LABOUR DISPUTE SETTLEMENT ON THE CANADIAN RAILWAYS - A PROPOSAL

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by

Albert Lloyd Dartnell, B.Com.

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Department of Economics and Political Science,
McGill University,
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PREFACE

Considerable material has been obtained from the records of the Canadian Pacific Railway Company, which has been very helpful. Some information was also supplied by the Canadian National Railways. The assistance of both of these companies has been valuable in writing this thesis and it is gratefully acknowledged by the writer.

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CHAPTER I

THE CANADIAN RAILWAY INDUSTRY

PURPOSE OF THE STUDY

It is proposed in this thesis to advance a solution for the settlement of labour disputes in the Canadian railway industry. The constant recurrence of strike threats and three actual strikes since the end of World War II, have caused concern from time to time because of the possibility of railway transportation being unavailable. It is the intention, therefore, to examine collective bargaining in the industry, with special attention to the factors which must be considered in any "solution" to the problem of labour disputes.

The geographical extent and historical background of the Canadian railways is examined, followed by an outline of certain unique features of the railway industry. Federal labour legislation as applying to the railways is then outlined, and against this background, labour relations and collective bargaining are examined, as is the question of whether a strike in the railway industry creates an emergency situation. Finally, a proposed solution for the settlement of railway labour disputes is advanced.

GEOGRAPHICAL

For all practical policy purposes, the Canadian Pacific, the Canadian National and their subsidiary companies constitute in themselves the railway industry of Canada although there are some smaller lines. The two large railways were operating 91.1 per cent of the 44,814.6 miles of first main-

line track in Canada at December 31, 1962.[1] The small railways range in size from .4 miles of track for the Van Buren Bridge Company, St. Leonard, N.B., to 789.5 miles in the case of the Pacific Great Eastern Railway in British Columbia.[2] The Canadian National and Canadian Pacific stretch from the Atlantic Coast to the Pacific Coast. Their many branch lines in all parts of the Dominion bring traffic to and receive traffic from their main transcontinental systems.

HISTORICAL

Physical Development

For the purposes of this study, railway growth in Canada is considered from two points of view - track mileage and traffic growth (both freight and passenger traffic).

Track Mileage

The table below shows actual first main-line railway track mileage from 1835 to 1962, by five-year intervals, unless otherwise indicated.[3]

Table I

Track Mileage - Canadian Railways 1835 - 1962

Year	Miles of Track	Year	Miles of Track	Year	Miles of Track
1835	0	1883	9,577	1925	40,352
1836	16	1885	12,163	1930	42,048
1846	16	1893	15,005	1935	42,916
1850	66	1898	16,870	1940	42,565[5]
1855	877	1903	18,988	1945	42,352
1860	2,065	1908	22,966	1950	42,978[6]
1865	2,240	1910	24,731	1955	43,444[7]
1873	3,832	1915	34,882[4]	1960	44,029[8]
1878	6,226	1920	38,806	1962	43,654[9]

It will be noted that by 1903, approximately 19,000 miles of track had been constructed. In the following

twenty-seven years, 23,000 miles of track were constructed. Since 1930, however, only 2,000 miles of track were added; thus, the major portion of trackage expansion took place before the great depression.

Traffic Handled

The table below shows tons of revenue and non-revenue freight handled[10] by Canadian railways from 1875 to 1960, by five-year intervals. Included also are 1956, the peak freight traffic year for Canadian railways, and 1962. The numbers of passengers carried are also shown.

Table II

Tons of Revenue and Non-Revenue Freight and Numbers of Passengers Handled by Canadian Railways - 1875 - 1962

Millions

Year	Tons of Freight	Passengers Carried	Year	Tons of Freight	Passengers Carried
1875	5.7	5.2	1925[13]	111.3	41.5
1880	9.9	6.5	1930[14]	132.4	34.7
1885	14.7	9.7	1935[15]	93.4	20.0
1890	20.8	12.8	1940[16]	125.2	22.0
1895	21.5	14.0	1945[17]	188.4	53.4
1900	36.0	21.5	1950[18]	184.5	31.1
1905	50.8	25.3	1955[19]	203.1	27.2
1910	74.5	35.9	1956[20]	230.4	25.7
1915[11]	87.2	49.3	1960[21]	188.4	19.5
1920[12]	127.4	51.3	1962[22]	194.2	19.3

Apart from the periods around 1925, 1935 and 1950, tons of freight handled annually grew continually from 1875 to 1956. Since 1956, freight handled has declined due in large measure to the pervasive competition from highway trucking, pipelines and inland shipping.

Passengers carried increased annually up to 1920;

from that point to the great depression decreases were registered. During World War II, passenger traffic increased considerably, 1945 being the peak year. Since that time successive reductions have been experienced due to intense competition from the private motor car, the bus and the aeroplane.

In summary, major expansion in trackage occurred prior to 1930, evidencing considerable optimism. However, greater use of the facilities was not experienced until World War II and in the post-war period, passenger traffic reaching its peak during the war and freight traffic its peak in 1956.

Historical Review of Major Canadian Railways

The Canadian National Railways is a Crown Corporation while Canadian Pacific is a privately-owned Company. The following brief historical review will show how this situation developed.

Early Transportation

Prior to 1850, Canada depended mainly on waterways and roads for transportation, the Atlantic Coast and St. Lawrence River being extremely important for transport purposes.[23]

The first steam railway appeared in Canada in 1836 and almost from their inception steam railways have been of national concern.[24] As early as 1850, the Governments of Nova Scotia, New Brunswick and the Province of Canada[25] gave aid for railway construction.[26]

During the early years many small railway lines were built. By acquisition, merger and construction major systems emerged. It is these major lines which are of particular interest.

Grand Trunk System

The original Grand Trunk Railway operated in Eastern Canada. Later it added the Grand Trunk Pacific which could be termed its Western Canadian Lines.

Professor Currie[27] commenced his history of the Grand Trunk as follows:

> "When the Grand Trunk was projected in 1852 it was to be the longest railway in the world. Later it was characterized as the world's worst commercial failure...."[28]

The Grand Trunk was an English Company chartered in 1851. Its original program called for 1212 miles of track from Sarnia, Ontario, through Toronto and Montreal to Trois Pistoles, Quebec. By 1860, the original program was completed with a line from Sarnia to Montreal, where it divided - one branch going to Portland, Maine, and the other to Riviere du Loup on the St. Lawrence River.[29]

During the 1860's and 1870's the Grand Trunk made only "chequered progress."[30] It was over-capitalized, had poor designs, defective materials, faulty workmanship and fierce competition especially from the American railways and the Great Western Railway, which amalgamated with the Grand Trunk in 1882. Professor Currie states the problem lay with the English Contractors,[31] who built most of the trackage, the Government of the Province of Canada and poor management.[32]

In the 1880's and 1890's the Grand Trunk acquired a number of railroads in Eastern Canada and in the United States. It had a Chicago line by 1883[33] and, by 1890, had absorbed or it had control of seventeen railroads in Canada and fifteen in the United States.[34] However, in the last decade of the nineteenth century, new competition emerged for the Grand Trunk in the form of the Canadian Pacific Railway and Canadian Northern Railway System.

Up to 1895, management of the Grand Trunk left much to be desired. The appointment of Mr. Charles Melville Hays as Second Vice President and General Manager in 1895 changed this situation.[35] He operated the Grand Trunk in an excellent manner.[36] One of Mr. Hays' major accomplishments was the Western extension of the Grand Trunk, which was known as the Grand Trunk Pacific.[37]

The Grand Trunk desired to stay competitive with the Canadian Pacific and Canadian Northern and also desired to participate in the growth of the Canadian West.[38] Therefore, it was necessary for the Company to become a transcontinental road. Consideration was given to the various possibilities in this respect, one being the combination of the Canadian Northern and Grand Trunk to form a transcontinental line. Negotiations were held in 1902 and 1903 but these discussions proved fruitless.[39] The Grand Trunk then requested assistance of $10,000 a mile from the Federal Government, the proposal being a line from North Bay or Gravenhurst, Ontario, to Bute Inlet or Port Simpson (Prince Rupert) on the Pacific Coast. In addition, the Grand Trunk offered to build a line from Gravenhurst to Quebec

City.[40]

The Government provided aid but changed the plan. Two companies were chartered - the Grand Trunk Pacific and the National Transcontinental. The Grand Trunk Pacific line was to be built by the Grand Trunk from Winnipeg to Prince Rupert. The National Transcontinental line, from Winnipeg to Moncton, was to be built by the Government and upon completion leased to the Grand Trunk.[41]

By the commencement of World War I in 1914, the Grand Trunk was not able to take over the National Transcontinental as it was in a serious financial condition due to the high cost of the Grand Trunk Pacific and unfavourable economic circumstances through which the country had passed.[42] In 1915, the Grand Trunk failed in its Grand Trunk Pacific obligations and was tacitly released from the National Transcontinental contract.[43] Government aid was accorded the Grand Trunk Pacific until 1916 when the Drayton-Acworth Royal Commission, on which comment is made shortly, was appointed to examine railway problems in Canada.[44]

Professor Currie concluded that while it was a failure commercially, the Grand Trunk made a significant contribution to Canada's development.[45]

The Intercolonial Railway

One of the principal requirements of Nova Scotia and New Brunswick joining Confederation in 1867 was the promise of a railway line. This promise was contained in Section 145 of the British North America Act, which stated in part as follows:

> "...it shall be the Duty of the Government and Parliament of Canada to provide for the Commencement within Six Months

> after the Union, of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia and for the construction thereof without Intermission and the Completion thereof with all practicable Speed."

The Intercolonial - the promised line of 700 miles - was completed in 1876. It connected Truro and Halifax, N. S., with Riviere du Loup, the Grand Trunk eastern terminus.[46]

The Duff Royal Commission, in 1932, stated that the circuitous route through unproductive territory, with costly construction, excluded possibility of profit from the first. The Commission pointed out, however, the Intercolonial was essentially a national undertaking with its economic defects inseparable from the broader consideration of public policy.[47]

Prince Edward Island Transportation

Prince Edward Island joined Confederation in 1873. Two reasons which encouraged it to join Canada were that the Dominion Government was to take over the debt of the Prince Edward Island Railway and also that the Government would guarantee a year-round ferry service for the Island.[48]

Canadian Pacific Railway Company

Two years after Confederation - in 1869 - the vast preserve of the Hudson's Bay Company, what is now the Canadian West, was acquired by Canada. Access to the West was by the American railways or by railway to Georgian Bay and thence by boat or wagon.[49]

While the Prairie area's need for transportation exerted pressure for a Pacific railway, the immediate pressure emanated from the entrance of British Columbia into Confederation in 1871.[50] A promise was made to British Columbia that a

railway would be commenced by 1873 and completed within ten years of its entry into Confederation.[51]

After unsuccessful attempts were made to build the Pacific railway, the Government under Sir John A. MacDonald signed a contract with the Canadian Pacific Syndicate on October 21, 1880 to build the line. In 1881, the syndicate was incorporated as the Canadian Pacific Railway Company.

The Canadian Pacific was given, by the Government, 710 miles of existing track, representing a cost of $37,791,435; a cash subsidy of $25,000,000; a land subsidy of 25,000,000 selected acres; duty concessions on materials; land tax concessions; freight rates regulation concessions; and protection for twenty years from competition between its line and the United States border.[52]

The Canadian Pacific was completed by November 7, 1885 - half the time allowed under the contract.[53] The Company then undertook extensive main and branch line acquisition and construction both in Eastern and Western Canada. In addition, considerable immigration and colonization efforts were instituted by the Canadian Pacific to help populate the West.[54]

The Canadian Pacific expanded its trackage until 1930, to approximately 17,000 miles of first line track,[55] which is slightly less than today's trackage.[56]

Canadian Northern Railway System

The Canadian Northern Railway originated in Manitoba in 1896, the owners being Messrs. William Mackenzie and Donald Mann.[57] The Canadian Northern expanded east and west and, by 1905, had rail lines from Port Arthur to Edmonton. By 1917, the

Canadian Northern had 9,409.72 miles of track, with lines in all parts of the country.[58]

Before World War I, the Canadian Northern was having serious financial difficulties and was receiving Federal Government aid. The Drayton-Acworth Commission observed that in addition to stringent world money markets existing, the Canadian Northern had gone ahead too fast and had undertaken expensive schemes which could not possibly carry themselves from the outset.[59]

Steps Leading to the Formation of Canadian National Railways

The formation of the Canadian National Railways extended over the period 1917 to the end of 1922. There have been rail additions since that time but the merger of the companies concerned was completed by January 1, 1923.[60]

The Drayton-Acworth Royal Commission 1916-1917

The Government was faced with the serious financial difficulties of the Grand Trunk, Grand Trunk Pacific and Canadian Northern. A Royal Commission composed of Sir Henry Drayton, Mr. William Acworth and Mr. A. H. Smith was appointed on July 13, 1916,[61] to study the railway problem.

The terms of reference stated that the Commission was to consider the general problem of transportation in Canada and the status of the three transcontinental railway systems - Canadian Pacific, the Grand Trunk System, and Canadian Northern. Consideration was to be given to the question of reorganization of any of the systems or acquisition of any by the State.[62] A majority report was written by Sir Henry Drayton and Mr. William Acworth, while Mr. Smith wrote a minority report.[63]

The majority report observed that considerable assistance had been accorded to the railways by the various levels of Government. Up to June 30, 1916, total investment in all Canadian railways by Federal, Provincial and Municipal Governments totalled $968,451,737.[64]

After comment was made on each system, it was recommended that ownership of the Grand Trunk, Grand Trunk Pacific and Canadian Northern should be given over to the people of Canada as these railways had "broken down."[65] It was suggested that these three railways, as well as the three Government railways - the Intercolonial, Prince Edward Island Railway and National Transcontinental - be operated as one united system under a Company, to be established, free of political interference, called The Dominion Railway Company.[66]

As the Canadian Pacific had lived up to its commitments, the report recommended that its status, "should be left undisturbed", although Canadian Pacific was to be given the option of joining with the other railways if it desired to do so.[67]

Government Acquisition of the Railways

a) Canadian Northern Railway System

By the time of the issuance of the Drayton-Acworth Report, the financial situation of the Canadian Northern had become critical. The Government owned forty per cent of the common stock and in November 1917 legislation was passed to acquire the remaining sixty per cent.[68]

The Canadian Northern continued to operate with its own Board of Directors, reconstituted by the Government. In

December 1918, all Government lines were entrusted to the Canadian Northern and the name Canadian National Railways was applied to the combined system.[69] The Canadian National Act in 1919 incorporated the Canadian National Railway Company, a Corporation designed to absorb all railways owned or controlled by the Government.[70]

b) Grand Trunk System

In 1917, the Government, when approached by the Grand Trunk, refused further assistance unless the whole Grand Trunk group was handed to the Government. Negotiations progressed slowly until early 1919, when the Grand Trunk informed the Government it had to cease operating the Grand Trunk Pacific by March 10, 1919. The Minister of Railways was appointed Receiver of the Grand Trunk Pacific.[71] The Cabinet refused to release the Grand Trunk from its obligations unless all Grand Trunk lines were surrendered. Such agreement was reached in October 1919 and became law in November 1919.[72] Joint Government and Grand Trunk management existed for a time but by January 1, 1923, unified operation of all the Canadian National lines was achieved.[73]

Acquisition of Canadian Northern and the Grand Trunk group increased Government lines from 4,393 miles to approximately 22,000 miles.[74]

Individual railways comprising the Canadian National totalled 139.[75] The major railways were the Canadian Northern System, the Grand Trunk System, the Intercolonial, the National Transcontinental, the Prince Edward Island Railway and the Hudson Bay Railway.[76]

Conclusions

From the inception of the railways until 1917, the Government has evidenced considerable concern for railway expansion by providing financial as well as other types of assistance. Lines were encouraged for political reasons and profitable operation in many instances was questionable from the beginning.

With the acquisition of financially embarrassed lines from 1917 to 1923, the Government became even more deeply emeshed in railway problems. Not only was the Government offering assistance but it was the owner and operator of 22,000 miles of the 40,000 miles of first line track in Canada. A Crown Corporation and a privately-owned Company virtually comprised the railway industry. As the years have passed, Government involvement in the many railway problems has not decreased but rather increased. Reference will now be made to five Royal Commissions which relate in part or in whole to transportation and which have been appointed since the unification of the Canadian National.[77]

PERTINENT ROYAL COMMISSIONS

The five Royal Commissions involved are:

1. The Royal Commission on Maritime Claims, 1925-1926, under the Chairmanship of Sir Andrew Rae Duncan,[78] referred to as the Duncan Commission.
2. The Royal Commission to Inquire into Railways and Transportation in Canada, 1931-1932, under the Chairmanship of the Right Honourable Lyman Poore Duff,[79] referred to as the Duff Commission.
3. The Royal Commission on Dominion-Provincial Relations, 1937-

1940, under the Chairmanship of Doctor Joseph Sirois,[80] referred to as the Rowell-Sirois Commission.

4. The Royal Commission on Transportation, 1949-1951, under the Chairmanship of the Honourable W.F.A. Turgeon K.C., L.L.D., P.C.,[81] referred to as the Turgeon Commission, (appointed December 29, 1948).
5. The Royal Commission on Transportation, 1959-1962, under the Chairmanship of Mr. M.A. MacPherson, Sr., Q.C.,[82] referred to as the MacPherson Commission.

The Duncan Royal Commission 1925-1926

During the early 1920's the Maritimes suffered a business recession. The Provinces concerned complained to the Federal Government that freight rates were partly to blame,[83] because from 1912 to 1926 they had been increased ninety-two per cent in the Maritime area as compared with fifty-five per cent in other areas in Canada.[84]

The Duncan Commission, appointed to consider the problem, recommended a twenty per cent reduction on rates East of Levis and Diamond Junction, Quebec, to be borne by the Dominion Government. This reduction was suggested in order to recognize a pre-Confederation promise to the Maritimes of a low level of rates.[85] The recommendation was made effective July 1, 1927, by Parliament passing the Maritime Freight Rates Act.[86] In 1957, the reduction was increased to thirty per cent on shipments to other parts of Canada.[87]

While the Turgeon Commission of 1951, dealt with the subject, it made no significant recommendations with respect to the Maritime Freight Rates Act,[88] but the MacPherson Commission in 1961 made two suggestions. It was felt that, with

the exception of Newfoundland, the reduction on intra-Maritime traffic should be eliminated because the reduction was primarily to enlarge the market outside the Maritimes. Secondly, it was suggested that the reduction on traffic outbound to Central Canada and West, should apply to all forms of transport and not only to rail traffic; otherwise discrimination exists.[89]

There are two important points for consideration. Under the present arrangement, it would seem the railways are carrying some traffic which other forms of transportation might take if the thirty per cent reduction were applied to all forms of transport; thus, any Government action to extend the reduction to other forms of transport would undoubtedly affect railway revenues. Secondly, with this subsidy arrangement existing under the Act, the Federal Government is deeply involved in railway transportation costs in the Maritime area as present payments made to the railways by the Government on behalf of the Maritimes, exceed $14,000,000[90] a year.

The Duff Royal Commission 1931-1932

Appointment, Observations and Recommendations of the Duff Commission

Eight years after unification of the Canadian National, economic conditions in Canada had become serious. Diminished revenues were suffered by Canadian Pacific and continuing deficits were sustained by Canadian National. The Railways suggested to the Government that a Commission be appointed to study the transportation problem and the Government appointed the Duff Commission in November 1931.[91]

A number of causes were set forth for the transporta-

tion problem, including over-development of the railways, uncontrolled competition, made worse by one railway being supported by the Dominion Treasury, the World recession, highway competition, inflexible freight rates and railway practices, rigid wage scales and labour practices, and a number of special problems of the Canadian National.[92]

The Commission observed that from 1867 to December 31, 1931, total investment, at all levels of Government, in the Canadian railways was $2,748,704,197,[93] of which lines comprising Canadian National had received $2,495,451,623.[94]

While the Commission felt the Canadian National had been successful in bringing all its separate companies together, it also stated extravagance had been in evidence.[95]

The Duff Commission stressed the need for cooperation between the Canadian National and Canadian Pacific - the necessity to eliminate duplication of track, services and facilities. It was also recommended that the Canadian National be freed from political pressures and that Canadian Pacific be protected from arbitrary action by the Canadian National. The suggestion was made that highway trucking be charged user charges for highway use and be controlled on the same basis as the railways.[96]

Canadian National - Canadian Pacific Act - 1933

The outcome of the Duff Commission recommendations was the Canadian National - Canadian Pacific Act - 1933,[97] which provided for cooperation between the railways. In 1939 an amendment provided for benefit payments to laid-off railway employees.

Cooperative studies were made under the Act until 1950.

Of the total of ninety-five projects studied, which concerned line abandonments, passenger train pooling, use of joint stations and other similar matters, seventeen were adopted. These projects resulted in an annual saving of $1,184,240,[98] but, according to Professor Currie, the Act failed to achieve anything like that which was expected.[99] No unemployment payments were ever made under the Act because the Second World War commenced shortly after the amendment was passed.[100]

Since 1950, apart from the Act, the Canadian National and Canadian Pacific have implemented a number of joint projects, including joint switching arrangements, passenger train pooling, uneconomic branch line abandonments, joint car specifications and communications projects.[101]

Recommendations of Subsequent Royal Commissions re the Canadian National - Canadian Pacific Act

The Turgeon Commission, in 1951, felt the Act had served a useful purpose by saving over one million dollars a year and by detering wasteful competition. No change was recommended.[102] The MacPherson Commission, in 1961, felt no useful purpose is now being served by the Act as the railways were cooperating without it. It was also observed that labour had not received any benefit under the Act and it was recommended that it be repealed.[103]

Conclusions

As time has passed, the threads of Federal Government interest and participation have been woven into the warp and woof of the background fabric of the Canadian railways. Whether it was the intention of the Government, or not, to become more

deeply involved in railway matters, from 1917 to the time of the Duff Commission in 1931, Government investment in the railways - mainly Canadian National - increased from one to two and one-half billion dollars.

The total beneficial effect on railway finances of the Canadian National - Canadian Pacific Act cannot be measured, although it is not insignificant. While direct savings achieved were just over a million dollars a year, there was a curb imposed on wasteful competition - the expansion of facilities which had little or no prospect of a return on investment. In addition, the use of common facilities by the railways was encouraged, which principle is followed today. Unquestionably, these various factors increased railway revenues.

The Rowell-Sirois Royal Commission 1937-1940

The Rowell-Sirois Commission was concerned with Dominion-Provincial relations; thus, it commented on two transportation problems relating to the Provinces.

The first problem concerned discrimination in freight rates and, a general review of the subject was suggested. The Commission also made observations regarding rail-highway competition and foresaw some of the problems which exist today. It stated that in the Federal field there was a transportation system in which the Federal Government had invested three billion dollars and a privately-owned railway with investment of over one billion. This whole railway system was being effectively challenged by a newer one -

highway trucking - which was under the almost exclusive jurisdiction of the Provinces.[104]

The Commission said:

> "....We have in mind the fact that the provinces are now engaged in developing means of transportation which may destroy the possibility of solvent operation of the railways; and also that there is the likelihood that over-investment in transportation facilities which, in the past through too lavish provision of railway facilities, imposed so heavy a burden upon the Canadian economy, may be duplicated, perhaps upon an enlarged scale, in the highway development now taking place.
>
> The basic problem is how to assure to the public a national transportation system in which all the parts will function smoothly in their proper sphere so as to furnish the best service at the lowest overall cost."[105]

A general recommendation was made by the Commission in connection with the rail-highway competition. It was that there be intimate, cordial and continuing cooperation between the Federal and Provincial Governments in the matter of transportation[106] - a sound suggestion which was not followed as it should have been.

The Turgeon Royal Commission 1949-1951

Appointment and Scope

The appointment of the Turgeon Commission stemmed primarily from representations made by the four Western and the Maritime Provinces in respect of a freight rate increase of twenty-one per cent on April 8, 1948.[107] The Provinces concerned contended that discrimination existed in freight charges and that a Commission should be appointed to achieve "proper principles" in rate equalization.[108]

The Turgeon Commission dealt with over fifty subjects, including some of national concern, some of local concern, various freight rates problems, the power of the Board of Transport Commissioners (the body of control over the railways), accounting and statistics regarding transportation and the national transportation policy.[109]

Conclusions Regarding Recommendations

The Turgeon Commission observed that the railways were faced with severe competition, especially from highway trucking. However, in advancing its recommendations in respect of the existing freight rate structure, the Commission suggested an equalization of Class and Commodity rates[110] which did not assist the railways but rather hampered them in their attempt to compete with the growing trucking industry.[111]

Equalization of rates was designed to aid the long-haul shipper located in the outlying provinces. The principle was to reduce these long-haul rates, which were the situations where competition was not nearly so prevalent, and to increase the short-haul rates in the central area of the country where truck competition was most pervasive, making it more difficult for the railways to compete. Further, equalization disregarded the cost of providing the service and, thus, did not encourage the most efficient allocation of transportation resources.[112]

Greater rigidity was also built into the control of competitive rates set by the railways. The Commission recommended that supporting statistical data be advanced by the

railways to justify any competitive rates which might be contemplated.

A further significant weakness of the report was that only a very brief reference was made to air, water and highway transport. A central authority was suggested for control of the rail, water and air transport, which was never implemented, but the important point was that highway transport, because it was under the jurisdiction of the provinces, was ignored.[113]

In summary, the Turgeon Commission considered the railway problem in isolation when it should have been recommending ways and means to adapt the railways to the new competitive environment existing in the transportation industry. During the decade of the 1950's, significant inroads were made by highway trucking on railway traffic. It was in this period that "ability to pay" assumed great importance in railway labour cases.

The MacPherson Royal Commission 1959-1962

Appointment of the Commission

In the Fall of 1958, settlement was effected in a labour dispute involving the railway non-operating employees.[114] To meet the cost of the settlement and other settlements subsequent thereto,[115] the Board of Transport Commissioners on November 17, 1958, authorized a seventeen per cent freight rate increase[116] which was approved by the Cabinet.

The Western and Maritime Provinces appealed the freight rate increase to the Governor-in-Council. While the

appeal was dismissed on November 26, 1958, the Government indicated its intention to have the whole subject of freight rates reviewed.[117]

A freight rate "freeze" was imposed on March 24, 1959[118] and, in July 1959, the Freight Rates Reduction Act[119] was passed, its purpose being to reduce the seventeen per cent freight increase to ten per cent, with the difference of seven per cent being borne by the Federal Government. In April 1960, the Government increased its portion of the increase from seven per cent to nine per cent.[120]

On May 13, 1959, the Government appointed the MacPherson Royal Commission to inquire into the problems of railway transportation in Canada, with specific reference to inequities in the freight rate structure, the burden of public policy on the railways, the possibilities of more economic operation of the railways and the extent to which non-rail assets and earnings should be considered in setting rates.[121]

Observations of the Commission

The MacPherson Commission endeavoured to take a realistic view of the Canadian transportation situation. It recognized the monopoly position held by the railways prior to World War II and the growth of competition in the post-war years.[122] It observed that the railways had endeavoured to counteract this competition but that they had been hampered by the pressing need for a huge rehabilitation program of facilities after the War, as well as a steady post-war rise in labour and other costs.[123]

While the railways were gradually losing their position in the transportation complex, it was stated that there was certain "captive" traffic relying on the railways. The Commission felt that with the passing years this "captive" traffic will have to bear higher and higher freight rates with the result that some other form of transport will take the traffic and the railways financial position will become untenable.[124]

The railways were weakened by burdens inherited from a monopolistic era. These burdens, the Commission stated, were partly due to public policy and partly to policies pursued by the railways.[125] The three contributing factors were railway plant, freight rates charged and the regulatory structure within which the railways operate.[126]

The recommendations of the MacPherson Commission were based on four sound principles. The first was that there should be a minimum of regulation, applied equally to all forms of transport. The second was that there should be a rationalization of rail plant and services. If any uneconomic service is continued in the public interest then public funds should make up the deficit. The third was that no form of transport should be singled out for national policy, and, if so, sufficient compensation should be advanced to that form of transport to prevent the competitive transportation market from being upset. The fourth was that when a subsidy is paid to assist a shipper or region then it should not be disguised as a subsidy for transportation. It was felt that all forms of transport should

be given such assistance.[127]

Recommendations

Four major recommendations were made in order to remove from shippers captive to the railways the burden of obligations imposed on the railways because of tradition, law and public policy.[128]

a) Branch Line Abandonment and Elimination of Uneconomic Passenger Service

The MacPherson Commission faced up squarely to the question of eliminating unprofitable plant and services. It was stated by the Commission there were 8600 miles of light density lines in Canada. Many of these lines were originally built to serve the railway as a whole, or in the expectation of increased traffic. The growth of highway trucking resulted in a large number of miles of branch lines becoming uneconomic.[129] The Commission, therefore, recommended that the railways be allowed to shed this uneconomic plant.

The Commission felt that such an adjustment should not take place in a short period of time as many problems would be involved. It considered fifteen years to be a reasonable period. If the railways were to be asked to abandon lines at a rate slower than they otherwise could, the Commission felt some grant should be made to them and the sum of $13,000,000 a year was suggested.[130]

A realistic view was also taken of uneconomic passenger services. The Canadian National stated before the Commission that in 1958, its operating deficit on passenger service was $50.3 million while Canadian Pacific for the year indicated

a deficit of $27.6 million.[131]

The MacPherson Commission asked railway management what period of time would be considered adequate for adjustment of passenger services. Management stated five years. The Commission recommended a declining adjustment grant to the railways for the period 1961 to 1965, inclusive. A total of $120 million was suggested for Canadian National and $66 million for Canadian Pacific.[132]

b) Statutory Grain Rates and Statutory Free Transportation

The desire of the MacPherson Commission to place the railways on a sounder economic basis and to lift from them the burdens of public policy is evidenced by the recommendations made with respect to statutory grain rates and statutory free transportation.

Statutory grain rates are rates charged for the transportation of grain and grain products for export purposes. These rates are under the exclusive control of Parliament and they are three cents a hundred pounds below their 1897 level.[133] The railways stated before the MacPherson Commission that their combined losses in 1958 with respect to the transportation of grain and grain products totalled $70 million.[134]

The establishment of the statutory grain rates resulted from an agreement in 1897 between the Canadian Pacific and the Federal Government. The Railway desired assistance in building a three hundred and thirty mile line from Lethbridge, Alta., to Nelson, B.C., through the Crow's Nest Pass coal fields.[135] The Canadian Pacific desired to obtain

mining traffic from Southern British Columbia, which it feared might be taken by United States railways,[136] and approached the Federal Government for assistance. Parliament authorized a subsidy of $11,000 a mile of track, with a limit of $3,600,000. The total subsidy paid was $3,404,720. In return for the grant, the Railway agreed to reduce freight rates on grain, grain products and a number of essential farm commodities.[137]

Between 1918 and 1922, temporary increases in the grain rates were allowed, but subsequently, they returned to their former level. In 1925, the statutory grain rates were applied to all Canadian railways and, in 1927, they were applied to all territory bounded by the Great Lakes, the Pacific Ocean and the Hudson Bay. In 1925, the reduced rates on farm commodities were eliminated.[138]

In 1949 the Canadian Pacific stated before the Turgeon Commission that, based on 1948, it was sustaining annual losses of between $13.7 and $16.7 million as a result of the statutory grain rates.[139] It also stated that the twenty-one per cent freight rate increase in 1948 could have been eighteen per cent if the increase had been applied to grain and grain products, from which the Turgeon Commission concluded that the shippers were bearing the burden and not the railways. It was contended that the shippers had no quarrel with the grain rates and, thus, no change was recommended.[140]

The Turgeon Commission observed that there was

other relief being recommended for the shippers in the form of a $7 million subsidy to bear the cost of transportation over the sparsely populated territory of Northern Ontario. This subsidy, referred to as the "Bridge" subsidy, was used to reduce rates for both eastbound and westbound shipments.[141]

The MacPherson Commission report in 1961, stated that the railways should continue to handle grain. If, however, Parliament continued to control the grain rates, Parliament should ensure that the railways have a proper return on investment. An annual subsidy of $11,300,000 was recommended for Canadian National and $11,000,000 for Canadian Pacific.[142]

These inflexible statutory grain rates, have built a rigidity into revenues for approximately twenty-five per cent of railway traffic, which yields only nine per cent of total revenue.[143] The justification for maintenance of the statutory grain rates in the early days for national development purposes is understandable. With the change to a more industrialized Canadian economy since the 1930's, the maintenance of the rates might be more questionable. If, however, the Government desires to continue the rates at their present level, it would seem that the equitable course to be followed would be to lift from the railways any losses they sustain because of grain rates. This is precisely what the MacPherson Commission has recommended.

In respect of statutory free transportation, the Commission recommended that the railways should be reimbursed

for any such transportation required by law.[144]

c) Railway Pricing

A major revolutionary and far-reaching recommendation of the MacPherson Commission concerned railway freight pricing.

The existing railway freight rates structure was evolved during an era of railway monopoly. This pricing system could be considered as a "planned economy" existing in the midst of a free market system. It was based on the principle of "value of service" and was not devised by pressures of competition and unit costs but rather by, "charging what the traffic would bear."

Professor Currie states that "charging what the traffic will bear", means:

> "...that the price is set by and large, by the value of the benefits which the railway user receives from the shipping of the commodity in question. These benefits are measured by what he is willing to pay and still ship the commodity in substantial quantities."[145]

Another way he explains it is, "not charging that which the traffic will not bear."[146]

From the publication of the first freight classification in 1874, the main principle seemed to be, "to charge what the traffic would bear."[147]

In 1884, the principle of equalizing the burden of costs, over all rates, was added and it is these two principles which seemed to have dominated railway pricing. Cost of service from an overall railway point of view was important, but not for individual commodity unit costs.[148]

There evolved a "movement value" for a commodity between minimum variable or "out-of-pocket" cost and the level which a shipper could pay and still remain in business.[149] Some commodities paid far above the cost of service while others did not meet their total unit cost.

To illustrate the workings of the system, consider the transportation of a carload of silk and a carload of grain. Costs for transporting two such carloads would be equal or slightly different due to loading and unloading costs, but the freight rate charged on the silk could be forty times as high as the rate for grain. This illustration could be multiplied many times over.[150]

The MacPherson Commission said:

> "The traditional theory of railway pricing was a sophisticated and complex example of price differentiation. Commodities of high value were charged a price high enough to compensate for the low prices charged to low-valued commodities. With revenue requirements in mind, rates were set to average out the differences in cost of the service between easily accessible, more settled regions and those more remote. And tapering of rates with distance resulted in some assistance to long-haul movements."[151]

This "planned" approach to pricing enabled development of the country but when highway trucking began to expand, large amounts of high-valued traffic on which the higher railway rates were charged, were diverted from the railways. The MacPherson Commission said:

> "....The traditionally high prices the railways charged for the movement of manufactured commodities gave an extraordinary headway to motor transportation...."[152]

This diversion of traffic was possible because the higher rates were far above unit cost of the service provided.

In addition, door to door service and an expanding highway system enabled the trucking industry to grow.[153]

Class and Commodity rates, mentioned earlier, which are two types of rates based on value of service, accounted for 59.3 per cent of railway traffic in 1954, and in 1959, only 47.5 per cent. Competitive rates which the railways instituted in 1954 to counteract competition, accounted for 24.4 per cent of total railway traffic and increased to 36.8 by 1959.[154]

In the overall picture, the Commission concluded that while the railways were now handling less total tons than trucks, the former "...had retained the large portion of long-haul, heavy-loading freight."[155] It was felt that there existed for the railways competitive areas and areas of significant monopoly, not "average" monopoly as was formerly the case.[156]

The Commission recommended that the minimum level for rail rates in competitive areas should be direct or "out-of-pocket" costs.[157] The maximum level of rates suggested for the areas of significant monopoly[158] was the long-run variable cost as defined by the Board of Transport Commissioners, plus 150 per cent.[159]

The Order establishing the Commission specifically requested that consideration be given the subject as to whether non-rail earnings should be considered in the determination of railway freight rates. The Commission recommended that non-rail assets should not be considered in setting rates

because they could upset the competitive environment. Further, non-rail earnings might be negative in one instance and positive in another. How would the rates be handled? If all such earnings became negative would freight rates be increased to make up any deficit on non-rail operations? These questions clearly illustrate the weakness in adjusting rates by non-rail earnings.[160]

The MacPherson Commission made other recommendations such as eliminating the "Bridge" subsidy, which it said was discriminatory, as it did not apply to all forms of transport. While the "Bridge" subsidy is given to the shipper, the elimination of it would adjust traffic so that it would be more subject to market forces. Recommendation was also made that the Freight Rates Reduction Act and assistance for shipment of feed grains be eliminated.

