain to Churchill? The railway is there; the rates are fixed; the storage is provided; the insurance is controlled; the business and commercial connections between shippers and buyers are established and all the other factors of the business are playing upon the minds of the actors; but how many are within the control

of the railway? Only one: the rate. Is the publication of a rate to a local point "solicitation"? Was the National guilty of a violation of paragraph 6 in equalizing the Vancouver rate to Prince Rupert? The answer to all of this is that solicitation by railways for such carriage is simply irrelevant to the export business: when the commercial decisions are made—in part upon the services which the railways offer—including the port to which the shipments shall be made, then, and not till then, does the railway activity arise; if the port selected is a carrier competitive point, solicitation would be in order: if Vancouver were decided upon, both the National and the Pacific would at once be in the field; and it is this solicitation that paragraph 6 deals with: 10 but should Churchill be selected by the shipper, the next act of the railway would be not solicitation but the entering upon the carriage.

(14) There remains to be considered the scope and purpose of paragraphs 2 and 11 of the agreement. The former obviously deals with the interest of the National and Pacific as shareholders; there shall be a joint and equal participation in benefit as well as burden. Paragraph 11, in addition to a declaration as to the attitude of each railway toward the other, as well as toward the Northern, which would be implied, contemplates subsidiary benefits which, from the administration of the Northern itself, will accrue to the two controlling railways. This is a different field from that covered by 20 paragraph 7 and has already been dealt with. (Section 1.)

(15) Finally it cannot be urged too strongly that this agreement is one that is perpetual and that its application in the future may be to conditions quite different from what we have today. The nature of the traffic outward may change, its destinations may change; the whole commercial situation may be transformed. Before export traffic as such can be held to be within the meaning of paragraph 7, some principle should be brought forward in support of it, which has a basis in transportation datum. Nothing of that kind has as yet been suggested. Furthermore, the determination of such a practical matter, involving as it does so much appeal to a mental back- 30 ground based on practice and the experience of railway operations, is one which an administrative as well as a judicial body, such as the Board, is peculiarly qualified to make; and the decision of such a body should be reversed only for the most cogent and convincing reasons.

(16) In conclusion it is submitted:

(a) That the primary purpose of the agreement was to bring about a neutral and impartial administration which in the realm of benefits to be bestowed or favors to be conferred or railway relationships to be maintained, would be impartially and equally disposed to both railways:

(b) That neither railway in the slightest degree intended to surrender 40 any right, privilege or advantage which, by reason of its local or peculiar situation, it could enjoy, regardless of the form of administration of the Northern: and that the provision for equal division of traffic was intended to cover only the common field:



(c) That in the ordinary acceptation of the terms, the ports of Victoria, Prince Rupert and Churchill are not "competitive points" in a carrier sense; that the purpose of paragraph 7 was to deal with *carrier competition* only; that no principle or ground has been suggested on which *export grain as such* can be deemed to be "traffic to competitive points" within the meaning of the paragraph; and that although admittedly export grain was the primary feature of the traffic connected with the Northern and was the weightiest consideration in the minds of the negotiators, there is not a word in the agreement, either expressly or impliedly, alluding to or dealing  
10 with it.

For the foregoing reasons, it is submitted that the Judgment of the Board was right and that the appeal should be dismissed with costs.

I. C. RAND  
Of Counsel for the Respondent.

RECORD  
In the  
Supreme Court  
of Canada  
No. 9  
Factum of  
Canadian National  
Railway Company

No. 10  
Formal Judgment

No. 10  
Formal Judgment,  
6th March, 1934.

IN THE SUPREME COURT OF CANADA  
ON APPEAL FROM THE  
BOARD OF RAILWAY COMMISSIONERS FOR CANADA

20 Tuesday, the 6th day of March, A.D. 1934.

PRESENT: The Right Hon. Sir LYMAN POORE DUFF, G.C.M.G., Chief Justice,  
The Honourable Mr. JUSTICE LAMONT,  
The Honourable Mr. JUSTICE SMITH,  
The Honourable Mr. JUSTICE CROCKET,  
The Honourable Mr. JUSTICE HUGHES.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY,  
*Appellant*

AND

30 CANADIAN NATIONAL RAILWAY COMPANY,  
*Respondent.*

The appeal of the above named appellant from the Order of the Board of Railway Commissioners for Canada, No. 50139, dated the 12th day of July A.D. 1933, having come on to be heard before this Court on Wednesday the 15th day of November, in the year of our Lord one thousand nine hundred and thirty-three, in the presence of counsel for the Appellant as well

RECORD

*In the  
Supreme Court  
of Canada*

No. 10

Formal Judgment,  
6th March, 1934.

as for the respondent, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

THIS COURT DID ORDER AND ADJUDGE that the question of law upon which leave to appeal to this Court was granted by the Board of Railway Commissioners for Canada, namely,

“Whether upon the Agreement made between the Canadian National Railway Company and the Canadian Pacific Railway Company on the 29th day of January, 1929, and the facts and circumstances hereinafter set forth, grain shipped from stations on the Northern Alberta Railways to Prince Rupert or to Victoria for export, and exported from either of those ports to say the United Kingdom, is to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under Article 7 of the Agreement as not being ‘outbound freight traffic destined to competitive points on or beyond the lines of the parties’ as the expression is used in said Article.”

should be and the same was answered in the negative.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said appeal should be and the same was allowed with costs, to be paid by the said Respondent to the said Appellant.

(Sgd.) J. F. SMELLIE,  
Registrar.

No. 11

Reasons for  
Judgment  
(a) The Chief  
Justice  
(Concurred in by  
Smith and  
Hughes JJ.)

No. 11

### Reasons for Judgment

PRESENT: THE CHIEF JUSTICE and LAMONT, SMITH, CROCKET and HUGHES JJ.

(a) THE CHIEF JUSTICE: The appellants, the Canadian Pacific Railway Company, obtained leave to appeal from the Board of Railway Commissioners on the following question of law:—

Whether upon the Agreement made between the Canadian National Railway Company and the Canadian Pacific Railway Company on the 29th day of January, 1929, and the facts and circumstances hereinafter set forth, grain shipped from stations on the Northern Alberta Railways to Prince Rupert or to Victoria for export, and exported from either of those ports to say the United Kingdom, is to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under Article 7 of the Agreement as not being “outbound freight traffic destined to competitive points

on or beyond the lines of the parties " as the expression is used in said Article.

The articles of the agreement requiring strict examination are those numbered 2, 6, 7 and 11. We quote them literally :

10 2. Each of the parties hereto shall assume the payment of and be liable for one-half of the purchase price payable (with interest), and one-half of the obligations to be assumed by the Purchasers under the said Agreement, and shall be entitled to one-half of the benefits to be derived therefrom, it being the intention of the parties that the said Agreement shall be for their equal benefit and advantage.

6. Neither party shall directly or indirectly solicit the routing of outbound competitive traffic over their respective lines.

20 7. The new Company shall be required to route outbound freight traffic (including grain milled or stored in transit) originating on the lines of the new Company and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties, in such a way that each of the parties shall receive on a revenue basis one-half the outbound freight traffic originating and destined as aforesaid, including such freight traffic routed by the shipper as well as such freight traffic unrouted by the shipper. Comparisons on a revenue basis of the traffic so received by each of the parties shall be made monthly, and any inequality of division in any month shall be rectified in succeeding months. The foregoing provisions in respect to Freight Traffic shall apply also to outbound Express Traffic and Telegraph Traffic respectively, originating on the lines of the new company and destined to competitive points on or beyond the lines of the parties. For the purpose of the division of traffic in this paragraph provided for, Freight Traffic, Express Traffic and Telegraph Traffic shall be divided and dealt with separately.

30 11. The parties agree to co-operate with fairness and candour toward each other, and to give effect to this agreement in the most liberal and reasonable manner to the intent that each of them shall receive its full and equal share of the benefits of the joint undertaking, subject to the provisions of Clause 4 hereof.

The question for decision is by no means free from difficulty, although the relevant considerations lie in a rather limited field. The Board answered the question in the negative. We think the pith of the reasons delivered by the learned Chief Commissioner is in the extracts now quoted :

40 The rates and conditions of carriage of grain shipped for export from points on the Northern Company to all three of the ports above referred to are identical. The question is, what did the parties mean by the use of the words " competitive points on or beyond the lines of the parties " ? I have always understood " competitive points " in

RECORD

*In the  
Supreme Court  
of Canada*

No. 11

Reasons for  
Judgment  
(a) The Chief  
Justice  
(Concurred in by  
Smith and  
Hughes JJ.)

## RECORD

*In the  
Supreme Court  
of Canada*

No. 11

Reasons for  
Judgment  
(a) The Chief  
Justice  
(Concurred in by  
Smith and  
Hughes JJ.)

railway parlance to mean points in respect to which two or more lines compete for traffic. In other words, a point at which two or more railways have facilities and are prepared to handle traffic offered at equal rates. Reading the words in the ordinary way, I think there can be no doubt that "competitive points on or beyond the lines of the parties" means points on the lines of the parties or their connecting carriers, and have no reference to any point other than one on a railway.

The word "competitive" as used in the agreement must have reference to competition between railways. The parties were only interested in securing the carriage of grain to a port. What becomes of it afterwards did not in the least interest them. If the parties intended what Mr. Tilley now contends they did, they should have said so, and this is particularly true when one considers the meaning which both parties had, long prior to the agreement, given to the words "competitive traffic."

In the Board's General Order No. 252, re interswitching, it is set out that "nothing herein contained shall prevent the line carrier from absorbing the entire toll, or tolls, charged for interswitching competitive traffic, provided that the traffic and movements so treated are clearly defined in its tariffs." Turning to the tariffs of the Canadian Pacific and Canadian National as in effect in both Eastern and Western Canada, covering rules and regulations governing interswitching charges, they are found to all contain the following definition of competitive traffic:—

"DEFINITION OF COMPETITIVE TRAFFIC"

At point of Origin.—When the railway performing the switching service can handle the shipment in road-haul movement from the origin station at equal rate. 30

At Destination.—When the railway performing the switching service could have handled the shipment in road-haul movement into the destination station at equal rate."

Another definition found in the tariff of the Canadian Pacific, Western Lines, having to do with absorption of cartage charges rather than the question of interswitching, concerning competitive carload traffic, reads:—

"Competitive traffic is defined as having both its origin and destination at points reached by other railroads, which may also be reached by the lines of this company or its connections." 40

It will be seen then that the Canadian National prior to the making of the agreement had certain exclusive rights with regard to the carriage of traffic routed to Victoria or to Prince Rupert. If the contention of the Canadian Pacific is right the Canadian National deliberately abandoned these exclusive rights. I can find nothing in the agreement to justify such a position.

RECORD  
In the  
Supreme Court  
of Canada

No. 11  
Reasons for  
Judgment  
(a) The Chief  
Justice  
(Concurred in by  
Smith and  
Hughes JJ.)

10 I would give the words in the agreement the meaning which those words are ordinarily understood to convey among railway men, and hold that Prince Rupert is not a competitive point within the meaning of the agreement. I hold further that until such time as the Canadian Pacific files a through tariff for export wheat to Victoria, the latter point is not competitive within the meaning of the agreement.

The statement of facts and circumstances referred to in the question as stated by the Board and quoted above contains the following paragraph :

20 12. Grain shipped to any of the above mentioned ports for export is discharged by the railway into elevators at the said ports and there stored with grain of the same grade, and is no longer earmarked as grain of that shipment. When the shipper desires to export his grain an equivalent amount of grain of the same grade is subject to his order. The same practice is followed in all cases where grain is milled or stored in transit.

30 On behalf of the appellants it is contended that the Board has erred in ascribing too much weight to their meaning in "railway parlance," to use the phrase of the learned Chief Commissioner, in interpreting certain phrases in the agreement. We have quoted rather fully from the reasons of the learned Chief Commissioner because we think it appears pretty clearly from these reasons that, in construing what he regards as the critical expression of Art. 7, he considers himself governed by the common usage in speech and writing among "railway men" concerning matters of railway operation such, for example, as interswitching arrangements and the incidence of cartage charges.

The learned Chief Commissioner says :

The word "competitive" as used in the agreement must have reference to competition between railways. The parties were only interested in securing the carriage of grain to a port. What becomes of it afterwards did not in the least interest them.

40 There can be no doubt that the traffic the parties had in view consisted almost entirely of grain and products of grain for export. The ultimate destination of the articles shipped was not the Pacific sea-board but places in Asia, Europe and America beyond the Pacific sea-board. The real question is whether or not the returns from the whole of this traffic, originating on

RECORD

*In the  
Supreme Court  
of Canada*

No. 11

Reasons for  
Judgment  
(a) The Chief  
Justice  
(Concurred in by  
Smith and  
Hughes JJ.)

the Northern Alberta Railway Company's lines, carried by rail to the seaboard for export, were to be subjected to Articles 6 and 7 of the agreement, or whether these articles were to be limited in their application to traffic destined to points which are competitive in the sense ascribed to the word by the learned Chief Commissioner.

The parties had joined in a common enterprise with a view to sharing equally in its benefits and they declare their intention in very explicit words in Article 11 to

give effect to this agreement in the most liberal and reasonable manner to the intent that each of them shall receive its full and equal share of the benefits of the joint undertaking. . . 10

We think Art. 11 lays down a principle which does not contemplate that the construction of the cardinal stipulations of the contract are to be controlled by the meaning attached by the usage of "railway men" in "railway parlance," to particular expressions when those expressions are employed exclusively with reference to the operation of railways. The words of the agreement are, of course, to be given their ordinary scope, but we think this article is intended as a direction that the objects of the agreement as ascertained from the instrument as a whole, together with the conditions the parties must necessarily have had in view, are to be factors of exceptional weight and importance in its interpretation. From this point of view, we find ourselves unable to concur with the view of the learned Chief Commissioner that the phrase "competitive points" in Art. 7 is to be read as limited to points "at which two or more railways have facilities and are prepared to handle traffic offered at equal rates." 20

The learned Chief Commissioner observes

The parties were only interested in securing the carriage of grain to a port. What becomes of it afterwards did not in the least interest them.

We do not agree that the ultimate destination of grain shipped to the seaboard did not "in the least interest" the Railway Companies. It is not disputed, as already observed, that in great part, such grain is export grain, or that this was the condition of things contemplated by the parties to the agreement. Nor is it disputed that, in point of practice, tariffs of export rates, on grain and grain products, from stations on the Northern Alberta Railways for export to Africa, Asia, Australia, Central America and Europe are published by the Canadian Pacific Railway Company (to Vancouver, North Vancouver and New Westminster) and by the Canadian National Railway Company (to Vancouver, North Vancouver, Victoria and Prince Rupert) for export to the same countries. The ultimate destination of the grain is to points reached by both railways, either directly, or through rail or inland or ocean water connections. Giving the words of the agreement their natural sense, it would seem to make no difference whether such ultimate destination is reached by land or water. 30 40

Nor do we think that the language of Art. 6 should be overlooked. "Competitive traffic" is, perhaps, not a very precise phrase; but it seems, clearly enough, to mean here traffic in respect of which the railways would be competing. In its natural meaning it would apply to the traffic in export grain. It is quite true, of course, that Article 6 is not to be read as dominating the agreement. It must be read with Art. 7, but it does point to the conclusion that what the parties had in mind is competitive traffic in export grain. It is not seriously disputed that, but for the agreement, there would be competition between the railway companies in respect of all this traffic.

10 The appeal should be allowed with costs and the question submitted answered in the negative.

Concurred in by Smith and Hughes JJ.

(b) LAMONT, J.

This is an appeal from the decision of the Board of Railway Commissioners declaring that Victoria and Prince Rupert in British Columbia are not competitive points within the meaning of section 7 of an agreement, dated January 29th, 1929, between the Canadian Pacific Railway Company (hereinafter called the "Pacific") and the Canadian National Railway Company (hereinafter called the "National").

20 The question submitted to us by the Board and the relevant provisions of the agreement have been set out in the judgment of the Chief Justice and need not be repeated here.

Before attempting to interpret the language of section 7, which is the crucial section, it may not be inadvisable to see what were the relations which, prior to the agreement, existed between these two railway companies and the four railway companies which, as a result of the agreement, were merged into one company. These railways were the Edmonton, Dunvegan and British Columbia Railway, the Alberta and Great Waterways Railway, the Central Canada Railway and the Pembina Valley Railway, all of which were  
30 local railways running northerly from Edmonton to points in Northern Alberta. At the date of the agreement the Pembina was owned by the Alberta Government, and the other three had come under its control through insolvency of their respective companies. At Edmonton these railways connected with both the Pacific and the National which carried their traffic from Edmonton to the Pacific Coast. The principal traffic from these local railways was grain—chiefly wheat—which they brought down to Edmonton to be shipped to ocean ports for export from Canada. The National had three ports at which delivery of overseas traffic could be made to ocean-going vessels: Vancouver (including New Westminster), Prince Rupert and  
40 Victoria (the cars to this latter place being carried by barge from Port Mann), while the Pacific could make delivery only at Vancouver.

Both the Pacific and the National had been desirous of securing a monopoly of the carrying of this grain from Edmonton to tide water and, at different

RECORD  
In the  
Supreme Court  
of Canada

No. 11  
Reasons for  
Judgment  
(a) The Chief  
Justice  
(Concurred in by  
Smith and  
Hughes JJ.)

(b) Lamont J.

RECORD

*In the  
Supreme Court  
of Canada*

No. 11

Reasons for  
Judgment  
(b) Lamont J.

periods, prior to the date of the agreement, a monopoly of the traffic had been enjoyed by one or other of these railways to the exclusion of the other. As the carriage of grain from Edmonton to the Coast was profitable, each railway was desirous that the exclusive control should not fall into the hands of the other, so they agreed to combine and purchase the four local railways and form them into a single system to be called the Northern Alberta Railway. This they carried out by the agreement in question in which it was provided that a new company should be formed to take over and operate the four railways forming the Northern Alberta system (hereinafter referred to as the "Northern Alberta"). Each party was to provide one half of the purchase price and become responsible for one half the liabilities; and each party was entitled to appoint one half of the directors. The object of each of the parties in entering into this agreement was not the revenue which they hoped to derive from the operations of the Northern Alberta, for it is admitted in the respondent's factum that "the operation of the lines had been carried on in deficit." The consideration which appealed to both the Pacific and the National was the collateral benefit which their individual lines of railway would receive from carrying the grain gathered by the Northern Alberta and turned over to them for carriage to ocean ports. Therefore in the agreement the parties set out not only the terms and conditions on which they became partners in the Northern Alberta but also the principle in accordance with which they were to share in this collateral benefit. That principle was one of equality of benefit, it being declared that the intention was that the agreement should be "for their equal benefit and advantage" (s.2). This equality of benefit and advantage was emphasized in section 11, which reads as follows:—

11. The parties agree to co-operate with fairness and candour towards each other, and to give effect to this agreement in the most liberal and reasonable manner to the intent that each of them shall receive its full and equal share of the benefits of the joint undertaking, subject to the provisions of Clause 4 hereof.

In addition the agreement provided that all officers and employees of the new company should be impartial between the Pacific and the National and that neither party should, directly or indirectly, solicit the routing of outbound competitive traffic over their respective lines. By section 7 the new company is required

to route outbound freight traffic (including grain milled or stored in transit) originating on its lines and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties in such a way that each shall receive on a revenue basis one-half of such traffic.

The question for determination is, what did the parties mean by "competitive points on or beyond the lines" of the railways?

The contention of the Pacific is that the word "destined" in section 7 means "intended for delivery not to the actual point to which the traffic is



10 billed over the Pacific or National lines as it comes from the Northern Alberta, but to the ultimate destination which may be intended or contemplated by the person controlling its movements": and that the words "competitive points" include points beyond the lines of the Pacific or the National and their rail connections, such as all foreign points which are accessible to shipping from ocean ports reached by either railway or their connecting rail carriers; for instance, grain having Liverpool as its ultimate destination could be carried by either the Pacific or the National to the Pacific Coast, and there forwarded by ocean-going vessels to Liverpool. Any of these ports to which it may  
10 have been brought by either railway and from which it is shipped to Liverpool, are, according to the interpretation placed upon the section by the Pacific, "competitive points on or beyond the line of the railway."

The contention of the National is that these words include and apply only to outbound traffic which, received from the Northern Alberta, is undertaken by the Pacific or the National to be carried to a point then named as its destination, and that such point must be one common to both lines or their connecting rail carriers to which rates from shipping points by either the Pacific or the National, with or without connecting carriers, are equal.

20 The Board of Railway Commissioners held that "competitive points," in railway parlance, meant "points in respect to which two or more lines compete for traffic."

In his judgment the Chief Commissioner said:—

Reading the words in the ordinary way, I think there can be no doubt that "competitive points on or beyond the lines of the parties" means points on the lines of the parties or their connecting carriers, and have no reference to any point other than one on a railway.

This was his interpretation of the words used and he supported it by two other arguments.

The first was:

30 It will be seen that the Canadian National prior to the making of the agreement had certain exclusive rights with regard to the carriage of traffic routed to Victoria or to Prince Rupert. If the contention of the Canadian Pacific is right the Canadian National deliberately abandoned these exclusive rights. I can find nothing in the agreement to justify such a position.

The second was as follows:—

40 True, under the agreement the parties are to have equal benefits because they are taking equal shares in the new company, but equal benefits in what? Surely the benefits referred to are the benefits to be derived from the operation of the new company. . . .

Dealing with this latter argument first, I am of opinion that if the language means, as I think it does, that the benefits which the Pacific were to receive

RECORD

*In the  
Supreme Court  
of Canada*

No. 11

Reasons for  
Judgment  
(*o*) Lamont J.

were simply the dividends on its stock in the new company, the benefits were illusory, for, as I have already pointed out, the Northern Alberta was being operated at a loss. Further, if Prince Rupert and Victoria are held not to be competitive points within the meaning of section 7, the result will be that the Pacific and National will, under the agreement, share equally in the revenue derived from the carriage of outbound freight from Edmonton to Vancouver; but the National will have, in addition, the entire revenue from the grain carried to Prince Rupert and Victoria. This, in my opinion, is inconsistent with the equality of benefit in the joint undertaking provided for in section 11. It would also mean that the representatives of the Pacific, 10 as business men, agreed to pay one half the purchase price of the joint undertaking and assume one half of its financial obligations; hold one half the shares in the company and divide the collateral advantage—which was the chief inducement to enter into the agreement—on a basis which would allow the National the lion's share of the profit. That the representatives of the Pacific, or any other business corporation or person, would agree to that kind of arrangement seems to be highly improbable.

The Chief Commissioner stressed the argument that the National, prior to the making of the agreement, had certain exclusive rights with regard to the carriage of traffic routed to Prince Rupert and Victoria, and that they 20 would be giving these up if the contention of the Pacific was right.

It was common knowledge at the date of the agreement that the railways that were taken over by the Northern Alberta—with the exception of the Pembina—were in an insolvent condition, and that the Pacific might purchase them.

If the Pacific had purchased them it would have had the exclusive control; and, undoubtedly, would have routed everything it possibly could over its own line to Vancouver. The same would have happened had these lines been purchased by the National. Therefore, so far as export traffic was concerned, neither railway would have had much to hope for if the railways comprising 30 the Northern Alberta system became the property of the other. Furthermore, if the National did relinquish any exclusive right which it had with respect to grain routed to Prince Rupert and Victoria, might it not have considered that it was being compensated therefor

(1) By sharing on equal terms in the revenue from grain attracted to Vancouver over the Pacific by reason of its storage and shipping facilities, which it is well known are greatly superior to those of the National, and

(2) By the Pacific's relinquishment of its right to solicit the routing of grain over its line which is now routed by the Northern 40 Alberta over the National to Prince Rupert and Victoria. It was to avoid the possibility of one of the parties to the agreement getting exclusive control over the local railways that the Pacific and the National agreed to share equally in the obligations and advantages

which would accrue from taking over these lines. As equality of obligation and advantage is expressly declared in the agreement to be the intent of the parties, effect should be given to that intent in construing section 7, unless the adoption of that principle is inconsistent with the language there used.

RECORD  
In the  
Supreme Court  
of Canada

No. 11  
Reasons for  
Judgment  
(b) Lamont J.

The construction placed by the Board of Railway Commissioners on the words "competitive points on or beyond the lines of the parties," namely, "points on the lines of the parties or their connecting carriers," limits the application of the words "points beyond" to some point on a connecting  
10 railway. Now the only railways at the Pacific Coast which connect with either the Pacific or the National are railways running south to the United States. This was well known to the men who made and drafted the agreement. These men, however, also knew that the market for Alberta grain was not in the United States, but in Europe or the Orient; therefore, when they required the new company to route outbound freight destined to competitive points on or beyond the lines of the Pacific and the National, they must have had in contemplation the points to which the grain would be exported in order to find a market; and that certainly was not to a point on a railway running to the United States. In my opinion no reasonable meaning  
20 can be given to the words "competitive points on or beyond the lines of the railway" which would give effect to what the parties had in contemplation as a business enterprise, other than the overseas points as contended by the Pacific. To give to the words the construction placed upon them by the Board of Railway Commissioners seems to me to nullify the very object which the parties intended to effect. Further, although that intention might have been put in language which would have obviated our present difficulty, yet I think the words used, taken in their ordinary sense, are not inconsistent with the intent of the parties, and are a sufficient expression of it. That construction of "competitive points" should, therefore, be adopted which gives effect  
30 to the intention of the parties, rather than the narrower meaning which has been adopted from the definitions of "competitive traffic" and "competitive rates" as given effect to in the decision of the Board.