Conclusions

The MacPherson Commission has kept as its main objective, the most efficient allocation of transportation resources. Its recommendations have been made with the intention of placing the railways on the same basis as any other commercial enterprise. Recommendations have also been made to eliminate discrimination against any form of transport or any shippers, and a well-integrated national transportation policy has been suggested which will allow each form of transport to operate where it holds the competitive advantage. The far-reaching suggestions made by the Commission, if adopted, will undoubtedly have a significant effect on the

railway industry which will inevitably have a bearing on railway labour disputes.

Action to implement the recommendations of the MacPherson Commission was only taken in the Fall of 1964 when the Liberal Government introduced a Bill on the subject.[161] However, since July 13, 1961, an annual payment of $50 million has been made on behalf of the recommendations made by the Commission.[162] Since the issuance of the second volume of the Commission's report, in January 1962, there have been two general elections. The former Conservative Government had planned to pass legislation in respect of the report but before action was taken an election occurred. The present Liberal Government has, as mentioned, a Bill before the House. If the legislation is passed there will be a transition period for the railways, especially from a revenue viewpoint; such, of course, could have both adverse and favourable effects.

SOME UNIQUE FEATURES OF THE RAILWAYS

The Canadian railways possess some rather unique features which will be mentioned briefly.

Railway Ownership

The ownership arrangement of Canadian National and Canadian Pacific results in a Crown Corporation competing with a privately-owned Company, as mentioned previously.

There is the possibility for Government discrimination against either Company. While the Crown Corporation might enjoy advantage in dealing with the Government, on the

other hand, political pressure may be brought to bear on it. Pressure can also be indirectly brought to bear on the private Company, through the medium of the Crown Corporation. Further, the Crown Corporation, if it suffers a deficit, can draw on the Federal Treasury. This affords some financial advantage.[163] However, the Board of Transport Commissioners in authorizing freight rates increases has used the Canadian Pacific as the "yardstick" road. With deficits existing on the Canadian National, if that road were used as the "yardstick", a higher level of rates would result.

Control

The railways are controlled by a special Act - the Railway Act[164] - and by the Board of Transport Commissioners for Canada. Control of the Canadian railways under the Railway Committee of the Privy Council, commenced in 1868.[165] The main concern of the Committee was discrimination in freight charges.[166] In 1903, the Railway Act was passed and control of the railways was transferred from the Railway Committee to a new body, the Board of Railway Commissioners.[167] This change resulted from the recommendations of a Royal Commission in 1902.[168]

In addition to assuming the powers of the Railway Committee, the Board of Railway Commissioners, whose name was changed to the Board of Transport Commissioners in 1938, was directed to inquire into, hear and determine any matter arising out of the Railway Act. The Board's duties also include regulation of freight rates, passenger fares and any

other charges made by the railways; it has authority to approve locations and abandonment of stations and rail lines; it has extensive authority over crossing of railways by highways, farmers' roadways, and power and telephone lines; it has authority over speed of trains, fencing, fire protection, coupling devices for trains, braking mechanisms, car clearances, number of men on trains, operating rules and visual and auditory acuity of employees concerned with train operation; it has jurisdiction over express traffic, railway telegraph operations, and telephone companies; it sets rates under the Maritime Freight Rates Act and tolls for international bridges and tunnels; it has jurisdiction over water transport and interprovincial and international pipe lines.[169]

Examination of the foregoing reveals that the Board of Transport Commissioners exercises extensive control over railway operations. The necessity for the railways to seek the Board's authorization when making certain changes unquestionably delays the proposed action. In addition, there is always existing the presence of the "veto" power.

Under the Railway Act the railways are required to:

> "...furnish...adequate and suitable accommodation for receiving and loading of all traffic offered for carriage upon the railway...furnish adequate and suitable accommodation for the carrying, unloading and delivering of all such traffic...without delay... furnish and use all proper appliances...necessary for receiving, loading, carrying, unloading and delivering such traffic..."[170]

The railways must accept all shipments offered, unlike highway transport or any other ordinary business, which have a choice as to the good or service they will provide.

Further, the railways must publish schedules of operation, as well as freight and passenger tariffs, which make for rigidity in operations.

Size of Companies

The two large Railways are unique by their size. Excluding the Federal Government, they are the largest employers of labour in Canada. In 1963, Canadian National employed an average of 85,591 persons,[171] while the average for Canadian Pacific was 61,276.[172] Combined, these two Railways employed approximately four per cent of the industrial work force of 3,766,220.[173]

Gross assets of Canadian National at December 31, 1960, totalled $3.7 billion,[174] while those of Canadian Pacific were $2.7 billion.[175] Excluding financial institutions, a review of over 2,500 companies for the same year revealed only two companies with assets over $1 billion - the Bell Telephone Company with gross assets of $1.8 and the Aluminum Company of Canada with assets of $1.1 billion.[176]

The railways are large economic institutions and settlements of labour disputes undoubtedly have an impact on the economy of the country.

Labour Force

Unionization and collective bargaining have a long history on the Canadian railways. The first union lodges were established in 1864 at Belleville and Hamilton.[177] Today, the Canadian railway work force is more than ninety per cent organized. The Canadian National has approximately 190

collective agreements while Canadian Pacific has 165.[178]

There is a large number of long-service employees in the railway work force. This was observed, for example, by Mr. Justice Kellock in 1954 in his conciliation board report.[179] A recent study, which is indicative of the situation, although not conclusive, showed 52.2 per cent of railway employees with fifteen or more years of service, while 35.2 per cent of the employees of a mixed group of firms in the Montreal area were in the same service category.[180] Such being the case, then any fringe benefits based on length of service would place a heavier burden on the railways than on many other industries.

In 1958, the report of the conciliation board in the non-operating dispute stated that 36.5 per cent of railway occupations had no counterparts in other industry.[181] Although a precise figure is not stated, from evidence presented in the 1960 non-operating dispute, it would appear that the number of railway positions without counterparts in other industry is even higher than the percentage mentioned in 1958.[182] This situation makes it difficult to compare railway wages and working conditions with other Canadian industry, a subject dealt with in Chapter V.

Financial Considerations

The ratios of railway operating payrolls to gross revenues are relatively high. For example, in 1960, the ratios for Canadian National[183] and Canadian Pacific[184] combined were

53.7 per cent; for all Canadian manufacturing 22.2 per cent; for durable goods manufacturing 25.7 per cent; for major telephone companies in Canada 40.4 per cent;[185] for the Shawinigan Water and Power Company 18.8 per cent;[186] and for Hydro Quebec in 1961, 23.4 per cent.[187]

A further comparison which may be made concerns rates of return on net worth. Table III below shows rates of return for Canadian Pacific from 1953 to 1961. Canadian Pacific data is used rather than that of Canadian National because of the greater similarity of Canadian Pacific's financial structure to other industry.

Table III

Rates of Return on Net Worth 1953 - 1961

1953 - 2.64%	1956 - 3.38%	1959 - 2.47%
1954 - 1.76%	1957 - 2.81%	1960 - 2.29%
1955 - 2.88%	1958 - 2.47%	1961 - 2.77%

Source - Canadian Pacific Railway Company.

A composite figure for 300 leading Canadian corporations over the same period revealed that the rates of return varied from a low of 7.9 per cent in 1958 to 11.7 per cent in 1956. Only textiles, at one point, fell as low as Canadian Pacific.[188]

Dollar output in the railways is relatively low. For example, average revenue per employee in durable goods industries in 1960 was $16,846, while Canadian National averaged $6,610 and Canadian Pacific $8,000.[189]

Railway management has not had the freedom to adjust its plant and services with fluctuation in demand as

have other commercial enterprises. Thus, the railways bear overhead costs which might otherwise be eliminated. When commenting on uneconomic branch railway lines, the MacPherson Commission stated:

> "....But railway management has never been entirely free to adjust plant and services guided only by market demand...."[190]

CONCLUSION

In summary, the railway industry possesses a number of unusual features, which all have a bearing on the industry, and, thus, directly or indirectly, bear on collective bargaining. In addition, it has been shown that problems relating to the railways have been many. As time has passed, the Federal Government has become deeply involved in the railways and transportation problems. Labour dispute settlement has been no exception. Government's position in respect of the railways must be considered in any proposal which might be advanced for dispute settlement.

In the chapter to follow, a brief review is made of labour legislation to which the railways have been subject.

FOOTNOTES FOR CHAPTER I

1 Dominion Bureau of Statistics, (Hereafter referred to as D.B.S.) Railway Transport 1962, Part III, (Equipment, Track & Fuel Statistics), Ottawa, September 1963, p. 10.

2 Ibid., p. 10.
The larger of the small railways are shown below. In each case there is shown the Province in which each line is located and the number of miles of first main-line track operated. While these mileages were those operated, included are running rights by certain railways over other railways. Actual first main-line track for Canada in 1962 was 43,654.0, as compared with 44,814.6 operated.

Railway	Province	Miles of Track Operated
Sydney and Louisburg Railway	Nova Scotia	58.9
Quebec, North Shore and Labrador	Quebec	357.0
Algoma Central Railway Company	Ontario	321.8
Ontario Northland Railway	Ontario	566.3
Toronto, Hamilton and Buffalo Railway	Ontario	103.6
Midland Railway of Manitoba	Manitoba	75.5
Pacific Great Eastern Railway	British Columbia	789.5
Canadian Lines of United States Railroads		
New York Central Railroad	Quebec and Ontario	290.8
Chesapeake and Ohio Railroad	Ontario	338.7
Wabash Railroad	Ontario	245.4
Great Northern Railway Company	Manitoba and B.C.	130.2

In view of the restricted mileage of these small roads, it will be realized that they cover a very limited geographical area.

3 In earlier years the data shown is the only information available.

4 Railway Statistics of the Dominion of Canada, Ottawa, 1917, p. VIII.
D.B.S., Statistics of Steam Railways of Canada, Ottawa, (5) 1943, p. 4, (6) 1950, p. 4.
D.B.S., Railway Transport, Ottawa, (7) Part I, 1955, p. 7, (8) Part III, 1960, p. 7, (9) Part III, 1962, p. 12.

10 Data relating to tons of freight handled one mile were available only from 1907, but this indicator shows the same growth pattern as total tons of freight handled.

11 Railway Statistics of the Dominion of Canada, 1917, Op. cit., p. XIX.
D.B.S., Statistics of Steam Railways of Canada, Op. cit., (12) Year 1923, pp. 4 and 14, (13) 1928, p. 20, (14) 1933, p. 20, (15) 1938, pp. 20-21, (16) 1943, p. 14, (17) 1948, p. 12, (18) 1950, p. 12.
D.B.S., Railway Transport, Part IV, Op. cit., (19) 1955, p. 9, (20) 1956, p. 9, (21) 1960, p. 9, (22) 1962, p. 6.

23 Report of the Royal Commission to Inquire into Railways and Transportation in Canada, (Hereafter referred to as the Duff Commission Report), Ottawa, 1931-1932, p. 71.

24 Ibid., p. 73.

25 Upper and Lower Canada (now Ontario and Quebec).

26 Duff Commission Report, Op. cit., p. 73.

27 Professor A.W. Currie, Professor of Political Economy, University of Toronto, Toronto.

28 Currie, A.W., The Grand Trunk Railway of Canada, University of Toronto Press, Toronto, 1957, p. 1, (Hereafter referred to as Currie, A.W., Grand Trunk).

29 Duff Commission Report, Op. cit., pp. 73-74.

30 Currie, A.W., Grand Trunk, Op. cit., p. 159.

31 The firm of Peto, Brassey, Jackson and Betts.

32 Currie, A.W., Grand Trunk, Op. cit., p. 67.

33 Ibid., p. 227.

34 Jackman, W.T., Economic Principles of Transportation, The University of Toronto, Toronto, 1935, p. 17.

35 Sir Charles Wilson-Rivers was appointed President in 1895 and he secured Mr. Hays from the United States.

36 Currie, A.W., Grand Trunk, Op. cit., pp. 371-393.

37 Ibid., p. 394.

38 Ibid., p. 400.

39 Duff Commission Report, Op. cit., p. 80.

40 Currie, A.W., Grand Trunk, Op. cit., p. 395.

41 Ibid., p. 396.
Terms were seven years free and three per cent of cost for forty-three years.

42 Duff Commission Report, Op. cit., p. 81.

43 Report of the Royal Commission to Inquire into Railways and Transportation in Canada, (Hereafter referred to as the Drayton-Acworth Commission Report), Ottawa, 1917, p. xxvi.

44 Duff Commission Report, Op. cit., p. 11.

45 Currie, A.W., Grand Trunk, Op. cit., p. 481.

46 Duff Commission Report, Op. cit., p. 76.

47 Ibid., pp. 76-77.

48 Ibid., p. 76.

49 Innis, Harold A., A History of the Canadian Pacific Railway, McClelland and Stewart, Ltd., Toronto, 1923, pp. 26-52.

50 Duff Commission Report, Op. cit., p. 77.

51 Ibid., p. 77.

52 Innis, H.A., Op. cit., pp. 96-98 and
Duff Commission Report, Op. cit., pp. 77-78.

53 Innis, H.A., Op. cit., pp. 97-128.
Professor Innis outlines the many problems involved.

54 See Hedges, James B., The Building of the Canadian West, The MacMillan Company, New York, 1939.

55 Thomson, Leslie R., The Canadian Railway Problem, The MacMillan Company of Canada, Ltd., Toronto, 1938, p. 553.

56 Canadian Pacific Railway Company, 1959 Annual Report, Montreal, May 1960, p. 41.

57 Drayton-Acworth Commission Report, Op. cit., pp. xxxv-xxxvi.

58 Ibid., App. A., pp. 37-41.

59 Ibid., p. xxvii.

60 Canadian National Railways, Annual Reports; some of the larger additions over the years were:

1. A 114 mile line from Sherridan to Lynn Lake, Northern Manitoba, in November 1953.

2. A 161 mile line from Beattyville to Chibougamau, Quebec, in October 1957.

3. A 133 mile line from St. Felicien to Chibougamau, which completed a triangle between Beattyville, St. Felicien and Chibougamau, through lumbering and mining country in Quebec Province.

4. A 64 mile line from the Barrette-Chibougamau line to Matagami Lake mining area in Quebec.

Over the years there have been some line abandonments.

61 P.C. Order in Council 1680, 1916 - Quoted in Drayton-Acworth Commission Report, Op. cit., Part I, p. v. Sir Henry Drayton (at the time) Chief Commissioner of the Board of Railway Commissioners for Canada, Mr. William Acworth, a noted English authority on railways, and Mr. A.H. Smith, President of the New York Central System in the United States.

62 Drayton-Acworth Commission Report, Op. cit., Part I, p. v.

63 Ibid., Part VII, p. cii.
Mr. A.H. Smith recommended the following solution based on the fact that the Grand Trunk succeeded in the East and failed in the West and the Canadian Northern succeeded in the West and was jeopardized in the East:

> "Let the Canadian Pacific alone; let the Grand Trunk operate the eastern lines now held by that Company and the Canadian Northern; let the Canadian Northern operate the western lines, now held by that Company and the Grand Trunk Pacific System; let the Government operate the connections or procure their operations by private companies; all of which should be done under arrangements that are equitable and yet look to the not distant day when the country will have survived the war and resumed its prosperous growth."

64 Ibid., Part I, p. xix.

65 Ibid., Part V, p. ix.

66 Ibid., Part V, p. ix.

67 Ibid., Part V, p. ix.

68 7-8 George V., Chapter 24 and
Duff Commission Report, Op. cit., pp. 11 and 83.

69 P.C. Order in Council 3122, 1918.

70 9-10 George V., Chapter 13, Revised Statutes of Canada, 1927, Chapter 172.

71 Duff Commission Report, Op. cit., p. 84.

72 9-10 George V., Chapter 17, assented to November 10, 1919.

73 Duff Commission Report, Op. cit., p. 12.

74 Ibid., p. 85.

75 Ibid., p. 85.

76 Built in Manitoba, up to Hudson Bay, in the late 1920's and early 1930's, by the Federal Government.

77 Two Senate Committees have been appointed - one in 1925 and one in 1938. However, no action was taken as a result of their recommendations.
See Currie, A.W., Economics of Canadian Transportation, University of Toronto Press, Toronto, 1954, pp. 451-460, (Hereafter referred to as Currie, A.W., Canadian Transportation).

78 Ibid., p. 10.

79 P.C. Order in Council 2910, 1931.

80 P.C. Order in Council 1908, 1937.

81 P.C. Order in Council 6033, 1948.

82 P.C. Order in Council 1959-577, 1959.

83 Currie, A.W., Canadian Transportation, Op. cit., p. 10.

84 Report of the Royal Commission on Transportation, (Hereafter referred to as the Turgeon Commission Report), Ottawa, February 9, 1951, p. 228.

85 Ibid., p. 228.

86 17 George V., Chapter 44.

87 Report of Royal Commission on Transportation, Three Volumes, (Hereafter referred to as the MacPherson Commission Report), Ottawa, 1961, Volume II, p. 206.

88 Turgeon Commission Report, Op. cit., p. 237.

89 MacPherson Commission Report, Op. cit., Volume II, pp. 211-212.

90 Ibid., p. 206.

91 P.C. Order in Council 2910, 1931.

92 Duff Commission Report, Op. cit., p. 53.

93 Ibid., p. 90.
Included are 47,290,566 acres of land valued at $1 an acre.

94 Ibid., p. 87.

95 Ibid., p. 13.

96 Ibid., p. 63.

97 34-24 George V., Chapter 33.

98 Turgeon Commission Report, Op. cit., pp. 221-227.

99 Currie, A.W., Canadian Transportation, Op. cit., p. 455.

100 Turgeon Commission Report, Op. cit., pp. 221-227.

101 Submission of the Canadian Pacific Railway Company to the Royal Commission on Transportation, Montreal, September 15, 1960, pp. 43-45.

102 Turgeon Commission Report, Op. cit., p. 223.

103 MacPherson Commission Report, Op. cit., Volume II, p. 150.

104 Report of the Royal Commission on Dominion-Provincial Relations, Ottawa, 1940, Book II, p. 200.

105 Ibid., p. 200.

106 Ibid., p. 219.

107 Turgeon Commission Report, Op. cit., p. 13.

108 Ibid., p. 13.

109 Ibid., pp. 9-10.

110 Traffic is grouped into various classifications and rates are set for each class. Under the present system of Class Rates, there are ten groups or classes of commodities ranging from first class to tenth class, with multiples of some of the classes. Class Rates are the highest type of freight rate and are the foundation rates of the whole freight rates structure.

Commodity Rates are particular rates set for specified commodities. These rates are special rates accorded to particular commodities in order that it will be economical for them to move to market. Examples are pulpwood, iron ore, sheet copper, paper and pulp board.

111 MacPherson Commission Report, Op. cit., Volume II, p. 54.

112 Ibid., pp. 53, 58-59.

113 Turgeon Commission Report, Op. cit., p. 280.

114 Those employees who do not operate the trains.

115 Mainly labour disputes with operating employees.

116 Judgment and Order, Board of Transport Commissioners for Canada, Volume XLVIII, Ottawa, November 17, 1958.

117 Considerable discussion took place in the House of Commons on the subject of a Royal Commission prior to the appointment of the Commission on May 13, 1959.

118 Hansard, Second Session, 24th Parliament, March 24, 1959, p. 2208.

119 7-8 Elizabeth II., Chapter 27.

120 Order No. 101055, Board of Transport Commissioners for Canada, Ottawa, April 27, 1960.

121 P.C. Order in Council 1959-577, Op. cit., May 13, 1959. The Honourable Charles P. McTague was appointed Chairman. He resigned because of ill health and Mr. M.A. MacPherson, Sr., Q.C., was appointed Chairman. P.C. Order in Council 1959-1628, December 22, 1959.

122 MacPherson Commission Report, Op. cit., Volume I, pp. 26-28.

123 Ibid., p. 10.

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145 Currie, A.W., Canadian Transportation, Op. cit., p. 161.

146 Ibid., p. 161.

147 MacPherson Commission Report, Op. cit., Volume II, p. 44.

148 Ibid., pp. 45-47.

149 Ibid., p. 45.

150 See Scott, William G., What Differentials in Rates?, Essays on Traditional Differentials in Railway Rate-Making, Simmons-Boardman Publishing Corp., 30 Church Street, New York, 1956, p. 5.

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154 Ibid., p. 56.

155 Ibid., p. 57.

156 Ibid., p. 93.

157 Ibid., p. 57.

158 To determine significant monopoly see Ibid., pp. 87-88 and 119-121.

159 Ibid., p. 102.

160 MacPherson Commission Report, Op. cit., Volume I, pp. 71-73.

161 Hansard, Second Session, 26th Parliament, September 14, 1964, p. 8002 - Bill C-120.

162 Appropriation Act No. 4, 1961, Chapter 40.

163 From 1923 to 1963 the Canadian National Railways suffered a net deficit of $922 million. It must be remembered it contracted a huge debt from the major railways it absorbed.

164 3 Edward VII., Chapter 58 - Revised Statutes c170, S.1, Chapter 234.

165 31 Victoria, Chapter 68.
See Currie, A.W., Canadian Transportation, Op. cit., p. 690.

166 Currie, A.W., Canadian Transportation, Op. cit., pp. 44 and 424.

167 Ibid., p. 421.

168 Ibid., p. 421.

169 Ibid., pp. 422-423.

170 The Railway Act, Op. cit.

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CHAPTER II

LABOUR LEGISLATION AS APPLYING TO THE CANADIAN RAILWAYS

INTRODUCTION

The following review indicates the labour legislation to which the railways have been subject in the area of dispute settlement.[1]

LABOUR LEGISLATION 1900-1906

The Conciliation Act - 1900

The first major step taken by the Dominion Government to provide legislation for dispute settlement was in 1900, when the Conciliation Act was passed.[2]

Eleven years prior to the passing of the Act, a Royal Commission on Labour and Capital recommended the establishment of a Bureau of Labour to collect and publish labour information.[3]

In 1899, a Dominion inquiry into metal mining in British Columbia recommended that the Federal Government provide mediation services in labour disputes and, in addition, that it establish a Department of Labour.[4] There was at the time a large influx of immigrant workers, considerable labour unrest, a number of strikes[5] and low wages were being paid on Government contracts.[6]

The outcome of the many labour problems was the Conciliation Act - an Act patterned largely after British legislation. Some provisions of the Act were used extensively while others were not.[7]

The Act provided for a Federal Department of Labour which was established for the purpose of collecting and publishing labour statistics.[8] Also under the Act, the Minister of Labour was empowered to inquire into the cause of any industrial dispute, to arrange a meeting between the parties, and to appoint a conciliator or board of conciliation at the request of the employer or the employees. This procedure was used extensively.[9] The Minister was empowered to appoint an arbitrator, but only on the application of both parties. This section was never used.[10] In very difficult situations, the Minister was authorized, upon the request of a conciliator or board of conciliation, to recommend to the Government the appointment of a commission under the Inquiries Act to conduct an investigation under oath. This approach was later incorporated into subsequent Canadian labour legislation and has been used to a considerable extent, especially in periods when conflict was greater than usual.[11]

The Conciliation Act was generally considered as permissive legislation with no element of coercion,[12] but there was a strong element of persuasion in that if a conciliation board was instituted at the Minister's initiative or one party, the other party would be open to criticism by the public should it refuse such conciliation.[13]

The Railway Labour Disputes Act - 1903

In 1901, there was a strike of railway trackmen on the Canadian Pacific Railway, which was a major factor in Parliament passing the Railway Labour Disputes Act in 1903.[14] The Bill as originally drafted contemplated compulsory arbi-

tration which appears to have been influenced by previous Nova Scotia and New Zealand laws. While Labour had been interested in compulsory arbitration, by the time of the introduction of the Bill the interest had waned and compulsory investigation was desired by most of the unions.[15]

The Bill, as passed, enabled the Minister of Labour, at the request of a municipality, or at the request of either party, or upon his own initiative, to appoint a tripartisan committee of conciliation and investigation in respect of a dispute involving railway workers. If a party to a dispute refused to appoint a nominee, the Minister had the power to do so on the party's behalf.[16] If the committee of conciliation failed to bring about a settlement, the Minister could appoint a board of arbitration. The board's report would not be binding but it was considered the publicity given to the recommendation was likely to effect a settlement.[17]

The committees of conciliation employed an "accommodative" approach, i.e., they conciliated and were exposed to the powers of the parties' interests, while the boards of arbitration used a "normative" approach as they could summon witnesses for testimony under oath and they could require the production of documents and records for perusal.[18]

The Railway Labour Disputes Act added an element of compulsion to the small amount included in the Conciliation Act. The Conciliation Act required the parties to meet for conciliation purposes, but the addition of the Railway Labour Disputes Act was the imposition of a board of arbitration with its powers of investigation, followed by a report for

public consumption. This became a basic feature of Canadian dispute settlement machinery.[19]

The Conciliation and Labour Act - 1906

In 1906, the Conciliation Act of 1900 and the Railway Labour Disputes Act of 1903 were combined into the Conciliation and Labour Act.[20] There were no major changes in the merger of the Acts[21] and the 1906 Act is still on the Statute Books.

At this point in time, there was provision for voluntary intervention in any industry and compulsory conciliation and investigation on the railways.[22]

The Ontario Railway and Municipal Board Act - 1906

In 1906, the Province of Ontario passed an Act which enabled the Municipal Board to investigate and determine, upon request, matters in dispute between any steam or electric railway company, under provincial jurisdiction, and its employees. Agreement by the parties to accept the award of the Board was necessary and the employees were required to continue to work during the investigation. In addition, when a strike threatened or occurred, the Board could act as mediator. If such action failed the Board could investigate the dispute and make the findings public.[23]

The above Act was supported by the Ontario Railway Act, which allowed the Board to take over a railway if services were suspended.[24] This legislation was designed for emergencies and it provided for voluntary arbitration, compulsory conciliation, seizure and operation of struck facilities by the Provincial Government.[25]

THE INDUSTRIAL DISPUTES INVESTIGATION ACT - 1907

Reason for Act

An important piece of labour legislation was the Industrial Disputes Investigation Act of 1907.[26] This Act resulted primarily from a strike of coal miners at Lethbridge, Alta., in 1906, which caused a serious fuel shortage.[27] In addition, 1906 was marked by several other serious industrial disputes.[28]

Principles and Provisions

The basic principles of the Act were:

1. Compulsory investigation by a Government board.
2. Reliance on public opinion to bring parties to a settlement.
3. Prohibition of work stoppage pending investigation of a dispute.[29]

The new Act adopted certain features of the Conciliation and Labour Act, included the provision for delaying work stoppage or lockout while a dispute was being investigated, enlarged the scope of industries to which compulsory investigation applied and it provided for voluntary application of the Act in any industrial dispute where such services were requested.[30]

Compulsory investigation under the Act applied to any person or company employing ten or more persons in mining, transportation, communications or public utility service, including all types of railways, steamships, telegraph and telephone lines, gas, electric light, water and power works. Coupling this coverage with the voluntary provision to investi-

gate any dispute where the parties agreed to such action, resulted in a comprehensive coverage of industrial disputes.[31]

Voluntarism had been replaced by compulsion in a large area. Professor Woods, of McGill University, stated:

> "With the passage of the Railway Labour Act reliance on the parties voluntarily to establish or use outside agencies was replaced by an element of compulsion. And...in the Industrial Disputes Investigation Act in 1907, the parties were given the alternative of settling or subjecting themselves to investigation. Prior to 1903, as long as one party was strongly opposed to third party intervention, no such intervention would take place. After 1903 this was no longer true of the railways; and after 1907 it was no longer true of a wide range of public utilities and coal mines. As long as one party preferred intervention there would be a board. Unilateral rejection of conciliation had been replaced by unilateral compulsion...."[32]

Amendments

In 1918 the Industrial Disputes Investigation Act was amended to provide for the Minister to appoint a board if it seemed in the public interest to do so, and, in 1920, after a general strike in Winnipeg, the power of the Minister was extended to the point that even if a strike or lockout had not occurred, a board could be appointed.[33] These amendments also made provision for a municipality to have a board appointed upon application.[34]

A further amendment, in 1918, gave protection to an employee's service relationship with his company during a strike or lockout and also, in 1920, the Act was amended to recognize multi-employer bargaining; thus, enlarging bargaining units.[35]

The constitutionality of the Industrial Disputes Investigation Act as applying to labour in provincial juris-

dictions was challenged in 1923 by the Toronto Electrical Commissioners. It was maintained that the Act did not apply to municipal employees. The Privy Council upheld the contention and it was necessary for the Dominion Government, in 1925, to amend the Act to apply only to employees in Federal Works and Undertakings.[36]

WARTIME LABOUR LEGISLATION 1939-1944

During the Second World War provincial experiments in labour legislation tended to give way to the enormously expanded role of the Dominion Government.[37]

Extension of Coverage of Industrial Disputes Investigation Act

Shortly after the outbreak of War, the Industrial Disputes Investigation Act was extended to cover disputes between employees and their employers engaged in war work - munitions, supplies and defence contracts. This step, which was taken under the War Measures Act of 1914, greatly extended coverage of the Industrial Disputes Investigation Act.[38]

P.C. Order in Council 2685

In July 1940, by P.C. Order in Council 2685, the Dominion Government set forth a number of principles for guidance in the labour field. The major provisions were:

1. War production should be speeded by every means possible.
2. Fair and reasonable wages and working conditions should be maintained.
3. Temporary wage adjustments should be in the form of bonuses.
4. No strikes or lockouts should be engaged in but rather conciliation should be sought.

5. Employees should be free to organize.

6. Collective bargaining was encouraged.[39]

Order 2685 contained no coercive element but rather was based on moral suasion.[40]

P.C. Order in Council 7440

In December 1940, P.C. Order in Council 7440[41] was issued, imposing wage ceilings in war industries, with the use of cost-of-living bonuses where wages were depressed. This Order represented the extension into the labour market of price control, which had been imposed in other areas in 1939.[42] Order 7440 meant coercion by stabilization of wages rather than coercion of compulsory recognition of unions and compulsory collective bargaining, which provision had not, by that time, been written into Dominion labour law.[43]

Dominion Policy at 1940

At December 1940, the labour policy of the Dominion Government could be summed up as a recognition of freedom of association and the desirability of collective bargaining, collective agreements, setting out wages and working conditions and a means of settling disputes arising during the term of the agreement.[44] Industrial peace was to be achieved by voluntary recognition of unions, by negotiation, by conciliation officers and by conciliation boards. Wage control, which guaranteed economic stability, and the Industrial Disputes Investigation Act, were the "chief instruments of industrial relations policy."[45]

Inadequacy of the Industrial Disputes Investigation Act

As the Second World War continued, the Industrial

Disputes Investigation Act became inadequate to cope with the varied disputes with which it had to deal. The Labour Gazette states the Act "...was too deliberate to cope with the number of disputes....many disputes of a minor nature."[46] The Act had only one approach for settlement of disputes in the four areas of, "the right to associate", "recognition of the bargaining unit", "negotiation" and "the application and interpretation of agreements." The one approach was the use of a conciliation board.[47]

Industrial Disputes Inquiry Commission

In June 1941, in order to eliminate as much as possible the more expensive boards of conciliation in disputes arising from charges of discrimination or coercion regarding union membership, the Government established a three-man Industrial Disputes Inquiry Commission to make preliminary inquiry into such disputes.[48]

Strike Vote

In addition to the requirement of compulsory conciliation before commencing a strike, the provision was added, in September 1941, that subsequent to receipt of a conciliation board's report and after the employees had notified the Minister of Labour that a strike was contemplated, a Government supervised strike vote was required. There had to be a majority of the ballots in favour of the strike before a work stoppage could take place.[49]

P.C. Order in Council 8253

In October 1941, P.C. Order in Council 8253 replaced

P.C. Order in Council 7440 which concerned wage control and the cost-of-living bonuses.[50] Order 8253 created a permanent National War Labour Board, as well as regional boards, in place of previous ad hoc three-man boards. Coverage by the Order was extended to every employer normally subject to the Industrial Disputes Investigation Act, every employer manufacturing war supplies or in war construction, and every building trades employer with two or more employees. Order 8253 also provided for the stabilization of wages as of November 15, 1941, uniform cost-of-living determination bonus dates and bonus provisions, which were made compulsory with provision of penalties for non-compliance.[51]

P.C. Order in Council 9384

P.C. Order in Council 9384, issued on December 9, 1943, abolished the cost-of-living bonus arrangement. Effective January 1, 1944, cost-of-living bonuses were included in the employees' wages.[52]

P.C. Order in Council 1003

Wartime Labour Relations Regulations, embodied in P.C. Order in Council 1003, were issued in February 1944.[53] This Order in Council was extremely important. It suspended the Industrial Disputes Investigation Act and it formed the basis for the post-war approach to union recognition and dispute settlement in both the Dominion and Provincial jurisdictions.[54]

For the first time Federal industrial relations policy brought together the American approach to labour rela-

tions and the Canadian principles. The two approaches were merged in one document with the issuance of Order 1003. The principles of the American approach contained in the Wagner Act of 1935, concerned compulsory recognition of unions and bargaining rights. The Canadian principles concerned compulsory dispute investigation and delay in the strike or lockout.[55]

P.C. Order in Council 1003 included the following principles:

1. The right of employees to form and join unions.
2. Protection against unfair labour practices which, if allowed to continue, would result in discouraging the exercise of those rights.
3. A system of defining and certifying bargaining units.
4. Compulsory collective bargaining.
5. Compulsory postponement of strikes and lockouts coupled with compulsory two-stage conciliation.
6. The right to resort to strikes and lockouts after compulsory conciliation procedures were completed.
7. Compulsory negotiation, and arbitration if necessary, of rights disputes or those arising during the life of agreements.[56]

Previous to Order 1003, strikes and lockouts were lawful in "jurisdictional disputes", "recognition of unions by employers", "negotiation of new agreements and re-negotiation of former agreements", and "the interpretation and application of agreements in force." Order 1003 made strikes or lockouts

unlawful in all but the contract negotiation situations.[57] Introduction of compulsory arbitration of rights disputes did not have any effect on the railway situation because, as far back as 1918, the railways and certain of their employees had provided for arbitration of rights disputes in their collective agreements. An outline of these procedures is included in Chapter III.

THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT - 1948

With the cessation of the Second World War, the Dominion Government was faced with a reduction in the area over which it had jurisdiction in labour matters. The Provinces were in a position to assume jurisdiction over such matters, with the exception of Federal Works and Undertakings. However, the Provincial Labour Ministers, after the Federal Labour Minister discussed the situation with them, at a Conference in Ottawa, in October 1946, called upon the Dominion to draft legislation for Provincial consideration and guidance, which action was taken.[58] The draft legislation caused "spirited debate" among interested parties but, insofar as the Federal jurisdiction was concerned, it became law in 1948, under the title of the Industrial Relations and Disputes Investigation Act.[59]

Basically the new law contained the provisions of the Wartime Labour Relations Regulations. Professor Woods states:

> "....Essentially, the Dominion government re-acted the war-time labour-relations policy as it existed after 1944..."[60]

Five of the more important changes were:

1. Certification of unions directly rather than certification of bargaining representatives, as was the case formerly.
2. Provision for revocation of a certification if, in the opinion of the Canada Labour Relations Board, a union did not have a majority of employees; only the bargaining representatives could be changed previously, (this Board was provided for in the Industrial Relations and Disputes Investigation Act, Section 58).
3. Introduction of the prohibition of a strike vote until seven days after conciliation proceedings were completed.
4. An employer dominated or influenced agreement did not come within the Act.
5. Provision was made for an employee to present any grievance personally to his employer.[61]

The Federal Industrial Relations and Disputes Investigation Act of 1948 is still in effect and presently applies to the Canadian railways.

AD HOC LEGISLATION IN THE POST-WAR PERIOD

In addition to the foregoing continuing legislation, in the post-war period the railways have been subject to two important Acts which were ad hoc legislation. While more detail will be given on this subject in Chapter III, the Acts were:

1. The Maintenance of Railway Operation Act,[62] passed in 1950 to end a nine-day non-operating railway employees' strike. The Act provided for compulsory arbitration in the dispute.
2. The Railway Operation Continuation Act,[63] which was passed in 1960 to prevent the non-operating railway employees from taking strike action for a period of approximately five months.

SUMMARY AND CONCLUSIONS

In summary, the railways by the year 1900 had available voluntary conciliation machinery which could be set in motion by either party to a dispute. If it were a request of one party, public opinion would make it difficult for the other party to reject conciliation. Coercion did not exist, however, until 1903, at which time compulsory investigation was introduced for the railways alone. At that time public opinion was relied upon to help in settlement of disputes.

With the passing of the Industrial Disputes Investigation Act in 1907, the delay of a work stoppage or lockout was added to the former provision of compulsory conciliation and investigation.

The railways, of course, were subject to the wage stabilization policies of the Federal Government during the Second World War. Union recognition and compulsory collective bargaining provided for in Canadian legislation during the War did not affect the railways as collective bargaining had had a long history on the railways.

Compulsory conciliation and investigation were embodied in the 1948 Industrial Relations and Disputes Investigation Act, continuing a pattern familiar to the railways.