(c) CROCKET, J.—

(c) Crocket, J.

The question of law submitted for decision on this appeal is whether upon the agreement, the material provisions of which are set forth in the judgment of the learned Chief Justice, and the facts and circumstances stated in the order of the Board of Railway Commissioners granting leave to appeal, grain shipped from stations on the Northern Alberta Railways to Prince  
40 Rupert or to Victoria for export and exported from either of those ports, say to the United Kingdom, is to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under article 7 of the agreement as not being "outbound freight traffic destined to competitive points on or beyond the lines of the parties," as the expression is used in that article.

As grain so shipped to either of the two named ports is admittedly outbound traffic shipped "to points on (or beyond) the lines of the parties" it will be seen at once that the whole question with which we are concerned is as to whether it is grain "destined to competitive points," as that term is used in article 7 of the agreement, and that, if it is, the whole question is concluded. We have nothing to do in the latter event with its shipment to points "beyond the lines of the parties."

The Railway Commission held that both ports named were not competitive points within the meaning of article 7 for the reason that Prince Rupert is reached and served only by the C.N.R. and that only the C.N.R. undertakes the carriage of export grain to Victoria, although both railways have terminal facilities there. In so deciding it is clear from the written opinion of the learned chairman that the Board construed the term "competitive points" in the sense in which it is ordinarily used with reference to the operation of railways, or, as he expressed it, in the sense which it is ordinarily understood to convey among railway men, i.e., points at which, as he particularly explained, "two or more railways have facilities and are prepared to handle traffic offered at equal rates." 10

I have no doubt, and indeed it is not seriously disputed, that this is the ordinary signification of the term as it is used in connection with the operation of railways. The appellant, however, contends that this is not the sense, in which either the term "competitive points" or the words "destined to" immediately preceding it, is used in article 7, and this is really the crux of the controversy between the parties as it comes before us. 20

For my part I can see no reason why such words as "outbound freight traffic destined to competitive points on or beyond the lines of the parties" should be interpreted in any other sense than the ordinary, usual sense which they bear in the conduct and operation of railways. The whole agreement is on its face essentially a railway agreement, concluded between two railway companies as such, and one which deals entirely with railway administration and operation, railway traffic and railway revenue. 30

The contention that the critical words "destined to competitive points" are not used in article 7 in their usual railway operating sense is primarily based on the inclusion in the limitation clause of the words "or beyond." It is argued that in the case of freight shipped to the seaboard for export these words must necessarily denote points beyond the seaboard, and that their inclusion in the phrase contemplates a through joint rail and ocean transit. This is no doubt a possible construction if we were dealing with the carriage of outbound freight billed for a through joint rail and ocean transit to a point in an overseas country, but this is not the question which the Railway Commission considered or the question which is now submitted to us for decision. The question we have to decide is, not whether freight so billed is to be excluded from the equalization comparison provided for, but whether upon this agreement "and the facts and circumstances set 40

forth" in the order of the Board of Railway Commissioners granting leave to appeal,

"grain shipped from stations on the Northern Alberta Railways to Prince Rupert or to Victoria for export and exported from either of these ports to, say the United Kingdom, is to be excluded as not being 'outbound freight traffic destined to competitive points on or beyond the lines of the parties' as the expression is used in that article" (article 7).

10 There is not the slightest suggestion in the Board's order that the grain is billed for a through joint rail and ocean transit to any particular point overseas or indeed to any country overseas. On the contrary the statement of facts shews that it is not. It states that

20 "grain shipped to any of the above mentioned ports (Vancouver, New Westminster, Victoria and Prince Rupert, the two first named being points to which both railways carry grain over their own lines to their own terminals) for export is discharged by the railway into elevators at the said ports and there stored with grain of the same grade, and is no longer ear-marked as grain of that shipment. When the shipper desires to export his grain an equivalent amount of grain of the same grade is subject to his order. The same practice is followed in all cases where grain is milled or stored in transit."

It may be added that it is stated in the reply of the Northern Alberta Railways Co. that it is required to shew clearly on the waybills that the grain is for export and the name of the elevator in care of which the grain is shipped.

30 How grain thus shipped from stations on the Northern Alberta Railways to any of these ports, and discharged into the particular elevator in care of which it is shipped, and there stored to await an order of the owner when he desires to export it to the overseas marked in which he has decided to sell it, for delivery into an ocean steamer for a separate ocean transit, with which the railway company as such has no concern, can be considered as not being "destined" to the particular port on the Pacific seaboard to which it is shipped, but "destined" to an unnamed point in an unnamed country, I confess I am completely at a loss to comprehend. The very suggestion of a "competitive point" beyond the seas in such an agreement demonstrates to me that the words "or beyond the lines of the parties" were never intended to cover an ocean transit with reference to which the railway undertakes no responsibility and with which it has as such nothing whatever to do.

40 Notwithstanding that the principal traffic of the Northern Alberta Railways consists of grain shipped to the seaboard for export, and this traffic must therefore have been the dominating consideration in the negotiation of the agreement, it is apparent that the parties had in contemplation outbound domestic freight traffic as well as export traffic and that article 7 was

RECORD

*In the  
Supreme Court  
of Canada*

No. 11  
Reasons for  
Judgment  
(c) Crocket, J.

RECORD

*In the  
Supreme Court  
of Canada*

No. 11

Reasons for  
Judgment  
(c) Crocket, J.

framed to embrace both. The limitation "destined to competitive points" must be held to apply to both classes in some sense. Is it to be supposed that it was intended to apply in one sense to one class and in an entirely different sense, or not to apply at all, to the other?

The only conceivable ground on which such a supposition can rest is that the word "on" refers exclusively to domestic shipments or shipments of freight not intended ultimately to be exported overseas, and the word "beyond" exclusively to shipments to the seaboard for export, and that a clear distinction between the two descriptions of outbound freight traffic is thus indicated by the words "on or beyond." Such a construction obviously reads out the words "or beyond" in respect of all outbound freight traffic which is not intended for export, notwithstanding that there may be competitive, as distinguished from non-competitive points, either "on" the lines of the parties themselves, or "beyond" the lines of the parties on the lines of other connecting railways in Canada or the United States, to which such outbound freight traffic may be shipped. It also casts aside the word "on" in respect of all shipments of export freight to the seaboard, notwithstanding that such freight may be destined to points "on" the lines of the parties and indeed must be held to be so destined in a railway carrying sense unless it is billed to some named point overseas for a through, continuous joint rail and ocean transit. Moreover, it renders the words "competitive points" themselves entirely meaningless with reference to all such shipments of freight to the seaboard for export, for assuredly, where no overseas destination point is in any way indicated, it becomes quite impossible to apply the quoted words to an overseas point at all.

Apart from these considerations the collocation of the words "on or beyond" in relation both to "outbound freight traffic destined to competitive points" and to "the lines of the parties" itself appears to me to entirely preclude such a construction as is contended for and to make it clear that the whole limitation was intended to apply to all outbound traffic in the same sense. Reading all these words together in the order in which they are placed, the whole purpose of the clause on its very face is to prescribe destination to competitive, as distinguished from non-competitive points, as a condition of the inclusion of any outbound freight traffic, export or otherwise, in the revenue apportionment provided for in the article. The truth is that it is only when one endeavours to read the language of the clause in any other than its ordinary railway sense that any difficulty whatever arises upon the construction of the article itself.

One suggestion is that all freight shipped to the seaboard for export is "competitive traffic" in the sense that it is entitled to "competitive rates," and that what the parties meant was not "competitive points," but "competitive traffic." To give effect to this suggestion one must not only substitute for the term the parties have chosen to use another term of an equally well recognised and entirely different import in railway usage, but to re-cast the entire clause, and thus completely disregard its application to export traffic.

Another suggestion is that all ports on the seaboard are competitive ports, and that what the parties meant was, not "competitive points" in a railway carrying sense, but "competitive ports." This suggestion presupposes that the limitation clause does not apply to export traffic at all, for manifestly all freight intended for export overseas, must be shipped to ports on the seaboard, and if all ports are alike competitive, the limitation is entirely meaningless as regards shipments to the seaboard for export.

RECORD  
 In the  
 Supreme Court  
 of Canada

No. 11  
 Reasons for  
 Judgment  
 (c) Crocket, J.

10 Indeed, the whole gist of the appellant's contention is that the limitation does not apply at all to outbound traffic shipped to the seaboard for export. Yet neither the word "export" nor "seaboard" is mentioned anywhere in the text of article 7. One would naturally think if such had been the intention the parties would have said so instead of hitting upon a clause, which on its face comprises both export and non-export outbound freight traffic alike. In my opinion, this clause must be read in the context in which it appears in article 7 in the sense in which the Board of Railway Commissioners has construed it, and constitutes a definite and specific limitation upon the outbound freight traffic intended to be included in the fifty-fifty apportionment provided for by that article in respect of such outbound freight traffic.

20 The object of the agreement as a whole must, of course, be ascertained, and I have no doubt, having regard to the provisions of articles 2 and 11, that the underlying intention was that, as far as practicable, the parties should share fully and equally in the benefits accruing from their joint acquisition and operation of the Northern Alberta Railways system, and that the joint undertaking should be conducted with fairness and candour between them. Once, however, it is seen that a definite and specific exception is made in clear and unambiguous language as regards a particular branch of traffic in an article obviously inserted for the purpose of dealing exclusively with that particular branch of traffic, the special article must be held to be the governing article in relation to the particular branch of traffic which it has thus singled out from all other branches. No other conclusion, it seems to me, is possible without entirely ignoring the special article, which surely must be considered in order to determine the object and intent of the agreement as a whole. That intent, I think, is clearly shown, viz. : that both parties are to share equally in the benefits accruing from the joint undertaking in the manner above stated subject to the condition expressly provided in article 7 with regard to outbound freight traffic, that only the revenues accruing from such outbound traffic as is destined to competitive points on or beyond their own lines, is to be included in the equalizing revenue comparison. Articles 2 and 11 may both be read in perfect consistency with such an intent. They cannot over-ride or negative the plain unequivocal words of article 7.

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For these reasons I would affirm the decision of the Board of Railway Commissioners and dismiss the appeal with costs.

## No. 12

RECORD

*In the  
Privy Council***Order in Council granting special leave to appeal to His Majesty in Council**

AT THE COURT AT BUCKINGHAM PALACE

The 25th day of July, 1934.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

SECRETARY SIR PHILIP CUNLIFFE-LISTER

EARL STANHOPE

MR. CHANCELLOR OF THE DUCHY OF LANCASTER.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of July 1934 in 10  
the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Canadian National Railway Company in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appellants and the Canadian Pacific Railway Company Respondents setting forth (amongst other matters) that the Petitioners are desirous to obtain leave to appeal from a Judgment of the Supreme Court rendered on the 6th 20  
March 1934 reversing (by a majority of four against one) a decision dated the 12th July 1933 of the Board of Railway Commissioners for Canada as to the scope of a clause in a permanent contract between the parties providing for their equal participation in certain freight traffic originating at points on the railways included in the Northern Alberta Railways which are jointly owned and controlled by them through a subsidiary company: that the sums at stake amount to \$40,748.15 and \$17,939.40 for the years 1932 and 1933 respectively and are of unknown amount but certainly considerable for the future: And humbly praying Your Majesty in Council to grant special leave to appeal from the Judgment of the Supreme Court of the 6th March 30  
1934 or for such other Order as to Your Majesty in Council may seem fit :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 6th day of March 1934 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs : 40

No. 12  
Order in Council  
granting special  
leave to appeal to  
His Majesty in  
Council,  
25th July, 1934



“ And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

RECORD  
—  
*In the  
Privy Council*

No. 12  
Order in Council  
granting special  
leave to appeal to  
His Majesty in  
Council,  
25th July, 1934

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed  
**10** and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

## DOCUMENTS.

## No. 13

## Chapter 56, Statutes of Alberta, 1921

1921

## CHAPTER 56

An Act to provide for the Maintenance of The Edmonton, Dunvegan and British Columbia Railway Company.

*(Assented to April 19, 1921.)*

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows : 10

1. The agreement dated the twenty-first day of July, A.D. 1920 (hereinafter called the Main Agreement), made between the Edmonton, Dunvegan and British Columbia Railway Company and the Central Canada Railway Company, of the first part, His Majesty the King, in the right of the Province of Alberta, represented therein by the Minister of Railways and Telephones for the said province, of the second part, J. D. McArthur, Limited, and the Union Bank of Canada, of the third part, the Canadian Pacific Railway Company (therein and hereinafter called the Pacific Company), of the fourth part, and John D. McArthur of the City of Winnipeg, Manitoba, of the fifth part; AND the Agreement dated the Twenty-first day of July, A.D. 1920, made 20 between the Edmonton, Dunvegan and British Columbia Railway Company and the Central Canada Railway Company, of the first part, the Canadian Pacific Railway Company, of the second part, and His Majesty the King, in the right of the Province of Alberta, represented therein by the Minister of Railways and Telephones for the said Province, are hereby ratified and confirmed and are declared to be legal and binding on every party thereto, and the persons executing the same shall be deemed to have had full power and authority to sign on behalf of the parties thereto.