In view of the non-continuing Acts of 1950 and 1960, each of which was ad hoc legislation and dealt with a particular situation, it would appear that Governmental thinking favours an "ad hoc" approach to situations requiring inter-

vention in addition to that comprehended by the Industrial Relations and Disputes Investigation Act of 1948. What the Conservative Government originally planned is not known but when it took office in 1957, its intention to consider changes in the Industrial Relations and Disputes Investigation Act was announced. However, no alteration was made in the Act.

FOOTNOTES FOR CHAPTER II

1 There are a number of good works covering Canadian legislation, including Government Intervention in Labour Disputes in Canada, Department of Labour (Margaret Mackintosh), Bulletin No. 11, Industrial Relations Series, Ottawa, 1931; State Intervention and Assistance in Collective Bargaining, H.A. Logan; Labour Policy and Labour Economics in Canada, H.D. Woods and Sylvia Ostry, MacMillan of Canada, Toronto, 1962.

2 63-64 Victoria, Chapter 24, 1900.

3 The Labour Gazette, May 1947, p. 639.

4 Ibid., p. 639.

5 Ibid., p. 639.

6 Ibid., p. 639.
The Dominion Government passed a Fair Wages Resolution to ensure fair wages in Government contracts.

7 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 45.

8 Ibid., p. 45.

9 Ibid., p. 45.

10 Ibid., p. 45.

11 Ibid., p. 45.

12 Ibid., p. 45 and
The Labour Gazette, May 1947, p. 639.

13 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 45.

14 3 Edward VII., Chapter 55, 1903.

15 The Labour Gazette, August 1903, p. 137.

16 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 48.

17 Ibid., p. 48.

18 Ibid., p. 49.

19 Ibid., p. 49.

20 Revised Statutes of Canada, 1906, Chapter 96.

21 Can be found in Revised Statutes of Canada, 1929, Volume III, Chapter 110.

22 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 49.

23 Ibid., p. 47.

24 Ibid., p. 47.

25 Ibid., p. 47.

26 6-7 Edward VII., Chapter 20, 1907.

27 The Labour Gazette, September 1950, p. 1496.

28 Ibid., p. 1496.

29 Ibid., p. 1500.

30 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 50.

31 Ibid., p. 51.

32 Ibid., p. 52.

33 The Labour Gazette, September 1950, p. 1500.

34 The Labour Gazette, May 1947, p. 640.

35 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 55.

36 The Labour Gazette, September 1950, p. 1500.

37 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 62.

38 Ibid., p. 62.

39 P.C. Order in Council 2685, 1940.

40 The Labour Gazette, September 1950, p. 1502.

41 P.C. Order in Council 7440, 1940.

42 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 63.

43 Ibid., p. 63.

44 Ibid., p. 63.

45 Ibid., p. 63.

46 The Labour Gazette, September 1950, p. 1503.

47 Woods, H.D. and Ostry, Sylvia, Op. cit., pp. 65-66.

48 Ibid., p. 68.

49 Ibid., p. 69.

50 P.C. Order in Council 8253, 1941.

51 Ibid.

52 P.C. Order in Council 9384, 1943.

53 P.C. Order in Council 1003, 1944.

54 Woods, H.D. and Ostry, Sylvia, Op. cit., p. 80.

55 Ibid., see pages 70 to 81 for a more detailed review of the American and Canadian approaches to labour relations.

56 Ibid., p. 81.

57 Ibid., p. 81.
According to Professor Woods, while strikes were made unlawful, it did not eliminate completely such strikes.

58 Ibid., pp. 82-83.

59 Ibid., p. 83.

60 Ibid., p. 85.

61 Ibid., pp. 83-85.

62 14 George VI., Chapter 1, 1950.

63 9 Elizabeth II., Chapter 2, 1960.

CHAPTER III

LABOUR-MANAGEMENT RELATIONS IN THE CANADIAN RAILWAYS

INTRODUCTION

This chapter, which is mainly descriptive, examines day-to-day labour-management relations in the Canadian railways and reviews the more important national labour disputes in the industry. Chapter IV presents an analysis of the more important features of these disputes.

DAY-TO-DAY LABOUR-MANAGEMENT RELATIONS

General Observations

Day-to-day labour-management relations on the Canadian railways are very good. From first-hand observation there exists a mutual feeling of respect and confidence between management and union representatives. The excerpt below, taken from a letter of sympathy written by a railway officer, conveys some idea of the good relations which exist:

> "....We have known him for many years and held him in high regard because of his sincerity, his warm friendly personality and his great integrity. This esteem was not only for Stan as a Union Officer but as a personal friend as well...."[1]

These same remarks could be duplicated for many of the railway union officers.

The employees' attitude is probably summed up very well in the excerpt below:

> "We do not think that these railways are bad employers, in the sense that we have got along with them; they have tried, we think, as the years have gone by to do right by their employees. But here we have a new situation..."[2]

Employment security in past years has been a feature

of railway employment. This is substantiated, to some extent, by the evidence presented in Chapter I, in respect of length of service of employees in the railways. However, in more recent years, considerable reductions have taken place in the railway work force due to extensive technological change and traffic fluctuation. Railway employment on Canadian National and Canadian Pacific combined, decreased almost twenty-five per cent from 1956 to 1961.[3] This naturally has caused uneasiness in the ranks, but generally speaking relations are good.

Grievance Machinery

Further evidence of the good relations existing from day-to-day on the railways is the manner in which grievances or rights disputes have been handled over the years. While under the present Industrial Relations and Disputes Investigation Act of 1948, provision must be made in collective agreements for arbitration of unsettled rights disputes arising during the term of a collective agreement, for many years prior to this stipulation settlement of grievances worked extremely well on the railways.

There have been various types of grievance machinery in railway collective agreements. Reference will be made to each type but primarily to the Canadian Railway Board of Adjustment No. 1, which functioned for forty-five years. It was discontinued in 1964. While the Board was successful for many years, the Railway Association of Canada gave termination notice to the unions concerned on February 29, 1964, because

the Association felt the Board had become "a cumbersome device."[4] Nevertheless, the many years of successful operation of the Board is significant.

Canadian Railway Board of Adjustment No. 1

a) Composition and History

Board of Adjustment No. 1 was composed of twelve members - six each from the railways and unions involved.[5] The Chairman was chosen alternatively from each side. By agreement between the parties concerned, the Board was established August 7, 1918.[6]

In July 1918, the McAdoo Wage Award, referred to later, had been granted to Canadian railway employees. Also, just prior to that time there had been a strike threat by the Shop Trades.[7] At the same time, the War was critical for the Western Allies. The Government wanted to ensure that there would be no cessation of railway service and, in July 1918, requested the railways and unions to meet Senator G.D. Robertson, Acting Minister of Labour, to decide on a method of applying the wage award, and to arrive at an agreement whereby all differences arising between the railways and the unions might be disposed of in a satisfactory manner.[8] The outcome of the meeting was the Canadian Railway Board of Adjustment No. 1, established to render decisions in all matters of controversy arising from the administration of the collective agreements and the application of the wage award.

b) Procedure

If a grievance was not settled after being processed

through the various union and management levels, up to the Chief Operating Officer of the railway and the General Chairman of the union, the matter could be submitted to the Board of Adjustment for decision. To reach a decision in any case, only a simple majority was required. In the case of a deadlock, the dispute was submitted to a referee.

c) Results Achieved

The Board was originally established for the period of hostilities and the post-war adjustment period. In 1921, when Canada had returned to more normal conditions, the parties decided to continue the Board as its operations had been so successful.[9]

The Board operated from 1918 to 1961 without invoking the services of a referee. From its inception to March 31, 1960, the Board rendered 720 decisions and referred a number of disputes back to the parties for further consideration.[10] In 1961, Professor Bora Laskin, the first referee appointed, stated in his Award:

> "It is noteworthy that the present case is the first in which the Board has found it necessary to resort to a Referee to break a deadlock. The Board was established on August 7, 1918...."[11]

Subsequent to 1961, there were some instances in which referees were appointed to consider particularly difficult disputes but the almost complete abstinence from the resort to referees for over forty years indicates a fine working relationship. The writer feels, from observation, good relations still exist but the grievance machinery had not continued to meet the need.

In May 1964, the Labour Gazette included a report

concerning the discontinuance of Board of Adjustment No. 1. The report stated that the agreements between the Brotherhood of Locomotive Firemen and Enginemen and the Canadian National and Canadian Pacific have replaced the dispute machinery by a one-man arbitration procedure.[12] It is understood the other unions and railways are presently devising a new procedure for handling grievances, a necessity under the Industrial Relations and Disputes Investigation Act.

d) Wage Sub-Committees

To handle grievances for Shop and Maintenance of Way employees, two committees were formed which were referred to as Wage Sub-Committees. These committees were established as Sub-Committees of the Railway Board of Adjustment No. 1. The procedures were similar to those of the Board of Adjustment itself.

Canadian Railway Board of Adjustment No. 2

For a number of years grievances between the Canadian Brotherhood of Railway, Transport and General Workers[13] and Canadian National Railways were handled by the Canadian Railway Board of Adjustment No. 2. The C.B. of R.T. & G.W. represents clerks, freight handlers and a large number of similar occupations on the Canadian National. Unlike Board No. 1, decisions of Board No. 2 were binding on the parties. From information received by the writer, Board of Adjustment No. 2 was not entirely satisfactory and a new procedure was devised, which apparently meets the need of the parties.

The new system provides for the processing of a grievance through four union-management levels, up to the General Chairman and the Regional General Manager. If the dispute is not settled, the Department of Personnel, Canadian National Railways, and the Secretary of the Joint Protective Board of the Union, examine the matter. If agreement is still not reached then either party may submit the matter to an arbitrator for final and binding decision.

Joint Committees of Appeal

Another type of grievance procedure existing is the Joint Committee of Appeal. This type appears in a number of collective agreements. One of the major groups using this machinery is the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, a union which represents a similar type of employee on the Canadian Pacific as does the C.B. of R.T. & G.W. on the Canadian National.

The Joint Committee of Appeal provided for in the collective agreement between the Clerks' Brotherhood and Canadian Pacific, was established on December 19, 1935. The Committee consists of six members - three from either side, all of whom must be employees of the Company.[14] The Office of the Chairman is filled alternatively from each side.[15] The Committee must meet within a specified period of time and must continue in session until all matters placed before it are considered. A simple majority constitutes a decision. If a deadlock is reached provision is made for the members to agree

on a neutral person to sit with the Committee as a member thereof. With the additional member, the Committee is then able to make a decision.[16]

Other joint committees provide for an arbitrator rather than a neutral person joining the committee temporarily, e.g., the Commercial Telegraphers' Agreement with Canadian Pacific.

Conclusion

The whole approach to the settlement of grievances on the railways and the relationship between labour and management over a long period of time has exhibited a fine spirit of cooperation. Outside intervention has been at a very minimum in rights disputes although third party assistance has been more prevelant in recent years which might be indicative of changing attitudes. The collective bargaining situation has evidenced different characteristics as the following review will show, even though a cordial and courteous atmosphere has generally pervaded throughout such proceedings.

COLLECTIVE BARGAINING

Introduction

In this section on collective bargaining in the railway industry some general comments are made regarding employee groups, and the pattern of dispute settlement in the period before World War II is outlined briefly. This is followed by a more detailed review of the major pattern-setting disputes since the beginning of the War. Analysis appears in

the following chapter. Two important features of railway labour disputes are the question of an acceptable standard of comparison for measuring wages and working conditions, and the subject of the railways' ability to pay. These matters are dealt with in Chapters V and VI, respectively.

Employee Groups and Numbers of Employees

The major railway unions and some typical occupational classes[17] are shown in the table below. The two groups, operating and non-operating, are shown separately. Operating employees are those who operate the trains; non-operating employees are concerned with the attendant services.

Table IV

The Major Unions[18] Representing Railway Employees in Canada and Typical Occupations Represented

Unions		Occupations
Operating Group		
Brotherhood of Locomotive Engineers	-	Locomotive Engineers
Brotherhood of Locomotive Firemen and Enginemen	-	Locomotive Firemen and Helpers
Order of Railway Conductors	-	Train and Sleeping Car Conductors
Brotherhood of Railroad Trainmen	-	Train Conductors, Trainmen and Yard Forces
Non-operating Group		
Order of Railroad Telegraphers	-	Station Agents and Telegraph Operators
Commercial Telegraphers' Union of America	-	Commercial Telegraph Operators
Brotherhood of Maintenance of Way Employees	-	Track and Building Forces
International Association of Machinists	-	Shop Machinists, et al.
Brotherhood of Railway Carmen	-	Railway Carmen
International Brotherhood of Boilermakers, Blacksmiths, et al.[19]	-	Boilermakers, Blacksmiths

Sheet Metal Workers' International Association	-	Sheet Metal Workers
International Brotherhood of Electrical Workers	-	Electrical Workers
United Association of Plumbers and Steamfitters	-	Steamfitters, Plumbers
International Moulders' Union of North America	-	Moulders
International Brotherhood of Firemen and Oilers, et al.	-	Stationary Firemen and Oilers
Brotherhood of Railroad Signalmen of America	-	Signal Maintainers
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees	-	Clerks, Freight Handlers, Red Caps, Baggage Room Employees - mainly Canadian Pacific
Canadian Brotherhood of Railway, Transport and General Workers	-	Clerks, Freight Handlers - mainly Canadian National
Brotherhood of Sleeping Car Porters	-	Sleeping Car Porters

Source - Canadian Pacific Railway Company.

In 1961, the distribution of employees of Canadian National and Canadian Pacific, their subsidiaries and joint companies was as follows:[20]

Table V

Numbers of Employees of Canadian National Railways and Canadian Pacific Railway Company, Their Subsidiaries and Jointly Owned Companies and Distribution by Classification, Year 1961

Classification		Number	Per Cent of Total Group
Organized Operating Employees - Engineers, Firemen, Conductors, Trainmen and Yard Forces		24,476	16.4
Organized Non-operating Employees -			
Shop Employees	24,050		
Track and Building Employees	25,031		
Clerks, Freight Handlers, Labourers, et al.	24,299		
Express and Cartage Employees	10,511		
Station Agents and Telegraphers	6,911		
Commercial Telegraphers	6,435		
Sleeping and Dining Car Employees	1,701		
Signal Employees	1,350	100,288	67.1

Unorganized Employees - mainly Clerical and Building Maintenance Employees.	12,497	8.4
All Others - including Officers and Supervisors and miscellaneous categories.	12,203	8.1
Grand Total	149,464	100.0

Dispute Settlement Patterns

During the 1940's, the operating and non-operating employees bargained jointly.[21] Late in 1949, the operating unions broke from the non-operating group and commenced to bargain on an individual basis. This cleavage resulted because the demands of the groups were different in respect of working rules.

The non-operating group continued to bargain as a unit and a pattern for settlement of railway labour disputes emerged. After settlement had been reached with the large non-operating group, settlements were reached in the individual operating disputes. The railways before the Board of Conciliation in 1960, when commenting on the differences of conditions of employment and basis of pay between the operating and non-operating groups said:

> "....Notwithstanding these differences, however, it has been customary to negotiate settlements closely paralleling the settlements made with the pattern setting non-operating group."[22]

Subsequent to 1960, the railways in operating disputes attempted to divorce the one from the other because they did not feel there was justification for application of non-operating settlements to the operating employees. They took the position that the operating wage claims should be considered on

their own merits. The unions desired the same percentage increase as the non-operating group and the Brotherhood of Railroad Trainmen, for example, were successful in 1962 on both Canadian National and Canadian Pacific in obtaining an eight per cent wage increase, which was the amount accorded to non-operating employees in 1961. Reference is made to operating disputes later.

Review of Labour Disputes up to 1939

Period Prior to 1918

Wages and working conditions on each Canadian railway prior to 1918 were the same as those on United States railways in adjacent territory. The railways have suggested that this situation developed because of the free movement of people back and forth over the Canadian-American border and the necessity for the Canadian railways to attract and maintain competent personnel for their expanding trackage and handling of the seasonal grain crop.[23]

The McAdoo Award - 1918

The Canadian cost-of-living increased considerably during 1917-1918 and different classes of railway employees pressed strongly for wage increases. In the summer of 1918, as mentioned previously, the Shop Trades employees threatened to strike making the situation critical in wartime.[24] In the United States, the Government had taken control of the railways on January 1, 1918. They were administered by the United States Railroad Administration and the Director General of the Railroads was William Gibbs McAdoo. As in Canada, the United

States cost-of-living had increased considerably and wage increases had been requested by United States railway employees. The recommendations of a Commission[25] set up to study wages, were put into effect by the Director General of the railroads on April 30, 1918, under General Order No. 27. This award became known as the "McAdoo Award."[26]

In July 1918, the Canadian railways were faced with the Shop Trades strike. Spokesmen for the major railways[27] approached Sir Henry Drayton, Chairman of the Board of Railway Commissioners, advising him that the railways would be willing to apply the McAdoo Award to Canadian railway employees if such action were approved by the Government.

Sir Henry Drayton wrote to the Acting Prime Minister, the Honourable J.C. Doherty, K.C., L.L.D., on July 15, 1918, explaining the railways' position. He stated the Canadian railways had proposed applying the McAdoo Award to their employees as wages and working conditions on United States railways had been applied on Canadian railways in prior years. Sir Henry also said:

> "The Companies, however, say that it is impossible for them to do this without Government action and concurrence. The money must be provided from somewhere, either by the Government or by increased rate earnings. The railways represent that the present earnings are entirely inadequate."[28]

The Government issued Order in Council 1768, on July 16, 1918, approving the application of the McAdoo Award to all Canadian railway employees. In addition, a number of supplementary orders were issued with respect to wage increases for individual classes of employees.[29] Order 1768 also stated that

upon acceptance of the award by the Canadian railways, freight rates could be increased to the same extent as the increase being allowed in the United States as of August 1, 1918.[30]

The Chicago Award - 1920

Demands for wage increases from railway employees in both Canada and United States were advanced in the immediate post-war period because of the considerable rise in cost-of-living in both countries.[31] Federal control of United States railways terminated on March 1, 1920. The newly established United States Railroad Labour Board considered the employees' requests. On July 20, 1920, the Board, by Decision No. 2, granted wage increases to railway employees in the United States. This award was generally referred to as the "Chicago Award." Canadian railways applied the same increases to their employees[32] and freight rates in both Canada and the United States were increased.[33]

Recession of 1921-1922

A severe business recession occurred, both in Canada and the United States, shortly after the Chicago Award. Railway revenues were drastically reduced and, as a result, wage reductions were applied to railway employees in both countries.[34] In Canada, freight rates were reduced five per cent on January 1, 1921 and ten per cent on December 1, 1921. In the United States freight rates remained unchanged.[35] Unsatisfactory business conditions continued and in 1922, on various dates, the United States Railroad Labour Board ordered reductions for the majority of employees. The Canadian railways effected the

same reductions for their employees.[36] Freight rates in Canada were reduced seven and one-half per cent, effective August 1, 1922, while on July 1, United States freight rates had been reduced ten per cent.[37]

Period 1923-1929

Subsequent to 1922, the United States experienced a considerable industrial expansion; in Canada expansion came later and lasted a much shorter time. In this period greater restrictions were placed on the flow of people to and from the United States and as immigration from the United States to Canada supplied the necessary seasonal labour required, the Canadian and American economies became somewhat more insulated from one another, with a divergent trend in wages. In 1926, Mr. Justice Kelly, Chairman of a Conciliation Board considering a wage demand advanced by Canadian operating railway employees, said:

> "...it would appear that conditions in the United States are different from those in Canada...."[38]

United States operating employees received wage increases in 1924 and in the period 1926-1927. Only one adjustment was made for these employees in Canada - in 1926, except for trainmen for whom a further small adjustment was made in 1929. In total, from 1923 to 1929, the Canadian operating employees received less than their counterparts in the United States. Equipment maintenance employees in the United States received wage increases in 1923, 1926 and 1929. Similar Canadian railway employees had increases in 1927 and 1929, which on a net basis resulted in increases of one cent

an hour less than in the United States.[39]

Period 1930-1939

a) 1931-1932

The Canadian railways suffered considerable decreases in revenues in 1929 and 1930. In September 1931, the operating employees and telegraphers were asked to accept a temporary wage reduction. The dispute went before a Board of Conciliation under the Chairmanship of Mr. J.M. Macdonnell. The unions before the Board claimed parity with United States railway employees. The Board said in part:

> "...we feel that railway basic wage rates in Canada must be based on conditions in Canada and not in the United States...."[40]

Settlement of the case was a ten per cent wage reduction, effective December 1, 1931.[41] United States railway employees received a reduction of the same amount on February 1, 1932. In 1931, the United States railways were allowed to increase freight rates fifteen per cent while no increase was allowed in Canadian freight rates.[42]

b) 1933

In view of their serious financial position, in 1933 the Canadian railways served notice on the unions for a further reduction in wages. The dispute was heard by a Conciliation Board of which Mr. Justice G.F. Gibsone was Chairman. The unions again based their claims on parity with United States railway employees but the Board did not accept the claim of the unions.[43] The Board recommended a further ten per cent reduction, effective May 1, 1933, for train service employees,

telegraphers, levermen and sleeping and dining car employees but on November 1, 1933, a total reduction of fifteen per cent was made effective for all employees.[44]

c) 1935-1939

The Canadian railways were able to lessen the reduction to twelve per cent on January 1, 1935, and to ten per cent by May 1, 1935.[45] Late in 1935, the unions requested elimination of the ten per cent reduction still existing. The dispute was heard by a Board of Conciliation under the Chairmanship of Mr. Justice A.K. Maclean. The unions again based their claim on parity with United States railway employees, which basis was rejected by the Board because of the divergent economic situations between the Canadian and United States railways.[46] The Board recommended a partial restoration of the reductions in 1937 and further restorations as permitted by gross railway revenues. The unions threatened strike action and the settlement resulted in a number of successive restorations of one per cent, with the final one being three per cent. The reduction was completely eliminated by April 1, 1938.[47]

The United States Situation 1930-1939

Wage reductions in the United States did not exceed the ten per cent made effective February 1, 1932. By July 1, 1934, two and one-half per cent had been restored to United States railway employees, making the reduction seven and one-half per cent. By April 1, 1935, the reduction was eliminated. In 1936, demands for wage increases were made by United States railway employees. In the latter part of 1937 an increase of

five cents an hour was granted to non-operating employees and five and one-half cents an hour to operating employees.[48]

Freight rates in Canada had not been allowed to increase since 1922 while in the United States temporary increases were authorized in 1932-1933 and 1935-1937, the latter increases being made permanent in 1937. A further freight rate increase was allowed in the United States in 1938.[49]

Conclusion

In the years up to 1922, settlement of disputes on the Canadian railways hinged on action taken on United States railways. Subsequent to 1922, emphasis was placed more on recommendations of conciliation boards and Canadian economic conditions. While the period prior to World War II has significance in that it provides a background against which to view the present Canadian railway labour situation, the important period for the purpose of this study is from the commencement of the War up to the present, more especially in the post-war period, when the railways' economic situation changed from a monopolistic environment to one which is in part monopolistic and in part competitive. A review of the process of settlement of major pattern-setting disputes since 1941 follows.

Settlement Process of Railway Labour Disputes in Canada 1941-1962

1941 - Cost-of-Living Bonus

Wage controls had been imposed, as mentioned in Chapter II, on war industries by Order in Council 7440 in December 1940; however, a cost-of-living bonus was allowed

where wages were depressed. The International Railway Unions[50] advanced a claim to the railways[51] for a cost-of-living bonus because of the increase in living costs. The unions claimed that railway employees would be entitled to a bonus under Order 7440. The railways declined the bonus claim and the dispute was heard by a Conciliation Board composed of the Honourable Mr. Justice Patrick Kerwin, Ottawa, as Chairman, Mr. Isaac Pitblado, K.C., Winnipeg, as the Railways' Nominee and Mr. A.W. Roebuck, K.C., M.P., Toronto, as the Unions' Nominee.[52] The majority report of the Board, signed by the Chairman and Railways' Nominee, recommended a cost-of-living bonus of $1.93 a week, for all full-time employees before the Board whose earnings did not average $25.00 a week. It was also recommended that those employees with earnings between $25.00 and $26.93 a week should be increased to $26.93. No other employees were to receive a cost-of-living bonus. Proportionate bonuses were recommended for part-time workers, male employees under twenty-one years of age and female employees. The minority report recommended that all Canadian railway workers, not only those before the Board, should be paid a cost-of-living bonus of $1.75 a week from January 1, 1941, and proportionate bonuses for part-time employees.[53]

In the first instance neither party accepted the recommendation. The unions desired a larger amount and the railways said they were unwilling to accept the report because the Honourable Norman A. McLarty, K.C., Minister of Labour, did not give approval to the report when it was issued but

this did not legally prevent them from accepting it. The Minister of Labour, had, however, in private discussions with the railways, expressed the opinion that he felt transportation industries would be permitted to pay a cost-of-living bonus. Unofficially, he even suggested an amount, which is not now available.[54] After further negotiation, however, the parties settled on the amount recommended by the Board, effective June 1, 1941.[55]

An escalator clause was provided in the agreement. If the cost-of-living decreased or increased by five per cent, the bonus would be adjusted accordingly provided three months had elapsed. To November 15, 1943, four upward adjustments were made bringing the bonus to $4.60 a week or $19.93 a month.[56] On December 9, 1943, the bonus was incorporated into the basic rates of pay as a result of Order in Council 9384. The stated purposes of the Order were:

1. To provide for the establishment of wage rates incorporating therein cost-of-living bonuses being paid at the time.
2. To stabilize the wage structure in Canada in order to maintain stability in prices and prevent general increases in cost-of-living.
3. To provide machinery for the orderly rectification of any gross inequalities and injustices in wage rates as far as possible, consistent with the paramount principle of maintenance of price stability.[57]

1944 - Wage Increase of Six Cents an Hour

The International Unions again joined forces in 1943

and presented a demand for a wage increase.[58] The claim was based on parity with United States railway employees for the operating group and twenty-three cents an hour for non-operating employees.[59] Settlement was not reached and the unions took the dispute to the National War Labour Board.[60] After hearing the dispute, the Board on July 31, 1944, directed that all railway employees receive an increase of six cents an hour or $12.44 a month, effective September 15, 1943.[61]

1946 - Wage Increase of Ten Cents an Hour

The unions had acted in concert during the War. Early in 1946, however, as a result of an increase in cost-of-living a number of the unions submitted individual requests for a wage increase. These requests varied from ten to fifty cents an hour, the majority being from twenty to twenty-five cents an hour. Some were submitted to the National War Labour Board, which returned the notices stating they should be handled with the railways concerned. Other groups submitted their notices to the railways and requested national handling of the matter for their groups. The railways on July 19, 1946, dispatched letters with the same wording to all unions concerned, suggesting complete national handling. Following is an excerpt from the letter:

> "Certain other notices affecting other groups of employees which had become the subject of an application to the National War Labour Board have, as you are aware, been referred back to the parties for further negotiation.
>
> The representatives of various other groups of railway employees have also served notices on the Railways of Canada and requested that the matter be dealt with on a

national basis for such groups.

> Under all the circumstances, it is the considered opinion of the Railways that to enable the matter to be developed in a logical manner the whole question should be dealt with on a national basis, but with all groups concerned at the same time."[62]

On August 1, 1946, the unions submitted to the Canadian National and Canadian Pacific, their subsidiaries and joint companies, a request for a wage increase of twenty cents an hour.[63] After negotiation meetings were held, Canadian National, including six subsidiaries, and Ontario Northland Railway, settled with the unions on an increase of ten cents an hour.[64] The Canadian Pacific, including its subsidiaries, and five other small companies which Canadian Pacific owned jointly with other railways, advised the unions they would not settle until they were assured of increased freight rates.[65]

The unions requested the National War Labour Board to direct Canadian Pacific, its subsidiaries and joint companies, to increase wages ten cents an hour. In October 1946, after hearings, the Board directed the Canadian Pacific and other railways involved to pay an increase of ten cents an hour effective June 1, 1946, as the Board felt that these railways were financially able to do so; thus a settlement was effected.[66]

1947 - Twelve Days' Vacation after Five Years of Service

During World War II, the majority of organized railway employees received six days' vacation. Following were the effective dates for each classification:

Shop Employees	-	Canadian National employees had received six days' vacation and the National War Labour Board directed the Canadian Pacific to give its shop employees six days' vacation also, effective January 1, 1943.[67]
Maintenance of Way Employees	-	Six days' vacation, effective January 1, 1944.[68]
Clerks, Freight Handlers, et al.	-	Six days' vacation, effective January 1, 1944.[69]
Signalmen	-	Six days' vacation, effective April 18, 1944.[70]
Locomotive Engineers, Locomotive Firemen, Conductors and Trainmen	-	Six days' vacation, effective January 1, 1945.[71]

Non-schedule office employees and telegraphers enjoyed two weeks' annual vacation previously. The operating and non-operating unions in February 1947, joined in requesting fourteen days' vacation.[72] Negotiations were held but settlement was not reached. Mr. J.S. McCullagh[73] was appointed Conciliation Officer but his efforts to achieve a settlement were fruitless. He recommended a Board of Conciliation which was appointed to hear the case.[74]

The Chairman of the Conciliation Board was Doctor Alexander Brady, University of Toronto, selected by the Minister of Labour in the absence of a joint recommendation from the Nominees. The Railways' Nominee was Mr. J.T. Chisholm, K.C., Montreal, and the Unions' Nominee was Mr. Maurice Wright, L.L.B., Ottawa.[75] After hearings, the unanimous report of the Board recommended twelve days' vacation after five years of service.[76]

The unions accepted the report, but the railways

stated to the Director of Industrial Relations, Ottawa, Mr. M.M. MacLean, that they could not accept the recommendation of the Board because there had been no increase in freight rates even though an application had been made in 1946. They also said that wages and materials from 1939 to 1946 increased $165 million and net earnings in 1946 were $11 million less than 1940, even though gross revenues had increased $262 million.[77] After a majority vote in favour of a strike, the unions set November 3, 1947 for withdrawal from the service.[78] Further negotiation, however, resulted in a settlement based on the Board's recommendation and agreement was signed on October 25, 1947.[79]

1948 - Wage Increase of Seventeen Cents an Hour

The agreement of 1947 did not preclude notice being served within a specified time; thus, on November 20, 1947, the International Unions requested a wage increase of thirty-five cents an hour, as did the National Union, the C.B. of R.T. and G.W. (at that time C.B. of R.E. and O.T.W.) which made a separate request.[80]

Only brief negotiations took place. For example, one meeting was held in the International Unions' dispute, at which the unions stated that their claims were based on cost-of-living and parity with United States railway employees. The railways stated they did not have the ability to absorb further wage costs.[81]

Both the International Unions and the C.B. of R.T. and G.W. requested conciliation assistance. Mr. H.R. Pettigrove

intervened as Conciliation Officer in the two disputes, but to no avail. He, therefore, recommended that Boards of Conciliation be appointed.[82] In January 1948, a Board of Conciliation was appointed in each dispute. Mr. Justice J.C.A. Cameron, of Ottawa, was appointed Chairman of the two Boards, the selection of the Minister of Labour in the absence of a joint recommendation by the parties' nominees. In the International dispute the Railways' Nominee was Mr. M.M. Porter, K.C., Calgary, and the Unions' Nominee was Mr. Maurice Wright, L.L.B., Ottawa.[83] In the C.B. of R.T. and G.W. dispute the Railway's Nominee was Mr. Paul Smith, K.C., Montreal, and the Union's Nominee was Mr. Samuel Baron, Montreal.[84]

The majority report of each Board was signed by the Chairman and the Railways' Nominees, the recommendation in each instance being seven cents an hour, effective April 8, 1948.[85] The railways accepted the reports while the unions rejected them.[86] A strike vote was taken and a majority of the employees favoured withdrawal from the service. July 15, 1948, was announced as the strike date.[87]

On May 27, 1948, the Minister of Labour, the Honourable Humphrey Mitchell, reconvened the Boards of Conciliation to act in a mediatory capacity but agreement was not reached. The parties held further negotiations but still agreement was not reached even though progress was made. The parties were summoned to Ottawa by the Minister of Labour and negotiations were held from July 9 to July 14. On July 14 a settlement of seventeen cents an hour was reached - ten cents more than the

recommendation of both Boards. The agreement was to run for one year.[88]

1950 - Wage Increase of Seven Cents an Hour and a Forty-Hour Week

As mentioned previously, from 1949 onward, the non-operating and operating employees bargained separately. The non-operating unions continued as a group while the operating unions bargained individually and settled subsequently to the non-operating employees.

a) Negotiation and Conciliation

The fifteen International Unions representing non-operating railway, hotel and water transport employees advanced requests for a wage increase of seven cents an hour effective July 17, 1949 and a forty-hour week effective September 1, 1949.[89] The C.B. of R.T. and G.W. advanced separate requests to Canadian National for ten cents an hour wage increase, a forty-hour week and a check-off of union dues.[90] On July 8, 1949, the railways transmitted to the non-operating unions ten rules proposals designed for greater operating efficiency. These rules proposals concerned starting times, clock punching, statutory holidays, as well as other similar matters.[91] Negotiations held during July, August and September were fruitless. The railways stated that hotel and water transport employees should not be included in the disputes, and further discussions would be of little use until this matter was cleared.

The International Unions on September 23, 1949, and the C.B. of R.T. and G.W. on October 11, requested conciliation assistance. Messrs. M.M. MacLean and H.R. Pettigrove met

with the parties in both disputes on October 18, 19 and 20, but were unsuccessful in reaching settlement. They then recommended that Conciliation Boards be appointed.[92] Boards were appointed on October 28, and Mr. Justice J.O. Wilson, Vancouver, selected by the Minister of Labour, was Chairman in both instances, in the absence of a joint recommendation by the nominees. In the International Unions' dispute the Railways' Nominee was Mr. Isaac Pitblado, K.C., Winnipeg, while the Unions' Nominee was Mr. A.J. Wickens, K.C., Moose Jaw. In the case of the C.B. of R.T. and G.W., the Railway Nominee was Mr. T.R. Meighen, K.C., and the Union's Nominee was Mr. J.A. Coote. Both nominees were from Montreal.[93]

Hearings of the Boards commenced in January 1950, and with certain adjournments were concluded by March 10.[94] The majority report in each dispute was dated April 11, 1950 and was signed by the Chairman and the Railways' Nominees.[95] The recommendations were:

1. A forty-hour week with maintenance of take-home pay.
2. That hotel and water transport employees be excluded.
3. That negotiation take place on the railways' rules proposals.
4. That the check-off demanded by the C.B. of R.T. and G.W. be not granted.[96]

The C.B. of R.T. and G.W. rejected the majority report on April 24, and sent out a strike ballot to be returned by June 15, 1950. The International Unions rejected the majority report of their Board of Conciliation on May 11,

and dispatched a strike ballot for return by July 24. On May 12, both groups advised the Minister of Labour of the strike vote being taken.[97] Further negotiations failed to settle the dispute and a strike date was set for August 22, 1950.[98]

b) Mediation

In view of the threatened strike, the Government, by August 18, appointed Doctor W.A. Mackintosh,[99] as a special mediator. Meetings with the parties were held on August 19, 20 and 21,[100] but settlement was not reached. A nine-day strike ensued, commencing as scheduled on August 22, 1950.[101] Doctor Mackintosh said his work was made particularly difficult because of:

> "...complete lack of confidence between the parties... the number and variety of unions which were attempting to bargain as one unit...the very low level of effectiveness of collective bargaining in the industry.... and...the fact the rapidly approaching menace of the strike created confusion..."[102]

At the mediation stage there was a merger of the two disputes,[103] and they were handled concurrently thereafter.

c) Strike

The strike commenced at 6.00 a.m. Standard Time and negotiations were not resumed until August 25. This resumption was at the request of Prime Minister St. Laurent. Negotiations on the 25th and 26th were of no avail.[104]

When the Prime Minister requested that the parties resume negotiations, he also summoned Parliament. When negotiations failed, the Government introduced into the House of Commons a Bill which became, "The Maintenance of Railway

Operation Act."[105] The Act terminated the strike at 8.58 pm., August 30. It made provision for appointment of an Arbitrator to arbitrate between the limits of the offers made by the parties when negotiations had ceased.[106]

The legislation, although it provided for compulsory arbitration, was limited. It was ad hoc legislation with the Arbitrator's powers confined within narrow limits. The parties had agreed on the forty-hour work week but there was a difference in the inception date between June 1, 1951 and September 1, 1951. The unions had asked seven cents an hour wage increase while the railways had offered four cents an hour. The other matter for consideration was whether hotel and water transport employees should be included in the group. Agreement had been reached on negotiation of the railways' rules proposals and payment of straight time up to forty-eight hours in the event of an emergency.

d) Arbitration

Mr. Justice R.L. Kellock was appointed Arbitrator on October 17, 1950.[107] Hearings were held between October 27 and November 10, 1950 and the Arbitrator's report was issued on December 18.[108] Mr. Justice Kellock awarded June 1, 1951 as the inception date for the forty-hour work week and three cents an hour wage increase, the full amount requested by the unions because the cost-of-living had increased to some extent. He also eliminated the hotel and water transport employees from the group as he felt that these operations were separate from railway operations.[109] A two-year agreement was signed,

effective September 1, 1950, with either party being allowed to serve sixty days' notice prior to August 31, 1952.

Application for Wage Increase Prior to Expiration of Agreement

Late in 1951 while the non-operating agreement had one year to run, the operating and non-operating unions, with the exception of the Brotherhood of Locomotive Engineers, approached the railways requesting a wage increase because of the considerable increase in cost-of-living.[110] The railways said they could not see their way clear to accord the employees an increase in wages because railway employees had not suffered when compared with other groups of employees. The agreements were left undisturbed.

1952 - Wage Settlement of Seven Per Cent and Seven Cents an Hour and Union Dues Check-off

On July 3, 1952, when they were allowed under the agreement to serve notice, the non-operating unions[111] requested a wage increase of forty-five cents an hour, provision for a cost-of-living bonus, a union shop, a union dues check-off, and elimination of the "emergency clause" of the former agreement.[112] Meetings were held between the parties on July 7 and July 11. While agreement was not reached, some compromises were made. An increase of seven cents an hour was offered by the railways but this was unacceptable to the unions.[113]

The unions applied for conciliation and Messrs. Arthur MacNamara,[114] M.M. MacLean[115] and R.M. Cram[116] acted in a Conciliation Officer capacity. Meetings were held continuously between July 22 and August 2, and while progress was

made, settlement was not reached. A Board of Conciliation was recommended.[117] The Conciliation Board was appointed on August 7, 1952, the Chairman of which was Mr. Justice R.L. Kellock, who was selected by the Minister of Labour in the absence of a recommendation by the parties' nominees. The Railways' Nominee was Mr. Paul S. Smith, Q.C., Montreal, and the Unions' Nominee was Mr. David Lewis, Toronto.[118] Hearings of the Board were held in September and October and its report, issued on November 21, 1952, was signed by the Chairman and Railways' Nominee. The recommendations included a wage increase of seven per cent and seven cents an hour, a voluntary revocable check-off and elimination of the "emergency clause."[119]

The railways advised the Department of Labour that they would be willing to accept the report while the unions advised the Department of Labour that the report was unacceptable.[120] On December 10, 1952 negotiations were resumed. The following day, each railway advised its employees that as settlement of the dispute did not appear to be imminent, a wage increase of seven per cent and seven cents an hour was being granted to those concerned.[121] After further meetings, settlement of the dispute was reached on December 19, 1952. The terms were:

1. A wage increase of seven per cent and seven cents an hour.
2. A compulsory check-off.
3. Elimination of the "emergency clause."
4. A one-year agreement.[122]

1954 - Three Weeks' Vacation after Fifteen Years of Service and Five Paid Statutory Holidays

a) Negotiation and Conciliation

The non-operating unions[123] on November 2, 1953, served notice requesting eight paid statutory holidays, four weeks' vacation after fifteen years of service, eighteen days' sick leave each year and double pay if Sunday fell on a rest day.[124] Four meetings were held but settlement was not reached. The railways stated that the requests were not justified and, in addition, they were not in a position to absorb additional labour costs.[125]

The unions applied for conciliation services. Messrs. H.R. Pettigrove and Raoul Trepanier were appointed as Conciliation Officers.[126] Meetings were held on December 7 and 8, 1953, but agreement was not reached. The Conciliation Officers recommended that a Conciliation Board be appointed.[127] The Board was appointed on January 4, 1954, the Chairman of which was Mr. Justice R.L. Kellock, who was selected by the Minister of Labour failing joint recommendation of the parties' nominees. The Railways' Nominee was Mr. M.M. Porter, Q.C., Calgary, and the Unions' Nominee, Mr. A.J. Wickens, Q.C., Moose Jaw.[128] Hearings of the Board were held on February 9 and 10, and March 1, 1954. Three separate reports were written by the Board members, copies of which were sent to the parties on April 28. The Railways' Nominee recommended that no changes be made.[129] The Minister of Labour, the Honourable Milton F. Gregg, decided that where the reports of the Chairman and Unions' Nominee coincided, such would constitute the majority

report.[130]

The Chairman's report, dated April 22, 1954, recommended three paid statutory holidays, three weeks' vacation after twenty-five years of service, and a sick leave plan. Premium pay for Sunday work was not recommended.[131] The Unions' Nominee made recommendations equal to or beyond all those of the Chairman.[132]

b) Subsequent Negotiations and Arbitration

The railways advised the Department of Labour that they were unable to accept the report because of their poor financial situation.[133] The unions advised the Department of Labour that they felt a majority report did not exist and, thus, they were free to pursue the matter as they saw fit.[134] At the instigation of the Minister of Labour, the parties held further meetings, but no agreement was reached.[135] The unions at the same time, distributed a strike ballot, the return of which was expected by August 2.[136]

Prime Minister St. Laurent and Labour Minister Gregg, on August 12, summoned the parties to meet them in Ottawa. Discussions were held from August 12 to August 18. While some progress was made, settlement was not reached. Finally, voluntary arbitration was agreed to by the parties,[137] although the unions objected strongly and stated they acquiesced under duress.[138] The Minister of Labour drew up terms of reference for the Arbitrator. With a few slight changes these terms were incorporated into an agreement between the parties, dated September 14, 1954.[139] The late Honourable

Gordon McG. Sloan, Chief Justice of British Columbia, was appointed Arbitrator on September 17.[140]

Hearings were held in the latter part of October and early November and the Arbitrator's report was dated November 19, 1954. Mr. Justice Sloan awarded five paid statutory holidays;[141] one week's vacation for one up to three years of service; two weeks' vacation for three up to fifteen years of service; and three weeks' vacation for fifteen or more years of service.[142] The Arbitrator awarded two more statutory holidays than that recommended by the Conciliation Board and he reduced the requirement for three weeks' vacation from twenty-five to fifteen years of service, but he did not include a sick leave plan. On February 24, 1955, a one-year agreement was signed implementing the Arbitrator's award, effective January 1, 1955.

1956 - Wage Increase of Eleven Per Cent, Health and Welfare Benefits and Two Additional Paid Statutory Holidays

The non-operating unions served notice on the railways on November 2, 1955, for:

1. An eighteen per cent wage increase.
2. Eight cents an hour for each employee for health and welfare benefits.
3. Three additional statutory holidays.[143]
4. Payment to monthly rated employees for statutory holidays, should such occur during vacation.[144]

Five meetings of negotiation were held between November 17 and 25, without agreement being reached. An impasse occurred and the unions stated they were going to apply for a concilia-

tion board as they felt the conciliation officer stage was futile.[145]

A Board of Conciliation was appointed on December 6. The Chairman of the Board, selected by the Minister of Labour failing joint recommendation of the nominees, was Mr. E.G. Taylor, Toronto. The Railways' Nominee was Mr. Paul S. Smith, Q.C., Montreal, and the Unions' Nominee was Mr. David Lewis, Toronto.[146] Prior to the hearings of the Board, the railways on December 15, suggested to the unions that the Board's report be binding, but the unions did not accept the suggestion.[147]

Hearings, with various adjournments, were held between January 30 and March 6, after which the Chairman endeavoured to conciliate the dispute, but without success.[148] The majority report, dated April 9, 1956, was signed by the Chairman and Unions' Nominee. The report recommended a wage increase of eleven per cent, in four steps from January 1, 1956 to June 1, 1957; a health and welfare plan, effective January 1, 1957, costing five cents an hour to be shared 50-50 by the company and the employees; and two additional statutory holidays.[149] The minority report recommended that no changes be made.[150]

The unions on April 17, 1956, advised the Department of Labour they would accept the majority report, even though they were disappointed with it.[151] The railways on April 28, requested further negotiation with the unions,[152] but the latter declined. In writing the Department of Labour on this

matter, the unions stated that negotiations would be unfruitful.[153]

On May 2, 1956, Labour Minister Gregg wired the parties asking that negotiations be recommenced. A meeting was held on May 8, but settlement was not reached as the unions stated they would not accept anything less than the majority report of the Board and they decided to circulate a strike ballot. However, on May 9, the railways wrote to the unions stating they would settle on the recommendations of the report. The railways said this action did not constitute acceptance of the report because there were various reasons (not listed) why the report was not acceptable.[154] Apparently there was a distinction in the opinion of the railways between the acceptance of the recommendations of the report and the full contents thereof. A two-year agreement was signed, to be effective January 1, 1956.

1958 - Wage Increase of Six Per Cent and Four Cents an Hour, and Four Weeks' Vacation after Thirty-Five Years of Service

The fifteen non-operating unions on November 12, 1957, requested:

1. A wage increase of eleven per cent and seventeen cents an hour.
2. An additional $8.50 for each employee per month for health and welfare benefits.
3. Increased vacations.
4. One additional statutory holiday - Remembrance Day - to bring the total to eight.

5. Four cents an hour for severance pay.
6. That work normally performed by employees should not be contracted out.
7. That employees be paid every second Thursday.
8. A one-year agreement.[155]

Meetings were held on November 27 and 28 and December 2, 1957, but agreement was not reached. The railways proposed that the contracts be extended one year as a contribution to the economic stability of the country.[156] Upon the request of the unions, a Conciliation Board was established on December 5, 1957.[157] The original Chairman of the Conciliation Board, selected by the Minister of Labour, was the Honourable Mr. C.P. McTague, Q.C., Toronto. The unions protested the appointment of Mr. McTague because of his "business and other interests" and Mr. McTague withdrew. Following is an excerpt from the report of the Labour Gazette:

> "In early January, Frank Hall, chairman of the negotiating committee, said in a letter to the Minister that the unions were protesting Mr. McTague's appointment because they believed he could not be considered an appropriate person to serve in the neutral capacity of chairman of the board.
>
> Mr. Hall pointed out that Mr. McTague is President of two companies, Director of nine others and once represented the City of Toronto in an arbitration case affecting firemen."[158]

The Honourable Michael Starr, Minister of Labour, in replying to Mr. Hall advising that Mr. McTague had withdrawn, pointed out that the Department of Labour considered themselves fortunate to secure the services of Mr. McTague. He spoke of Mr. McTague's distinguished career as a Justice of the Supreme Court

of Ontario, of his full acceptance by labour organizations when he was Chairman of the National War Labour Board and his services as Conciliation Board Chairman at various times in Ontario. He also said that Mr. McTague had been Union Nominee for the Brotherhood of Locomotive Firemen and Enginemen on Boards with Canadian National and Canadian Pacific.[159] In his place the Minister appointed Mr. Justice H.T. Thomson, Regina.[160] The Railways' Nominee was Mr. Philip Vineberg, Montreal, and the Unions' Nominee was Mr. David Lewis, Toronto.[161]

The majority report, dated July 31, 1958, signed by the Chairman and the Unions' Nominee, recommended a wage increase of four cents an hour and six per cent, in three steps; four weeks' vacation after thirty-five years' service; a recommendation against any proposal to restrict contracting of work; no recommendation on severance pay; and a two-year contract, effective January 1, 1958.[162]

The unions accepted the report on August 21, 1958,[163] while the railways advised the Department of Labour they would accept the report with the proviso that they receive an increase in freight rates.[164] On September 16, the railways made an application for a nineteen per cent increase in freight rates.

The unions distributed a strike ballot on September 25 and on November 11 the railways were advised a strike would take place on December 1.[165] On November 17, a seventeen per cent freight increase was approved by the Board of Transport

Commissioners[166] and on November 26, Cabinet's approval of the freight increase was given. Settlement of the dispute was effected and a two-year agreement was signed, to be effective January 1, 1958.

1960 - Wage Increase of Seven Cents an Hour and Four Per Cent, and Four Weeks' Vacation after Twenty-Five Years of Service

a) Negotiation and Conciliation

The non-operating unions on November 5, 1959, served notice for a wage increase of seven per cent plus twelve and one-half cents an hour, effective January 1, 1960, and improved vacations. The railways served notice for a charge of ten cents for each check-off deduction.[167] Seven meetings of negotiation were held between November 25, 1959 and January 22, 1960. Agreement was not reached and upon the request of the unions, a Board of Conciliation was appointed on February 18, 1960.[168] The Chairman of the Board, selected by the Minister of Labour in the absence of a joint recommendation by the parties' nominees, was Mr. Justice J.V.H. Milvain of Alberta. The Railways' Nominee was Mr. Philip Vineberg, Montreal, and the Unions' Nominee, Mr. David Lewis, Toronto.[169] Hearings of the Board were held on twenty-five days between May 9 and July 7, 1960.[170] The majority report, dated August 24, was signed by the Chairman and the Unions' Nominee. It recommended a wage increase of seven cents an hour and four per cent, applied in three steps; four weeks' vacation after twenty-five years; and that no charge be assessed for the check-off.[171] The Railways' Nominee concurred in the vacations

and check-off recommendations.[172]

The unions accepted the report while the railways rejected it. After a majority vote in favour of a strike, the unions set the strike date for December 3.[173] At the request of the Federal Government, the parties met Cabinet Ministers in both Montreal and Ottawa, but settlement of the dispute was not achieved.[174]

b) Legislation to Prevent a Strike and Subsequent Settlement

As a strike appeared imminent, the Government introduced legislation entitled "The Railway Operation Continuation Act",[175] to postpone strike action until May 15, 1961, with the maintenance of existing wage levels and employment conditions. Prime Minister Diefenbaker stated in Parliament that the Act would postpone any action before the Royal Commission on Transportation issued its report which, the Prime Minister said, would eliminate the freeze on freight rates and allow the railways and their unions to come to a settlement.[176] At the request of the Prime Minister, on January 23, 1961,[177] the parties met in February 1961, but a settlement was not reached and the Minister of Labour was so informed.[178]

Towards the latter part of April, the parties held a series of meetings and, in addition, each party met with the Prime Minister and Minister of Labour. The meetings continued until May 1, at which time the unions broke off negotiations because they stated their minimum requirement was the Conciliation Board's recommendations.[179] The railways said that this

"made a sham of collective bargaining" as it was inconsistent with the unions participating in discussions earlier; they maintained there was no room for bargaining.[180]

Labour Minister Starr requested the parties to recommence negotiations and, on May 4, settlement was reached on the Board's recommendations - as mentioned, a wage increase of seven cents an hour and four per cent and four weeks' vacation after twenty-five years.[181] The settlement provided for a two-year agreement, effective January 1, 1960, and avoided the strike set for May 16.[182]

1962 - Wage Increase of Two Per Cent and Four Cents an Hour and One Cent for Each Hour Worked to be Set Aside for Job Security Purposes

While the contract signed in 1961 was for a period of two years, settlement of the previous dispute was reached only in May of 1961; thus, the employees were able to serve notice again by September 1. Actually, new requests were made on December 20, 1961. Briefly, they were:

1. A wage increase of 5¾ per cent plus eleven cents an hour.
2. A job security program which would allow only a one per cent reduction each year in numbers of employees with more than five years' service.
3. Unemployment benefits for those laid off with less than five years' service.
4. Limitation on contracting out.
5. Retraining programs.
6. An increase in weekly indemnity.
7. Extension of health and welfare benefits to retired employees.
8. A two-year agreement.[183]

Meetings were held on January 23, February 14, 15 and 23[184] but agreement was not reached. A Board of Conciliation was appointed on March 9, 1962. Mr. Justice T. Craig Munroe of British Columbia, was Chairman of the Board of Conciliation, selected by the Minister of Labour in the absence of a joint recommendation from the nominees. The Railways' Nominee was Mr. A.G. Cooper, Q.C., Halifax, while the Unions' Nominee was Mr. David Lewis of Toronto.[185]

The railways stated before the Board of Conciliation that they had been hopeful of presenting proposals which would bring the parties on common ground without imperilling the railways' financial position.[186] The unions stated they found the railways' approach unacceptable because the railways would not recognize the durable goods standard for determination of wages.[187] The Board's hearings involved only eight days, between May 8 and July 20. The Board members met in Montreal on July 25 and 26, and they agreed on a unanimous report. The recommendations were a four-step wage increase totalling two per cent and four cents an hour and one cent for each hour worked to be set aside for job security purposes. On August 9, the Board met the parties at which time the latter said they would accept the Board's report.[188]

This unanimous report was the first one written since the 1947 Vacations' dispute.

The foregoing national disputes are being used as the basis for this thesis. Very brief comment should, however, be made with respect to the important points in the Diesel

Firemen's dispute on the Canadian Pacific because of the process followed in arriving at a settlement.

Locomotive Firemen's Diesel Dispute - Canadian Pacific Railway Company 1956-1958

a) Negotiation and Conciliation

On February 1, 1956 the Brotherhood of Locomotive Firemen and Enginemen served notice on the Canadian Pacific for a wage increase and other changes in working conditions.[189] On February 6, the Company served notice proposing that it have the unrestricted right to determine if and when a fireman (helper) should be on a locomotive other than steam power. Two other proposals were advanced. They concerned differential payments in the Pacific Region and payment for preparation of locomotives.[190]

Negotiation failed to achieve a settlement and both parties applied for a Board of Conciliation. The Board under the Chairmanship of Judge J.C. Anderson, Belleville,[191] held hearings between June 2, and November 15, 1956.[192] The majority report, signed by the Chairman and Railway's Nominee, among other things, recommended that freight and yard diesels be allowed to operate without firemen, provided there was fair treatment to the employees involved.[193]

b) Strike - 1957

The Company accepted the report, but the Union, after a strike ballot of the General Grievance Committee, set January 2, 1957, for withdrawal from the service. The strike took place as planned and lasted nine days, even though Acting Prime Minister C.D. Howe and Labour Minister Gregg endeavoured

to achieve a settlement. The other organized railway employees were laid off.[194]

Prime Minister Louis St. Laurent returned to Ottawa during the strike and proposed to the parties that a Royal Commission be appointed to consider the diesel question, the differentials and the locomotive preparatory payments. The parties accepted the proposal and, in addition, a twelve per cent wage increase was agreed upon.[195] The Prime Minister in commenting on the proposed Commission stated in part as follows:

> "....If there is a thorough investigation and report, neither side is going to attempt after that to hold out on a formula for safe operations that will have been recommended after a full investigation by a board that would be constituted in such a way as to have considerable prestige with Canadian public opinion."[196]

c) The Royal Commission

A three-man Royal Commission was appointed on January 17, 1957, under the Chairmanship of Mr. Justice R.L. Kellock, the other two members being Mr. Justice C.C. McLaurin, Alberta, and Mr. Justice J. Martineau, Quebec.[197] Hearings of the Commission took place between March 4, and November 5, 1957,[198] sixty-eight days being involved.[199] The Commission found that the firemen's duties had been eliminated or were a duplication of duties discharged by others,[200] but employment was guaranteed for all those firemen with seniority before March 1, 1956. Firemen with seniority after that date had preference in employment in other lines of work.[201]

d) Strike - 1958

Various moves were made by both parties. As the

Company was unsuccessful in resuming negotiations with the Brotherhood, it advised the latter on March 31, 1958, the recommendations of the Royal Commission would be implemented on May 11, 1958.[202] By the latter part of April, the dispute on the Union's side moved to the United States. Mr. H.E. Gilbert, the Union's President, had discussions with Mr. N.R. Crump, President, Canadian Pacific, who informed Mr. Gilbert that the dispute could only be considered insofar as he was concerned, within the framework of the Royal Commission report.[203] The Union, on May 1, announced that there would be a strike on May 11.[204] Prior to the strike, the Company endeavoured to lay off seventy-five junior firemen whose seniority commenced after April 1, 1956. The Union sought an injunction, but this was denied May 9, by the Court in Montreal.[205]

Prime Minister Diefenbaker and Labour Minister Starr met the parties on May 8, 9 and 10, but to no avail.[206] Management stated it was going to continue operations on May 11. Plans of the parties were implemented but in many areas other employees showed no reluctance to cross picket lines. While some areas were closed fairly completely, especially in the far west, within a short time many employees who remained out of service in sympathy, returned to work.[207] Some comments were as follows:

The Halifax Chronicle-Herald - May 13:

"...the Brotherhood of Locomotive Firemen and Enginemen so far has not received the support it had said could be relied upon from other railway unions..."

and

The Moncton Times - May 12:

"...it became clear yesterday that the other groups of employees are standing with the Company on the question...."

In a press summary issued on May 16, by Canadian Pacific the following comments appeared:

"....In Windsor Station itself, people came and went. Porters, baggagemen and those engaged in other services went about their jobs. In the first few hours following the strike deadline freight trains arrived and departed from the St. Luc Yards...."[208]

and

"At Quebec City the usual passenger trains arrived and departed...."[209]

In reference to comments by Mr. W.E. Gamble, head of the Firemen's Union in Canada, the report said he "... admitted that the strike appeared more effective in the west than in the east."[210]

The strike lasted three days, during which time negotiations continued under Government direction. It has been reported, although the writer cannot document the source, that the Prime Minister said he would implement the report by legislation if agreement was not reached. However, on May 13, the Royal Commission's report was accepted by the Union and the dispute was settled.[211]

Strikes and Strike Threats in the Post-War Period

Strikes and strike threats (a strike threat being where a vote was taken and a strike was imminent) in major disputes in the post-war period have been as follows:

Table VI

Strikes and Strike Threats in Canada - 1946-1962

Year		Group	Railway
1947	(Threat)	All employees	Major railways
1948	(Threat)	All employees except Engineers	Major railways
1950	(Strike)	Non-operating employees	Major railways
1952	(Threat)	Trainmen	Canadian Pacific
1954	(Threat)	Non-operating employees	Major railways
1957	(Strike)	Locomotive Firemen (Diesel Dispute)	Canadian Pacific
1958	(Strike)	Locomotive Firemen (Diesel Dispute)	Canadian Pacific
1958	(Threat)	Non-operating employees	Major railways
1959	(Threat)	Locomotive Firemen (Diesel Dispute)	Canadian National
1960[212]	(Threat)	Non-operating employees	Major railways
1961[212]	(Threat)	Non-operating employees	Major railways
1962	(Threat)	Locomotive Engineers	Canadian National
1962	(Threat)	Locomotive Engineers	Canadian Pacific
1962	(Threat)	Trainmen	Canadian National
1962	(Threat)	Trainmen	Canadian Pacific

Source - Canadian Pacific Railway Company.

Situation re Operating Disputes

Examination of the foregoing list reveals that prior to 1962, the only strike or threat of strike involving an operating union, apart from the Firemen's Diesel disputes, was that of the Trainmen on Canadian Pacific in 1952. In 1962, however, four strike threats occurred in operating disputes.

As stated earlier, prior to 1962 the large non-

operating settlements defined an area in which the operating disputes could be settled. Over the years, however, with the application of percentage wage increases to the higher basic rates enjoyed by the operating employees, the absolute differentials between the operating groups and non-operating group was constantly widening.

In the non-operating dispute settlement of 1961, there had been an approximate eight per cent wage increase. Because of the widening differentials between the non-operating and operating groups, the Canadian National and Canadian Pacific strenuously opposed application of an eight per cent wage increase to operating employees. In the six individual disputes concerning Locomotive Engineers, Conductors and Trainmen, and Firemen on the Canadian National and Canadian Pacific, conciliation boards were appointed in each instance. The four conciliation board reports, which related to the Locomotive Engineers, and Conductors and Trainmen, recommended among other things, a six and one-half per cent increase in wages.

In the Locomotive Engineers' disputes - Canadian National and Canadian Pacific - the wage increase agreed to was six and one-half per cent. The Trainmen fought tenaciously for an eight per cent increase in wages, which was eventually accorded them. However, both railways achieved some desired rules changes.[213]

The chapter which follows relates to some of the more important points in railway disputes which were reviewed in this chapter.

FOOTNOTES FOR CHAPTER III

1 Excerpt from a letter written by Mr. W.T. Wilson, Vice President Personnel and Labour Relations, Canadian National Railways, to Mr. Wm. J. Smith, National President of the Canadian Brotherhood of Railway Transport and General Workers, on the death of Mr. S.H. Eighteen, Secretary, Joint Protective Board, Canadian Transport, (C.B. of R.T. and G.W. Publication) June, 1963, p. 161.

2 Excerpt from comments of Mr. F.H. Hall, Chairman for the Joint Negotiating Committee of the Non-operating Unions, before Board of Conciliation, while speaking on Severance Pay.
Transcript of Proceedings, Canadian Non-operating Railway Dispute, Montreal, March 5, 1958, p. 395.

3 D.B.S., Railway Transport, Part VI, 1956 to 1961.
The Canadian National and Canadian Pacific employ more than 20,000 employees in "other operations."

4 Press Summary, Canadian Pacific Railway Company, Montreal, February 14, 1964, p. 3.

5 Canadian National Railways
Canadian Pacific Railway Company
Toronto, Hamilton and Buffalo Railway
Ontario Northland Railway
Northern Alberta Railways

The Brotherhood of Locomotive Engineers
The Brotherhood of Locomotive Firemen and Enginemen
The Brotherhood of Maintenance of Way Employees
The Order of Railway Conductors
The Order of Railroad Telegraphers
The Brotherhood of Railroad Trainmen

6 The first Agreement, dated August 7, 1918, was signed by the Canadian Railway War Board and the individual Unions concerned. The Railway Association of Canada, Montreal, which succeeded the Canadian Railway War Board signed with the Unions a Memorandum of Agreement, dated April 15, 1921, perpetuating Board of Adjustment No. 1.

7 Statement of the Railways, In re Board of Conciliation and Investigation considering request of certain groups of railway employees for a wage increase of thirty-five (35) cents per hour, Montreal, 1948, p. 10.
Available at Federal Department of Labour, Ottawa, Canadian National Railways or Canadian Pacific Railway Company, Montreal.

8 Rountree, G. Meredith, The Railway Worker, Oxford University Press, 1936, p. 46.

9 See Footnote No. 6.

10 Fourteenth report of the Canadian Railway Board of Adjustment No. 1, Montreal, Period April 1, 1957 to March 31, 1960.

11 Award of Referee: In the matter of Submission A-600 being a dispute between the Order of Railroad Telegraphers and the Canadian Pacific Express Company. Reheard by the Canadian Railway Board of Adjustment No. 1 in the presence of a Referee, Professor Bora Laskin, Q.C., Toronto, July 11, 1961, p. 1.

12 The Labour Gazette, May 1964.

13 Until January 1, 1959, the name of this Union was the Canadian Brotherhood of Railway Employees and Other Transport Workers. For this study the new name will be used throughout.

14 They may be employees on leave in the case of the union.

15 Agreement Governing Hours of Service and Working Conditions between Canadian Pacific Railway Company and All the Classes of Employees Represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective June 1, 1951; Revised to January 1, 1959, p. 35.

16 Ibid.

17 The Dominion Bureau of Statistics lists over 3,000 railway occupations in its publication Canadian Classification of Railway Employees and Their Compensation, Ottawa, 1956.

18 Prior to 1950, the Hotel and Restaurant Employees' International Alliance and Bartenders' International League, representing hotel employees was included. As a result of an arbitration award in 1950 by Mr. Justice Kellock, they were divorced from the railway bargaining group.

19 Prior to 1953, the Boilermakers and Blacksmiths had separate unions.

20 Transcript of Proceedings, 1962, Op. cit., p. 347. The railways involved in the 1962 dispute were operating 94.1 per cent of mileage in Canada, with 153,128 employees, of which Canadian National and Canadian Pacific, their subsidiaries and joint companies accounted for 97.6 per cent of employees.

21 In a number of the disputes one or other of the unions has had a separate set of demands but these deviations were only for one dispute in each instance.

22 Transcript of Proceedings, 1960, Op. cit., p. 534.

23 Statement of the Railways, 1948, Op. cit., p. 10.

24 Ibid., p. 10.

25 Mr. Frank K. Lane, Secretary of the Interior, was Chairman of the Railroad Wage Commission.

26 General Order No. 27 of the Director General of Railroads, Washington, 1918.

27 The Canadian Pacific Railway Company, Grand Trunk System and Canadian Northern.

28 Letter of July 15, 1918, included in Statement of the Railways, 1948, Op. cit., p. 13.

29 See Appendix I.

30 P.C. Order in Council 1768, 1918.
The freight rate increase in Canada was actually only fifteen per cent while the United States increase was twenty per cent.

31 Statement of the Railways, 1948, Op. cit., p. 15.

32 See Appendix I.

33 Statement of the Railways, 1948, Op. cit., p. 15.

34 See Appendix I.

35 Statement of the Railways, 1948, Op. cit., p. 16.

36 See Appendix I.

37 Statement of the Railways, 1948, Op. cit., p. 16.

38 The Labour Gazette, November 1926, p. 1065.

39 Statement of the Railways, 1948, Op. cit., p. 18.

40 The Labour Gazette, December 1931, p. 1295.

41 See Appendix I.

42 Statement of the Railways, 1948, Op. cit., p. 21.

43 The Labour Gazette, May 1933, p. 486.

44 Statement of the Railways, 1948, Op. cit., p. 22.
Signalmen were placed on a fifteen per cent reduction on January 1, 1934.

45 Ibid., p. 23; also
See Appendix I.

46 The Labour Gazette, February 1937, p. 137.

47 Statement of the Railways, 1948, Op. cit., p. 27; also
See Appendix I.

48 Statement of the Railways, 1948, Op. cit., p. 23.

49 Ibid., p. 23.

50 The C.B. of R.T. and G.W. (at the time, the Canadian Brotherhood of Railway Employees and Other Transport Workers) had a separate dispute with Canadian National Railways.

51 Canadian National Railways
Canadian Pacific Railway Company
Pacific Great Eastern Railway (British Columbia)
Algoma Central Railway Company (Ontario)
Toronto, Hamilton and Buffalo Railway (Ontario)
Ontario Northland Railway (Ontario)
Sydney and Louisburg Railway (Nova Scotia)
Essex Terminal Railway Company (Ontario)

52 The Labour Gazette, July 1941, p. 739.

53 Ibid., p. 746.

54 Information supplied by Canadian Pacific Railway Company, Montreal, also
The Labour Gazette, July 1941, p. 727.

55 The Labour Gazette, July 1941, p. 739.

56 Approximately ten cents an hour.

57 The Labour Gazette, December 1943, p. 1602.
The procedures for including the cost-of-living bonus in wage rates are outlined in the Labour Gazette, February 1944, p. 170.

58 The C.B. of R.T. and G.W. and the Brotherhood of Maintenance of Way Employees had separate requests.

59 Transcript of Proceedings, National War Labour Board, Application of Standard Railway Labour Organizations for increase in basic wage rates, Ottawa, May 4, 5 and 6, 1944, p. 20.

60 The National War Labour Board was established on October 24, 1941, as stated in Chapter II, by P.C. Order in Council 8253. The Board was created to investigate wage conditions and labour relations. It was to determine what were fair and reasonable wage rates and whether a cost-of-living bonus may be paid. Also provisions of collective agreements which were inconsistent with the Order in Council were to be brought into line. In addition, all other matters coming under the Board were to be brought into line with the principles laid down; The Labour Gazette, November 1941, p. 1338.

In 1943 the Board was reorganized. It was to be considered as somewhat of an industrial court and it was expected to build up a body of jurisprudence to apply in its proceedings. Previous to 1943, the Board just dealt with cases. It had no body of jurisprudence but it had become similar to an industrial court; The Labour Gazette, February 1943, p. 166.

61 The Labour Gazette, August 1944, pp. 961-962.

62 Joint letter signed by Mr. F.W. Edge, Director of Labour Relations, Canadian National Railways and Mr. H.D. Brydone-Jack, Acting Manager, Department of Personnel, Canadian Pacific Railway Company, Montreal, July 19, 1946.

63 Letter from Mr. H.B. Chase, Chairman, and Mr. G.R. Pawson, Secretary, Unions' Negotiating Committee, to Canadian National Railways and Canadian Pacific Railway Company, dated August 1, 1946.
The C.B. of R.T. and G.W. made a separate request on Canadian National.

64 National War Labour Board, Finding and Direction, Case File 3M-435, 1946.

65 Letter from Messrs. H.B. Chase and G.R. Pawson to Mr. R.H. Neilson, Chief Executive Officer, National War Labour Board, Ottawa, dated August 28, 1946.

66 National War Labour Board, Reasons for Decision, Case File 3N-449, October 16, 1946, and Finding and Direction, October 21, 1946.

67 National War Labour Board, Finding and Direction, Case File N651, June 4, 1943.

68 Ibid., Case File N-805, November 24, 1943.

69 Ibid., Case File N-940, November 24, 1943.

70 Ibid., Case File 2N-263, April 26, 1944.

71 Ibid., Case File 2N-546, March 19, 1945.

72 The Order of Railroad Telegraphers, Commercial Telegraphers' Union, the Brotherhood of Railroad Trainmen and the C.B. of R.T. and G.W. had separate cases. The Brotherhood of Sleeping Car Porters were not included in the list.

73 Industrial Relations Officer, Department of Labour, Ottawa.

74 The Labour Gazette, May 1947, p. 666.

75 Ibid., July 1947, p. 962.

76 Ibid., July 1947, p. 963.
Twelve working days constituted two working weeks in 1947.

77 Joint letter from Mr. R.C. Johnston of Canadian National Railways and Mr. H.D. Brydone-Jack of Canadian Pacific Railway Company, to Mr. M.M. MacLean, Director of Industrial Relations, Department of Labour, Ottawa, dated July 9, 1947.

78 The Labour Gazette, November 1947, p. 1561.

79 Ibid., p. 1561.

80 Ibid., June 1948, p. 1561.
The Brotherhood of Locomotive Engineers made a separate request for a wage increase of twenty-five cents an hour; The Labour Gazette, June 1948, p. 581.

81 Information supplied by Canadian Pacific Railway Company, Montreal.

82 The Labour Gazette, March 1948, p. 171.

83 Ibid., June 1948, p. 596.

84 Ibid., p. 581.

85 Ibid., pp. 585 and 602.

86 Ibid., August 1948, p. 821.

87 Ibid., p. 821.

88 Ibid., p. 821.

89 Ibid., June 1950, p. 827.

90 Ibid., p. 851.

91 Ibid., October 1950, p. 1639.

92 Ibid., December 1949, p. 1550.

93 Ibid., June 1950, pp. 826 and 850.

94 Ibid., pp. 826 and 850.

95 Ibid., pp. 834-842 and 858-866.

96 Ibid., pp. 834 and 858.

97 Ibid., p. 820.

98 Ibid., October 1950, p. 1643.

99 At the time, Vice Principal of Queen's University, Kingston.

100 The Labour Gazette, October 1950, p. 1643.

101 Ibid., pp. 1638-1654.

102 Ibid., p. 1643.

103 It is not available to the writer whose suggestion this was.

104 The Labour Gazette, October 1950, p. 1650.

105 Ibid., p. 1653.

106 Ibid., p. 1653.

107 P.C. Order in Council 4994, October 17, 1950.

108 The Labour Gazette, February 1951, p. 195.

109 Ibid., pp. 208, 209 and 213.

110 Letter from Mr. F.H. Hall, Chairman, General Conference Committee of the Unions, to Messrs. J.R. Kimpton, Canadian Pacific Railway Company, W.M. Armstrong, Canadian National Railways, W.B. Salter, Toronto, Hamilton and Buffalo Railway, and A. Freeman, Ontario Northland Railway, dated September 21, 1951.
Subsequent to the request, the Locomotive Firemen, Conductors and Trainmen withdrew from the request as their agreements were terminating and they would be in a position to serve notice.

111 The C.B. of R.T. and G.W. joined in the request of the main group and also the Brotherhood of Sleeping Car Porters. The Hotel and Restaurant Employees' International Alliance and Bartenders' International League was no longer included.

112 The Labour Gazette, January 1953, pp. 55-56.

113 Information supplied by Canadian Pacific Railway Company, Montreal.

114 Deputy Minister of Labour, Department of Labour, Ottawa.

115 Director of Industrial Relations, Department of Labour, Ottawa.

116 Industrial Relations Officer, Department of Labour, Ottawa.

117 The Labour Gazette, October 1952, p. 1352.

118 Ibid., p. 1352 and January 1953, pp. 55-56.

119 Ibid., January 1953, pp. 55-73.

120 Separate letters from the various railways involved to Mr. M.M. MacLean, Director of Industrial Relations, Department of Labour, Ottawa, each dated November 27, 1952; also
Letter from Mr. F.H. Hall, Chairman, Joint Negotiating Committee, Non-operating Railway Unions, to the Honourable Milton F. Gregg, Minister of Labour, Ottawa, dated November 28, 1952.

121 For example, see letter from Mr. N.R. Crump, President, Canadian Pacific Railway Company, to employees of that Company, dated December 11, 1952.