2. The Lieutenant Governor in Council is hereby authorized to advance to the Pacific Company the sums of money provided for in the Main Agreement, and such sums of money may be raised by way of loan upon the credit of the general revenue fund of the province and shall be chargeable thereon in such manner and on such terms as may seem good to the Lieutenant Governor in Council and shall, without any further or other appropriation than is provided by this section, be paid to the Pacific Company upon the terms of the said Main Agreement. 30

RECORD

Board of Railway  
Commissioners  
for Canada

No. 13

Chapter 56,  
Statutes of  
Alberta, 1921.

## SCHEDULE

RECORD

*Board of Railway  
Commissioners  
for Canada*No. 13:  
Chapter 56,  
Statutes of  
Alberta, 1921.

ARTICLES OF AGREEMENT made this twenty-first day of July, A.D. 1920, between THE EDMONTON, DUNVEGAN AND BRITISH COLUMBIA RAILWAY COMPANY AND THE CENTRAL CANADA RAILWAY COMPANY (hereinafter called "the Railway Companies" of the First Part); HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF ALBERTA, represented herein by the Minister of Railways and Telephones for the said Province (hereinafter called "the Government," of the Second Part); J. D. McARTHUR COMPANY, LIMITED, AND  
10 UNION BANK OF CANADA, of the Third Part; CANADIAN PACIFIC RAILWAY COMPANY (hereinafter called "the Pacific Company," of the Fourth Part); and JOHN D. McARTHUR of the City of Winnipeg, Manitoba, Contractor, of the Fifth Part:

WHEREAS the railway companies are railway companies referred to in section 1 chapter 6 of the Statutes of the said Province of this present year;

AND WHEREAS default exists in the payment of interest due upon debenture stock and bonds of the Edmonton, Dunvegan and British Columbia Railway  
20 Company guaranteed by the said Province (of which the Principal sum aggregates Nine Million, Four Hundred and Twenty Thousand Dollars (\$9,420,000), and in the payment of interest due upon a loan of Two Million Dollars (\$2,000,000) made by the said Province to the Central Canada Railway Company, the said loan of Two Million Dollars (\$2,000,000) being secured by a mortgage upon the undertaking of the Central Canada Railway Company and guaranteed by the Edmonton, Dunvegan and British Columbia Railway Company;

AND WHEREAS the lines of the said railway companies have not been properly maintained and it is necessary that a large amount of work be done  
30 thereon immediately to ensure a satisfactory public service;

AND WHEREAS it has been deemed expedient by the Lieutenant Governor in Council to appoint a manager of the railway companies and to provide for the expenditure of moneys as authorized by the said Act and to take such measures as may be necessary to improve the condition of the lines of railway of the railway companies and to ensure the effective operation thereof and to keep the said lines in adequate repair;

AND WHEREAS in addition to the aforementioned debenture stock and  
40 bonds of the said Edmonton, Dunvegan and British Columbia Railway Company, that company made an issue of Two Million, Four Hundred Thousand Dollars (\$2,400,000) debenture stock secured by a trust indenture bearing date the 26th day of March, A.D. 1919, executed between that company and the Interior Trust Company as trustees for the holders of such debenture stock, which stock was issued at par in payment of certain advances to and indebtedness of the said railway, all of which said debenture stock is now held by the Union Bank of Canada as pledges of J. D. McArthur Company, Limited,

or otherwise, and whereas the said Union Bank of Canada and J. D. McArthur Company, Limited, at the request of the other parties hereto, have joined herein for the purpose of postponing their rights under the said trust indenture in respect of the said debenture stock so as to cause the same to rank after the security hereby granted and agreed to be granted by the railway companies to the Government.

AND WHEREAS it is provided by the said Act that no part of the advance thereby authorized shall be paid out to any person other than to a receiver or to a manager appointed by the Lieutenant Governor in Council by agreement as in said Act provided and shall not be paid while the operation of the undertaking remains in the company; 10

AND WHEREAS the Fifth Party is the absolute owner of all the shares of said railway companies, excepting only the qualifying shares held by the present directors of the said companies;

NOW THEREFORE THESE PRESENTS WITNESS THAT in consideration of the premises and of the covenants, promises and agreements on the part of the several parties hereto respectively herein set forth and contained, the said parties do hereby each with the other covenant, promise and agree in manner following, that is to say: 20

1. The Government hereby agrees to advance forthwith through the manager hereinafter referred to, the sum of One Million Dollars (\$1,000,000) in the said Act referred to, and with the sanction of the Legislature of Alberta, which the Government undertakes to endeavour to procure, to advance for the same purposes and on the same conditions, such additional sums not exceeding in the aggregate One Million, Five Hundred Thousand Dollars (\$1,500,000), making with the One Million Dollars (\$1,000,000) referred to in the said Act a total not exceeding Two Million Five Hundred Thousand Dollars (\$2,500,000) as shall be necessary to eliminate the present deferred maintenance of the railway companies and bring the lines of the companies up to a reasonable standard of operating efficiency, to be agreed between the Government and the manager; 30

2. It is essential to the proper working out of this agreement that the manager be entitled to operate the traffic of the Edmonton, Dunvegan and British Columbia Railway Company by means of a physical connection in Edmonton between the line of the Edmonton, Dunvegan and British Columbia Railway Company and that of the Pacific Company. In the event that the manager or the Government is unable to arrange on terms satisfactory to the Government and the Pacific Company running rights for the Edmonton, Dunvegan and British Columbia Railway Company with the Grand Trunk Pacific Railway Company and (*or*) the Canadian National Railway Company between the property of the Edmonton, Dunvegan and British Columbia Railway Company in Edmonton and the property of the Pacific Company 40

likewise in Edmonton, the Government agrees that it will, in addition to the moneys otherwise herein agreed to be supplied, furnish sufficient money to the manager to construct a line of railway on behalf of the Edmonton, Dunvegan and British Columbia Railway Company connecting the properties aforesaid.

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 13:  
Chapter 56,  
Statutes of  
Alberta, 1921.

3. The railway companies shall become the debtors of the Government for all moneys from time to time advanced by the Government under the provisions of this agreement as and from the respective dates of such advances. Such advances shall be repayable by the railway companies on the first day of  
10 July, A.D. 1925, or, at the option of the railway companies, on the first day of July, A.D. 1930, with interest thereon meanwhile at the rate of six per cent. (6%) per annum payable half-yearly on the first day of January and on the first day of July in each year.

4. As security for all advances made by the Government pursuant to the terms of this agreement and interest thereon each of the railway companies hereby grants to the Government by way of mortgage its undertakings, franchises, rolling stock, lines of railway, assets and property of every kind and description whatsoever belonging to or in any way appurtenant to the  
20 undertaking of the company, such grant to be void on repayment of the said advances with interest as aforesaid. The railway companies covenant and agree that they will execute such further and other assurances as the Government may deem necessary to effectuate the security hereby covenanted to be granted, including the delivery and pledging of bonds or debenture stock of the railway companies to the amount of all moneys so advanced.

5. The parties of the Third Part hereby postpone all their rights and interests under the securities held by them as aforesaid, to the security granted or to be granted to the Government hereunder by the railway companies in  
30 respect of the said intended advances and the interest thereon and they undertake to procure all necessary assents thereto including the assent of the Trustee under the Trust Indenture securing the Debenture Stock hereinbefore referred to. The Parties of the Third Part will take such steps as the Government may deem necessary to carry out the intent of this clause and to effectually and completely give priority to the security herein agreed to be given to the Government over that now held by the Parties of the Third Part.

6. It is further agreed between the Parties hereto that the rights of the Government which have accrued or may hereafter accrue by reason of any  
40 defaults of the Railway Companies are in no way barred or waived by the Government, but are simply postponed during the continuance of this Agreement. All moneys payable to the Government, the payment of which is so postponed, shall bear interest at the rate of six per cent. per annum.

7. The Government hereby nominates and appoints the Pacific Company as manager of the undertakings of the railway companies as provided in

## RECORD

Board of Railway  
Commissioners  
for Canada

No. 13  
Chapter 56,  
Statutes of  
Alberta, 1921.

Chapter 6 aforesaid, and the railway companies hereby agree to and confirm said appointment.

8. It shall be the duty of the manager with the approval of the Government to disburse all moneys which the Government shall provide under the terms of this agreement and to take full charge of and conduct the operation and management of the railways of the railway companies, including the administration of the finances of the railway companies and the improvement and betterment of their properties.

9. The manager's appointment shall be absolute and the railway companies shall hand over full control and management of their undertakings to the manager. 10

10. The Fifth Party agrees that he will immediately procure the resignation of each of the directors and officers of the railway companies and will duly qualify the nominees of the manager (one of whom may be named by the Minister) to be elected as directors of the said companies and will forthwith cause such nominees to be elected as such directors, and will during the continuance of this agreement, cause such nominees or their substitutes named by the manager, subject as aforesaid, to be duly elected as the directors of the said railway companies. No salaries shall be paid to the directors during the continuance of this agreement. 20

11. The manager shall hold office for a period of five years from the date of this agreement and thereafter until three months' notice in writing of the termination thereof be given either by the Government or by the Pacific Company to the other parties to this agreement. The manager's remuneration shall be fifteen per cent. of the revenues of the railways, in excess of working expenditure as defined in *The Railway Act*, such compensation to be payable only out of the surplus earnings of the railways after payment of fixed charges as hereinafter mentioned. Working expenditure shall include salaries or wages of all persons engaged exclusively in the service of the railway companies. 30

12. The manager shall from time to time and whenever so required by the Minister, render full and complete accounts of the operation and finances of the railway companies whilst under the control of the manager.

13. The accounts of the railway companies whilst under the direction of the manager shall be kept according to the standard system of railway accounting required by the Board of Railway Commissioners for Canada and the other parties to this agreement shall be permitted access at all reasonable times to the accounts and records of the said companies. 40

14. The Pacific Company hereby accepts the appointment as manager hereunder and provided the Government advances the several sums of money as herein agreed, including so much of the One Million Five Hundred Thousand

Dollars (\$1,500,000) as shall be necessary for the purposes of this agreement and provided the parties hereto fulfil the several obligations by them herein undertaken to be done and performed, the Pacific Company agrees that the properties of the railway companies will be efficiently maintained and operated having regard to the present physical condition of the railways and their physical condition after expenditure of the advances to be made by the Government, and that the manager on reasonable terms will provide such additional motive power and rolling stock as may be necessary for such operations, but the manager shall not itself be called upon to provide any of the capital requirements of the companies. The charges to be made by the manager for equipment so provided shall not exceed, in the case of cars, the rates for the time being in force under the Car Service Rules of the American Railroad Association, nor, in the case of motive power, the charges now established between the Pacific Company and the railway companies.

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 13  
Chapter 56,  
Statutes of  
Alberta, 1921.

15. The revenues of the railways during the term of this agreement shall be applied according to the following priorities:

(1) To the payment of working expenditure as defined by *The Railway Act*.

(2) To the payment of the interest on the securities of the Edmonton, Dunvegan and British Columbia Railway Company guaranteed by the province and on the loan made by the province to the Central Canada Railway Company.

(3) To the payment of interest on the sums to be advanced by the Government under this agreement.

(4) To the payment of interest on the debenture stock of the Edmonton, Dunvegan and British Columbia Railway Company held by the Union Bank of Canada.

(5) To the payment of the remuneration of the manager, and

(6) The remainder to be used in paying for betterments to the railways.

16. If the said revenues shall be insufficient to pay the interest on any of the said obligations all rights arising consequent upon such default shall be postponed during the currency of this agreement.

17. Should the railway companies at any time hereafter receive from the Government of Canada any grant or grants of either money or lands in respect of any portion of the said lines of railway now under operation, all amounts realized from any such grant or grants shall in so far as is consistent with any conditions respecting such grant or grants be applied on the improvement

of the said lines of railway in case of the moneys to be advanced by the Government hereunder.