122 The Labour Gazette, February 1953, p. 240.

123 The Order of Railroad Telegraphers had a separate case.

124 The Labour Gazette, June 1954, pp. 826-832.

125 Information supplied by Canadian Pacific Railway Company, Montreal.

126 Industrial Relations Officers, Department of Labour, Ottawa.

127 The Labour Gazette, February 1954, p. 248, and March 1954, p. 411.

128 Ibid., June 1954, p. 817.

129 Ibid., pp. 839-845 and 869.

130 Ibid., p. 818.

131 Ibid., pp. 817-832.

132 Ibid., pp. 832-839.

133 Joint letter from Mr. W.M. Hobbs, Vice President Personnel, Canadian National Railways, and Mr. D.I. McNeill, Vice President Personnel, Canadian Pacific Railway Company, to Mr. M.M. MacLean, Director of Industrial Relations, Department of Labour, Ottawa, dated May 8, 1954.

134 Letter from Mr. F.H. Hall, Chairman, Joint Negotiating Committee, Non-operating Railway Unions, to Mr. M.M. MacLean, Director of Industrial Relations, Department of Labour, Ottawa, dated April 30, 1954.

135 Letter from the Honourable Milton F. Gregg, Minister of Labour, Ottawa, to each party, dated June 11, 1954.

136 Letter from Unions to all Non-operating employees, dated June 21, 1954, enclosing strike ballot, which was to be returned by August 2, 1954.

137 The Labour Gazette, August 1954, p. 1090.

138 The Labour Gazette, September 1954, p. 1216; also Statement of Mr. F.H. Hall, to his Committee, dated August 18, 1954; copies of which were sent to the Prime Minister and the Minister of Labour.

139 Obtainable at Department of Labour or from either of the parties.

140 P.C. Order in Council 1954-1395, September 17, 1954.

141 New Year's Day, Good Friday, Dominion Day, Labour Day and Christmas Day.

142 The Labour Gazette, December 1954, p. 1662 and January 1955, pp. 47-59.

143 Thanksgiving Day, Victoria Day and Remembrance Day.

144 The Labour Gazette, June 1956, pp. 687-688.
Extra Gang employees had a separate dispute which had gone before a Board of Conciliation. When the notice of November 2, 1955 was served, the requests of the Brotherhood of Maintenance of Way Employees, on behalf of the Extra Gangs, were withdrawn and the group joined the main Non-operating group.

145 Minutes of Meeting, Non-operating Negotiations, Personnel Departments, Canadian National Railways and Canadian Pacific Railway Company, November 25, 1955.

146 The Labour Gazette, June 1956, p. 688.

147 Minutes of Meeting, Non-operating Negotiations, Personnel Departments, Canadian National Railways and Canadian Pacific Railway Company, December 15, 1955.

148 The Labour Gazette, June 1956, p. 688.

149 Ibid., pp. 700-701 - Thanksgiving Day and Victoria Day.

150 Ibid., pp. 701-710.

151 Letter from Mr. F.H. Hall, Chairman, Joint Negotiating Committee, Non-operating Railway Unions, to Mr. M.M. MacLean, Director of Industrial Relations, Department of Labour, Ottawa, dated April 17, 1956.

152 Information supplied by Canadian Pacific Railway Company, Montreal.

153 Second letter from Mr. F.H. Hall to Mr. M.M. MacLean, dated May 1, 1956.

154 Joint letter from Mr. W.T. Wilson, Vice President Personnel, Canadian National Railways, and Mr. D.I. McNeill, Vice President Personnel, Canadian Pacific Railway Company, to Mr. F.H. Hall, Chairman, Joint Negotiating Committee, Non-operating Railway Unions, dated May 9, 1956.

155 The Labour Gazette, September 1958, pp. 998-999.

156 Information supplied by Canadian Pacific Railway Company, Montreal.

157 Letter from Mr. Bernard Wilson, Director of Industrial Relations, Department of Labour, Ottawa, to each party, dated December 5, 1957.

158 The Labour Gazette, February 1958, pp. 140-141.

159 Ibid., p. 141.

160 Ibid., September 1958, p. 997.

161 Ibid., p. 997.

162 Ibid., pp. 1011-1017.

163 Letter from Mr. F.H. Hall, Chairman, Joint Negotiating Committee, Non-operating Railway Unions, to Mr. Bernard Wilson, Director of Industrial Relations, Department of Labour, Ottawa, dated August 21, 1958.

164 Joint letter from Mr. Donald Gordon, Chairman and President, Canadian National Railways and Mr. N.R. Crump, President, Canadian Pacific Railway Company, to the Honourable Michael Starr, Minister of Labour, Ottawa, dated September 11, 1958.

165 Letter from Mr. F.H. Hall, Chairman, Joint Negotiating Committee, Non-operating Railway Unions, to Canadian National Railways and Canadian Pacific Railway Company, dated November 11, 1958.

166 Judgment and Order, Board of Transport Commissioners for Canada, Vol. XLVIII, Ottawa, November 17, 1958.

167 The Labour Gazette, October 1960, pp. 1030-1031.

168 Letter from Mr. Bernard Wilson, Director of Industrial Relations, Department of Labour, Ottawa, to each party, dated February 18, 1960.

169 The Labour Gazette, October 1960, p. 1030.

170 Transcript of Proceedings, 1960, Op. cit.

171 The Labour Gazette, October 1960, pp. 1030-1040.

172 Ibid., pp. 1030-1040.

173 Ibid., November 1960, p. 1103.

174 Ibid., December 1960, p. 1222.

175 Op. cit., Chapter II, (9 Elizabeth II., Chapter 2, 1960).

176 Hansard, Fourth Session, 24th Parliament, December 1, 1960, p. 370.

177 Separate letters from the Prime Minister, the Right Honourable John Diefenbaker, to Mr. Donald Gordon, Chairman and President, Canadian National Railways, Mr. N.R. Crump, Chairman and President, Canadian Pacific Railway Company, and Mr. F.H. Hall, Chairman, Joint Negotiating Committee, Non-operating Railway Unions, dated January 23, 1961.

178 Separate letters from Mr. W.T. Wilson, Vice President Personnel and Labour Relations, Canadian National Railways, and Mr. D.I. McNeill, Vice President Personnel, Canadian Pacific Railway Company, to Labour Minister, the Honourable Michael Starr, with a copy to the Prime Minister, both dated February 20, 1961; also
Letter from Mr. F.H. Hall, to the Prime Minister, with a copy to the Minister of Labour, dated February 15, 1961.

179 The Labour Gazette, May 1961, p. 431.

180 Press Notice, Press Bureaux, Canadian National Railways and Canadian Pacific Railway Company, Montreal, May 1, 1961.

181 The Labour Gazette, May 1961, p. 431.

182 Ibid., p. 431.

183 Transcript of Proceedings, 1962, Op. cit., pp. 22-25.

184 Ibid., pp. 26 and 29.

185 The Labour Gazette, October 1962, p. 1181.

186 Transcript of Proceedings, 1962, Op. cit., p. 269.

187 Ibid., p. 269.

188 The Labour Gazette, October 1962, p. 1182.

189 Ibid., February 1957, pp. 190-192.

190 Ibid., p. 178.

191 Ibid., June 1956, p. 684.

192 Ibid., February 1957, p. 177.

193 Ibid., pp. 182-190.

194 Ibid., January 1957, p. 5.

195 Ibid., p. 5.

196 Hansard, Fifth Session, 22nd Parliament, January 10, 1957, p. 58.

197 P.C. Order in Council 1957-52, January 1957.

198 Report of the Royal Commission on Employment of Firemen on Diesel Locomotives in Freight and Yard Service on the Canadian Pacific Railway Company, Queen's Printer, Ottawa, December 18, 1957, p. 2.

199 See Transcript of Proceedings in Diesel Firemen's Dispute.

200 The Labour Gazette, March 1958, p. 256.

201 Ibid., p. 258.

202 Ibid., June 1958, p. 577.

203 Ibid., p. 577.

204 Ibid., p. 578.

205 Ibid., p. 578.

206 Ibid., p. 578.

207 Press Summary, Canadian Pacific Railway Company, May 16, 1958, pp. 4-8.

208 Ibid., p. 4.

209 Ibid., p. 4.

210 Ibid., p. 6.

211 The Labour Gazette, June 1958, p. 578.

212 These strike threats concern the same dispute.

213 Operating settlements in the 1964 contract negotiations were reached within a relatively short period of time when considered in relation to some of the earlier disputes.

CHAPTER IV

LABOUR DISPUTE ANALYSIS

Two of the more important characteristics of the labour disputes examined in Chapter III are the length of time involved in each dispute and the extensive third party intervention. Comment is made below on these more important features.

LENGTH OF DISPUTES[1]

Table VII below shows time elapsed in the national railway labour disputes examined:

Table VII

Approximate Length of Time (by Months) of National Railway Labour Disputes and Locomotive Firemen's Diesel Dispute - 1941-1962

Dispute	Date of Request		Date of Settlement		Approximate Time Elapsed
1941	January	1941	July	1941	6 months
1944	July	1943	July	1944	12 months
1946	Early	1946	CNR- August CPR- October	1946 1946	6-8 months
1947	February	1947	October	1947	9 months
1948	November	1947	July	1948	9 months
1950	June	1949	December	1950	19 months
1952	July	1952	December	1952	6 months
1954	November	1953	November	1954	12 months
1956	November	1955	May	1956	7 months
1958	November	1957	November	1958	12 months
1960	November	1959	May*	1961	18 months
1962	December	1961	August**	1962	8 months
Locomotive Firemen's Diesel Dispute	February	1956	May	1958	28 months

Source - Chapter III. * May 4. ** August 9.

It will be observed that considerable time has elapsed from the receipt of union requests until settlement was reached. The minimum period of time involved in any one dispute has been six months, and, in many instances, disputes have lasted a much longer time. The effect which lengthy disputes have had on the parties concerned with railway labour disputes is difficult to assess. The railway unions have not been overly emphatic on the question of delay in disputes, although they have referred to the subject. Possibly the unions have not been more emphatic regarding earlier settlements because they have achieved settlements which have been made retroactive to the end of the previous contract. Management, in more recent disputes especially, has endeavoured to avoid any delays whatsoever although union representatives, management and conciliation board members find it impossible to avoid postponements. Government intervention to date would appear to have resulted primarily from requests for conciliation and threatened emergency situations. The lengthy disputes would not appear to unduly affect the public but shorter disputes would seem to hold advantage for fostering good labour relations.

THIRD PARTY INTERVENTION

Third party intervention in the disputes reviewed has been an important factor in reaching settlement. It has taken different forms - conciliation officers, mediators, conciliation boards, arbitrators and direct intervention by Cabinet members and Parliament itself. Comment on each form of intervention follows.

Conciliation Assistance

Conciliation Officers

Services of conciliation officers were used in the disputes from 1947 to 1954. In each instance, one to three meetings were held by conciliation officers, except in 1952, when seven meetings were convened. The outstanding feature of this type of intervention was that conciliation officers were never successful in achieving a settlement.

Probably more progress was made in 1952 in the conciliation officer stage, than in any other dispute, when Mr. MacNamara, Deputy Minister of Labour, and Mr. MacLean, Director of Industrial Relations, Ottawa, acted in a conciliation capacity. In that instance, however, there were circumstances existing which encouraged settlement. In 1951, one year prior to the expiration of the former agreement, the unions requested the railways to increase wages because of the rapid increase in the cost-of-living. The unions stated that hardship and sacrifice were being experienced by the employees. The railways refused the request in 1951, but shortly after the notice was received in 1952, they offered a wage increase of seven cents an hour. When the conciliation officer stage emerged, there was a base offer from which to work. By the time the officer stage was completed, the railways had offered a seven per cent increase, equivalent to nine cents an hour, and progress had been made on the other points under consideration, such as the check-off of union dues.

A further consideration with respect to the conciliation officer stage in 1952 is that the ranks of the officers - Deputy Minister of Labour and Director of Industrial Relations - were higher than those of conciliation officers in other disputes, a fact which might have been of considerable importance.

Since 1956, however, the conciliation officer stage has been eliminated from the non-operating railway disputes. The following appeared in the Labour Gazette in comments made by the Department of Labour in relation to the 1956 Non-operating dispute:

> "In none of the post-war series of Union railway disputes has a conciliation officer managed to bring about a settlement. The Unions are known to take the view that this part of the standard procedure in a case of the magnitude of the current one, is just a waste of time."[2]

Mediators

One mediator was appointed in the non-operating railway disputes when in 1950, Doctor W.A. Mackintosh was requested by the Government to act as an Industrial Enquiry Commissioner three days before the strike of August 22. A settlement was not reached, but Doctor Mackintosh did bring the parties' positions closer together. He stated he might have been more successful if he had had more time, but his appointment expired at the commencement of the strike.[3]

Boards of Conciliation

The examination of disputes has shown that boards of conciliation have been an important step in the settlement of railway labour disputes. Comment follows on some of the

more important aspects and surrounding circumstances with respect to conciliation boards.

a) Negotiations Prior to Appointment of Boards of Conciliation

In negotiations prior to the appointment of boards of conciliation, the railways in a number of instances stated that they were unable to absorb additional labour costs. Such was the case in the disputes in the years 1941, 1944, 1946 (Canadian Pacific), 1947, 1948 and 1954. In 1958 and 1960, the railways suggested that the contracts be extended for one year to promote economic stability.

In the 1950 dispute, the railways, in the pre-board negotiations, advised the unions that progress in the dispute could not be made so long as hotel and water transport employees were included in the bargaining group. The dispute proceeded to the board unresolved.

Out of thirteen national disputes, in only three, were offers made by the railways prior to the board of conciliation stage. In 1952, the railways made an offer of an increase of seven cents an hour, the circumstances surrounding the case having been mentioned previously. In 1956, the railways, prior to the appointment of the board of conciliation, stated that they were willing to make an offer on wages, health and welfare and statutory holidays, but concrete amounts were not discussed. In the 1962 dispute, the railways said they would make an overall offer provided some agreement could be reached on a wage increase.

This pre-board of conciliation experience would

suggest that for one reason or another, not a great deal of negotiation took place. This lack of progress could probably be attributed to a hesitancy on both sides.

Professor Woods, of McGill University, has stated that he is convinced there is no real bargaining between the railways and the unions. He said on one occasion in 1961:

> "Collective bargaining in the railway industry has failed because it has assumed that the two parties are the Railways and the Unions.
>
> The fact is the parties are the Unions and the public. Railway management does not have the power to commit the public."[4]

The comments above seem to shed light on the lack of negotiation in railway labour disputes.

b) Board Personnel

Members of boards of conciliation, as well as arbitrators, have been eminent persons. A judge has acted as chairman or arbitrator in each instance, with the exceptions of 1947 and 1956, when Doctor Brady and Mr. Eric Taylor, respectively, acted as Board Chairman. Of the nine appointments in the seven disputes between 1950 and 1962 - seven chairmen and two arbitrators - Mr. Justice Kellock acted as Chairman twice and as Arbitrator once. Five judges from Western Canada were appointed - Mr. Justice Wilson, Mr. Justice Sloan (Arbitrator), Mr. Justice Thomson, Mr. Justice Milvain, and Mr. Justice Munroe. The fact that five Western judges have been appointed could be significant because of the concern of Western Canada with increased freight transportation costs, especially in the period from 1948 to 1962.

A further point of interest is that the chairman of

each conciliation board was appointed by the Minister of Labour, the parties' nominees having failed to agree on a chairman in any one dispute.

The parties have consistently nominated lawyers to act as their nominees on boards of conciliation. The unions have on occasion voiced opposition to use of members of the legal profession, yet in each dispute they have nominated a lawyer to act on their behalf. One reason why lawyers have been used could be the length of time consumed in hearings. To obtain the services of other competent personnel could prove to be difficult as they might find it impossible to devote the necessary time.

c) Length of Hearings of Boards of Conciliation

The length of hearings of boards of conciliation increased with each dispute, reaching a peak in 1958 when thirty-eight days in all were involved. In 1960, twenty-five days were required for hearings, but there were not as many items to be considered by the board as there were in 1958. In the 1962 dispute, only eight days were involved. Mr. Justice Munroe, Chairman of the Board in 1962, while the writer was present, made it clear to the parties that he did not think that lengthy hearings were necessarily the best approach.

d) Effect of Post-Hearing Conciliation Attempts by Boards of Conciliation

Conciliation attempts by boards of conciliation subsequent to the completion of hearings, have not been successful, apart from 1962. Six days after the hearings of 1962 were completed, the Board members agreed on recommendations and

the same day presented them to the parties. Fourteen days later the parties accepted the recommendations and after a lapse of a further four days, the Department of Labour issued the report.[5] It would appear that the efforts of the Board in 1962 were of considerable value in bringing the parties into agreement.

e) Time Taken for Issuance of Boards' Reports

The following table indicates the time elapsed between the last day of hearings and issuance of the boards' reports:

Table VIII

Time Elapsed Between Last Day of Hearings and Issuance of Reports of Boards of Conciliation in National Disputes and also Locomotive Firemen's Diesel Dispute - 1941-1962

Dispute	Last Day of Hearings		Date of Report		Number of days
1941	May	14	June	11	28
1944) 1946)	National War Labour Board Awards				
1947	June	10	June	30	20
1948	March	30	April	24	25
1950	March	10	April	14	35
1952	October	8	November	21	44
1954	March	1	April	28	58
1956	March	10	April	12	33
1958	June	6	July	31	55
1960	July	7	August	24	48
1962	July	20	August	13	24
Locomotive Firemen's Diesel Dispute - 1956	November	16	December	17	31

Source - Chapter III.

Considerable time has been consumed in the writing of boards' reports. The longest periods involved were in 1954 and 1958. Since then, the time taken has decreased. In 1962, fourteen days elapsed from the date recommendations were given to the parties, until their acceptance. Four days later, the report was issued. The Board's decision took only six days, a short time when considered in relation to the other disputes.

f) Time Elapsed from Issuance of Boards' Reports Until Settlement or Establishment of Arbitration

Table IX below shows the time in each dispute between the boards' reports and settlement or arbitration proceedings:

Table IX

Time Elapsed from Issuance of Boards' Reports Until Settlement or Establishment of Arbitration - 1941-1962

Dispute	Date of Report		Settlement or Arbitration Date		Number of Days
1941	June	11	July	29	48
1944) 1946)	National War Labour Board Awards				
1947	June	30	October	25	117
1948	April	24	July	14	81
1950	April	14	August	30	138
1952	November	21	December	19	28
1954	April	28	August	19	113
1956	April	12	May	9	27
1958	July	31	November	26	118
1960	August	24	May	4	253
1962	August	13	August	13	-
Locomotive Firemen's Diesel Dispute	December 17, 1956		January 17, 1957 (Royal Commission)		31

Source - Chapter III.

It will be observed, that except for the 1962 dispute, the time elapsed has been of considerable duration from the issuance of the boards' reports until final settlement or establishment of arbitration procedures.

g) Recommendations of Boards of Conciliation and Terms of Settlement

Examination of the recommendations made by boards of conciliation and the final settlements reached in the various disputes indicates that the boards' recommendations have been of importance in relation to final settlement. For example, the actual recommendations made in the disputes of 1941, 1947, 1952, 1956, 1958, 1960 and 1962 comprised the terms of settlement. In 1944 and 1946 the National War Labour Board handed down arbitrary decisions and compulsory arbitration was instituted in 1950. Voluntary arbitration was agreed to in 1954 and the Royal Commission was appointed in the Locomotive Firemen's Diesel dispute. Thus, the International and National disputes of 1948 were the only instances in which the terms of settlement did not coincide with the reports of the boards of conciliation and where there was no further intervention by a board or commission.

A further observation regarding reports of boards of conciliation concerns the nominee in each dispute who signed the majority report with the chairman. In the disputes prior to 1954, with the exception of the dispute of 1947 when a unanimous report was issued, the nominees of the railways joined the chairman in signing the majority reports. In 1954, three separate reports were issued and, subsequent to that time, with

the exception of 1962, the unions' nominees signed the majority report. It was in 1954 that ability to pay increased labour costs became a crucial point with the railways and has since remained an important factor to them. Prior to that time, the railways considered ability to pay was important but since then growing competition from other forms of transport has had effects on rail revenues. This subject of ability to pay is dealt with shortly.

The parties' nominees have not displayed any great tendency to deviate from the positions held by the parties during disputes. There would appear to be some lack of objective appraisal on the part of the nominees, the burden of such appraisal falling primarily on the chairmen.

Royal Commission in the Diesel Dispute

A knotty problem existed within the Locomotive Firemen's Diesel dispute. While the Board of Conciliation recommended that firemen be removed from freight and yard diesels, this was insufficient for either the public or other railway employees to accept completely as being the answer to the problem. The situation changed, however, after the Royal Commission issued its findings. Support for the Locomotive Firemen's case was light, as shown in Chapter III. Even other railway employees did not hesitate to cross picket lines. It would appear that there was considerable value in the use of a Royal Commission to settle this difficult problem concerning Locomotive Firemen.

Direct Government Intervention

Direct intervention by Cabinet members and Parliament

has been of significance in the labour disputes reviewed, especially since 1948. In the disputes from 1941 to 1947, the parties either reached agreement without further assistance, or an award was made by the National War Labour Board, obviating any necessity for direct Government intervention. In the 1948 dispute, less than one week before the date set for withdrawal from service, the parties were summoned to Ottawa. Under the guidance of the Prime Minister and Minister of Labour, settlement was reached a day before the strike was to commence. In the 1950 dispute, after the non-operating strike began, Prime Minister St. Laurent, and the Ministers of Labour and Transport had discussions with the parties. These discussions failed to result in settlement and it was then that the Maintenance of Railway Operation Act was passed by Parliament. In the 1952 dispute, direct Cabinet intervention did not occur, but it must not be overlooked that the Deputy Minister of Labour acted in a conciliation capacity which, undoubtedly, assisted in final settlement. Subsequent to the Conciliation Board's report in 1954, the Minister of Labour urged the parties to recommence negotiations, which they did; however, settlement was not reached. Later the parties were summoned to Ottawa by the Minister of Labour and Prime Minister St. Laurent outlined to them the Government's position. Further negotiations failed to achieve a settlement and, it was at that stage, that the Prime Minister, according to Mr. F.H. Hall, the Chairman of the Unions' Negotiating Committee, advised that if voluntary arbitration was not accepted then compulsory arbitration would

be imposed. The parties agreed to voluntary arbitration.[6]

In the 1956 dispute, three points of interest arise with respect to Government pressure for settlement. First, Mr. E.G. Taylor, the Conciliation Board Chairman, in his attempt to conciliate after the Board's hearings, stated "with apparent confidence", according to the minutes of the railways, that there would be no legislation to prevent a strike, but that should a strike occur, legislation would be introduced to terminate such strike.[7] Second, when agreement had not been reached, after the Board's report was issued the Minister of Labour urged the parties to negotiate, which they did, but settlement was not forthcoming. Third, the problem facing the railways was that the Canadian National President, Mr. Donald Gordon, had been given to understand that the Government would make the Canadian National settle, which would leave the Canadian Pacific to settle or bargain on its own. The railways, not desiring to have such a situation occur, later agreed to settle on the basis of the Board's report.[8]

In the 1958 dispute, Cabinet intervention occurred in a manner unlike that of past disputes. The railways stated they would settle on the Board's report if sufficient revenue was made available in the form of a freight rate increase. The decision of settlement was placed with the Government. The Board of Transport Commissioners authorized a seventeen per cent increase in rates for which Cabinet approval was required. Five days prior to the strike date, the Cabinet approved the rate increase, which in turn resulted in settlement of the dispute.

In the dispute which followed in 1960, a strike date was set for December 3. In November, Cabinet members intervened and met the parties first in Montreal, and then in Ottawa. A settlement was not reached and the Railway Operation Continuation Act was passed prohibiting strike action until May 16, 1961. In January 1961, the Prime Minister urged the parties to meet, which they did, but agreement was not reached. About a month prior to the new strike date of May 16, negotiations were again commenced and Cabinet members again intervened. Settlement was reached on May 4.

Direct Government intervention was not necessary in the 1962 dispute as the parties accepted the unanimous report of the Board of Conciliation.

In the Diesel dispute, from 1956 to 1958, Cabinet members intervened on three occasions, and, in addition, the Government appointed the Royal Commission to study the problem.

CONCLUSIONS

From the foregoing review it may be concluded that Government intervention in all forms has been important in reaching settlement in railway labour disputes. However, changes in control of railway revenues and other aspects of railway finances could very well result in a different collective bargaining situation. Without a change in the railways' financial situation, it would appear that third party intervention and lengthy disputes cannot be unexpected. While it appeared the 1962 dispute was somewhat of an exception and could possibly set a precedent for future disputes, third party intervention

was a very important ingredient for settlement even in that dispute. Since compiling this material, a further non-operating dispute took place early in 1964. The pattern of settlement did not deviate from the previous disputes. After a majority report was written by the Conciliation Board Chairman - Mr. Justice Munroe - and the Unions' Nominee, it was rejected by the railways. However, shortly after, according to press reports, the Presidents of the Canadian National and Canadian Pacific met with Prime Minister Lester Pearson. Settlement of the dispute followed shortly thereafter.

This whole review of railway disputes has shown that the public and the unions would appear to be the parties involved in railway labour disputes. Government intervention has been extremely important in the settlement of these disputes.

FOOTNOTES FOR CHAPTER IV

1 "Length of Dispute", refers to time the notice of requests were received until the time when settlement was reached.

2 The Labour Gazette, January 1956, p. 20.

3 Ibid., October 1950, p. 1643.

Mediators have been of assistance in certain operating employees' disputes where a previous pattern had been established. However, in these disputes the railways were at first opposed to applying the pattern to the operating groups; such was the case in 1962.

4 The Toronto Globe and Mail, March 9, 1961.

5 The Labour Gazette, October 1962, p. 1182.

6 Ibid., September 1954, p. 1252.

7 Minutes of Meeting held between Chairman of Conciliation Board, Mr. Eric Taylor, and the representatives of Canadian National Railways and Canadian Pacific Railway Company, Montreal, March 9, 1956.

8 Minutes of Meeting held between representatives of Canadian National Railways and Canadian Pacific Railway Company, Montreal, May 9, 1956.

CHAPTER V

A STANDARD OF COMPARISON FOR RAILWAY WAGES AND WORKING CONDITIONS

GENERAL OBSERVATIONS

Considerations in Wage Determination

Barbara Wootton, in a study of contemporary wage and salary structure in Great Britain, stated the following in relation to the determination of wages:

> "In general the shift of emphasis away from economic and towards social and ethical considerations cannot fail to strike anyone who has followed the trend of wage discussions over the past thirty or forty years. The contrasts are striking. Once a battleground in which rivals fought each other over the division of proceeds of their joint plundering activities, today wage negotiation has developed into a conference of industrial statesmen debating questions of justice, precedent and public interest..."[1]

Participants in railway collective bargaining in Canada over the period examined, and for that matter, for many years before, sought standards of comparison against which wages and working conditions might be measured. Conciliation board members, whose reports have been extremely relevant in final settlement of disputes, have also constantly endeavoured to find measurements which would result in "fair", "just" and "reasonable" wages and working conditions. These factors go beyond the limits of economic considerations and enter into social and ethical realms.

Some of the principal criteria advanced by parties to labour disputes in the support or denial of wage claims, as suits their respective positions, have been:

1. A minimum budget.
2. Changes in the cost-of-living.
3. Productivity increase.

4. Ability of the employer to pay.
5. Comparisons with wages paid in other places or industries.[2]
6. Ability to recruit and retain suitable staff.[3]
7. Increase or reduction in purchasing power and employment.
8. Maintenance of take-home pay with reduction of hours.[4]
9. Fear of inflation.

All of these reasons have been used at one time or another by both parties in railway labour disputes. Many of them are social and ethical rather than truly economic.

Economic Considerations

Economic considerations in a free market system would dictate that the allocation of the resource labour should be undertaken by the price in the market, i.e., that according to supply and demand, the price would fluctuate to the extent necessary to clear the market. This would mean that where there had been an increase in the supply of labour or decrease in the demand for labour, a lower price would result and all the available labour would be purchased at that price. The employer would be paying a reduced wage (price) to maintain his work force. On the other hand, if there was a rise in demand for labour or a reduction in the supply of labour, the price would rise in order to attract and retain the necessary workers. Should an employer be unwilling to pay the going price, his enterprise would be undermanned and his profits would be less than maximum. If he were unable to pay the going price he would eventually, have to cease operation of what would, in theory, be an uneconomic enterprise.

Sometimes, to support a wage request, unions advance

the argument that if a company finds it difficult to obtain staff, the wages are low and should be raised, criterion number six listed previously. This is truly the only economic criterion of those mentioned. Examination of the others, such as provision for a minimum budget for workers, keeping abreast of cost-of-living and equalling other workers in intra and inter-industry comparisons, shows that these criteria fall under the heading of the social and ethical. These are arguments for "justice", "fairness" and "equality." Nor can it be denied that such arguments as ability to pay, fear of inflation and an increase in purchasing power and, thus, employment, all involve considerations of a "fair" and "just" solution to wage problems, although they are clothed in economic terminology.

Trend in Labour Disputes

For better or worse, it seems true that labour disputes now hinge to a great extent on what is "fair" and "reasonable" in the eyes of the various parties involved, including the public. If such is the case, then in arriving at any viable standard measure, the criteria used for the settlement of wages and working conditions must appear "fair" and "reasonable" to the parties. Otherwise, a criterion or criteria will not be acceptable to one or the other.

Can a Lasting Formula be Established?

While criteria used for determination of wages may appear "fair" and "reasonable" to a party at one time, such may not be the case at another period; or the criteria may be

of little use to the party. For example, at one period of time a union might consider that a cost-of-living increase is a suitable basis for substantiation of a wage request, but if at the time of serving its next request, cost-of-living has not increased, the union will look to other criteria on which to base its claim. In other words, in free collective bargaining there does not seem to be the possibility of a lasting formula for the settlement of disputes.

Sylvia Wiseman in the article cited, in footnote two of this chapter, arrived at the conclusion that there can be no formula for wage determination. She said:

> "There is no universally accepted principle of moral philosophy which will offer a clear guide. The arbitrator must inevitably make ad hoc, pragmatic decisions which he considers fair and just, as well as economically defensible. If he is skillful and/or lucky, he will make a 'wise' (that is, acceptable) decision. We cannot expect any more."[5]

IS A STANDARD NEEDED IN RAILWAY LABOUR DISPUTES?

While it would appear that there can be no lasting formula for wage determination, over the years much effort has been expended in railway disputes to advance a suitable wage standard. The parties have not agreed in any dispute upon the measure or measures to be used for a standard of comparison. Nevertheless, they, as well as outside interested persons, have expressed the opinion that some objective standard of measurement is necessary for railway wages.

The Parties' Comments

Before the Board of Conciliation in 1960, while commenting upon a standard, the unions stated:

> "....But we want to make clear from the beginning that the basic issues before this Board are really only two, the same two issues that have dominated our negotiations with the railways for several years past. There is the question of a proper standard of comparison for wages and working conditions. There is the further question of the financial effects of public policy and the railways' reiterated plea of 'inability to pay.'"[6]
> (Emphasis added by unions)

In the same dispute in 1960, the railways made the following statement in their brief in relation to a standard of comparison for wages and working conditions:

> "For the past ten years various Boards of Conciliation have been faced with the necessity, in recommending wage and fringe benefit levels, of seeking what seemed to them at the time to be the most satisfactory and appropriate standards available with which comparisons could be made."[7]

Government Comments

This quest for a standard has not only been enunciated by the railways and railway unions but also by other interested parties. For example, the Prime Minister when introducing the Railway Operation Continuation Act in the House of Commons, said:

> "The Conciliation Board's report said as follows:
>
> > 'Both the railways and the unions placed emphasis on the need for a standard of comparison between wages of the Non-operating railway force of employees and some appropriate outside group. The railways, for example, put it that the wages paid to their employees should be adequate when tested by a reasonable standard of comparison.'
>
> ....May I say here and now that I believe that to be the basic principle."[8]

The Honourable Paul Martin, Liberal Member for Essex East, at the time of passing of the Railway Operation Continuation Act, said:

> "....Everyone agrees that there must be a standard in railway negotiations against which working conditions can be measured..."[9]

It may be concluded that there is general agreement by the parties and government leaders that a standard of comparison is required.

SEARCH FOR A STANDARD

The remainder of this chapter will show the importance placed by the parties in the disputes and also by conciliation board members on two criteria - a comparison of Canadian railway wages with wages of other groups of employees, and, in a few instances, cost-of-living increase.

Period up to 1922

As mentioned in Chapter III, prior to 1918 the standard for wages and working conditions on each Canadian railway was comparable to that on railways in adjacent territories in the United States. In 1918 and 1919, the McAdoo Award made in the United States, was also applied to Canadian railway employees, while United States railway wage deductions in 1921 and 1922 were also applied on the Canadian railways; thus, the standard used was conditions in the United States.

Period 1923-1939

Wage increases and reductions applied to Canadian railway employees during the period 1923-1939 were not of the same magnitude as those in the United States. This was unlike the period from 1918-1922. While the Canadian railway unions continued to use parity with the United States railway employees as their main basis for wage claims, and did so up

until 1952, boards of conciliation in railway disputes from 1926 onward, implied or stated the opinion that Canadian railway wages and working conditions should be comparable with those existing in other Canadian industry or should, at least, not follow United States conditions. There are shown below four excerpts from reports of boards of conciliation written during the period 1923-1939.

Board of Conciliation - 1926:

> "From any evidence submitted to this Board there does not seem to be any obligation upon the Railway Companies in Canada to follow changes of rates of pay in the United States.
>
> Moreover, it would appear that conditions in the United States are different from those in Canada..."[10]

Board of Conciliation - 1931:

The report in referring to the unions' claims said:

> "They contended, 'that Canadian railroads now should receive the same wages as similarly classed employees, with whom they are closely related, on the American side of the International boundary.'"[11]

and

> "...we feel that railway basic wage rates in Canada must be based on conditions in Canada and not in the United States..."[12]

Board of Conciliation - 1933:

In commenting upon the application of the McAdoo Award to Canadian railway employees, the Board of Conciliation in 1933 said:

> "So soon as the McAdoo Award was promulgated in the U.S., Canadian Railway Labour pressed for the adoption of the same rates in Canada. The reasons given included the similarity of the work, and the approximation of economic conditions. If there was similarity in the situation, there was certainly no similarity between the employees..."[13]

and

> "....To impose upon the Canadian Railways the rates of wages in the McAdoo Award, meant to increase the railway wage bill by some $57,000,000 per annum..."[14]

and

> "The railways were absolutely unable to find the money wherewith to meet any such increases..."[15]

and

> "It was in the urgent and threatening circumstances... that the Government...as a war measure, adopted P.C. 1768, which virtually enacted into Canada the wage rates of the McAdoo Award..."[16]

Board of Conciliation - 1937:

Referring to the unions' submission, the Board of Conciliation in 1937 said:

> "It was not part of the employees' case that railway rates of pay in Canada compared unfavourably with the rates received by other general classes of employees in this country. Their main contention in this respect rested on a comparison of railway rates in Canada with those in the United States."[17]

and

> "Separate national control and regulation of earnings must make the railways of the two countries into separate national systems. National policies, such as those in respect to development of resources, domestic and foreign trade, and price levels, create differences in operating conditions for these railway systems which are beyond their control. So do geography, climate, and the distribution of population. While there are many advantages in there being like standards and practices in the two systems, it seems reasonable to us that, in any particular case, similarity in governing factors should be established as a fact before the example in one country can be urged as a fixed rule in the other."[18]

<u>1941 Dispute</u>

In 1941, the unions requested that the railways establish a cost-of-living bonus. This request was based on the rise of cost-of-living during the first years of World War II, although the unions referred to parity with United States rail-

way employees. The Board of Conciliation based its recommendation of an increase of $1.93 a week on changes of cost-of-living in Canada.