18. The party of the Fifth Part represents and warrants that in addition to the funded indebtedness above set forth the railway companies have incurred only the following liabilities, and no others:

(a) Liability under mortgage held by the Standard Trusts Company covering a portion of the Edmonton, Dunvegan and British Columbia Railway Company's terminal property in Edmonton, upon which mortgage there is unpaid-for principal the sum of Thirty-nine Thousand Nine Hundred and Ninety-nine Dollars and Ninety-five cents (\$39,999.95); 10

(b) Liabilities to the Province of Alberta for interest paid by the province on the Edmonton, Dunvegan and British Columbia debenture stock to the extent of One Hundred and Forty Thousand Dollars (\$140,000.00), and for interest due to the province on the Central Canada provincial loan to the extent of One Hundred and Fifty Thousand Dollars (\$150,000.00); and

(c) The current accounts payable by the railway companies in the ordinary course of business as going concerns. 20

19. Should the Standard Trusts Company demand payment of the principal money or any portion thereof secured by the above mortgage the Union Bank of Canada will arrange for the purchase and retention of the said Mortgage held by the Standard Trusts Company as aforesaid so that during the currency of this agreement only the interest thereon will require to be paid as it matures out of the revenues of the railway companies as part of the working expenditure. 30

20. The payment of the said liabilities to the Province of Alberta is postponed during the currency of this agreement.

21. As soon as possible after the execution of this agreement an adjustment of the current accounts payable and receivable by the railway companies and of the value of the moneys and current materials and supplies on hand in the ordinary course of business as going concerns will be made. Such adjustment shall be made as of the day of the date hereof by Mr. N. F. Judah, auditor for the railway companies and an official of the Pacific Company and in the event of the total of such current accounts payable exceeding the total of the moneys on hand, the current accounts receivable and the value of the current materials and supplies on hand the owner will forthwith supply the deficiency to the railway companies. 40

22. Similar adjustments will be made at the termination of this agreement, and the intention being that the current accounts receivable and the value of materials and supplies on hand shall then also be made to equal the current



accounts payable, but the Pacific Company will not be required to pay interest charges except in so far as the revenues of the railway companies shall be sufficient to pay the same.

RECORD  
Board of Railway  
Commissioners  
for Canada

23. The railway companies join herein for the purpose of giving their covenants as herein stated and of expressing their full concurrence herein.

No. 13  
Chapter 56,  
Statutes of  
Alberta, 1921.

24. Wherever the word "Minister" is used herein it shall refer to and mean the Minister of Railways and Telephones for the Province of Alberta.

10

In witness whereof the Parties of the First, Third and Fourth Parts have caused their respective corporate seals to be hereunto affixed attested by the hands of their respective proper officers and the Government has caused this agreement to be signed by the Honourable Chas. Stewart, Minister of Railways and Telephones for the said Province of Alberta, and the party of the Fifth Part has hereunto affixed his hand and seal.

20

THE EDMONTON, DUNVEGAN AND BRITISH COLUMBIA  
RAILWAY COMPANY.

[SEALED]

J. D. McARTHUR, *President.*  
B. W. THOMPSON, *Assistant Secretary.*

THE CENTRAL CANADA RAILWAY COMPANY.

[SEALED]

J. D. McARTHUR, *President.*  
B. W. THOMPSON, *Assistant Secretary.*

30

CHAS. STEWART,  
*Minister of Railways and Telephones for Alberta.*

J. D. McARTHUR COMPANY, LIMITED.

[SEALED]

J. D. McARTHUR, *President.*  
B. W. THOMPSON, *Assistant Secretary.*

UNION BANK OF CANADA.

40 [SEALED]

By H. A. ROBSON.  
JOHN GALT, *President.*  
H. B. SHAW, *General Manager.*

CANADIAN PACIFIC RAILWAY COMPANY.

[SEALED]

E. W. BEATTY, *President.*  
E. ALEXANDER, *Secretary.*  
J. D. McARTHUR.

RECORD

THIS AGREEMENT made this twenty-first day of July, A.D. 1920.

Board of Railway  
Commissioners  
for Canada

BETWEEN:

THE EDMONTON, DUNVEGAN AND BRITISH COLUMBIA RAILWAY COMPANY and the CENTRAL CANADA RAILWAY COMPANY, (hereinafter called "the railway companies")

Of the First Part;

THE CANADIAN PACIFIC RAILWAY COMPANY,  
(hereinafter called "the Pacific Company")

Of the Second Part; 10

AND

HIS MAJESTY THE KING, IN THE RIGHT OF THE PROVINCE OF ALBERTA, represented herein by the Minister of Railways and Telephones for the said Province, (hereinafter called "the Government")

Of the Third Part.

WHEREAS the parties hereto have entered into an agreement of even date herewith (J. D. McArthur Company, Limited, Union Bank of Canada and John D. McArthur being also parties thereto) which among other things provides for a physical connection between the railway of the Edmonton, Dunvegan and British Columbia Company and the railway of the Pacific Company at Edmonton. 20

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. That all through rates which are now or shall hereafter be established between the railway companies and the Pacific Company shall during the currency of the said recited agreement be divided on a rate *pro rata* basis of local class or commodity rates to and from the junction point between the line of the Edmonton, Dunvegan and British Columbia Railway Company and the line of the Pacific Company; that is to say, each company's share of each through rate shall be the proportion thereof which such company's local class or commodity rate bears to the sum of the local class or commodity rates covering the entire movement. 30

2. The charges to be made from time to time by the Pacific Company for any office space, passenger and (or) freight terminal services rendered for the railway companies shall be such as shall from time to time be agreed upon between the Pacific Company, the said Minister of Railways and Telephones and Mr. B. W. Thompson on behalf of the present owners of the stock of the Railway Companies. Should the above parties be unable to agree upon the charges to be made as aforesaid the matter or matters in dispute shall be referred to the Board of Railway Commissioners for Canada whose decision in each case shall be final and binding. 40

No. 13  
Chapter 56,  
Statutes of  
Alberta, 1921.

In witness whereof the railway companies and the Pacific Company have hereunto caused their respective corporate seals to be hereunto affixed attested by the hands of their proper officers and the Government has caused this agreement to be signed by the Honourable Charles Stewart, Minister of Railways and Telephones for the Province of Alberta.

RECORD  
Board of Railway  
Commissioners  
for Canada  
No. 13  
Chapter 56,  
Statutes of  
Alberta, 1921.

(Signed) THE EDMONTON, DUNVEGAN AND BRITISH  
COLUMBIA RAILWAY COMPANY.  
10 Seal of the Edmonton,  
Dunvegan and British  
Columbia Railway Company J. D. McARTHUR, *President*.  
B. W. THOMPSON, *Assistant Secretary*.

THE CENTRAL CANADA RAILWAY COMPANY,  
Seal of the Central Canada  
Railway Company. J. D. McARTHUR, *President*.  
B. W. THOMPSON, *Assistant Secretary*.  
20

THE CANADIAN PACIFIC RAILWAY COMPANY.  
Seal of the Canadian  
Pacific Railway Com-  
pany. E. W. BEATTY, *President*.  
E. ALEXANDER, *Secretary*.  
CHAS. STEWART,  
*Minister of Railways and Telephones  
for Alberta*.  
30

40

## No. 14

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 14  
Agreement between  
the Grand Trunk  
Pacific Railway  
Company and the  
Canadian Northern  
Railway Company  
of the First Part  
and the Edmonton,  
Dunvegan and  
British Columbia  
Railway Company,  
the Central Can-  
ada Railway Com-  
pany and the  
Alberta and Great  
Waterways Rail-  
way Company.  
11th Nov., 1926.

**Agreement between the Grand Trunk Pacific Railway Company and the Canadian Northern Railway Company of the First Part and the Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company and The Alberta and Great Waterways Railway Company.**

MEMORANDUM OF AGREEMENT, made this eleventh day of November A.D. 1926.

10

BETWEEN:

THE GRAND TRUNK PACIFIC RAILWAY COMPANY and THE CANADIAN NORTHERN RAILWAY COMPANY (hereinafter jointly referred to as the "National Railways")

Of the First Part;

and

THE EDMONTON, DUNVEGAN & BRITISH COLUMBIA RAILWAY COMPANY, the CENTRAL CANADA RAILWAY COMPANY, and THE ALBERTA & GREAT WATERWAYS RAILWAY COMPANY, (all hereinafter jointly referred to as the "Alberta Companies")

20

Of the Second Part;

1. The National Railways grant to the Alberta Companies permission to use their freight sheds, team tracks, and other freight handling facilities in the City of Edmonton, Alberta, subject to the conditions hereinafter mentioned:—

2. On days when their freight sheds are open for business the National Railways will accept at their Edmonton freight sheds all outward freight offered for movement over the railways of the Alberta Companies, the said freight to be loaded and billed by the National Railways' Local Freight Staff. The Alberta Companies' inward bound freight shall be similarly handled by the National Railways at their freight shed.

30

3. The Alberta Companies will supply the necessary freight equipment for the accommodation of their freight traffic and the National Railways will use such equipment for the Alberta Companies' freight traffic.

40

4. The National Railways will, with their own locomotives and crews, move over their own rails to and from the E.D. & B.C. Junction the Alberta Companies' traffic destined to, or originating at, the freight sheds or team tracks of the National Railways or on private sidings on the railways of the National Railways in the City of Edmonton. The National Railways will also move with their own locomotives and crews between the E.D. & B.C. Junction and the regular points of interchange between the National Railways and the

Canadian Pacific Railway, in the Edmonton terminals of the National Railways all carload traffic originating at or destined to points on the Canadian Pacific Railway in which the Alberta Companies are interested as carriers, charges to be as per Clause Seven.

RECORD  
Board of Railway  
Commissioners  
for Canada

10 5. The Alberta Companies agree to supply the National Railways with locks or seals for placing on all cars containing shipments for the Alberta Companies passing through the National Railways' freight sheds outbound at Edmonton.

6. Subject to agreement with the Traffic Department of the Alberta Companies, the National Railways will issue, at expense of Alberta Companies, all joint tariffs from Edmonton to stations on the railways of the Alberta Companies on the basis of the distribution scales—the mileage to be used being based on ten miles to E.D. & B.C. Junction, plus the Alberta Companies' mileage beyond, and the National Railways will also issue through rates to Edmonton from points on the railways of the Alberta Companies, using recognized scales of rates and commodity rates.

20 7. Unless otherwise specifically provided for, the Alberta Companies will pay to the National Railways for all freight handled by the National Railways through their Edmonton Freight Terminals as follows:—

Classes: 1, 2, 3 and 4, or higher—\$1.50 per net ton.

Classes: 5, 6, 7, 8, 9, 10.

5, 4, 4, 4, 4, 3½ cents per 100 pounds.

(Classes as per Canadian Classification).

Smalls—15 cents each.

Commodities as per Schedule "A" attached hereto.

30

8. Settlement of freight claims on L.C.L. traffic handled through National Railways' Edmonton freight sheds shall be made as provided in Schedule "B" attached hereto.

9. Through traffic will be prorated between the Alberta Companies and the National Railways on the following basis:—

*Grain to Port Arthur—Fort William and to Vancouver or Prince Rupert for Export—*

40 A prorate of the mileage grain rates, prairie basis, to and from Edmonton,—Vancouver mileage to be utilized to Prince Rupert.

*Other Traffic—*

A prorate of local class or commodity rates to and from Edmonton when like rates as factors exist; otherwise as agreed upon from time to time with foregoing as general basis.

No. 14  
Agreement between  
the Grand Trunk  
Pacific Railway  
Company and the  
Canadian Northern  
Railway Company  
of the First Part  
and the Edmonton,  
Dunvegan and  
British Columbia  
Railway Company,  
the Central Can-  
ada Railway Com-  
pany and the  
Alberta and Great  
Waterways Rail-  
way Company.  
11th Nov., 1926.

## RECORD

*Board of Railway  
Commissioners  
for Canada*

## No. 4

Agreement between  
the Grand Trunk  
Pacific Railway  
Company and the  
Canadian Northern  
Railway Company  
of the First Part  
and the Edmonton,  
Dunvegan and  
British Columbia  
Railway Company,  
the Central Can-  
ada Railway Com-  
pany and the  
Alberta and Great  
Waterways Rail-  
way Company.  
11th Nov., 1926.

10. Carload traffic from or to points on the lines of the Alberta Companies on which the National Railways receive line haul will be interchanged with the Alberta Companies at E.D. & B.C. Junction and/or Morinville, and will not be subject to charges in addition to regular line haul.

11. The intent of this agreement is that the National Railways will be the exclusive connection of the Alberta Companies for the interchange of all traffic; arrangements with any other railway will be cancelled and the Alberta Companies will not in the future enter into any joint traffic affiliation with any other Railway Company without prior notice to and concurrence of the National Railways. 10

12. For cartage of freight in Edmonton to and from the National Railways' terminals there, the Alberta Companies shall use the cartage service used by the National Railways.

13. The National Railways shall not be liable for any per diem charges upon the Alberta Companies' cars utilized in the handling of local Edmonton traffic in the Edmonton terminals of the National Railways, otherwise the regular per diem rules shall be operative. 20

14. The National Railways shall make the usual collection of tolls accruing on the Alberta Companies' freight traffic at Edmonton.