1944 Dispute

Parties' Positions

During the course of World War II, wage controls were imposed in Canada and the wage increase requested in 1943 by the railway unions went before the National War Labour Board. The main criteria used by the unions in substantiating their claim for an increase in wages was parity with United States railway employees. Only brief reference was made to any comparison with wages of employees in other Canadian industries.[19] The railways' primary concern in this dispute was to refute the unions' claim of parity with United States railways. They stated that the McAdoo Award had distorted Canadian railway wages.[20]

Board's Award

The National War Labour Board in awarding a wage increase of six cents an hour to railway employees in 1944, stated that it felt comparisons must be made with other Canadian industries.[21] The Board observed that as a comparative study of Canadian wages had not been made by either party in the dispute, it had undertaken to make a study of its own.[22] It also stated that the study embraced a "large and representative group" of various types of industries from all parts of Canada. It was felt that the establishments concerned had a wide range of job classifications, which were, "...reasonably

similar to railway positions."[23] Other factors taken into consideration by the Board were:

1. The level of wages in each industry before World War II.
2. The security and pension rights afforded railway employees.
3. The level of skill requirements in the various industries.[24]

1946 Dispute

A standard of comparison did not emerge as a factor in 1946. The Canadian National granted their employees an increase of ten cents an hour, while the Canadian Pacific was later ordered by the National War Labour Board to pay an increase of the same amount.[25]

1947 Dispute

Parties' Positions

In the 1947 Vacations' dispute, the unions before the Board of Conciliation used for comparison purposes conditions of workers in Great Britain, Australia, New Zealand and the United States, as well as a selected list of industries and municipalities in Canada in which workers were receiving two weeks' vacation.[26] The main arguments advanced by the railways were:

1. That vacations for railway employees had in the past been bargained collectively for each group of employees, consideration being given to the peculiarities of the situation of each group of employees. It was felt, therefore, that vacations should not be handled en masse.
2. That comparisons made by the unions were not valid because the working conditions in the Canadian railways were unlike any of the situations mentioned by the unions.[27]

Board's Report

The Board in its unanimous report recommended increased vacations. It stated that the case should be judged on existing industrial practice and that which was regarded as desirable social policy. It also observed that the railways were a great force in the Canadian economy and must inevitably reflect the tendencies prevailing.[28]

1948 Dispute

Parties' Positions

In 1948, the following criteria were used by the unions to substantiate their claim for a wage increase:

1. Desire for parity with United States railway employees.[29]
2. The increase in the cost-of-living.[30]
3. Comparisons with various other Canadian industries.[31]

The railways before the Board of Conciliation advanced a number of differences between the United States and Canadian economies; they maintained that railway wages in Canada had risen almost to the same extent as average hourly earnings in manufacturing and industry generally. They also stated that railway real wages were only slightly below the real wage level of 1939.[32]

Board's Report

The Board did not accept the United States comparison, suggested by the unions, primarily because of the differences existing between the two countries. Further, the Board concluded that if living costs in 1939 were used as a base for cost-of-living, the railway employees would be entitled to only 4.2 cents an hour wage increase. It recommended a seven cents

an hour increase stating that the additional 2.8 cents, over and above the 4.2 cents, would place railway employees in a favourable position in relation to employees in other Canadian industry.[33]

1950 Dispute

Board of Conciliation Proceedings

a) Parties' Positions

In 1949, United States railway employees achieved a settlement which accorded them a forty-hour week and a wage increase of seven cents an hour. Subsequently, the Canadian railway employees advanced requests for a forty-hour week and seven cents an hour, basing their claims on parity with United States railway employees.[34] The railways in advancing a standard for comparison purposes used average wages paid to employees in Canadian manufacturing. They also elaborated upon the differences between the United States and Canadian economies.[35]

b) Board's Report

The majority report of the Board, which was signed by the Chairman, Mr. Justice J.O. Wilson, and the Railways' Nominee, stated in part:

> "The variety of occupations in which Non-operating rail workers are engaged is such that comparisons are difficult. However, such comparisons as are made should be with large groups, such as durable goods workers, which may also be expected to comprise a diversity of occupations and to include, as does the Non-operating rail group, skilled and unskilled workers. Comparisons with individual industries are of less value..."[36]

and

> "We have said comparisons are difficult. We do not admit that they are impossible. The difficulty arises in part

> from the fact that certain classes of railway workers are sui generis, they have not their counterpart in other industries..."[37]

The Wilson Board made reference to the one criterion utilized by the Presidential Emergency Board in the forty-hour week dispute in the United States two years earlier - the durable goods industries.

The six industries which comprise the durable goods group are as follows:

Wood Products
Iron and Steel Products
Transportation Equipment
Non-ferrous Metal Products
Electrical Apparatus and Supplies
Non-metallic mineral products

Appendix II shows sub-groups included in each of the above industries.

The Wilson Board did not use durable goods for comparison of Canadian non-operating railway wages, but, on the other hand, did not reject this standard. The Board used a wider range of industries, which included Pulp and Paper, Textiles, Mining, Local Transportation, Rubber Products, Building Construction and Highway Construction.[38] In recommending a forty-four hour week, the Board observed that the unions' request for forty hours a week would place railway employees in Canada ahead of all other Canadian industrial groups, with the exception of Coal Mining.[39] While the Wilson Board did not utilize the durable goods standard for comparison purposes, it has been an important factor since that time in non-operating railway disputes.

Arbitration Proceedings

Mr. Justice R.L. Kellock was appointed Arbitrator subsequent to the strike in 1950. His terms of reference were narrow in that the forty-hour week had been agreed upon by the parties, and the only decision the Arbitrator had to make concerned the inception date. The wage increase decision was limited to a maximum of three cents an hour.

a) Parties' Positions

The unions in arguing their case before the Arbitrator, based their wage claim on increased cost-of-living and their request for decreased hours on the trend of working hours in Canada and other countries. A number of individual industries were selected for comparison purposes. The railways in their presentation to the Arbitrator stated that the railway workers would be favoured over the durable goods workers as well as other "outside" workers, if the requests were granted. After considering the wide geographical distribution of railway employees when compared with employees in other industry, the railways' brief stated:

> "....We again consider that the proper comparison is the whole group of durable industries, which is the higher paying group in manufacturing..."[40]

The railways at this point advocated that the level of earnings of durable goods workers should be the maximum or ceiling for railway workers' wages.

b) Arbitrator's Award

Mr. Justice Kellock, the Arbitrator, observed that the unions had advanced a number of selected industries for

comparison purposes but he said, they had not shown why these industries, in themselves, were comparable to the Canadian railways. To illustrate his point, the Arbitrator referred to three of the industries used - Coal Mining, Petroleum and its products, and Automobiles and parts, and he enunciated his reasons why he felt these industries were unlike the railways.[41] In searching for a standard by which to measure railway wages, the Arbitrator arrived at the following conclusion:

> "...in comparing railway wage rates with wage rates outside, the comparison should be with those sections of industry in which the nature and variety of employment, the proportions of male and female employees and the territorial distribution are really comparable."[42]

and

> "Without going through the list in detail, a fair comparison on the basis of the factors already mentioned is, in my opinion, furnished as nearly as may be by the group of industries falling under the head of 'durable goods manufacturing.' That section of industry employs probably a higher proportion of skilled workers than in the case of manufacturing generally and the proportion of female employees is said, on the material before me, to be about the same as in the case of the Non-operating railway employees....In 1948 the durable goods industry was used as a basis of comparison for similar purposes in the United States by a presidential board which had to consider problems akin to those arising here."[43]

It would seem two factors were important in influencing the Arbitrator to turn to the durable goods comparison. First, the use of the durable goods comparison by the Presidential Emergency Board in the United States and, second, the railways' claim that the durable goods earnings should be a ceiling for railway non-operating employees' wages.

1952 Dispute

Parties' Positions

Before the Board of Conciliation in 1952, the unions

based their claim for a wage increase of forty-five cents an hour on parity with United States railway employees and on an increase in the cost-of-living.[44] Prior to the appointment of the Board, the railways offered an increase of seven cents an hour - a sufficient amount, they said, to place non-operating employees on a comparable level of earnings with durable goods workers.[45] This same stand was taken by the railways before the Board of Conciliation.

Board's Report

The majority report signed by Mr. Justice Kellock, Chairman, and the Railways' Nominee, stated in part:

> "No other group of workers in the Canadian economy furnished, in the opinion of the Board, a comparison which answers all the requirements as well as the durable goods industry..."[46]

Minority Report

The Unions' Nominee, in his minority report, objected to the durable goods comparison for railway workers, for the following reasons:

> "In short, the actual hourly or weekly earnings in the durable goods group as a whole are dragged down by the inclusion of the wood products industries and of unorganized as well as organized units, small scale as well as large scale industry, and uneconomical as well as economical establishments..."[47]

By completion of the 1952 dispute, the durable goods comparison had become an important feature in non-operating railway disputes, which, of course, influenced subsequent operating employees' settlements. The United States comparison had been totally rejected.

1954 Dispute

Board of Conciliation Proceedings

a) Parties' Positions

In the fringe benefit dispute of 1954, the railways before the Board of Conciliation laid great stress on their economic plight. They stated that rising freight rates were seriously affecting their competitive position and difficulty was being experienced in securing adequate net earnings at the then existing wage levels.[48] The unions in this dispute had come to the point where they were willing to accept the durable goods standard as the measuring rod for wages and working conditions of non-operating railway employees,[49] and have, since 1954, advocated the durable goods industries as the standard to be used in non-operating railway disputes.

b) Chairman's Report

Mr. Justice Kellock, the Chairman, observed that the railways' spokesmen had stressed their poor financial situation but, he also stated, the railways had not departed from the durable goods comparison.[50] In making his recommendations the Chairman took into consideration the level of durable goods earnings, but also concluded that the railways' ability to pay was not irrelevant.[51] As mentioned previously, the Minister of Labour decided that where the report of the Unions' Nominee coincided with the Chairman's report, this comprised the Board's report.

c) Minority Report

The Railways' Nominee in his minority report stated

that while the durable goods level of earnings had been used previously for comparison purposes, it was not a suitable criterion because of the differences between the durable goods industries and the railways in pricing, provision of service, geographical distribution of employees, rate of return on investment and ability to pay.[52]

Arbitration Proceedings

In 1954, before Mr. Justice Sloan, who was appointed Arbitrator in the dispute, the railways challenged the durable goods comparison in various respects but no alternative criteria were suggested. The Arbitrator commented as follows:

> "The durable goods industry has been generally used as a yardstick of comparison with Railway working conditions. There are areas in which conditions are, to a degree, parallel for comparative use, but there are divergencies which render the yardstick misleading and not an absolute guide."[53]

After discussing some of the divergencies between the railways and the durable goods industries, Mr. Justice Sloan said:

> "In the overall result, it seems to me that the durable goods industry may, with some reservations, be regarded as a reasonably good guide. It has at least one virtue; there is no other."[54]

1956 Dispute

Parties' Positions

By 1956, the durable goods standard had become well entrenched as a measuring rod (in part at least) for non-operating railway employees' wages and working conditions. In the 1956 labour case the railways strongly disputed the use of the durable goods level of earnings for judging non-operating railway wages and working conditions. By January 1, 1956, when

the dispute was underway, durable goods average hourly earnings were $1.59,[55] while non-operating average hourly earnings were $1.467.[56] This advance of durable goods earnings over non-operating earnings strengthened the desire of the unions to use the durables as the criterion for non-operating disputes, while it urged the railways to look for lower standards.

In the 1956 dispute, the railways proposed a new standard of comparison for non-operating wages, referred to as the "paid workers" standard.[57] This standard was composed of two parts. The first part comprised the group average annual earnings of all paid workers in the country. This group level of earnings was proposed as a standard to measure whether railway wages were adequate. The second part of the proposal was that any excess to be paid over average earnings of the country as a whole, should depend on the ability of the industry to pay.[58] The railways when advancing their "paid workers" standard for consideration of the Board of Conciliation, advocated that railway workers be compared with workers throughout the ten provinces of Canada rather than with a "...favoured segment of the community",[59] referring, of course, to the durable goods workers.

As indicated previously, the unions based their claims on the durable goods standard. They stated in part:

> "....The employees take it as established that their claims are to be measured by no worse standard than that provided by the durable goods industries..."[60]

Board's Report

Mr. E.G. Taylor, Chairman of the Conciliation Board,

and the Unions' Nominee signed the majority report.

a) General Observations

The Board observed that the unions rested their entire case on the durable goods standard, while the railways had stated they could no longer live with that standard even though they admitted that they had in previous disputes advocated it as a ceiling beyond which they could not go.[61] The Board commented on the "paid workers" standard advanced by the railways and noted also that the railways had submitted a more thorough study of the comparison between the durable goods industries and the railways. According to the Board, the railways had concluded that the durable goods standard was not valid because of the difference in geographical distribution of workers in the railways and durable goods industries, as well as differences existing in the rate of return on investment, the gross revenue per employee, capital investment per employee and the ratio of payroll to revenue.[62]

b) Criteria for Wage Determination

The Board, in commenting upon proper criteria for wage determination in the railway industry, stated that it did not believe that one criterion should govern wages, even though a "...proper standard of comparison is one factor, a very important one." Other criteria mentioned by the Board were community wage comparisons, cost-of-living and ability to pay.[63]

c) Necessity for a Standard

The Board made special note that the parties concerned were agreed that in railway disputes it is very important to find an appropriate standard of comparison (this referred to a

standard in the narrow sense of one criterion).[64] It then emphasized the necessity of finding a solution to the dispute so that a strike would not occur. In part, it stated:

> "....Because of this pressing consideration, it is obvious that a proper standard of comparison on the basis of which a railway wage dispute may be settled is of urgent importance. For this reason, the Board agrees with the parties that it is of value for the Board to recommend and for the parties to agree upon an appropriate basis for comparison."[65]

d) Conclusions

The Board rejected the "paid workers" standard advanced by the railways. It stated that the standard was too broad in scope for the purpose concerned. For example, it was pointed out that there was a large number of female occupations included, as well as the professional, agricultural and managerial groups. The Board felt that the only factor the standard met was the geographical distribution. It did not meet the problem of skill levels, the male-female ratio, the traditional level of railway earnings as compared with other groups, the railway industry's position in the economy, the employees' position in the community and the size of the railway industry.[66]

In rejecting the "paid workers" standard and deciding upon a measuring rod for non-operating railway wages, the Board said:

> "...the so-called standard does not provide an appropriate basis of comparability; its application would lead to illogical results..."[67]

and

> "The Railway industry is unique; there is no other Railway industry in Canada with which it can be compared."[68]

and

> "Thus the closest comparable groups of employees to the Non-operating force on the Railways are those employed in manufacturing. And of the manufacturing group, 'Durable Goods' has been accepted, at least since 1950, as the most comparable. There are a number of relevant pronouncements by previous Chairmen of Conciliation Boards and by two eminent and distinguished Arbitrators, as well as statements by spokesmen of the Railways themselves in previous disputes, all of which conclude that, while recognizing the difficulties involved, 'Durable Goods' is the most appropriate comparison available..."[69]

The Board felt that there were no new factors which would induce a change; thus, it stated:

> "...we fully share the views expressed by previous Reports and Awards that, with the necessary reservations...the durable goods group of manufacturing industry remains the most nearly comparable and forms an appropriate standard..."[70]

and

> "....In the totality of circumstances, we are of the opinion and so recommend that 'Durable Goods' should continue to be accepted as the appropriate standard. However, in our opinion, no standard can be an absolute guide or be applied mathematically, regardless of all other circumstances and factors."[71]

e) Gap in Earnings

An extremely important point in respect of the Board's recommendations on wages concerned the gap existing between non-operating workers' earnings and those of the durable goods workers. The recommendation did not seek to close the existing gap in one adjustment as the Board felt that this would be a heavier burden than the railways should be asked to bear at one time; thus, the recommended settlement fell short of parity with durable goods earnings.[72]

Minority Report

The Railways' Nominee in his minority report stated:

> "Even though as a member of the 1952 Board I participated in using a comparison with Durable Goods, I am convinced in the light of the facts brought to the attention of this Board that such a comparison is erroneous. Having come to this conclusion, to continue such a comparison in this dispute would merely be perpetuating an error..."[73]

He then recited the differences between the non-operating railway workers' situation and that of the durable goods group, the chief of which he thought was the geographical distribution. It was for these reasons he felt he could not accept the durable goods comparison.[74]

1958 Dispute

Parties' Positions

Before the Board of Conciliation in 1958, the unions endeavoured to substantiate their claims on the basis of the durable goods comparison. They said:

> "To put matters briefly, the foundation of the employees' claims is the necessity for full and unqualified parity with the established and accepted standard for the determination of their working conditions, that is to say, unmodified parity with the durable goods standard, a chosen standard of the Railways themselves and the standard that has now been tested and approved in these hearings by a long succession of Arbitration Tribunals and Boards of Conciliation."[75]

The unions also mentioned that they had opposed durables earlier as a standard, but they said they now concluded:

> "....For the employees to reopen the issue and press for a higher standard would be unrealistic, because the precedents are by now so strong as to be virtually unchallengeable..."[76]

The railways before the Board of Conciliation in 1958 recited in detail the various reasons why they could not accept the durable goods industries as a suitable standard of comparison for railway workers. The formula mentioned in the 1956 dispute

was again advanced, i.e., that railway wages should be measured by a suitable standard and any excess should depend on ability to pay. A new standard was advanced in place of the "paid workers" standard of the previous case. The new standard was referred to as the "going wage" standard.[77] The railways said that the new "going wage" standard was an attempt to meet most of the criticisms of the 1956 "paid workers" standard, and, at the same time, take into account the nationwide distribution of employees, the variety of skills and occupations, as well as the male-female ratio.[78]

Briefly, the "going wage" standard was constructed as follows. The level of wages paid to workers who were judged to be reasonably comparable to railway workers was obtained for each area of the country. These wages were then combined into an average, which was considered by the railways to represent the average level of wage rates for a body of workers who it was felt, possessed the same skills and geographical dispersion as non-operating railway employees.[79] The railways stated that when the "going wage" standard was compared to wages of non-operating railway employees, the railway employees held a small margin of advantage and, thus, it was concluded that their wages were adequate.[80]

Board's Report

The majority report of the Board, signed by the Chairman, Mr. Justice Thomson, and the Unions' Nominee, contained considerable comment on the durable goods and "going wage" standards.

a) Board's Comment on the Durable Goods Standard

The Board observed that the unions' case for a wage increase was "based squarely and almost exclusively" on the sole criterion of the durable goods industries. The Board felt that if such a course were followed all that would be necessary would be to show that the wage rates of non-operating employees were lower than earnings of the durable goods workers and then to eliminate the differential.[81] The Board stated that previous conciliation board chairmen and arbitrators had evidenced reservations about using the durable goods industries as an unqualified standard. One example advanced was that of Mr. Justice Sloan in 1954, who stated that there were divergencies between the durable goods workers and non-operating railway employees, which divergencies would render the durables measure misleading and it would not be an absolute guide. The Board observed, however, that Mr. Justice Sloan had said that no other standard had been advanced.[82] A further example advanced by the Board was Mr. Eric Taylor's remarks in 1956. Mr. Taylor had stated that while the durable goods standard could not be disregarded, as it was an important factor, it could not be applied mathematically or mechanically without regard to other factors which are of importance.[83] The Thomson Board concluded that the employees in the durable goods industries were as nearly comparable to the non-operating employees as employees in any other group of industries in Canada but it felt that other factors and circumstances, such as ability to pay, should be considered in the determination of wages for non-operating railway employees.[84]

b) Board's Comment on the Unions' Position

The Board said that the unions argued that railway employees' wages since 1939 had fallen behind those of durable goods employees and then observed:

> "...that does not prove that employees of the Railways have been as badly used as the figures might at first glance seem to indicate."[85]

According to the Board, this changed relationship was easily explained. Prior to 1939, the railway employees reaped the benefit of "capable and aggressive leadership" and, thus, they had a high wage scale. Manufacturing, on the other hand, was in its infancy and it was not until World War II that it, as well as other industries, reached maturity and were able to pay better wages. In such circumstances, the Board felt that there would be a narrowing of the gap between wages paid to railway employees and those in other more recently established and prosperous industries. Further, while this feature had been considered by other boards and arbitrators, it had not, according to the Board, had any decisive effect in wage determination.[86] It was also observed that a recession was being experienced, which could result in a slowing of wage increases in the durable goods industries.[87]

c) Board's Comment on the Railways' Proposed Standard

The Board's chief criticisms of the "going wage" standard were, first, the method used for the selection of outside occupations for comparison with railway occupations and, second, the date of the wage data utilized. It was stated that these data were over one year old and required adjustment.[88]

The Board concluded that:

> "...the railways' new composite standard cannot, in its present stage of...development, be regarded as better or more satisfactory than the durable goods standard."[89]

It further observed, however, that the "going wage" standard had served a useful purpose in calling to attention some of the defects in the durable goods standard. The Board felt the new standard emphasized the necessity for careful examination and evaluation of other factors, "...which must be considered in determining what are <u>just and reasonable</u> wage rates for the Non-operating employees.",[90] (Emphasis added).

d) Application of the Durable Goods Standard

The Board devoted ten pages of its report to the factors which it felt should be given consideration when applying the durable goods standard to the non-operating railway employees. A summary of these factors is shown in Appendix III.

In making its recommendations, the Board said:

> "...in our opinion the Durable Goods Standard leaves much to be desired. In spite of that however, it still remains one of the most important factors to be taken into account...we have earnestly endeavoured to give due consideration and proper weight, not only to the Durable Goods Standard, but also to each of the various factors, differences and other matters...mentioned."[91]

Mr. Justice Thomson said that he was concerned about a reasonable wage increase and the need for moderation, while Mr. Lewis, the Unions' Nominee, his co-signor, was concerned with recommendations being substantially below the level of durable goods earnings. The result, he stated, was a compromise.[92]

Minority Report

Mr. Vineberg, the Railways' Nominee, commented at

considerable length on the differences between the durable goods workers and railway employees. He felt the "going wage" standard was valid and, that it had shown the railway employees' wages were not out of line. Considering this, together with the benefits enjoyed by railway employees and the fact that an economic recession was existing, he thought that the wage level should remain unchanged.[93]

1960 Dispute

Parties' Positions

a) Railways' Position

Before the Board of Conciliation in 1960, the railways made a vigorous attempt to break away from the durable goods comparison, pointing out why they felt it was not an appropriate standard. They stated that various boards and arbitrators had given limited approval to the standard and that recent boards had become increasingly critical of the durable goods industries "as the sole determinant for the setting of railway wage levels."[94] The railways then advanced what they considered to be the important differences between the durable goods workers and railway employees, which differences are summarized in Appendix IV. It will be noted there are some factors mentioned in addition to those shown in Appendix III.

In order to determine what they thought would be a proper measure for wages of non-operating employees, the railways advanced another standard, generally referred to as the "Woods, Gordon" study. They said:

> "The standard that the railways now advance is not new - it remains consistent with the same basic concepts as those contained in the 1958 standard and differs only to the extent that a sincere attempt has been made to eliminate the deficiencies that were found to exist previously. To accomplish this a study was made by Woods, Gordon & Company, a firm of management consultants experienced in the fields of job analysis and wage determination..."[95]

It is not proposed to outline in detail the "Woods, Gordon" study, as it involved forty-four pages and a number of appendices.

Briefly, the study summarized the "paid workers" standard of 1956 and the "going wage" standard of 1958. It commented upon the following problems with which the former standards had failed to deal with properly:

1. The assessment of employee skills and qualifications.
2. The problem of regional differences in wage rate levels.
3. The difficulty in obtaining adequate outside wage rate information.

The study observed that there was a limited number of railway occupations which have counterparts in outside industry and that there was a limited amount of available statistical information on wage rates; therefore, specific jobs in the railway were selected which:

1. Had skills and qualifications similar to a job in an outside field of employment.
2. Would provide employment in the main geographical areas.

It was decided that the counterparts in outside industry would have to be represented in the main geographic areas and also there would have to be proper wage data available concerning them.

After much study and field work, twenty-one separate job comparisons representing 19,000 railway employees were selected. It was felt that these met the above conditions. Appropriate counterparts were also selected from outside industry. In addition, wage data in respect of the positions selected were also obtained for the date October 1, 1958. A number of exhibits and explanations were included, showing supporting data regarding job descriptions, wage rates and sources of wage data.

The wage rates obtained for the railway positions and their counterparts in other industry, were depicted graphically. From the scatter diagram composed by the points, a line of "best-fit" was derived. In addition, a 45 degree line was also drawn which line would depict the situation if the wage rate of each railway position was equal to the wage rate of its counterpart. It was stated that where the line of "best-fit" was above the 45 degree line, the positions in this range were paid higher than their outside counterparts. Where the line of "best-fit" was below the 45 degree line, those positions were lower paid than their outside counterparts. The wage rates of all the positions involved ranged from $1.40 to $2.00 an hour. It was found that those railway positions with wage rates of $1.80 an hour or less, were higher than the wage rates paid their counterparts in outside industry. Those positions with wage rates of more than $1.80 an hour were less than their outside counterparts. Further, two-thirds of the railway positions used were in the $1.40 to $1.80 range while one-third were in

the range of $1.80 to $2.00 an hour. The Woods, Gordon representatives stated that railway management had informed them that approximately seventy-five per cent of the 116,000 non-operating employees were included in the $1.40 to $1.80 wage rate range and twenty-five per cent in the range above $1.80. It was concluded from the analysis made that railway wage rates compared favourably with outside occupations; thus, the railways felt that there should be no increase in wage levels.

b) Unions' Position

The unions devoted a good deal of their presentation to the significance of, and the justification for, the level of earnings in the durable goods industries being the sole determinant of wages for non-operating railway employees.[96] They argued that while there were some differences existing between the non-operating railway employees and the durable goods employees, when the durables group was first introduced in 1950, these differences were not mentioned; therefore, they held the opinion that no change should be made in 1960. After referring to a number of the differences, the unions said:

> "The standard did not reproduce the Non-operating force in all its details - no standard can be imagined that would have - but it was intended to be fair in an overall way, fair as nearly as may be in terms of broad principles of comparison..."[97]

and

> "We have shown why, in our opinion, the use of the Durable Goods standard is necessary in determining an adequate floor to the earnings of Non-operating employees..."[98]

In calculating what they thought would be necessary to increase

railway wages, the unions said that a flat increase of 15.2 cents an hour would be required to close the gap between the earnings of durable goods workers and the earnings of non-operating railway employees. They said a further 7.2 cents an hour would be required to keep pace with the durables' earnings up to the end of the agreement. The balance between the 22.4 cents and the 25 cents requested, could, they said, be utilized for a step-by-step increase.[99]

Extensive cross-examination of the "Woods, Gordon" study was undertaken by the unions. They attacked, among other things, occupational coverage for comparison purposes, wage data on labourers which had been gathered from municipalities, and the particular construction of the line of regression or "best-fit" used for measurement purposes.

Board's Report

Mr. Justice Milvain wrote a fairly short report, which was concurred in by the Unions' Nominee.

a) A Standard of Comparison

The report observed that the railways and the unions both placed emphasis on the need for a standard of comparison. It said:

> "Thus, a major part of the time this year, as in the two previous conciliation hearings in 1956 and 1958, was taken up with an analysis, support and criticism of the Durable Goods standard..."[100]

The Board made comment on the successive three standards for wage comparison presented by the railways in the disputes of 1956, 1958 and 1960. In connection with the "Woods, Gordon" study of 1960, the following remark appeared:

> "....It is also clear the Woods, Gordon study of this year, though it involved a great deal of work, cannot be considered as occupying the position of a standard of measurement."[101]

The Board concluded that in view of the difficulty in finding comparisons for job classifications in the railways, the durable goods industries should:

> "...continue to be recognized as an important sign-post...to reach a rational conclusion on the question of wages for railway Non-operating employees...but... the durable goods standard cannot be regarded as a fixed immutable thing to be applied with mathematical precision."[102]

The Board observed that the skills and male-female ratio in the durable goods industries were relatively the same as those in the non-operating railway group. It was felt, however, that the geographic and territorial distribution of the two groups were different and it was also noted that the railways' revenue situation was unlike that of other companies.

b) Gap in Earnings

While the wage recommendation of seven cents an hour and four per cent did not seek to close the gap between the earnings of the durable goods employees and the earnings of non-operating employees, it was the desire to maintain the existing differential.[103] In addition, the two other items, mentioned previously, were also recommended, i.e., increased annual vacations and that their be no charge imposed for the check-off of union dues.

Minority Report

The Railways' Nominee, in his opening remarks, stated in part:

> "....Representatives of the employees are anxious to gear compensation to a Durable Goods criterion, irrespective of whether revenues are available or not. The Railways are concerned with viability. It is no exaggeration to suggest that they fear for their economic lives..."[104]

He expounded at length on the railways' financial condition, pointing out their precarious situation.[105] He also referred to the differences between the durable goods group and non-operating railway employees[106] and concluded his report with the recommendation that there be no change made in the railway wage level. He did, however, concur in the recommendations for increased vacations and that there be no charge made for check-off of union dues.[107]

1962 Dispute

Parties' Positions

a) Railways' Position

In 1962, the railways stated before the Board of Conciliation that the unions based their requests for a wage increase on a "parity of averages", i.e., a straight comparison of average hourly earnings of durable goods workers with average hourly earnings of non-operating employees; further, that the unions maintained this parity had been established by boards of conciliation and arbitration tribunals in previous non-operating wage disputes.[108] The railways said it was a fallacy to maintain that a "parity of averages" had been established in the past. Two tasks they set out to do were:

1. To show that previous boards did not in any way accept or advocate the principle of a "parity of averages", but "... did evolve and crystallize a radically different rule for

guidance in dealing with wage claims in this field."[109]

2. To show that when the rule established by the reports of boards and tribunals was applied to the existing situation there was not justification for a wage increase at the time or during the ensuing two years.[110]

Before proceeding with their comments on the subject of a "parity of averages", the railways stated that the durable goods standard was not their "chosen standard" as often referred to by the unions; they also said they were not going to get into a controversy over the matter.[111] The railways went on to say that prior to World War II, the wage structure of the railways had been developed by collective bargaining. Since 1946, however, there had been a number of across-the-board increases for non-operating employees and no consideration had been given to a comparison of individual occupations with similar occupations in other industry; thus, an overall comparison with the durable goods industries was not sound.[112] The railways advanced a number of excerpts from the reports of past boards of conciliation which stated that the durable goods comparison was just one factor to be considered; thus, a "parity of averages" had not been established.[113] To further substantiate their point that a "parity of averages" had not been established, the railways presented information to show that since 1955, after the settlement of the various disputes, the non-operating employees' earnings as a percentage of the durables' earnings were:

December 1955 - 93 per cent
December 1957 - 91.4 per cent
December 1959 - 92 per cent
December 1961 - 95.3 per cent

The railways said that reports of previous boards had advanced various criteria for wage determination and a number of excerpts were quoted in this respect. The criteria mentioned by the railways were:

1. A proper standard of comparison.
2. The pattern of wage increases in the community since the last increase granted to those concerned.
3. The cost-of-living as reflected by the Consumers' Price Index.
4. In appropriate circumstances, the ability of an industry to pay.[114]

It was further observed by the railways that while the various boards had adopted the durable goods earnings for comparison purposes, they also listed three differences between the non-operating employees and durable goods employees. These differences concerned the geographical distribution of the two groups of employees, the male-female ratio, and the exclusion of the operating or production employees from the railway group with the inclusion of the clerical groups. The durables group, they said, is composed solely of production employees.[115]

The remainder of the railways' presentation, which specifically dealt with the unions' demands, was devoted to the application of the four criteria mentioned and an elaboration upon the differences between the durable goods workers and the non-operating railway employees.[116] The railways advanced adjusted data which took account of the three major differences mentioned, i.e., the geographical distribution of

employees, the male-female ratio and the adjustment of the non-operating group for production and clerical employees. They maintained that these adjustments must be made to have a proper comparison of the durable goods group and the railway group. When these adjustments were made, they said, the railway workers were in a favourable position when compared with the durable goods workers.[117]

b) Unions' Position

The unions in the 1962 dispute maintained the same position as they had in the previous six non-operating disputes. In part they stated:

"...there are two dominant issues before this Board."[118]

The two issues referred to by the unions were the durable goods standard of comparison and the railways' ability to pay. They stated that while these two issues were fundamental in previous cases, during negotiations in 1962 they appeared to have undergone an alteration.[119] The unions stated that they were not surprised at the railways attempting "to repudiate" the standard which had been set up but, they said:

> "...what is new is their apparent intention to deny the validity of the concept of a standard - any standard - in these negotiations. This was demonstrated in our direct discussions by their failure to offer an alternative to the 'durable goods' standard, and was underlined by their offer of a wage adjustment dependent on and taking into account a satisfactory settlement of all other issues - but unrelated to any standard."[120]

The unions emphasized the need for a standard for two reasons. First, they said peaceful labour relations are more important on the railways than in "the rest of industry." They felt that a strike of any duration would be "drastic",

bringing damage not only to the parties but also to the economy.[121] Should a strike occur, the unions foresaw lost traffic for the railways and stricter government regulation; they themselves would risk control of their affairs and also face the possibility of compulsory arbitration. They felt that "no one clearly wants a strike." To the unions, a strike was a last measure against "serious injustice."[122] They said that a strike was "a sort of appeal to the market place in wage disputes." On the railways, the unions felt that that kind of appeal was not available and this was one of the principal reasons why a standard of comparison must exist in railway negotiations. They asked how a reasonable settlement might be measured if there is no standard, adding that the parties cannot bargain in the same way as in ordinary industry. They concluded that, "a standard is needed."[123] The second principal reason advanced by the unions for a suitable standard was that it would prevent the burdens of public policy being transferred to the shoulders of railway employees.[124]

While the unions felt that a standard was necessary, they also felt that not just any standard was sufficient. They said:

> "Just measurement of Non-operating railway employees' earnings would be accomplished by the use of the Durable Goods standard..."[125]

a standard, they maintained, which had been:

> "...supported by more than a decade's jurisprudence by third parties..."[126]

The unions said that the railways had advanced certain proposals during negotiations but as they would not recognize the

durable goods standard, the unions stated they could not entertain the proposals advanced.[127] They argued that the durable goods standard should be the paramount consideration in determining the minimum level of wages and working conditions for non-operating employees. This contention was based primarily on the support of the standard by neutrals and also the fact that they, the unions, had been forced to accept the standard on the basis of precedent.[128]

The unions maintained that application of the durable goods standard would require an 18.7 cents an hour increase to bring the level of non-operating employees' earnings to the level of durable goods workers. They suggested that the difference of 3.3 cents an hour between 18.7 cents an hour and the 22 cents an hour requested, could be used for negotiation of a step-by-step application of the wage increase.[129]

c) Summary

In summary, both parties to the dispute felt that a standard was needed. The unions gave unqualified support to the sole criterion of the durable goods standard, which they felt had been established by precedent. The railways advanced four criteria which they felt should be used for measuring railway wages - a standard of comparison with other groups of employees, the pattern of wage increases in the community, the cost-of-living trend and ability to pay.

Board's Report

The Board issued a very short, unanimous report. In addition to the specific recommendations made, only one para-

graph of the report, which is quoted below, referred to the wage increase:

> "The Board has taken into consideration the relationship of the average hourly earnings of the Non-operating railway employees to those of the Durable Goods group of employees, and also considered the pattern of wages in the Durable Goods industries so far negotiated for 1962 and 1963. In the light of these and other factors, including the economic and competitive position of the railways, the institution of the job security program, the economic conditions in Canada viewed as a whole and other considerations referred to in the reports of previous Boards of Conciliation, the Board recommends the following wage increases..."[130]

As mentioned previously, the Board recommended a wage increase of two per cent and four cents an hour, on a step basis, and one cent an hour for job security purposes.

While the Board made little comment on the question of a standard of comparison, it accepted the durable goods level of earnings as an important factor in railway labour disputes, but it also felt that other economic considerations and related matters were of importance.

SUMMARY AND CONCLUSIONS

Criteria for measuring wages and working conditions of Canadian railway employees have been sought for many years. The main measure used in the period up to 1924 was the level of wages and working conditions of United States railway employees. Subsequently, the railways were successful in convincing third parties that United States conditions should not be the measuring rod for Canadian railway wages. Nevertheless, the Canadian railway unions clung to the United States standard of comparison until 1952, although they were unsuccessful in dispute after dispute in influencing third parties

to base their recommendations on United States railway wages and working conditions.

In their desire to influence third parties to make recommendations based on Canadian comparisons, the railways in 1950 referred to the durable goods industries in Canada. It would appear the guide in this respect was the action of the Presidential Emergency Board in the United States in 1948, when it recommended a forty-hour week and an increase of seven cents an hour for United States non-operating railway employees, based on the durable goods industries in that country. In the 1952 dispute the railways advanced a step further and suggested to the Board of Conciliation that durable goods wages and working conditions in Canada constituted a ceiling beyond which they should not be required to go.

Mr. Justice Kellock, who was Arbitrator in 1950 and Board of Conciliation Chairman in 1952, was the first to utilize the durable goods standard in Canadian railway disputes for comparison purposes. By 1954, the unions realized their fight for parity with United States railway employees had been lost. The durable goods standard offered them some advantage and they advocated this measure as a suitable yardstick for non-operating wages and working conditions. In the same dispute the railways were preoccupied with their financial situation and they scarcely referred to the durable goods situation. Mr. Justice Kellock, as Chairman of the Board of Conciliation in 1954, perpetuated the use of the durable goods standard, and in the arbitration in that same year, it became firmly entrenched.

Mr. Justice Sloan, the Arbitrator, said that he found one virtue in the standard - that there was no other standard presented.

Since 1954, the railways have attempted to dislodge the durable goods industries as a measuring rod and have been successful to the extent that other factors have been given recognition by boards of conciliation when making their recommendations. However, the earnings of durable goods workers have been of considerable importance in determining railway wages.

From the foregoing, six points emerge. They are:

1. That determination of wages and working conditions has been based on what is "fair" and "reasonable" - social and ethical bases - rather than on the purely economic approach of staffing. The use of the social and ethical bases may well be an expected approach because of the importance of the railways in the economy, their financial situation and extensive Government involvement in the railways.
2. That in order to judge what is "fair" and "reasonable" those concerned with railway labour disputes agree that a standard of comparison is necessary for measuring railway wages and working conditions, even though there is disagreement as to whether the standard should be composed of one criterion or a number of criteria.
3. That third parties have determined the standard used.
4. That early comparisons used in the railway industry in Canada were wages and working conditions of United States

railway employees but that more recently earnings of durable goods workers in Canada have become recognized as one criterion for comparison purposes - a very important one.

5. That over the years, the standard of measurement has been twice reduced. The first, was a reduction from the comparison with United States railway employees to the earnings of Canadian durable goods workers. The second reduction was the addition to the durable goods criterion of other factors, such as ability to pay.
6. That in earlier years when the railways enjoyed a monopoly position, railway workers were "leaders" in wages and working conditions in the Canadian economy, the United States standard being the measurement used. In more recent years, as the railways have entered a more competitive era, the railway workers have become, to some extent, "followers" in that other industry has developed and Canadian conditions have been used to measure railway wages and working conditions.

While a standard of comparison with other industry is important in railway labour disputes, ability to pay, which has been referred to, and is dealt with in the next chapter, has also become important in recent years.

FOOTNOTES FOR CHAPTER V

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7 Ibid., p. 560.

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10 The Labour Gazette, November 1926, p. 1065.

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13 Ibid., May 1933, p. 486.

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20 Ibid., pp. 157-239.

21 The Labour Gazette, August 1944, pp. 961-962.

22 Ibid., p. 962.

23 Ibid., p. 962.

24 Ibid., p. 962.

25 Referred to in Chapter IV.

26 Statement of the Unions to the Board of Conciliation and Investigation re Application of Certain Groups of Employees for Fourteen Days' Vacation with Pay, Montreal, 1947, pp. 7-22, 32.

27 Statement of the Railways to the Board of Conciliation and Investigation re Application of Certain Groups of Employees for Fourteen Days' Vacation with Pay, Montreal, 1947, pp. 17-19; also Rebuttal Statement, pp. 4-5.

28 The Labour Gazette, July 1947, p. 962.

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31 Ibid., pp. 30-45.

32 Statement of the Railways, 1948, Op. cit., pp. 34-56, 69-74 and 88.

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34 Ibid., June 1950, p. 833.

35 Ibid., p. 829.

36 Ibid., p. 830.

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41 The Labour Gazette, January 1951, pp. 200-201.

42 Ibid., p. 200.

43 Ibid., p. 201.

44 Transcript of Proceedings, 1960, Op. cit., pp. 50-51.

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79 Ibid., pp. 569-569A.

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86 Ibid., p. 1002.

87 Ibid., p. 1002.

88 Ibid., pp. 1004-1006.

89 Ibid., p. 1007.

90 Ibid., p. 1007.

91 Ibid., p. 1013.

92 Ibid., p. 1013.

93 Ibid., October 1958, pp. 1155-1158 and 1162.

94 Transcript of Proceedings, 1960, Op. cit., pp. 588-589.

95 Ibid., pp. 596-597.

The "Woods, Gordon" study may be found in the 1960 Transcript of Proceedings, Non-operating Railway Employees' Dispute, pp. 1272-1396. Cross-examination by the unions can be

found at pp. 1400, 1480, 1741, 1911, 2086, 3117, 3133, 3207, 3220 and 3241.

96 Transcript of Proceedings, 1960, Op. cit., pp. 40-117.

97 Ibid., p. 107.

98 Ibid., p. 117.

99 Ibid., pp. 117-132.

100 The Labour Gazette, October 1960, p. 1031.

101 Ibid., p. 1031.

102 Ibid., p. 1031.

103 Ibid., pp. 1033-1034.

104 Ibid., p. 1034.

105 Ibid., pp. 1036-1038.

106 Ibid., pp. 1038-1040.

107 Ibid., p. 1040.

108 Transcript of Proceedings, 1962, Op. cit., p. 266.

109 Ibid., p. 286.

110 Ibid., p. 287.

111 Ibid., p. 288.

112 Ibid., pp. 289-291.

113 Ibid., pp. 292-296.

114 Ibid., pp. 300-321.

115 Ibid., pp. 321-322.

116 Ibid., pp. 323-337.

117 Ibid., pp. 323-337.

118 Ibid., p. 10.

119 Ibid., p. 11.

120 Ibid., p. 11.

121 Ibid., p. 13.

122 Ibid., p. 13.

123 Ibid., p. 15.

124 Ibid., p. 16.

125 Ibid., p. 17.

126 Ibid., p. 18.

127 Ibid., p. 29.

128 Ibid., pp. 33-77.

129 Ibid., pp. 77-90.

130 The Labour Gazette, October 1962, pp. 1182-1183.

CHAPTER VI

ABILITY TO PAY

INTRODUCTION

The criterion of ability to pay has loomed large in railway labour disputes, especially in recent years. The railway unions before third parties, in the disputes reviewed, have taken the position that the subject of railway revenues is a matter between the railways and the Federal Government. Railway managements, when appearing before third parties, have urged them to give consideration to the railways' revenues when making recommendations.

In the following review of the subject of ability to pay emphasis is placed on disputes after 1950. Prior to the 1950's, and even up to 1952, the railways stated they were unable to meet increased labour costs without increased freight rates. Since 1954, they have emphasized the point that difficulty has been experienced in increasing freight rates because of greater competition and, thus, they have maintained that inability to pay should be a major consideration in the settlement of railway labour disputes.

REVIEW OF THE SUBJECT OF ABILITY TO PAY

Up to 1950

1944 Dispute

In the 1944 dispute, the National War Labour Board did not require the railways to pay wages equal to those received by United States railway employees but rather made a recommendation of six cents an hour increase based on a study

it had undertaken with respect to Canadian conditions. This action of the Board indicates that it held the opinion that the railways were in a position to meet conditions prevailing in Canada. The period during World War II had been a prosperous one for the railways.

1946 Dispute

In 1946, the Canadian National and Ontario Northland Railways had settled with the unions on the basis of a wage increase of ten cents an hour. Two months later, after application had been made by the unions to the National War Labour Board, the Board directed the Canadian Pacific and the Toronto, Hamilton and Buffalo Railway Companies to increase wages ten cents an hour as it felt these railways were financially able to do so. In part, the Board stated:

> "....The issues in this case are confined to the pleas of inability to pay the increased rates without compensating increases in the prices of the services which they render."

and

> "....Finally, we hold that the Companies respondent in this case, are able to pay the increased rates for the time being at any rate."[1]

1947 Dispute

In the 1947 Vacations' dispute, the Canadian National and Canadian Pacific stated to the Board of Conciliation that their net earnings would be $37 million short of meeting fixed charges. They maintained that even if their then pending freight rate application were granted, it would be insufficient to provide an adequate return on the investment. The unions, however, argued that the railways had prospered during the War

period.

The Board of Conciliation in 1947 took cognizance of the rising costs and decreased earnings with which the railway companies were faced but it felt that the financial problems should not obscure the claims of the employees which the Board maintained compared favourably with other "great industries." In part, the Board stated:

> "The lucid and excellently prepared brief of the Railways indicates prima facia, at least, incapacity on their part to absorb the increased cost involved in accepting the Board's recommendation. The Board is not, however, unmindful of the fact that an application is presently pending before the Board of Transport Commissioners for increased freight rates and suggests that the recommendations herein contained be brought to the attention of that Board...."[2]

1948 Dispute

Late in 1947, when the unions requested a wage increase of thirty-five cents an hour, the railways stated that their financial position would not enable them to sustain any increased costs as there had been no increases in freight rates, even though an application had been made in 1946. The railways maintained that if increased costs were placed on them, their financial position would be imperilled and additional burdens would have to be placed on the public.[3]

Just prior to the receipt of the report of the Board of Conciliation in 1948, a twenty-one per cent freight rate increase was authorized by the Board of Transport Commissioners. The Board of Conciliation observed that the increased revenue was authorized to meet expenses incurred up to the 1947 level and, thus, it felt the railways could not bear anything more

than a seven cent an hour increase. The Board said that 4.2 cents an hour would take care of the cost-of-living and the remaining 2.8 cents an hour would place the railway employees in a favourable position with respect to employees in other Canadian industry.[4]

1950 Dispute

Board of Conciliation Proceedings

As stated previously, the 1950 dispute centered around demands for the forty-hour week and a wage increase of seven cents an hour. These were the terms of settlement reached in 1948 with non-operating railway employees in the United States. Primarily the railways contended they could not meet the wages and working conditions of United States railways. They stated that railway revenues would be insufficient to bear the increased costs and their competitive position would be seriously impaired by increasing freight rates.

The Board of Conciliation report stated that while the employees must be treated fairly, the railways' financial position should also be considered. The Board in recommending a forty-hour week said:

> "...the financial position of the railways is such that they should not be asked to embark on a novel and costly program as to both wages and hours of work, novel and costly in terms of all comparable Canadian employment. The economy of the railways is not such as to justify their selection as the laboratory for such a radical social experiment."[5]

Arbitration Proceedings

Before the Arbitrator in 1950, the railways stated that if wage increases were granted freight rate increases

would follow which would affect the competitive position of the railways.[6]

The unions, while appearing before the Arbitrator, stated:

> "It has been alleged that increases in freight rates would be necessary. This we do not know, but we hold that to be a matter between the Railways and the Government's regulatory Agency, the Board of Transport Commissioners."[7]

They further stated that if the employees were denied "warranted wage increases" because the railways could not get the necessary revenue, the employees were in an "economic trap."[8]

Mr. Justice Kellock, the Arbitrator, in his award commented on the lag in approval for freight rate increases. He stated that wage increases had been granted by the railway companies for which compensating increased freight rates had not been authorized. In respect of the three cents an hour which he awarded, the Arbitrator said, however:

> "I do not think...it can be reasonably said that the failure of the railways to put into effect an increase in wage rates in the period under discussion was of such a nature as to call for any provision of a compensatory character in respect of that period."[9]

<u>1952 Dispute</u>

As stated previously, in 1952 the unions based their demands on parity with United States railway employees, but before the Board of Conciliation, the railway companies suggested that the level of earnings of durable goods employees was a ceiling beyond which they should not be required to go. The railways elaborated upon their financial position and stated that their competitive position would suffer if parity

with United States railway employees was granted to Canadian railway employees. They alluded to the fact that increased freight rates would be required. They also stated that if their competitive ability was affected, their ability to provide steady employment would also be affected.[10]

In making its recommendations, the Board of Conciliation decided that the Canadian railways should not be required to accord parity with United States railway employees' earnings, because the financial situation of the Canadian railways was unlike that of the United States railways.[11]

1954 Dispute

Board of Conciliation Proceedings

Faced with falling revenues, the railways in the 1954 dispute pleaded a much stronger case of inability to pay than they had done previously. Before the Board of Conciliation they stated that their existing financial situation was the major reason for refusal of the unions' demands.[12] In arguing their inability to pay, the railways stated that their revenues were insufficient to meet their current needs as recognized by the Board of Transport Commissioners.[13] In addition, they said business was declining, prospects were uncertain and competition was increasing; thus, they could not sustain additional costs. The railways stated that they felt it would be a "dereliction of duty" to accept increased payroll expense unless "gross injustices" were being suffered by the employees.[14]

The unions in presenting arguments to the Board of

Conciliation stated that the employees found themselves in a difficult position; a situation similar to that in which the railways were placed. They said the railways were unable to control their revenues and this placed the employees in a trap - a trap in which they refused to stay. They contended the employees were bearing the brunt of insufficient freight rates, a situation to which they were vigorously opposed. Further, they claimed that all sections of the economy should bear the consequences of freight rates, maintaining that if increased expense resulted from "justified demands" as measured by the durable goods industries, then such cost should be borne by the nation in the form of increased freight charges.[15]

Mr. Justice Kellock, in his report as Chairman of the Conciliation Board, summed up the parties' positions by saying that the railways had not departed from the durable goods standard but they had said that their economic circumstances would not permit them to accept any increased cost. The unions, he said, did not argue the financial situation of the railways but rather the "trap" in which the employees found themselves.[16] He undertook a fairly full review of the railways' financial situation, and made the observation that the economic situation of the railways could not at all times and under all conditions be considered as irrelevant but he did not think ability to pay should be the whole guide.[17]

Arbitration Proceedings

In the Arbitration proceedings of 1954, before Mr. Justice Sloan, the unions dwelt more fully with the subject of

ability to pay. They quoted as follows from Doctor H.F. Angus' addendum to the final report of the Royal Commission on Transportation published in 1951. In part, Doctor Angus said:

> "A comprehensive transportation policy should pay due regard to the interests of labour which is as much entitled to just and reasonable treatment as shippers and investors. In Canada this problem has not been tackled directly and railway labour, in particular, has been regarded as a cost which it is the duty of management to keep as low as possible."[18]

The unions felt that Doctor Angus had correctly appraised the situation.[19] They also stated that they felt the gross and net revenues not only reflected the economic forces and railway activity but, in addition, reflected deliberate public policy which depressed railway revenue; thus, they held the opinion that wages and working conditions should not be affected by ability to pay. It was reasoned by the unions, that if ability to pay was given consideration in railway labour disputes, the employees would be subsidizing public policy.[20]

According to the unions, the major points of public policy which were detrimental to railway revenues were:

1. The time lag in freight rate increases.
2. Unregulated trucking, which resulted in the railways having to forego traditional rules in rate-making in order to compete.
3. Statutory grain rates remaining at pre-1900 levels.
4. The railways being required to operate passenger services which were unprofitable.[21]

The unions stated that they did not quarrel with public policy but felt that in view of the major considerations listed, which

were affecting railway revenues, ability to pay should not be considered in determining wages and working conditions. In addition, they felt that the economic downturn being experienced in Canada at that time, was not dangerous and that the railways had a good sound future.[22]

In their submission to the Arbitrator, the railways commented upon the unfavourable trend in their financial position and, in addition, they said they were pricing themselves out of the market each time it was necessary to increase freight rates in order to bear additional costs. They also stated that wages of railway employees in Canada had, on a percentage basis, increased to a greater degree than had profits, dividends or operating income.[23]

In making his arbitration award in 1954, Mr. Justice Sloan said in part:

> "The Railways in seeking means to retrench are now, it seems to me, asking the working men and women of the Non-operating force to accept working conditions less favourable than those now enjoyed in comparative industries....In that sense employees of the Railways, represented before me are being asked to subsidize the effect of a national policy. If I am right in my conclusion that the direct and indirect effect of the Crowsnest Pass rates are a major contributing factor to the present situation in which the Railways find themselves, and the evidence before me can lead me to no other rational conclusion, then it is my respectful opinion that some fair share at least of this burden should be shouldered by the people of Canada from the national treasury - a suggestion not entirely bare of relevant precedent."[24]

It will be noted that Mr. Justice Sloan did not say the railways were in a position to pay increased costs; rather he said, the burden of the increase should be borne by the public.

Extra Gang Employees' Dispute

In the latter part of 1954, a majority report of a Board of Conciliation was issued by the Chairman, Professor H.D. Woods of McGill University, and concurred in by Mr. Michael Rubenstein of Montreal, the Unions' Nominee.[25] The dispute concerned Extra Gang employees, which comprise a section of the Maintenance of Way or track forces. The view taken by this Board is quite different to that of Mr. Justice Sloan. It will be noted from the following excerpt from the majority report in the Extra Gang dispute that the Board took the position that its duty was to advance reasonable recommendations and that its terms of reference did not include power to recommend ways and means for management to meet additional costs:

> "Our terms of reference do not include any power to recommend the means by which the railway management should meet any additional costs which might arise through the implementation of our proposals. Clearly this is a matter between the railways and the Canadian public whose responsible agencies have the authority to determine the rate structure or other means of financial assistance to the operators.
>
> The Board, while cognizant of the financial difficulties of the railways, cannot confine its consideration to this problem as a sole criterion. We must also take into account the position of these employees in relation to the emerging standards in Canadian employment as a whole. We cannot be held responsible for any additional financial burden which our recommendations may impose merely because the railways, are not in a position to pay. We recognize that our recommendations must be reasonable...."[26]

1956 Dispute

In the hearings before the Board of Conciliation in 1956, the railways again advanced the plea of inability to pay, stating that their rate of return was insufficient. They

felt an adequate return on investment should be achieved before wage rates were advanced and also maintained that they were no longer in a position to pass on to their customers, to any appreciable extent, increased costs by increasing freight rates. They said that to attempt to do so would only result in the loss of considerable business to their competitors.

In the 1956 dispute, the unions again took the position that ability to pay was wholly irrelevant. They referred to the various controls and rigidities existing as a result of public policy which they said had resulted in financial difficulties for the railways.[27] In part, they stated:

> "....If fair working conditions imply financial problems for the Railways, the responsibility is neither the employees' or the Board's, but something shared between the Government and the Railways."[28]

The report of the Board of Conciliation, signed by the Chairman, Mr. E.G. Taylor, and the Unions' Nominee, stated the following:

> "The question of ability to pay is always a difficult one in wage determinations. At best it is only one of the factors that must be taken into account..."[29]

Reference was then made in the report to a statement by Mr. Justice Wilson in the 1950 dispute, that if higher wages were deserved, the public must pay the cost.

The Board's report then dealt at some length with the statutory grain rates and unprofitable passenger services, after which the conclusions contained in the following excerpts were reached:

> "...the Railways are by Statute requested to carry grain at an uneconomic rate which causes them to lose many millions of dollars each year. It would, in our opinion, be the height of injustice if, to use Chief Justice Sloan's words, the non-operating employees were

> required to subsidize 'public policy by a contribution measured in terms of the prevailing disparity in conditions of their employment.' We do not believe that the people of Canada would wish or, indeed, condone such a result..."[30]

and

> "At all events, the Chairman has kept the financial evidence of the Railways carefully in mind and has given their claim of inability to pay weight in seeking recommendations which would be fair and just in all the circumstances. Mr. Lewis, on the other hand, supports the position of the Unions that the claim of inability to pay should not play any part in the recommendations of the Board...Both signatories...are...agreed that it is not possible to redress the disparity between the earnings of durable goods employees in one adjustment. The total cost of such an adjustment would be heavier than the railway industry should be asked to bear immediately and all at one time. Consequently, the recommendations which we make...fall short of parity with the 'Durable Goods' standard for the reasons given."[31]

As noted, the Chairman of the Conciliation Board took cognizance of the railways' financial situation in considering recommendations which the report states would be "fair" and "just." Mr. Lewis, on the other hand, thought that ability to pay should have no part in the recommendations, but he did agree that the gap existing between the level of durable goods earnings and non-operating employees' earnings should not be bridged in one adjustment.[32]

1958 Dispute

The railways before the Board of Conciliation in the 1958 dispute, presented a considerable amount of material to show that their financial position was not improving and that their rate of return on investment was inadequate when judged by the permissive level of earnings allowed by the Board of

Transport Commissioners. They also stated that they were having a much more difficult time to raise freight rates than in former years, which was due to the existing competition.[33]

The unions before the Board of Conciliation in 1958, when commenting on ability to pay, stated that Mr. Justice Sloan had deposited the matter with the Federal Government and the railways, where, they said, "it properly belonged." They emphasized their position which was advanced in previous cases, i.e., that the railway employees should not subsidize public policy, dealing at some length with the statutory grain rates, unprofitable passenger services, unregulated competition of highway trucking and the time lag in freight rate increases.[34]

The majority report dealt quite extensively with the railways' ability to absorb increased labour costs. Three excerpts from the Board's report are quoted below:

> "The ability of the Railways to pay higher wages has become a much more important factor than was formerly the case....The Railways are now genuinely concerned about their ability to meet the demands of the Unions for increased wages and greater fringe benefits."[35]

and

> "....As pointed out by one of the Railways' witnesses, no suggestion was advanced by the Railways either in the Arbitration proceedings in 1950, or in the Conciliation proceedings in 1952, that they were unable to pay wages which would be comparable with the earnings in 'Durable Goods' but they did at that time contend that they were unable to give increases based on the scale of wages paid to workers on the railways in the United States. The Railways in those years had no doubt of their ability to recover from increased freight rates sufficient revenues to pay wages on a scale which would maintain a parity with 'Durable Goods'..."[36]

and

> "...it has become increasingly difficult to put authorized increases in freight rates into effect, and competition...has been steadily increasing. Today the Railways are having real trouble in meeting the mounting costs of labour and materials. Some of the principal reasons for this change were stated by Mr. Justice Sloan..."[37]

The Board's report went on to state that the financial difficulties of the Canadian railways were of considerable concern to the Board of Transport Commissioners which:

> "...had the means at its command for making a much more extensive and detailed investigation of this matter than this Board has been able to make; hence what it has to say...is of special significance..."[38]

There then appeared some fairly lengthy excerpts from the Board of Transport Commissioners' Judgment of February 15, 1954, which it would be well to quote here:

> " 'As a result of these recent rail traffic trends, we are now more strongly than ever of the opinion that the long succession of general freight rate increases, mainly due to added costs of labour which is the largest single factor and to increased costs of materials, has brought about a loss of traffic by the Railways to competing modes of transport, not only of traffic which the Railways formerly regarded as vulnerable because it was highly competitive, but loss as well of traffic which was formerly non-competitive but which has now become subject to competition by reason of the aforementioned long succession of rate increases. <u>Thus the law of diminishing returns is now, in the inexorable economic sense, beginning to assert itself. We are convinced, therefore, that unless the several underlying conditions adversely affecting the Railway industry in general change markedly for the better, means other than general rate increases imposed on the basis of the past will have to be found in the future if the railways of Canada are to be maintained in a healthy operating position.</u>' "[39]
>
> (Emphasis added by the writers of the majority report of the Board of Conciliation.)

and

> " 'Canadians at large have a vital stake in our Railways. <u>They, we think, reasonably could expect both railway management and labour in their own mutual long term self-</u>

> interest, as well as in the interest of the public, to collaborate in taking a new and economically realistic view of the deterioration which has taken place in the traffic position of Canadian Railways since the Board's Judgment in March last. This is so, particularly since such deterioration cannot be accounted for by any contraction...in Canadian production generally but is, we believe, attributable ...to...competing modes of transport.' "[40]
>
> (Emphasis added by the writers of the majority report of the Board of Conciliation.)

The conclusion reached in the majority report of the Board of Conciliation is summed up in the following:

> "Railway revenues have been dropping...Under the circumstances...moderation is called for..."
>
> and
>
> "The Board, however, does not agree with the Railways, that no wage increase should be granted at this time..."[41]

In making his recommendations, the Chairman of the Board of Conciliation said that he was concerned for the economy as a whole and the need for moderation, while Mr. Lewis was concerned with agreeing to a recommendation which was below parity with the durable goods level of earnings. The result, the Chairman said, was a compromise.[42]

1960 Dispute

The railways before the Board of Conciliation in the 1960 dispute again advanced the argument of inability to pay increased labour costs. Excerpts were quoted from reports of previous boards of conciliation in which it was stated that ability to pay is one factor to be considered in the determination of railway wages and working conditions.[43]

In 1960, the unions again put forth considerable material on the subject of ability to pay, advancing their

previous argument that public policy had placed the railways in a difficult position and, thus, they contended that ability to pay should not be considered in the determination of wages and working conditions for railway employees. In part, they said:

> "In short, the Railways operate as a public utility and have never been governed by purely commercial considerations in the manner of unregulated industries operating in a more or less free market. On the contrary, they have been and are instruments of public policy to an extent to be measured in tens of millions of dollars a year. What financial difficulties they may have is a matter now being debated before the new Royal Commission. But any imaginable amount is to be accounted for many times over by the immense expenses imposed on them in the public interest."[44]

The following subjects were commented upon by the unions:

1. Statutory grain rates - the pre-1900 level of rates in effect on grain for export.
2. Unprofitable passenger services and uneconomic branch lines.
3. Discriminatory regulations of the railways as compared with highway trucking.
4. Delays in freight rate increases.
5. The financial assistance or subsidies the railways had received from the Federal Government over the years.

The unions maintained, as in previous cases, that in view of the above factors the question of the railways' financial condition was between the Government and the railways.[45]

The majority report of the 1960 Board of Conciliation, signed by the Chairman, Mr. Justice J.V.H. Milvain and the Unions' Nominee, stated that:

> "The Railway representatives presented a great deal of evidence...to show that the Railways are unable... to absorb any increased cost..."

and

> "It is clear from the evidence that in a large part the embarrassment suffered by the Railways...is due to public policy in the shape of statutory rates and government regulations. This Board must, of course, assume that the impact of public policy is for public good. However, it is equally clear that the railway employees should not bear alone a subsidization of public policy through limited earnings. The burden must surely be borne by members of the public at large."

and

> "However, the Railways' inability to pay cannot be entirely ignored in arriving at what amounts to adequate payment to the employees...Especially is this true today when freight rates have been frozen ..."[46]

The report did not make a recommendation which would close the gap between the level of durable goods earnings and the non-operating employees' earnings but rather one which prevented the gap from becoming greater. It stated:

> "At a time when the financial situations of the Railways are not improving and freight rates are frozen, it may not be wise to seek to close the gap, but it is surely fair and reasonable to prevent its becoming greater."[47]

The Railways' Nominee pointed up the various differences between the durable goods situation and that of the non-operating railway employees. He carefully commented upon the whole question of a wage increase and then said:

> "A Royal Commission is currently grappling with the interrelationship of the Railways and the public. The procedure for seeking rate changes has been immobilized for the time being. Under the circumstances, and in keeping with the grounds formulated in the majority report that the burden is one for the public, I would recommend that no wage changes be effected at the present time."[48]

<u>1962 Dispute</u>

In the hearings before the Board of Conciliation in

1962, the railways presented considerable material on the subject of their inability to absorb additional labour costs. Their comments, in large measure, centered around the MacPherson Commission report referred to in Chapter I of this document. The first step in the railways' presentation was an attempt to show that since 1947, they had not shared in the growth of the Canadian economy. Their position, they said, had changed from that of a monopoly to a competitive one and increased freight rates, necessitated by increased labour costs, had exposed more and more railway traffic to other forms of transport.[49] They then outlined the various steps taken to meet the competition - new sales and pricing techniques, better service and large capital expenditures - but notwithstanding all of the steps taken, they said labour costs had taken an increasing share of each revenue dollar. For example, the Canadian Pacific in 1947 paid 50.8 per cent of its revenues in labour costs; in 1961, labour costs had increased to 55.5 per cent of total revenues. It was also observed that consistently, actual earnings fell short of the permissive level of earnings authorized by the Board of Transport Commissioners. The railways said this discrepancy had been borne by the shareholders.[50] Further use of Canadian Pacific data purported to show that the returns to shareholders from 1947 to 1961 had increased 52.4 per cent, while labour increase per man hour in the same period had increased 147.2 per cent. It was also argued that labour costs per man hour had increased to a greater extent than revenue per man hour.[51]

The major relevant events concerning the railways in Canada since 1958 were then outlined. They were:

1. The non-operating labour settlement reached in November 1958.
2. The authorization of the seventeen per cent freight rate increase in November 1958.
3. Imposition of the "freight rate freeze" by the Government in March 1959.
4. The appointment of the Royal Commission on Transportation in May 1959.
5. The Freight Rates Reduction Act of July 1959, which made provision for the Government to bear seven per cent of the freight rate increase; this was increased to nine per cent in April 1960.
6. The non-operating employees' settlement in May 1961.
7. The receipt of Volumes I and II of the report of the Royal Commission on Transportation in 1961 and early in 1962, respectively.
8. Payment to the railways, in 1961, of $50 million interim subsidy, in relation to the Royal Commission's recommendations.[52]

The railways stated that the MacPherson Royal Commission had recognized their changed situation in Canada, but had also observed that there was a definite place for rail transport in Canadian transportation. They said, however, that the Commission felt that management and labour must make any necessary adaptations required to meet the changes resulting from increased competition. In the opinion of the railways, the

demand by the unions for a "freeze" on layoffs was in direct conflict with the MacPherson Commission recommendations. They stated that the "job freeze" contemplated by the unions would quickly bankrupt the privately-owned Railway - Canadian Pacific - unless the taxpayer bore the burden.[53] They further stated that nothing should be done to inhibit the ability of the railways to remain flexible and at the same time keep cost under control; this, they observed, would enable them to remain competitive and to ensure jobs.[54] In summary, the railways said:

> "The railway industry cannot agree to higher labour costs or more employment restrictions in 1962 and 1963 without placing in serious jeopardy its own future, the jobs of its employees, the interests of the people, industries and communities it serves and the many industries dependent on furnishing the railway industry with materials and supplies.[55]

The unions stated that in addition to the standard of comparison[56] the other major issue was the plea of inability to pay. They said, however, that the railways had proposed to them, "some sort of job security" and "held out the possibility of a wage increase." This, they concluded, indicated a softening of the railways' "usual" plea of inability to pay, which the unions felt, "had in the past ruled out all meaningful discussions."[57] The unions contended that the MacPherson Commission report had borne out their previous statements that the railways' financial problems resulted from their use as instruments of public policy. They also said that they accepted the fact that the railways may well be used as instruments of public policy but, not that the railway workers should bear the

burden of public policy by having a reduced level of wages and working conditions. They stated also that previous boards of conciliation had held the opinion that the burden of public policy should not be placed on the railway workers.[58] Further, they maintained that the principle of parity of non-operating railway employees' wages with the level of earnings in the durable goods industries had been accepted by former boards of conciliation, independent of the qualification of ability to pay. It was also contended that these same boards had rejected the argument of ability to pay.[59]

The unions advanced a further point of argument on the subject of ability to pay. They said the railways in an endeavour to prove their inability to pay had compared the financial situation of the Canadian Pacific with that of the durable goods industries and, by doing so, had used the Canadian Pacific as the yardstick for measuring purposes. The unions rejected this approach for two reasons. The first was that a difference between the Canadian Pacific and durable goods industries would not be unexpected. For that matter, they said, there was a difference existing between the Canadian Pacific and Canadian National and such would be the case for any other railways with which comparisons might be made. The second reason was that if Canadian Pacific were to be used as the measuring rod for ability to pay and wages for the non-operating railway employees were set on this basis, then Canadian National was being forced to act as a private company, a situation which should not exist according to Mr. E.G. Taylor, Chairman of the

Conciliation Board in 1956.[60] The unions also pointed out that the Canadian Pacific - the yardstick road - had to meet market prices for materials and supplies. They contended that if such were the case with respect to materials and supplies it did not seem fair that the non-operating employees should receive earnings lower than the earnings of the durable goods employees, contending that the level of durable goods' earnings should be considered as the market price for the services of non-operating employees.

It was stated in additional comment made by the unions on Canadian Pacific finances and ability to pay, that the boards of conciliation intended parity to be restored with the durable goods' earnings, but in more than one stage. The unions said that in 1960, special circumstances were existing - the freight rate freeze - and the existing gap in earnings was continued. They mentioned, however, that they were pleased that the gap between the level of durable goods' earnings and earnings of non-operating railway employees had been reduced to some extent during the period of the past contract, 1960-1961, and they requested that the Conciliation Board in 1962 make a recommendation which would completely eliminate the gap.[61]

The unanimous report of the Board of Conciliation had very little to say with respect to criteria but after commenting on other factors, the following few words regarding ability to pay would indicate the Board took account of this factor:

> "....In the light of these and other factors, including the economic and competitive position of the railways ..."[62]

OBSERVATIONS AND CONCLUSIONS

The foregoing review has shown that the railways have been vitally concerned with their ability to meet increased expenses. However, this concern has not been confined to railway management. Chairmen of conciliation boards have also expressed concern for the railways' financial position and the Federal Government saw fit to appoint the Royal Commission on Transportation problems, to impose a "freight rate freeze" and to pay subsidies to the railways, which exhibits Government concern in the matter. The unions recognized that a revenue problem exists in the railways but attribute this to public policy, and contend that railway finances are a matter between the railways and the Federal Government. The unions have consistently contended that any level of earnings for railway employees which is less than the earnings in the durable goods industries results in railway employees subsidizing public policy. Since 1956, chairmen of conciliation boards, after considering the railways' financial situation, have not seen fit to recommend for non-operating railway workers, parity with durable goods employees.

In an attempt to put the railways on a sounder financial basis and to enable them to operate in transportation segments where they can be efficiently competitive, the MacPherson Commission report made far-reaching recommendations, as mentioned in Chapter I. In review, the major recommendations made were elimination of uneconomic branch lines, elimination of unprofitable passenger services, assistance to

the railways in transporting Western Canada's export grain crop to ocean terminals and a change in railway pricing to take account of extensive competition with which the railways have been faced. The Commission recommended subsidies to assist the railways in adjusting while its recommendations were being implemented. An amount of $100 million was suggested for the first year, to be reduced year by year to $47 million after five years and to $22 million after fifteen years. The following excerpt taken from an article in the Financial Post states concisely the objective of the MacPherson Royal Commission:

> "The overall target will be to put Canada's railways on a sound business basis, ending the murky and muddled compromise between economics and politics that has so long formed the basis for rail policy."[63]

As stated previously, a Bill has been introduced into Parliament to implement the recommendations of the MacPherson Commission report. This Bill is still under consideration. If changes are made along the suggested lines and the railways are enabled to adjust to their new competitive environment, the subject of ability to pay may take on lesser proportions than in the past. The important point at this stage is to endeavour to reach the objective of the Royal Commission, i.e., to allow the railways to operate with the least regulation possible, consistent with adequate protection for the shipping and travelling public. Under the present situation, with freight rates "frozen" and subsidies being paid by the Government to the railways, the Government is unavoidably, directly or indirectly, drawn into any labour settlement of any magnitude, with a tendency for the onus of

settlement being placed with the Government.

Considering the unions' position, there are certain features to be observed. If the people of Canada desire to have their railways and an appropriate standard of comparison can be decided upon, by third parties at least, there should be no reason why the employees should not be accorded that level of wages and working conditions. The standard would of necessity have to be reviewed continually because of changing conditions. If sufficient revenue is not available because of public policy imposed on the railways, it would not seem proper for railway employees to receive a lesser amount than the level judged suitable for them. When public policy is imposed, it weakens the argument of ability to pay, but it does place the problem with the Government. Regardless of what decision is made as to an appropriate standard, the position of the Board of Conciliation in the Extra Gang dispute of 1954 would appear to be sound in that the task of a board of conciliation is to evaluate the employees' position in relation to other employees in the economy. The Board felt that it should make reasonable recommendations for the employees, and that the railways' financial position should be considered by the appropriate parties.

In summary, it would appear to be reasonable that any inability to pay because of public policy should not result in a deficiency in railway wages and working conditions but, on the other hand, the railways must have sufficient revenues if they are to remain viable. The answer seems to lie in allowing the railways to adjust in such a way as to fit into

the new environment in which they find themselves, which is the objective of the MacPherson Royal Commission's recommendations. Where deficient revenues for the railways result from public policy, then it would seem only proper that the people of Canada should bear the burden of such deficiency.

FOOTNOTES FOR CHAPTER VI

1 The Labour Gazette, November 1946, pp. 1550-1551.

2 Ibid., July 1947, pp. 962-963.

3 Statement of the Railways, 1948, Op. cit., pp. 75-87.

4 The Labour Gazette, June 1948, p. 602.

5 Ibid., June 1950, p. 832.

6 Transcript of Proceedings (before Arbitrator) 1950, Op. cit., pp. 227-232.

7 Ibid., p. 125.

8 Ibid., p. 334.

9 The Labour Gazette, January 1951, p. 207.

10 Transcript of Proceedings before the Board of Conciliation appointed to assist in Non-operating Railway Employees' Dispute, Montreal, September 23, 24 and 25, October 6, 7 and 8, 1952, pp. 410-426.

11 The Labour Gazette, January 1953, p. 63.

12 Transcript of Proceedings (before Board of Conciliation) 1954, Op. cit., pp. 149-149A.

13 The Board of Transport Commissioners' permissive level of earnings for Canadian Pacific was set at $46.4 millions, which varies from year to year. It is made up of an allowance for surplus, preferred and common dividends and a return on some non-rail assets.