Settlement will be made between the National Railways and the several Alberta Companies weekly, on Edmonton local traffic, and monthly on through traffic, on receipt of abstracts, the Alberta Companies rendering statements covering traffic received from the National Railways and the National Railways rendering statements covering traffic received from the Alberta Companies. 30

15. The Alberta Companies will afford to the National Railways exclusive arrangements for the handling of Express and Telegraph business on the bases set out in agreements of even date herewith.

16. A separate agreement also of even date herewith has been entered into between the parties hereto respecting the movement of passenger trains of the Alberta Companies between the passenger station of the National Railways at Edmonton and E.D. & B.C. Junction. 40

17. Material for maintenance, repairs, improvements or construction for the Alberta Companies, carried over lines of Canadian National Railways, when originating in Canada, charge to be one cent per ton mile, minimum distance 50 miles, with minimum charge of fifty cents for any one shipment, exclusive, however, of Edmonton local traffic.

Locomotives and steam shovels on their own wheels carried over lines of

Canadian National Railways for repairs, or when leased by Canadian National Railways to Alberta Companies will be moved at rate of one cent per ton mile.

RECORD  
Board of Railway  
Commissioners  
for Canada

18. The National Railways will not increase freight rates between points on the National Railways and points on the lines of the Alberta Companies in either direction beyond the rates from time to time in effect for corresponding distances on the Western Lines of the National Railways unless such higher rates are ordered by a superior authority or are agreed to by the Alberta Companies.

No. 14  
Agreement between  
the Grand Trunk  
Pacific Railway  
Company and the  
Canadian Northern  
Railway Company  
of the First Part  
and the Edmonton,  
Dunvegan and  
British Columbia  
Railway Company,  
the Central Can-  
ada Railway Com-  
pany and the  
Alberta and Great  
Waterways Rail-  
way Company.  
11th Nov., 1926.

10

19. This agreement shall, subject to the sooner determination thereof as herein provided, remain in effect for a period of three years from the date hereof and thereafter until cancelled in writing by ninety (90) days' notice by the Alberta Companies to the National Railways or by the National Railways to the Alberta Companies; provided that the Alberta Companies may cancel this agreement by six (6) months' notice in writing to the National Railways given at any time after the expiration of one year from the date hereof in case the Province of Alberta has the opportunity to lease or sell the Alberta Companies' Railways to advantage.

20

20. All covenants on the part of the Alberta Companies herein contained are joint and several covenants.

21. The agreement covering the use by the Waterways Company of the National Railways' freight shed at Edmonton, entered into between the National Railways and the Waterways Company and dated May 1st, 1922, is hereby cancelled as from the date hereof.

22. For the purposes of this agreement the Pembina Valley Railway shall  
30 be considered as part of the Edmonton, Dunvegan and British Columbia Railway, and the tolls on traffic originating at or destined to points on said Railway (Pembina Valley) shall be divided accordingly.

IN WITNESS WHEREOF the parties hereto have executed these presents under their respective corporate seals attested by the hands of their respective officers.

SIGNED, SEALED AND DELIVERED

40

in the presence of THE CANADIAN NORTHERN RAILWAY COMPANY.

[SEAL]

GERARD RUEL, *Vice-President.*  
HENRY PHILIPS, *Assistant Secretary.*

THE GRAND TRUNK PACIFIC RAILWAY COMPANY.

[SEAL]

GERARD RUEL, *Vice-President.*  
HENRY PHILIPS, *Assistant Secretary.*

RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 14

Agreement between the Grand Trunk Pacific Railway Company and the Canadian Northern Railway Company of the First Part and the Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company and the Alberta and Great Waterways Railway Company.  
11th Nov., 1926.

L. C. CHARLESWORTH  
(as to the signature of  
Jno. Callaghan)

A. MACDONALD  
(as to the signature of  
G. E. Powell)

Approved  
A.T.W.

THE EDMONTON, DUNVEGAN & BRITISH COLUMBIA RAILWAY COMPANY, THE CENTRAL CANADA RAILWAY COMPANY, THE ALBERTA & GREAT WATERWAYS RAILWAY COMPANY.

JNO. CALLAGHAN,  
*General Manager.*

[SEAL]

GEO. E. POWELL,  
*Assistant Secretary.*

[SEAL]

[SEAL]

10

SCHEDULE "A"

CARLOAD COMMODITY TRAFFIC TO AND FROM EDMONTON  
CANADIAN NATIONAL RAILWAYS' PROPORTIONS

20

(Minimum as per road haul tariffs providing in excess of Canadian Freight Classification minimum.)

Canadian National Proportions in cents per 100 pounds.

Sand, Gravel, Crushed Stone...	2	Grain, Flaxseed.....	2½	
Stone, (Rubble, etc.), Clay.....	2	Hay and Straw.....	3	
Brick.....	2	Ice.....	2½	
Sand (Moulding).....	3	Horses.....	2½	30
Dimension Stone.....	3	Cattle and Hogs.....	2	
Butter.....	7	Scrap Iron.....	2	
Eggs.....	7	Vegetables.....	3½	
Cheese.....	7	Salt, Bulk.....	3	
Meats (dressed).....	7	Tar Sands, Bulk.....	3	
Poultry (dressed).....	7	Fish (Fresh or Frozen).....	5½	
Fuelwood.....	1½	Settlers' Effects.....	4	
Fence Posts.....	2½	Lumber.....	2½	

Carload traffic other than specified above originating at Edmonton destined to stations on Alberta Companies. When loaded by shippers on private sidings in Canadian National terminals, C.N. proportion to be two cents per hundred pounds, minimum \$8.00 per car. 40

Approved.  
A.T.W.



## SCHEDULE "B"

SETTLEMENT OF FREIGHT CLAIMS ON L.C.L. TRAFFIC HANDLED THROUGH  
CANADIAN NATIONAL EDMONTON FREIGHT SHEDS

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 14

Agreement between  
the Grand Trunk  
Pacific Railway  
Company and the  
Canadian Northern  
Railway Company  
of the First Part  
and the Edmonton,  
Dunvegan and  
British Columbia  
Railway Company,  
the Central Can-  
ada Railway Com-  
pany and the  
Alberta and Great  
Waterways Rail-  
way Company.  
11th Nov., 1926.

It is agreed to prorate freight claims as between the National Railways and the Alberta Companies on l.c.l. traffic handled through the Edmonton Freight Sheds on the following basis:—

- 10    1. Located damage—Claim to be assumed by the line with whom responsibility is located.
2. Concealed Loss and Damage—Such claims to prorate Canadian National Railways 20%; Alberta Companies 80%.
3. Shortage—
- (a) *Under Original Seals*—Canadian National Railways 40%, Alberta Companies 60%.
- 20           (b) *Continuous Seal Records*—Canadian National Railways 40%, Alberta Companies 60%
- (c) *Located Loss*—to be settled in accordance with Responsibility.
- (d) *Under Imperfect Seal Record*—When Canadian National record of seals is imperfect, or vice versa, the responsibility will be located with the line with the imperfect record, or in the case where both lines have an imperfect record, the amount of claim shall prorate, Canadian National Railways 40%, Alberta Companies 60%.
- 30           4. All claims other than as above for loss or damage shall prorate in accordance with F.C.A. Rules.

Approved.  
A.T.W.

## RECORD

Board of Railway  
Commissioners  
for Canada

## No. 15

## General Order of Board of Railway Commissioners for Canada No. 448.

## GENERAL ORDER No. 448

No. 15  
General Order of  
Board of Railway  
Commissioners  
for Canada,  
No. 448.  
26th Aug., 1927

*In the matter of the Order in Council, P.C. No. 886, of June 5, 1925, requiring the Board of Railway Commissioners for Canada to make a full and complete investigation into the whole subject of railway freight rates in the Dominion of Canada.*

10

File No. 34123

FRIDAY, the 26th day of August, A.D. 1927.

Hon H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*  
THOMAS VIEN, K.C., *Deputy Chief Commissioner.*  
A. C. BOYCE, K.C., *Commissioner.*  
C. LAWRENCE, *Commissioner.*  
HON. FRANK OLIVER, *Commissioner.*

20

Whereas by Order in Council, P.C. No. 886, dated the 5th day of June, 1925, this Board was directed to make a thorough investigation into the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure which will in substantially similar circumstances and conditions be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion, and the expansion of its trade, both foreign and domestic, having due regard to,—

30

- (a) the claim asserted on behalf of the Maritime Provinces that they are entitled to the restoration of the rate basis which they enjoyed prior to 1919;
- (b) the encouragement of the movement of traffic through Canadian ports;
- (c) the increased traffic westward and eastward through Pacific Coast ports owing to the expansion of trade with the Orient and to the transportation of products through the Panama Canal.

40

And whereas by Order in Council, P.C. 24, dated the 7th day of January, 1926, the Board was directed, as a part of the general rate investigation above referred to, especially to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports, and to take such effective action under the Railway Act, 1919, as the Board may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports.

- Upon hearing the matter at the sittings of the Board held in Ottawa, Montreal, Windsor, Toronto, Moncton, St. John, Winnipeg, Regina, Saskatoon, Edmonton, Calgary, Kelowna, Vernon, Kamloops, Vancouver, New Westminster, Chilliwack, Victoria, and Prince Rupert, in the presence of counsel and representatives of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and the Maritime Provinces, and the Canadian Pacific and Canadian National Railway Companies, the following among other associations and Boards of Trade were represented at various sittings of the Board or submitted their representations in writing, namely: The Boards of
- 10 Trade of New Westminster, Prince Rupert, Chilliwack and district, Kamloops, Calgary, Moose Jaw, Saskatoon, Prince Albert, Estevan, Regina, Brandon, Yorkton, Winnipeg, Toronto; Ontario Associated Boards of Trade, Cochrane, Montreal, St. John, Halifax, Charlottetown, Moncton and Sydney; the Victoria Chamber of Commerce, Western Canada Fruit and Produce Exchange, Canadian Council of Agriculture, Retail Merchants' Association, Canadian Manufacturers' Association, Hamilton Chamber of Commerce, Canadian National Millers' Association, Canadian Lumbermen's Association, National Dairy Council of Canada, Fruit Branch, Department of Agriculture of Canada, Live-
- 20 stock Producers of Canada, Live Stock Exchange of Toronto, Quebec Harbour Commissioners; Chamber of Commerce, Joliette, Quebec; Canadian Pulp and Paper Association and Canadian Freight Association.

*The Board orders as follows, namely:—*

1. That the rates on grain and flour from all points on Canadian Pacific branch lines west of Fort William to Fort William, Port Arthur and Westfort be equalized to the present Canadian Pacific main line basis of rates of equivalent mileage groupings (the rates governed by the Crowsnest Pass agreement not to be exceeded): that the Canadian Pacific Railway Company publish
- 30 rates in accordance with the above direction, and that all other railway companies adjust their rates on grain and flour to Fort William, Port Arthur, Westfort and Armstrong, to the rates so put into effect by the Canadian Pacific Railway Company, such changes to become effective on the twelfth day of September, 1927.
2. That the rates on grain and flour from prairie points to Vancouver and Prince Rupert for export shall be on the same basis as the rates to Fort William, but in computing such rates, the distance from Calgary to Vancouver via the Canadian Pacific Railway shall be assumed to be the same as from Edmonton
- 40 to Vancouver via the Canadian National Railway, namely, 766 miles.
3. That the provisions as to distributing tariffs, set out in section XVII of the judgment in the Western Rates Case, shall, instead of being limited to the Canadian Pacific Railway, as provided therein, be extended so as to apply to the Canadian National Railway as well; the necessary amending tariffs to be effective on the twelfth day of September, 1927.

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 15  
General Order of  
Board of Railway  
Commissioners  
for Canada,  
No. 448.  
26th Aug., 1927

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 15  
General Order of  
Board of Railway  
Commissioners  
for Canada,  
No. 448.  
26th Aug., 1927

4. That the rate of 34½ cents per 100 pounds on wheat and 33 cents per 100 pounds on other grain for export from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to Quebec as shown in Supplement No. 32 to Canadian National Railway Tariff C.R.C. No. E-447 be, and they are hereby disallowed; and the Canadian National Railway Company is hereby directed to publish and file in substitution thereof a tariff showing a rate of 18.34 cents per 100 pounds on all grain for export from Port Arthur, Fort William, Westfort, and Armstrong, Ont., to Quebec. Such changes to become effective on or before but not later than, the twelfth day of September, 1927.

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5. The Board further orders that all railway companies subject to its jurisdiction be, and they are hereby required to publish and file tariffs showing the same rate to Quebec as to Montreal on,—

- (a) Grain from bay ports for export;
- (b) All traffic from Toronto and points west thereof for export.

Such changes to become effective on or before, but not later than the twelfth day of September, 1927.

20

H. A. McKEOWN,  
*Chief Commissioner.*

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V.  
c. 48)

## No. 16

Northern Alberta Railways Act (19-20 Geo. V, c. 48)

19-20 GEORGE V.

CHAPTER 48.

30

An Act to incorporate the Northern Alberta Railways Company, and respecting the Canadian National Railway Company and the Canadian Pacific Railway Company.

[Assented to 14th June, 1929.]

HIS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

40

Short Title.

1. This Act may be cited as the *Northern Alberta Railways Act, 1929.*

Authority to  
acquire Edmonton,  
Dunvegan and  
British Columbia  
Ry. Co., Alberta  
and Great Water-  
ways Ry. Co.,  
Central Canada  
Ry. Co., Central  
Canada Express  
Co., and Pembina  
Valley Ry.

2. The Canadian National Railway Company and the Canadian Pacific Railway Company may jointly acquire the undertakings of The Edmonton, Dunvegan and British Columbia Railway Company, the Alberta and Great Waterways Railway Company, the Central Canada Railway Company and the Central Canada Express Company, and the capital stocks of the said

Companies, and the undertakings of the Crown in the right of the Province of Alberta in respect thereof and in respect of the Pembina Valley Railway, upon the terms and conditions set forth in the Agreement dated the sixth day of February, 1929, a copy of which is set out in Schedule "A" to this Act, and may thereafter jointly hold, maintain and operate the said undertakings: Provided that the terms and conditions of the said Agreement shall be subject to the approval of two-thirds of the votes of the shareholders of the Canadian Pacific Railway Company present or represented at an Annual General Meeting or a Special General Meeting duly called for the purpose.

RECORD  
*Board of Railway  
Commissioners  
for Canada*

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V.  
c. 48)

10

3. The Canadian National Railway Company and the Canadian Pacific Railway Company may sell and transfer the said undertakings or any of them or cause the same to be transferred to the Northern Alberta Railways Company, which is hereby incorporated with the franchises, privileges and powers embodied in Schedule "B" to this Act, for such price and upon such terms and conditions as shall be agreed upon by the Boards of Directors of their respective Companies; provided, however, that every such sale shall be subject to the approval of two-thirds of the votes of the shareholders of the Canadian Pacific Railway Company present or represented at an Annual General Meeting or a Special General Meeting duly called for the purpose.

Sale and transfer  
to and incorpora-  
tion of Northern  
Alberta Ry. Co.

20

4. Any conveyance or transfer made in pursuance of such sale shall be valid and effectual to vest in the Northern Alberta Railways Company all the property, powers, rights, privileges and franchises thereby transferred of The Edmonton, Dunvegan and British Columbia Railway Company, the Alberta and Great Waterways Railway Company, the Central Canada Railway Company and the Central Canada Express Company, and of the Crown in the right of the Province of Alberta in respect thereof and in respect of the Pembina Valley Railway, freed and discharged from all securities, charges and encumbrances at any time created or suffered, affecting the Canadian National Railway Company or the Canadian Pacific Railway Company, but subject to the rights of the holders of any outstanding bonds, debentures or other securities charged upon the said undertakings or any of them, at any time issued by The Edmonton, Dunvegan and British Columbia Railway Company, the Alberta and Great Waterways Railway Company, the Central Canada Railway Company or the Central Canada Express Company, or the Crown in the right of the Province of Alberta in respect thereof or in respect of the Pembina Valley Railway.

Property vested in  
Northern Alberta  
Ry. Co.

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40

5. The Canadian National Railway Company and the Canadian Pacific Railway Company are respectively authorized to subscribe for, take and hold shares of the Capital Stock of the Northern Alberta Railways Company to the extent of one-half each of the total of such Capital Stock from time to time issued, and may each guarantee the payment of the principal and interest of one-half of any bonds, debentures or other securities which may from time to time be issued by the Northern Alberta Railways Company for the purposes of its undertaking.

Authority to hold  
shares of capital  
stock.

## RECORD

Board of Railway  
Commissioners  
for Canada

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

Issue of securities  
by Canadian  
Pacific Ry. Co.

6. The Canadian Pacific Railway Company being first authorized so to do by at least two-thirds of the votes of its shareholders present or represented at an annual meeting, or at a special meeting duly called for the purpose, may issue consolidated debenture stock for the purpose of acquiring one-half of the bonds, debentures or other securities at any time issued by the Northern Alberta Railways Company: Provided that the annual charge for interest on such consolidated debenture stock shall at no time exceed in amount the interest on the securities so acquired, and any securities so acquired shall be held by the Canadian Pacific Railway Company as still subsisting and continuing as a security *pro tanto* for the holders of all consolidated debenture stock then issued by the Canadian Pacific Railway Company, and the holders of consolidated debenture stock so issued shall at all times have equal rights in all respects and shall rank *pari passu* with the holders of such consolidated debenture stock as the Canadian Pacific Railway Company has, prior to the passing of this Act, been authorized to issue. 10

Issue of securities  
by Canadian  
National Ry. Co.

7. (1) The Governor in Council may provide for the raising of money necessary to make the payments which the Canadian National Railway Company may be called upon to make in carrying into effect the provisions of the Agreement with His Majesty the King in the right of the Province of Alberta set forth in Schedule "A" to this Act, or for the purpose of acquiring one-half of the bonds, debentures or other securities at any time issued by the Northern Alberta Railways Company. For such purposes the Canadian National Railway Company may issue notes, obligations, bonds, debentures or other securities (hereinafter in this section called "securities" to an amount or amounts fixed from time to time by the Governor in Council, and the Governor in Council may authorize the guarantee of the principal and interest of the securities. 20

Nature and form  
of securities.

(2) With respect to the securities in this section referred to, the Governor in Council may from time to time approve or decide,— 30

- (a) the kind of securities to be issued and guaranteed, and the form and terms thereof;
- (b) the form and manner of the guarantee or guarantees;
- (c) the times, manner and amount of the issue or issues;
- (d) The terms and conditions of any sale, pledge or other disposition of the securities; 40
- (e) the securing, if deemed desirable, of the securities by mortgage, deed of trust or other instrument, and the manner thereof, and the form and terms of any such indenture, and the Trustee or Trustees thereof.

Guarantees

(3) The guarantee or guarantees may be signed on behalf of His Majesty by the Minister of Finance or by such other person as the Governor in Council may from time to time designate, and such signature shall be conclusive

evidence for all purposes of the validity of any such guarantee and that the provisions of this section have been complied with.

(4) In respect of the sale of the securities, the Canadian National Railway Company shall adopt the principle of competitive bids or tenders, but it shall not be bound to accept either the highest or the lowest or any bid or tender made or obtained, nor be precluded from negotiating for better prices or terms. This subsection shall not, however, apply to temporary financing, in whole or in part, by way of pledge or otherwise of the securities either in permanent or temporary form, where the Governor in Council approves such temporary financing and the terms thereof.

RECORD  
Board of Railway  
Commissioners  
for Canada  
No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V.  
c. 48)

Tenders.

8. Section one hundred and fifty-one of the *Railway Act* shall not apply to the transactions hereinbefore authorized.

Agreements  
for sale, etc.

9. The Agreement, a copy of which forms Schedule "C" to this Act, made between the Canadian Pacific Railway Company and the Canadian National Railway Company, is hereby ratified and confirmed and declared to be legally binding according to the tenor thereof upon the parties thereto; and the parties to the said Agreement and the Northern Alberta Railways Company are hereby authorized and empowered to do whatever is necessary to give full effect to the said Agreement, the provisions of which are to be taken as if they had been expressly enacted hereby and formed an integral part of this Act.

Agreement  
confirmed.

#### SCHEDULE "A"

AGREEMENT made this sixth day of February, 1929, between HIS MAJESTY THE KING in the right of the Province of Alberta, represented by the Honourable J. E. Brownlee, Premier of the Province, and the Honourable Vernor W. Smith, Minister of Railways, hereinafter called "the Province", of the One Part, and CANADIAN PACIFIC RAILWAY COMPANY and CANADIAN NATIONAL RAILWAY COMPANY, hereinafter called "the Purchasers", of the Other Part.

#### WITNESSETH AS FOLLOWS:

1. The Province shall sell and the Purchasers shall purchase for the considerations and upon the terms and conditions hereinafter set forth the undertakings of The Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, the Central Canada Express Company and the Alberta and Great Waterways Railway Company and of the Province in respect thereof and in respect of the Pembina Valley Railway. The expression "undertakings" shall include the railways, rolling stock and equipment, telegraph and telephone lines, lands, buildings, structures, plant, machinery, tools, materials, supplies, goods, moneys, credits, things in action, contracts, rights, powers, privileges and franchises and other assets whatsoever of the said Companies and of the Province in respect thereof and in respect of the Pembina Valley Railway and the Capital Stocks of the said Companies.

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

2. The said undertakings are sold free from all encumbrances except the \$7,000,000 (£1,438,356) First Mortgage Four Per Cent Debenture Stock of The Edmonton, Dunvegan and British Columbia Railway Company due February 16, 1942; the \$2,000,420 First Mortgage Four and One-half Per Cent. Gold Bonds of the same Company due October 22, 1944, and the \$7,400,000 First Mortgage Five Per Cent. Debentures of The Alberta and Great Waterways Railway Company due January 1, 1959, and the Province shall release and discharge and procure the release and discharge of all other encumbrances and liabilities affecting the said undertakings.

10

3. This Agreement is subject to enabling legislation and the parties will respectively apply to the Legislature and to Parliament at their next Sessions for ratification thereof. Should such enabling legislation not be passed at such Sessions or should this Agreement not be approved by the shareholders of the Canadian Pacific either before or within ninety days after the passing of such enabling legislation this Agreement shall be null and void.

4. Forthwith after ratification the Province shall deliver possession of the said undertakings to the Purchasers and do and execute, or procure to be done and executed, all such assurances and things as shall be requisite to vest the same in the Purchasers free from all encumbrances and liabilities except the Debenture Stock, Bonds and Debentures mentioned in Paragraph 2 hereof; any expense necessarily incurred by the Purchasers in acquiring a good title to the said undertakings may be set off against the purchase price hereby agreed to be paid. At the option of the Purchasers the said undertakings, or any part thereof, shall by the Province be transferred to and vested in any Company or Companies now or hereafter incorporated for the purpose of acquiring, holding and operating the same.

5. As part of the consideration for the said sale the Purchasers shall pay to the Province the sum of Fifteen Million Five Hundred and Eighty Thousand Dollars in instalments as follows:

Five Million Dollars on the first day of June, 1929, if delivery of the undertakings has been made on or before such date, and if delivery has not been made on such date then on the date such delivery takes place whichever is later; Five Million Dollars on the first day of June, 1933; Five Million Five Hundred and Eighty Thousand Dollars on the first day of June, 1939, and interest on the deferred instalments on the first day of June in each year at the rate of Four Per Cent per annum from the date of delivery of possession.

40

6. As a further part of the consideration for the said sale the Purchasers shall pay and satisfy the principal and interest of the Debenture Stock and Bonds of The Edmonton, Dunvegan and British Columbia Railway Company specifically mentioned in Paragraph 2 hereof, accruing after the date of delivery of possession, and shall indemnify the Province against all actions, proceedings, claims and demands in respect thereof. Interest for the period current at the



date of delivery of possession but not yet matured shall be apportioned between the Province and the Purchasers as of that date.

7. As a further consideration for the said sale the Purchasers shall complete the construction of the extensions of the Edmonton, Dunvegan and British Columbia Railway from Wembley to Hythe, about twenty-five miles, and the Central Canada Railway from Whitelaw to the Water Hole District, about fifteen miles, and will pay to the Province the cost of said extensions incurred by the Province up to the date of delivery of possession.

10

8. The Purchasers shall also within five years construct and put into operation not less than sixty miles of additional branch lines and extensions of the Edmonton, Dunvegan and British Columbia and Central Canada Railways in the Peace River District.

20

9. The Province shall pay the principal and interest of the \$7,400,000 Five Per Cent Debentures of the Alberta and Great Waterways Railway Company due January 1, 1959, as they shall respectively fall due, and shall at all times indemnify and save harmless the Purchasers and the property and undertakings of the Alberta and Great Waterways Railway Company hereby sold from and against all loss, costs, charges, damages and expenses by reason thereof.

30

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10. The Province shall also at or before transfer of the said undertakings release and discharge The Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, the Central Canada Express Company and the Alberta and Great Waterways Railway Company from all liability to the Province of whatever kind or nature, including loans or advances of money made by the Province, guarantees given and contracts and engagements entered into on behalf of any of the said Companies except the liability of The Edmonton, Dunvegan and British Columbia Railway Company in respect of the guarantees given by the Province for the payment of principal and interest of the Debenture Stock and Bonds of The Edmonton, Dunvegan and British Columbia Railway Company specified in Paragraph 2 hereof. And the Province shall indemnify and save harmless the Purchasers and their assigns, and the said several Companies, their works and undertakings from any and all liabilities to any person or corporation whatsoever incurred by the said Companies or any of them, prior to the date of delivery of possession, save as aforesaid in respect of the Debenture Stock and Bonds of The Edmonton, Dunvegan and British Columbia Railway Company specified in Paragraph 2 hereof.