14 Transcript of Proceedings (before Board of Conciliation) 1954, Op. cit., p. 181.

15 Ibid., pp. 262-264.

16 The Labour Gazette, June 1954, p. 821.

17 Ibid., pp. 821-826.

18 Transcript of Proceedings in Non-operating Railway Dispute before Arbitrator, Montreal, 1954, pp. 20-21.

19 Ibid., p. 21.

20 Ibid., pp. 211-254.

21 Ibid., p. 217.

22 Ibid., pp. 211-254.

23 Ibid., pp. 343-472.

24 The Labour Gazette, December 1954, p. 166.

25 Mr. S.W. Crabbe was the Railway Association's Nominee. He wrote a minority report.

26 The Labour Gazette, January 1955, pp. 62-63.

27 Transcript of Proceedings, 1956, Op. cit., pp. 84-109.

28 Ibid., pp. 93-94.

29 The Labour Gazette, June 1956, p. 696.

30 Ibid., p. 696.

31 Ibid., p. 697.

32 Ibid., p. 697.

33 Transcript of Proceedings, 1958, Op. cit., pp. 815-817, 843-845 and 1034-1061.

34 Ibid., pp. 48-59, 160 and 170-246.

35 The Labour Gazette, September 1958, p. 1010.

36 Ibid., p. 1010.

37 Ibid., p. 1011.

38 Ibid., p. 1011.

39 Ibid., p. 1011.

40 Ibid., p. 1011.

41 Ibid., p. 1012.

42 Ibid., p. 1013.

43 Transcript of Proceedings, 1960, Op. cit., pp. 571-587.

44 Ibid., pp. 183-184.

45 Ibid., pp. 183-214.

46 The Labour Gazette, October 1960, p. 1032.

47 Ibid., p. 1033.

48 Ibid., p. 1040.

49 Transcript of Proceedings, 1962, Op. cit., pp. 179-189.

50 Ibid., pp. 189-197.

51 Ibid., pp. 198-201.

52 Ibid., pp. 202-208.

53 Ibid., pp. 208-222.

54 Ibid., pp. 222-224.

55 Ibid., p. 229.

56 A standard in the narrow sense of one criterion.

57 Transcript of Proceedings, 1962, Op. cit., pp. 18-19.

58 Ibid., pp. 19-21.

59 Ibid., pp. 142-143.

60 Ibid., pp. 148-152.

61 Ibid., pp. 152-157.

62 The Labour Gazette, October 1962, pp. 1182-1183.

63 The Financial Post, Ottawa's Big Rail Overhaul Ready to Go, November 16, 1963.
This article stated that legislation based on the recommendations of the MacPherson Royal Commission might be put before Parliament before the year-end or shortly thereafter. As it developed the Bill was not put before Parliament until the latter part of 1964.

CHAPTER VII

DOES A CANADIAN RAILWAY STRIKE CREATE AN EMERGENCY?

INTRODUCTION

The purpose of this chapter is to determine whether Government should intervene to prohibit threatened strikes on the Canadian railways. Political and general observations are reviewed, followed by comments on the service provided by the railways. Consideration is then given to criteria used to judge whether a dispute can cause a national emergency, and a conclusion is reached.

POLITICAL AND GENERAL OBSERVATIONS

1950 Strike

The first strike which occurred on the railways in Canada in almost fifty years, was that of the non-operating railway employees in 1950, which lasted for nine days. At that time the Korean War was in progress. The Liberal Government in office, as mentioned in Chapter III, introduced legislation - the Maintenance of Railway Operation Act - to terminate the 1950 strike. Prime Minister Louis St. Laurent in introducing the legislation made the following remarks:

> "A prolonged tie-up could wreck this country, at least on the course that it has been pursuing with such outstanding success since Confederation, and quite possibly mean serious risk and injury not only to ourselves, but to the cause of peace..."[1]

and

> "....There is probably no other country in the world whose economy is so dependent on railway transportation as... Canada..."[2]

Similar remarks were made by the Leader of the Opposition at

the time, Mr. George Drew:

> "Mr. Speaker, there is a very real consciousness in every part of this house, as I believe there is in every part of Canada, that we are meeting here to deal with the most serious situation of its particular kind that has ever confronted the Parliament of Canada.
>
> It is essential, for the very security of the home life of our people, action be taken without delay."[3]

Further, the late Mr. Solon E. Low, then Leader of the Social Credit Party, said:

> "Mr. Speaker, I think that every person capable of any ability to think at all must realize that every hour that the Canadian railroads remain idle multiplies the tragedy which has been visited upon millions of our people through the total paralysis of our railway system."[4]

Senator David A. Croll, then member for Spadina Constituency, stated:

> "We are meeting here today in an air of crisis that has swept over this country as I have never known it before in peacetime. Usually tension and hostility create the worst possible atmosphere in which to settle a labour dispute; yet something must be done and done now in order to end this creeping economic paralysis. I support, as do other members of this house, the resumption of railway service at the earliest possible moment."[5]

These are but a few of the many remarks in and out of Parliament concerning the urgency of resuming railway service.

Department of Labour Strike Study - 1950

Subsequent to the strike, the Department of Labour, in Ottawa, made an early appraisal of the situation. The report of the Department noted that the Mayor of one Northern Ontario community of 29,000, predicted that his community would starve within one week should the strike continue for that length of time. The Department mentioned other calamitous consequences

which were anticipated. However, the following remarks appear in the report:

> "In actuality, the adversities imposed by the strike fell short of such calamitous forebodings. Nevertheless, the hardships that were experienced were very real, and before work was resumed it appeared that the breaking point in the ability of the managements of many industries to continue production was not far away. This was indicated by the cumulative totals of actual industrial layoffs and the large number of potential layoffs reported in the press and through the National Employment Service."[6]

The report pointed out that some outlying areas were faced with severe hardships. For example, at Atikokan, Ontario, a town of 3,000, one hundred miles west of Port Arthur, supplies became seriously depleted and a "mercy" train was authorized by the unions' strike committee to take 119,000 pounds of food to that town.[7]

The Department's report states that certain arrangements which had been made temporarily, lightened the burden of the strike. Precautions were taken by many businessmen and communities. In addition, it was observed that there is generally an upswing in August in the manufacturing industries to meet a later increased market and many companies took advantage of the strike to stockpile their products. A further point mentioned was that when direct negotiations were renewed on August 25 and 26, at the request of the Prime Minister, and the fact that Parliament had been called into session, confidence for a settlement was increased, which apparently persuaded many firms to postpone layoffs as long as possible. According to the report, there were 47,000 railway employees,

apart from those on strike, and 23,430 employees of other industries laid off.[8]

Comments of the Royal Commission on Transportation - 1951

Subsequent to the strike, the Turgeon Royal Commission made the following remarks on the situation:

> "The effect of the strike was calamitous. The truck, the bus, and the plane put forth a great effort of relief. But the Canadian people realized at once that the economic life of this country of great distances is dependent upon the service of the railways. Parliament was called into special session and emergency legislation was passed directing the resumption, within 48 hours, of railway transportation services by the companies and by their employees. The Government stated that the purpose of the legislation was to deal with the national emergency then existing..."[9]

Strikes on the Canadian Pacific in 1957 and 1958

While the strikes in 1957 and 1958 with respect to the Diesel dispute, occurred on the one railway, both the Liberal Government in office in 1957 and the Conservative Government in office in 1958, intervened extensively to have the dispute settled. While in both cases there appeared to be a reluctance to pass legislation to terminate the strikes, it has been alleged, although the writer does not know the source, that the Governments concerned contemplated legislative action, should their mediation efforts have failed. Whether such action was actually contemplated is not known but in view of the concern shown by both Governments it would not be unexpected.

Threatened Strikes in 1960 and 1961

Two strike threats were advanced in the non-operating railway dispute which commenced in 1960 and was settled in 1961. The first strike date was set for December 3, 1960. From the

date of issuance of the Conciliation Board's report on August 24, 1960 to December 16, 1960, approximately two hundred and forty editorials relating to the dispute appeared in Canadian daily and weekly newspapers. The majority of these editorials emphasized the necessity of preventing a strike.[10]

Prime Minister John Diefenbaker in introducing legislation to delay the threatened strike for five months, outlined the serious consequences which could result if a strike took place.[11] The Leader of the Opposition, Mr. Lester B. Pearson, said the Liberal Government would have introduced legislation which would have made a strike unnecessary.[12]

Further, on April 15, 1961, the Canadian Institute of Public Opinion[13] issued the findings of a poll conducted with respect to the legislation passed by Parliament in 1960 to delay strike action. Sixty-one per cent of those citizens polled approved of Parliament's action, fourteen per cent disapproved and twenty-five per cent did not express any opinion on the subject. The main reason advanced by those who approved was the harmful effect a strike would have on the economy. It would appear that the weight of opinion in Canada is against allowing a strike.

The Railway Unions' Position

As pointed out in Chapter V, even the railway unions stated that no one wants to have strikes on the railways. The unions feel, however, that the strike is their last measure of protection. Should they call a strike, they feel, they risk control of their affairs and face compulsory arbitration. It

would appear then the unions expect Government intervention and that such procedure is not foreign to their minds. It indicates to some extent an acceptance, even though they do not approve of such action.

Judging from political action and comments of the elected representatives of the Canadian public, editorial comment from all parts of the Dominion, and sampling of public opinion, Canadians seem to hold the opinion that the operation of their railways is essential.

SERVICE PROVIDED BY THE CANADIAN RAILWAYS

Consideration should be accorded to the transportation supplied by the Canadian railways, to ascertain the types of transport which might be substituted in the event of a strike.

Passenger Service

While there is certain convenience provided by railway passenger service, such as in outlying areas and between the large cities, it is unlikely that any undue hardship would exist if railway passenger service were discontinued because of a strike.

Large amounts of passenger traffic have in recent years been diverted from the railways to the aeroplane, the bus and the automobile, the latter according to estimates made, providing about four-fifths of all passenger transportation in the country.[14] With the growth of good highways and air travel, the railways have handled less and less passenger business.

In the short-haul situation it would seem that the automobile and the bus could ameliorate any passenger difficul-

ties caused by a rail strike. In the medium and long-haul field, with the growth of our air lines in the past few years, it would not seem that too many problems would be experienced. In summary then, lack of rail passenger service could inconvenience some travellers, but it is quite unlikely that an emergency would occur unless in very isolated areas.

Freight Service

There appears below a table relating to transportation of freight traffic in Canada. To take account of tonnage handled and mileage travelled, inter-city ton miles performed by each type of carrier is the indicator used. The data shown is for selected years.

Table X

Inter-city Ton Miles Performed in Canada by Type of Carrier

For Selected Years

(Millions of Ton Miles)

Year	Rail	Highway	Water	Air	Oil Pipeline	Gas Pipeline	Total
1938	26,835	1,515	24,267	1	-	-	52,618
1940	37,898	1,847	22,508	1	-	-	62,254
1945	63,349	2,995	21,994	3	-	-	88,341
1950	55,538	7,597	27,017	10	610	-	90,772
1955	66,176	10,248	34,348	31	12,302	-	123,105
1960	65,445	13,841	36,869	43	17,226	6,414	139,838
1961	65,828	16,099	39,169	45	21,483	9,308	151,932
1962	67,937	16,585	42,720	49	24,295	11,710	163,296

Source - D.B.S., Daily Bulletin, January 8, 1964.

Consideration of the various types of transportation

shown in Table X, suggests that if a strike took place on the Canadian railways, highway trucking is probably the only immediate effective substitute for railway freight service although other forms of transport could be of assistance to a very limited degree. Shipment by water is a very slow process, is limited to certain areas of the country, and is not available during the winter season in most parts of the Dominion.

Air freight transportation could be an effective substitute primarily in relation to high valued, low bulk commodities. Limited air capacity as evidenced by Table X, would prohibit movement of many hundreds of commodities which are ordinarily transported by rail.

Oil and gas pipelines are limited to the carrying of one commodity each and are confined geographically. Pipelines are probably in most cases transporting their full capacity or close to it and are serving a particular market. Their substitutionary effect in a rail strike would not appear to be great although they have grown considerably in recent years.

While highway trucking would likely be the most effective substitute, examination of the data reveals that it is still only approximately one-fourth the size of rail transportation, even though trucking increased more than ten times from 1938 to 1962. Further, the MacPherson Commission report in commenting on rail and truck growth in recent years stated that tonnage increase in the trucking industry far surpassed tonnage increase on the railways but that the railways have

held their long-haul portion of traffic fairly well,[15] thus, highway trucking growth has tended to be in the short-haul segment.[16]

The most crucial transportation problems would occur in the long-haul freight situation. In the short-haul, highway trucking could forestall an emergency for a short period, but even in that segment highway trucking would be limited because after a time, needed supplies for consumers and producers, especially the latter, would be delayed due to a limit in the capacity of trucks. Stockpiling to overcome shortages due to anticipated strike action is limited by storage capacity, and by the uncertainty of labour and management strategies.

From the purely economic point of view, probably the economy could stand a limited period, such as it did in 1950, without its railways. Shortages would soon occur and the economic impact could have far-reaching effects. Further, once a strike commenced, barring Government intervention, there would be no certainty as to how long the strike would last and a psychological fear on the part of shippers and consignees could develop. In summary, then, it would seem that to allow a rail strike to occur and to continue for a period could have a detrimental effect on the economy; in addition, hardship could result especially in long-haul transportation.

CRITERIA FOR DETERMINING NATIONAL EMERGENCY STRIKES

Four Suggested Criteria

Mr. George Hildebrand[17] examined the question of emergency strikes in the United States. His considerations

are of necessity influenced by the emergency provisions of the Taft-Hartley Law governing labour relations matters in that country and United States economic conditions; thus, his conclusions are not necessarily designed for Canadian conditions. In any event, he advanced four criteria to determine if a strike in an industry creates an emergency in the nation as a whole. They are:

1. The impact of the dispute must be national rather than local.
2. The production of the service must be essential in the sense that its use cannot be dispensed with or postponed without quickly and seriously impairing the safety or health of the whole nation.
3. A dispute must embrace all or a substantial part of the industry.
4. The emergency must be imminent or actual rather than an ultimate prospect should the strike last for an indefinitely long period.[18]

When judged by these criteria, the following shows that the Canadian railways have the potential to cause a national emergency.

Criterion number one is obviously relevant to the railways in Canada.

In respect of criterion number two, the firms may fall into three classes and still meet the test. These classes are:

1. Products or services which are essential to the external and internal safety of the population;

or

2. Products or services whose combined production is essential to a sustained flow of real and money income to much of the population;

or

3. Products or services which are indispensable to the immediate health and safety of final consumers.

The Canadian railways at a minimum could meet item two above, item three, at least in long-haul transportation, and after a period, in short-haul transportation; and item one, when considered from a national defence point of view.

Criterion three set out by Mr. Hildebrand requires that all or a substantial part of the industry be involved in a dispute. Historically, the large non-operating or pattern-setting disputes in the railway industry, have involved industry-wide bargaining, which enables these disputes, at least, to meet criterion number three. As the various operating groups (engineers, firemen, conductors and trainmen) bargain individually, a strike might affect only one railway. There is, however, no guarantee that such would be the case should, for example, the trainmen on both Canadian National and Canadian Pacific be negotiating a new contract at the same time.

Criterion number four requires that the emergency must be imminent or actual rather than an ultimate prospect should the strike last an indefinitely long period. The Canadian railways would undoubtedly meet this criterion within a short time after a strike commenced. Added to shortages which would develop, would be the uncertainty as to when the strike might

terminate, with a very cumulative effect throughout the economy.

Mr. Hildebrand's Conclusions

Mr. Hildebrand concluded that in the United States, strikes in the following industries have a high potential for causing national emergencies:

1. Critical defence products.
2. Mining, smelting and refining fissionable metals.
3. Railroads.
4. Bituminous coal mining.
5. Basic steel products.

In respect of the railroads, Mr. Hildebrand makes the following comments:

> "Clearly railroad services belong on the list. They are essential to final consumers, to the production of incomes and to national defence. Bargaining is industry-wide and a strike would promptly generate a national emergency..."[19]

and

analyzing the situation as affecting final and industrial consumers, he stated:

> "Final consumers have a considerable range of essentials and there is no doubt that they are vulnerable to strikes. Relative to the national emergency problem, however, final consumers' turn-out covers a surprisingly small role. Most of their essential goods and services are produced for local or intra-regional markets whose radii are too small to make them sources of possible national emergencies. Certainly this would be the case for medical and hospital care, utility services, and food stuffs, excluding meats. And though meat and gasoline are produced for markets of much wider geographical scope, the collective bargaining structures in these industries are currently too decentralized to bring about national emergency. For final consumers, therefore, the national emergency problem is limited to the railroads."[20]

also

> "Turning to industrial consumers...First, there is railroad service which is not storable and which is ubiquitously used. Here vulnerability to strike is high..."[21]

Summary

In summary, we observe that the Canadian railways meet the four criteria advanced by Mr. Hildebrand. Further, if he concludes that disputes in the railroads in the United States have a great potential for causing an emergency in that country, it would seem that this would be much more the case in Canada. Because of Canada's geography and less extensive system of alternative surface transport, it is more dependent on its railways than is the United States.

CONCLUSIONS

Canadian government leaders have been unanimous on the necessity of continued operation of the railways. Editorial comment and public opinion have endorsed government intervention to prevent a rail strike. In addition, while competition for the Canadian railways has grown over the past two decades, as a result of the growth of alternate forms of transportation, the railways still form an important part of our economic life. Finally, when judged by objective criteria advanced to measure a national emergency dispute, it would appear that the railways in Canada could be considered an emergency dispute industry. At this stage in our development, the Canadian people take the position that there should be continual operation of the railways. Possibly in years to come with the advance of other forms of transportation and the extension of our highway systems, the

railways will not be considered as important as they are today. In the present circumstances, it appears that government intervention is a necessity when a strike threat occurs.

FOOTNOTES FOR CHAPTER VII

1 Hansard, Third Session, 21st Parliament, August 29, 1950, p. 11.

2 Ibid., p. 11.

3 Ibid., p. 25.

4 Ibid., p. 34.

5 Ibid., p. 39.

6 The Labour Gazette, October 1950, p. 1650.

7 Ibid., p. 1650.

8 Ibid., p. 1651.

9 Turgeon Commission Report, Op. cit., p. 256.

10 Press Summaries, Canadian Pacific Railway Company, Montreal, August 26, 1960 to December 16, 1960.

11 Hansard, Fourth Session, 24th Parliament, 1960-1961, p. 240.

12 Ibid., p. 349.

13 Often referred to as the Gallup Poll, the name of the parent institution in the United States.

14 D.B.S., Daily Bulletin, April 22, 1964.

15 Tons of freight handled by Canadian railways in 1962 were distributed as follows:

Products of Agriculture	25,177,337
Animals and Products	1,508,284
Products of Mines	68,236,842
Products of Forests	15,441,325
Manufactures and Miscellaneous	49,342,838
Less-than-carload Freight	1,223,715
Total	160,930,341

See D.B.S., Catalogue No. 52-205, Annual Railway Freight Traffic.

16 MacPherson Commission Report, Op. cit., Volume II, p. 57.

17 At the time, Professor at the University of California; he later went to Cornell University.

18 Bernstein, Irving and Others, Emergency Disputes and National Policy, Harper and Brothers, New York, 1955, p. 6.

19 Ibid., p. 16.

20 Ibid., p. 20.

21 Ibid., p. 20.

CHAPTER VIII

CONCLUSIONS AND RECOMMENDATIONS

IMPORTANT FACTORS IN RESPECT OF THE CANADIAN RAILWAYS AND THEIR LABOUR DISPUTES

Analysis of the railway industry and railway labour disputes reveals the following major factors which must be considered in the settlement of disputes.

General Factors

1. From the commencement of the railways, successive governments of Canada have been deeply involved in financing and developing the rail lines. Vast sums have been spent, especially by the Federal Government, in railway building and railway operation.
2. Prior to World War II, the Canadian railways enjoyed a monopoly position. Subsequent to the War, and up to the early 1950's, the railways did not have any great difficulty in raising freight rates to compensate for increased costs. In more recent years, severe competition has made it difficult for the railways to obtain increased revenue by increasing freight rates.
3. The MacPherson Royal Commission on Transportation has recently made extensive recommendations with respect to railway revenues and plant adjustment which, if adopted by Parliament, will put the railways in a much better competitive position.

Labour Dispute Factors

1. The railway labour disputes reviewed have been of considerable duration.

2. Conciliation procedures in railway labour disputes have been compulsory for approximately sixty years.
3. Third party intervention has been important in settlement of railway interest disputes. The parties have tended to lean heavily on direct Cabinet intervention. In rights disputes, intervention has been at a minimum.
4. In a good many of the disputes, especially in more recent years, recommendations of conciliation boards have been the basis of final settlement.
5. On two occasions within the past decade and a half, the Federal Government has passed ad hoc legislation respecting strikes - one Act to terminate a strike in 1950 and one Act to prohibit a strike in 1960. On other occasions, e.g., in 1954, similar legislation was threatened failing settlement.
6. Two criteria have been considered important in railway labour disputes. They are:
   a) A standard of comparison for non-operating railway employees' wages.
   b) The railways' ability to pay increased labour costs, which revolves to some extent around public policy requirements. Since 1954, this has become an important subject.
7. The earnings of Canadian durable goods workers have become a very important criterion or standard in determining the wages of non-operating railway employees. In previous years, parity with earnings of United States railway employees was the standard in dispute.
8. The Royal Commission in the Firemen's Diesel dispute, and its

recommendations, were extremely important in the settlement of that dispute, as that body carried considerable weight with the public and other railway unions.

9. A strike in the railway industry would in a short time result in a national emergency.

10. In the post-war period there have been three railway strikes, and a number of strike threats, which have caused considerable concern throughout Canada.

WHAT IS REQUIRED?

Shortcomings of the Present System

The shortcomings of the present system could be considered as follows:

1. Conciliation officers have never been of great value.

2. The decisions of conciliation boards, which have been so important in railway disputes, are primarily the decision of the one neutral, the chairman.

3. Boards of conciliation have been ad hoc boards; in most instances there has been a new chairman on each occasion - a person virtually unfamiliar with the railway situation but yet required to make recommendations involving many millions of dollars.

4. Upon completion of the conciliation board procedure, there is no restraint on strike action, apart from any intervention deemed advisable by the Cabinet. Thus, Cabinet intervention has been frequent.

5. In order to terminate or to eliminate a strike threat or terminate a strike, Parliament action is necessary - action

which is certain to take place in any strike situation, judging from past experience.

6. The durable goods standard of comparison has become firmly entrenched and yet, at best, it is a rough comparison. A much more refined standard could probably be constructed.
7. Continuing research to obtain a refined and more precise standard of measurement has been undertaken to a limited extent only, and this work has been done by the railways.

Necessities for a Proposed Solution

It is necessary to conceive a method of settlement for railway disputes which will try to strike a balance between the public and private interests. While it would seem to be desirable to eliminate frequently recurring strike threats in the railway industry, care must be taken to ensure that railway wages and working conditions are in line with similar occupations within the community; railway revenues and expenses must be at a level which will enable the railways to remain viable and railway dispute settlement should not continually end up with the Cabinet or Parliament.

If it is necessary for a dispute to be submitted to a board, then at least three neutrals should be responsible for making the recommendations - neutrals who are familiar with railway problems; thus, greater permanence of board members is necessary. Flowing out from this permanence, would be the possibility of greater research into railway labour matters and a more refined approach to the problems advanced.

PROPOSED SOLUTION

The proposed solution is designed to meet the shortcomings of the present method of dispute settlement.

Railway Labour Board

It is proposed that a permanent Railway Labour Board be established, composed of three neutral members. Such members would be selected and appointed by the Minister of Labour, to be agreed to by the railways and railway unions. These members would be appointed for a period of five years, with the Chairman of the Board acting in a full-time capacity. The other two members would function as and when required. The appointments could be renewed after the period of five years, for a further period of five years. The Chairman of the Railway Labour Board might well be a member of the judiciary, appointed from any part of Canada. One of the other two members would be appointed from Eastern Canada, and the other from Western Canada. Two requirements for all three members would be that they be skilled in industrial relations and that they represent the public interest. The expense of the Board could be borne fifty per cent by the Government and twenty-five per cent by each party. This would seem to be a reasonable division of cost considering both the public and private interest in railway disputes.

Suggested Procedure for Dispute Settlement

The Railway Labour Board could act in both a mediation and arbitration capacity. The suggested procedure would be:

Mediation

The parties would present their proposals to each other as allowed under the existing collective agreement. Should negotiations be ineffective in attaining a settlement, then the Board could act in a mediatory capacity and would, at the same time, be acting in a fact-finding role by obtaining a knowledge of the problems involved and understanding the obstacles in the way of settlement. If the mediation effort failed, then the Board could withdraw for a period of forty days to give the parties time to re-consider their positions and to undertake further negotiations. The period of forty days could be extended at the joint request of the parties. If at any time during the forty-day period, the parties desired the mediation service of the Board, such service would be made available.

Arbitration

After the period of forty days, or a lesser period if the parties felt that there would be no advantage in waiting for the full period to elapse, strike action would be prohibited and the Railway Labour Board would sit as an arbitration panel to formulate binding provisions. The railways and the unions would each have the opportunity of nominating a member to the arbitration panel, but such nominees would not participate in the arbitration report. The purpose of the parties' nominees would be to act in a "pipeline" capacity on behalf of their respective principals.

Research in Respect of Railway Labour Matters

Standards for comparing railway wages when advanced in labour disputes by one party have never been acceptable to the other party. Probably there could be acceptance by both parties if a standard were conceived and devised by neutrals, but even then it is quite possible that at least one party would disagree. Up to the present, considerable discussion has taken place on the subject of standards. However, no great refinement has been made in the measures actually used by conciliation boards, although the railways have made attempts in this direction.

The Railway Labour Board could have an important function, especially the Chairman, if he were appointed on a full-time basis, with appropriate staff, in directing continuing research for suitable criteria or standards of comparison for measuring wages and working conditions of railway employees. With a constantly changing environment, this continuing research is important. In any such operation, the railways and unions could collaborate with the Board in such research. Some of the areas which might be explored in devising appropriate criteria could be the geographical distribution of employees, the advisability of having wage increases based on occupation and region rather than across-the-board national increases, skill ratios, wages in comparable "outside" occupations, male-female skill and wage differentials, supply and demand of labour and other factors involved in the railway labour markets.

Quite possibly differentials should exist in railway wages for the different areas of the country, if for no other

reason than the distorting effect railway wages would otherwise have on the local labour markets. The remark has often been made in low-wage areas that railway wages are well above those of other employees. On the other hand, some of the railway skilled tradesmen in large metropolitan centres receive wages which are below their "outside" counterpart. It would seem that there would be some value in considering railway regional differentials.

In its desire to set up appropriate measuring rods for the wages and working conditions of railway workers, the Railway Labour Board could seek the assistance and guidance of such bodies as the Pay Research Bureau of the Civil Service Commission, which has had considerable experience in the problems of standards of comparison.

Advantages of the Proposal

There would be various advantages in the suggested procedure. The permanence of the proposed Board would enable the members to become familiar with the complex working rules, wage problems and the financial situation of the railways. This would seem to be important, especially if Bill C-120, before Parliament, concerning the railways, is passed. For a number of years ahead there will be a transitional period and the familiarity of the Board members with the problems during this time would be advantageous. The suggested procedure would be aimed at eliminating the frequent strike threats and Cabinet and Parliamentary intervention in railway labour disputes. It would work towards an appropriate standard for measuring wages

and working conditions and, at the same time, control unwarranted labour costs. The public interest would be protected against any unnecessary transportation costs emanating from labour expense. The suggested procedure would also work towards reducing the length of railway labour disputes.

A Final Note

The foregoing solution has been designed to take care of the rather unique situation existing with respect to the railways. The objective has been to allow for as much negotiation as possible prior to arbitration. Thus, sincere collective bargaining would be required between the parties to achieve full benefit from the proposal.

It is suggested that after five years of operation, careful review should be made of the procedure so that any changes necessary might be effected, especially in view of the possible changed railway situation which may emanate from legislation resulting from the MacPherson Commission report.

While it is felt that the proposal outlined would meet the needs of railway labour disputes, any Government in power will consider the political risks involved in these changes. For example, it was mentioned in Chapter II, that in 1957 the Conservative Government asked for submissions on suggested changes to the Industrial Relations and Disputes Investigation Act. While it is understood that six submissions were made, action was not taken to change the Act, possibly due in part, at least, to political problems which might be

encountered.

Any Government steps to change the Industrial Relations and Disputes Investigation Act along the lines proposed, might draw opposition from Canadian unions, although the proposal made is limited to the railways alone. The railway unions have had, however, a limitation on their strike action and, as stated previously, Government intervention to prevent or to terminate a railway strike is not unexpected by them or by other Canadian unions. After long and careful examination of railway labour disputes, the writer believes the proposed solution would be of benefit to the railway employees, railway management, and also to the Canadian public.

APPENDICES

Appendix I
(Sheet 1)

Dates on which Wage Increases and Decreases were Accorded to the Various Groups of Canadian Railway Employees - 1918-1938

1918-1919

Wage increases were accorded to the various groups of employees on the following dates, as a result of P.C. Order in Council 1768, July 16, 1918, effective May 1, 1918. The increases applied to all employees receiving less than $250.00 a month:

Mechanical Trades employees	May	1, 1918
Maintenance of Way employees	September	1, 1918
Agents and Operators	October	1, 1918
Sleeping and Parlour Car employees	January	1, 1918
Police Department employees	January	1, 1918
Dining Car and Restaurant employees	January	1, 1918
Locomotive Engineers, Locomotive Firemen, Conductors and Trainmen	January	1, 1918
Mechanical Trades employees	May	1, 1919

1920

Wage increases to all classes of employees, as a result of Decision No. 2 of the United States Railroad Labour Board.	May	1, 1920

1921

Wage reductions for all classes of employees, as a result of Decision No. 147 of the United States Railroad Labour Board.	June	1921[1]

1922

Wage reductions for:

Mechanical Trades employees	July	16, 1922
Maintenance of Way employees	July	16, 1922
Station and Telegraph employees	July	1, 1922
Clerks and Freight Handlers	October	22, 1922

Wage increase for:

Maintenance of Way employees	November	1, 1922

(As a result of Decisions 1028, 1036, 1074 and 1267 of the United States Railroad Labour Board).

Appendix I
(Sheet 2)

1931-1932

Wage reduction of ten per cent for:

Operating employees (Train and Engine Service)	December	1, 1931
Telegraphers	December	1, 1931
Levermen	January	1, 1932
Signal Maintainers and Helpers - 8½ per cent	January	1, 1932
Sleeping and Dining Car employees	January	1, 1932
Clerks and Freight Handlers	March	1, 1932
Mechanical Trades employees	April	1, 1932
Maintenance of Way employees	May	1, 1932

1933-1934

Further ten per cent reduction for:

Train Service employees	May	1, 1933
Telegraphers	May	1, 1933
Levermen	May	1, 1933
Sleeping and Dining Car employees	July	16, 1933

Twenty per cent reduction reduced to fifteen per cent for:

Train Service employees	November	1, 1933
Telegraphers	November	1, 1933
Levermen	November	1, 1933
Signal Maintainers and Helpers - 17 per cent	November	1, 1933
Sleeping and Dining Car employees	November	1, 1933
Signal Maintainers and Helpers - 15 per cent	January	1, 1934

Increase to fifteen per cent reduction for:

Clerks and Freight Handlers	November	16, 1933
Maintenance of Way employees	December	1, 1933

1935

Fifteen per cent reduction reduced to twelve per cent for:

All classes of employees, except Mechanical Trades employees (Running work employees reduced to ten per cent, and main shop employees to seven per cent).	January	1, 1935

Appendix I
(Sheet 3)

Twelve per cent reduced to
ten per cent for:

All classes of employees, except Mechanical Trades employees (Main shop employees reduced to five per cent).	May	1, 1935

1937-1938

Restoration to Basic Wage Rates for all classes as follows:

Reduction to 9 per cent - (Main shops 5)	February	1, 1937
Reduction to 8 per cent - (Main shops 3)	April	1, 1937
Reduction to 7 per cent - (Main shops 2)	June	1, 1937
Reduction to 6 per cent - (Main shops 1)	August	1, 1937
Reduction to 5 per cent - (Main shops Nil)	October	1, 1937
Reduction to 4 per cent	December	1, 1937
Reduction to 3 per cent	February	1, 1938
Basic rates restored	April	1, 1938

(1) Day not available for 1921.

Source - Statement of Railways before Board of Conciliation and Investigation considering request of certain groups of railway employees for a wage increase of thirty-five (35) cents per hour, 1948, Montreal, Appendix 34.

Appendix II
(Sheet 1)

Main Industry Groups Classified by Dominion Bureau of Statistics as Durable Goods Manufacturing

Wood Products:

- Saw and planing mills -
  - Plywood and veneer mills
  - Sash, door, and planing mills
  - Sawmills
- Furniture
- Other wood products

Iron and Steel Products:

- Agricultural implements
- Boilers and plate work
- Fabricated and structural steel
- Hardware and tools
- Heating and cooking appliances
- Iron castings
- Machinery -
  - Household, office and store
  - Industrial
- Primary iron and steel
- Sheet metal products
- Wire and wire products

Transportation Equipment:

- Aircraft and parts
- Motor vehicles
- Motor vehicle parts and accessories
- Railroad and rolling stock equipment
- Shipbuilding and repairing

Non-ferrous Metal Products:

- Aluminum products
- Brass and copper products
- Smelting and refining
- Other non-ferrous metal products

Electrical Apparatus and Supplies:

- Heavy electrical machinery and equipment
- Telecommunication equipment
- Batteries
- Refrigerators, vacuum cleaners and appliances
- Wire and cable
- Miscellaneous electrical products

Appendix II
(Sheet 2)

Non-metallic Mineral Products:[1]

Clay products
Glass and glass products

(1) Abrasives, asbestos, hydraulic cement, clay, glass, lime and gypsum, stone, concrete and miscellaneous non-metallic mineral products.

Source - D.B.S., Man-hours and Hourly Earnings.

Appendix III

Differences Between Durable Goods Industries and the Railways, as Outlined in the Majority Report of the Conciliation Board Under the Chairmanship of Mr. Justice Thomson in 1958

1. For 36.5 per cent of the non-operating railway employees, no comparable occupations could be found in "outside" industry.

2. The railway is a service industry, while durable goods industries are manufacturing. If demand for durable goods slackens, large numbers of employees are laid off. While there are seasonal lay-offs in the railways, by and large a good measure of security is afforded railway employees. Where lay-off possibility exists, it would be expected that a higher rate of pay would be received.

3. Payroll costs in the railways per dollar of revenue are almost twice that of durable goods, and the latter can adjust costs more quickly; thus, an increase in wage rates has a greater impact on the railways.

4. The difference in territorial distribution of the railway employees as compared with the durable goods employees, was a matter of real importance. There are more railway employees than durable goods workers in rural areas, and it was observed that higher wages are paid in urban than rural areas.

5. Railway employees are generally employed in smaller establishments than are durable goods employees. Higher wages are generally paid in larger establishments.

6. Conditions are never static in industry. Industries may be prosperous at one time and not at another. In view of the insatiable demand for durable goods in the post-war period, it enabled them to pay higher wages, but the railways had an altogether different experience. The Board stated the railways had been meeting the worst kind of competition, while the durable goods have had unprecedented prosperity.

7. The Board observed that all railway employees should be included in any comparison with durable goods employees rather than eliminating the operating employees of the railways, who are the production workers.

8. The last point for consideration was whether the non-operating employees should be compared with manufacturing as a whole rather than a segment thereof. The Board said this was the most fortunate and prosperous segment in the economy.

Appendix IV
(Sheet 1)

Differences Between Durable Goods Industries and the Railways, as Outlined in the Statement of the Railways, Part I, 1960, Pages 45-59 and 61-62

1. The ratio of payroll to gross revenues on the railways is larger than that of the durable goods industries.

2. Work on the railways is mainly maintenance work, as compared to production work of the durables; also, the railway production employees - the operating employees - were omitted in the comparison made.

3. There is a greater possibility of utilization of employees' time in the durable goods industries as compared with the railways.

4. The durable goods employees are much more concentrated than railway employees.

5. Railway transportation cannot be stored, as can a physical product.

6. The railways have not had the ability to adjust prices as other industries.

7. The dollar output per employee is substantially less on the railways than in the durable goods industries.

8. The value added per employee to the final product is much less in the railways than in manufacturing industries.

9. The gross capital expenditure per employee in the railways is more than double that of durable goods industries.

10. The geographical distribution of employees between the railways and durable goods industries is significantly different.

In connection with the geographical distribution, the railways presented evidence which showed durable goods wage rates weighted by non-operating employees throughout Canada. The result was that the actual average hourly earnings of durable goods workers as at December 1959, was $1.871 and on the above basis of weighting geographically, it was reduced to $1.748 an hour, or a difference of 12.3 cents an hour.

The railways also presented an exhibit showing what they felt were comparable groups, i.e., the inclusion of the railway operating employees (the production workers of the railways) in the non-operating group and exclusion of the

clerical forces. This they felt comprised a group similar to the durable goods group. The durable goods average hourly earnings were weighted with the above mentioned composite of railway employees. On this basis, the calculation showed that the durable goods earnings were 15.5 cents per hour below the earnings of the group of railway employees involved. In rebuttal evidence, further statements taking into consideration the geographical distribution were presented by the railways.

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