11. Until delivery of possession of the said undertakings the Province shall continue to maintain and operate the said undertakings in accordance with its standards and practices heretofore observed and followed, and at its own expense and risk.

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

## RECORD

Board of Railway  
Commissioners  
for Canada

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

12. As soon as may be after the delivery of possession a balance shall be struck as between the current accounts receivable and cash on hand and in the bank balances of the several undertakings on the one hand, and the current accounts payable in respect of the said undertakings on the other, including a proportion of taxes, rentals, premiums and other like periodic payments up to the date of delivery of possession; and in the event of a deficiency the amount thereof shall be payable by the Province to the Purchasers, and in the event of a surplus the amount thereof shall be payable by the Purchasers to the Province.

10

13. The Purchasers and their assigns, owners of the said undertakings with respect to any portions of the railways of the said Companies aided by guarantee of bonds, debentures, debenture stock or other securities under the provisions of any Statute of the Province of Alberta, shall remain subject to the existing provisions of Section 11 of the Railway Taxation Act for the remainder of any of the periods therein mentioned.

14. The Province shall communicate to the Purchasers all contracts and engagements entered into by the Province or any of the said Companies affecting the said undertakings, and will on request of the Purchasers terminate any 20 or all of the same at such time or times as the Purchasers may require.

IN WITNESS WHEREOF the Premier and Minister of Railways of the Province and the Presidents of the Canadian Pacific Railway Company and the Canadian National Railway Company have subscribed these presents.

J. E. BROWNLEE, *Premier of Alberta.*  
VERNOR W. SMITH, *Minister of Railways.*

CANADIAN PACIFIC RAILWAY COMPANY

30

E. W. BEATTY, *President.*

CANADIAN NATIONAL RAILWAY COMPANY

GERARD RUEL, *Vice-President.*

### SCHEDULE "B"

1. Sir Henry W. Thornton, Edward W. Beatty, Grant Hall, Samuel J. 40 Hungerford, Gerard Ruel and William H. Curle, all of the City of Montreal, together with such persons who may become shareholders in the Company, are incorporated under the name of "NORTHERN ALBERTA RAILWAYS COMPANY," hereinafter called "the Company."

2. The undertaking of the Company is declared to be a work for the general advantage of Canada.

3. The persons named in Section 1 of this Act shall be the provisional directors of the Company. If any provisional director die or resign before the first election of directors the vacancy may be filled by the remaining provisional directors.

RECORD  
Board of Railway  
Commissioners  
for Canada

4. The Capital Stock of the Company shall be Twenty-five Million Dollars.

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

10 5. The Head Office of the Company shall be in the City of Montreal.

6. The Annual Meeting of Shareholders shall be held on the first Tuesday in April.

7. The number of Directors shall be six, one or more of whom may be paid officers of the Company.

8. The Directors may vote and act by proxy, but no meeting shall be competent to transact business unless at least four Directors are present in person.

20 9. The Company may acquire by purchase and thereafter hold and operate the railways and undertakings of The Edmonton, Dunvegan and British Columbia Railway Company, the Alberta and Great Waterways Railway Company, the Central Canada Railway Company and the Central Canada Express Company, and of the Crown in the right of the Province of Alberta in respect thereof and in respect of the Pembina Valley Railway or any part of such undertakings.

30 10. The Company may issue bonds, debentures or other securities to an amount which, together with outstanding securities issued by The Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, the Alberta and Great Waterways Railway Company or the Province of Alberta in respect of any of the said undertakings or in respect of the Pembina Valley Railway, shall at no time exceed the sum of Fifty Thousand Dollars per mile of railway constructed or under contract to be constructed.

11. The Company may lay out, construct, maintain and operate,—

40 (a) An extension of the main line of The Edmonton, Dunvegan and British Columbia Railway Company from Spirit River in the Province of Alberta, by the most feasible route, and in a generally westerly direction a distance of one hundred and two miles, more or less, to a point in Townships seventy-eight or seventy-nine, range eighteen, west of the sixth meridian in the Province of British Columbia;

(b) An extension of the Grand Prairie branch of the Edmonton, Dunvegan

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

and British Columbia Railway from Wembley by the most feasible route and in a generally northerly and westerly direction a distance of eighty-six miles, more or less, to a point in Townships seventy-seven or seventy-eight, ranges fourteen or fifteen west of the sixth meridian in the Province of British Columbia.

- (c) An extension of the main line of the Central Canada Railway from Whitelaw in a generally northerly and westerly direction along the north side of the Peace River to a point on the westerly boundary of the Province of Alberta in Townships eighty-four or eighty-five; also a branch line from a point at or near Grimshaw in a generally northerly 10 direction to a point that will when surveyed approximate to a point in Township one hundred and eleven, range nineteen or twenty, west of the fifth principal meridian, thence in a generally northerly direction approximately parallel to the Hay River to the northern boundary of the said Province.

12. The Company may within two years from the date of the passing of this Act commence to construct the lines of railway authorized by Section 11 of this Act, and may within five years from the said date complete the said lines of railway, and if within the said periods respectively the said lines are 20 not commenced or are not completed and put in operation the powers of construction conferred upon the Company by Parliament shall cease and be null and void as respects so much of the said lines of railway as shall then remain uncompleted.

13. The Company may for the purposes of its undertaking acquire, construct and operate parks, wharves, docks, steam and other ferries, boats, vessels, motor vehicles, aeroplanes and other motor transport as the Company deems requisite in connection with its undertaking, and may enter into agree- 30 ments for any of such purposes.

14. Subject to the provisions of the Railway Act the Company shall have power to generate, acquire, use, transmit and distribute electric and other power and energy, and to acquire and develop water powers, and for the purpose of such generation, acquisition, use, development, transmission and distribution, may construct, acquire, operate and maintain lines for the conveyance of light, heat, power and electricity.

15. Subject to the provisions of the Railway Act the Company shall have power to construct and operate wireless stations, telegraph and telephone 40 plants and lines and all incidental facilities in connection therewith upon its railway for the purposes of its undertaking, and to transmit messages thereby for the public and to collect tolls therefor.

16. The Company may for the purpose of its undertaking construct or acquire buildings by purchase or lease, and operate for hotels or restaurants said buildings along its line of railway.

17. The Company may lease or otherwise acquire timber berths, timber licenses, mineral lands and mining rights, and carry on the business of lumbermen, timber merchants and manufacturers of timber and lumber in all its branches, and may acquire, work and operate mineral lands and mineral rights held by the Company.

RECORD  
Board of Railway  
Commissioners  
for Canada

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

### SCHEDULE "C"

10 AGREEMENT made this twenty-ninth day of January, A.D. 1929, between the CANADIAN PACIFIC RAILWAY COMPANY, hereinafter referred to as the "Canadian Pacific," and the CANADIAN NATIONAL RAILWAY COMPANY, hereinafter referred to as the "Canadian National."

20 1. The parties agree to join in the purchase of The Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, the Alberta and Great Waterways Railway Company, the Central Canada Express Company and the Pembina Valley Railway upon the terms set out in the correspondence between the President of the Canadian Pacific and the Premier of Alberta, dated September 17, 19 and 20, 1928.

2. Each of the parties hereto shall assume the payment of and be liable for one-half of the purchase price payable (with interest), and one-half of the obligations to be assumed by the Purchasers under the said Agreement, and shall be entitled to one-half of the benefits to be derived therefrom, it being the intention of the parties that the said Agreement shall be for their equal benefit and advantage.

30 3. A new Company shall be formed to acquire, maintain and operate the said undertakings, the capital of which shall be supplied by the parties in equal shares. Each party shall be entitled to appoint one-half the number of Directors, and the Directors may vote by proxy.

4. The operations of the new Company shall always be conducted with due regard to economy consistent with good railway practice, and having due regard to the future requirements of the property and the necessities of the territory to be served.

40 5. All officers and employees of the new Company shall be impartial between the Canadian National and the Canadian Pacific and the parties shall unite in requiring the dismissal or disciplining of any officer or employee guilty of infringing this rule.

6. Neither party shall directly or indirectly solicit the routing of out-bound competitive traffic over their respective lines.

7. The new Company shall be required to route outbound freight traffic (including grain milled or stored in transit) originating on the lines of the new

## RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

Company and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties, in such a way that each of the parties shall receive on a revenue basis one-half the outbound freight traffic originating and destined as aforesaid, including such freight traffic routed by the shipper as well as such freight traffic unrouted by the shipper. Comparisons on a revenue basis of the traffic so received by each of the parties shall be made monthly, and any inequality of division in any month shall be rectified in succeeding months. The foregoing provisions in respect to Freight Traffic shall apply also to outbound Express Traffic and Telegraph Traffic respectively, originating on the lines of the new Company and destined to competitive points on or beyond the lines of the parties. For the purpose of the division of traffic in this paragraph provided for, Freight Traffic, Express Traffic and Telegraph Traffic shall be divided and dealt with separately. 10

8. The new Company shall, from time to time, have the right to use such tracks and terminal facilities of the Canadian National and the Canadian Pacific at Edmonton, on reasonable terms to be agreed upon, as will permit the new Company to reach:—

- (a) The tracks of the parties hereto for interchange of interline freight traffic, including grain milled or stored in transit; 20
- (b) The passenger terminals and facilities of the parties hereto to permit of handling of mail, passenger and express business;
- (c) The main freight sheds and main team track yards of the parties hereto to permit of the handling of local freight, or to reach freight sheds and team tracks which the new Company may, from time to time, establish at Edmonton;
- (d) With its own telegraph or telephone wires, the passenger stations, and the dispatching or telegraph or telephone offices of the parties hereto, as well as its own telegraph or telephone stations, which may from time to time be established; 30
- (e) The Dominion Government Terminal Elevator or any other grain elevator in which grain may be stored in transit in order that the new Company may comply with the provisions of Clause 7.

9. It is agreed that an annual joint audit shall be made by the Accounting representatives of the parties hereto. 40

10. Disputes arising out of this Agreement in respect of any matter within the jurisdiction of the Board of Railway Commissioners for Canada shall be referred to the Board.

Disputes arising under Clauses 4, 5, 6, 7, 8 and 9 of this Agreement, not within the Board's jurisdiction, shall be submitted to two arbitrators, one to be selected by each of the parties under the provisions of the Arbitration Act of

the Province of Alberta, and any decision of such arbitrators shall be final and binding on the parties hereto.

11. The parties agree to co-operate with fairness and candour toward each other, and to give effect to this agreement in the most liberal and reasonable manner to the intent that each of them shall receive its full and equal share of the benefits of the joint undertaking, subject to the provisions of Clause 4 hereof.

RECORD  
Board of Railway  
Commissioners  
for Canada  
No. 16  
Northern Alberta  
Railways Act  
(19-20 Geo. V,  
c. 48)

10

CANADIAN PACIFIC RAILWAY COMPANY

E. W. BEATTY,  
*President.*

E. ALEXANDER,  
*Secretary.*

CANADIAN NATIONAL RAILWAY COMPANY

20

GERARD RUEL,  
*Vice-President.*

R. P. ORMSBY,  
*Secretary.*

No. 17

No. 18

No. 19

No. 20

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No. 17

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C.N. tariff No. W. 135-C, C.R.C. No. W. 357, Supp. No. 15 (*not printed*)

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No. 18

A.G.W. tariff No. 123, C.R.C. No. 105, Supp. No. 7 (*not printed*)

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No. 19

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C.N. tariff No. W. 135-D, C.R.C. No. W. 432, Supp. No. 8 (*not printed*)

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No. 20

C.N. tariff No. W. 135-F, C.R.C. No. W. 546, and Supps. 1, 36 and 42 (*not printed*)

RECORD

*Board of Railway  
Commissioners  
for Canada*

No. 21

No. 21

C.P. tariff No. W. 5769, C.R.C. No. W. 2847 and Supps. 37, 41 and 43 (*not printed*)

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No. 22

No. 22

C.N. tariff No. W. 485-A, C.R.C. No. W. 757 (*not printed*)

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In the Privy Council.

No. 48 of 1934.

ON APPEAL FROM THE  
SUPREME COURT OF CANADA

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BETWEEN

CANADIAN NATIONAL RAILWAY  
COMPANY - - - -

*Appellant*

AND

CANADIAN PACIFIC RAILWAY  
COMPANY - - - -

*Respondent.*

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RECORD OF PROCEEDINGS.

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FRESHFIELDS, LEESE & MUNNS,  
New Bank Buildings,  
31, Old Jewry, E.C.2.

*Appellant's Solicitors.*

BLAKE & REDDEN,  
17, Victoria Street,  
London, S.W.1.

*Respondent's Solicitors.*