CHAPTER I

THE FREIGHT RATE STRUCTURE

The Commission has been in receipt of numerous representations in which regional or provincial complaints about freight rates, on grounds of discrimination or undue preference, have been voiced.

In keeping with our reasons, already stated, for regarding railway questions which impinge upon Dominion-provincial relations as coming within our terms of reference, we deem it expedient to give consideration to some general aspects of the question of public control of railway rate-making—a matter which has been a fruitful cause of trouble between regions and between provinces and the Dominion for at least the past sixty years.1

The Order in Council of June 5, 1925.—It is not necessary, in considering the historical aspects of the question, to go further back than 1925. It was in that year, June 5, that the Dominion Government passed an Order in Council requiring the Board of Railway Commissioners to make a full and complete investigation into the freight rate structure of the railways. When the Board of Railway Commissioners entered upon this task it had (with one exception) complete control over rates in Canada, subject to an appeal on points of law to the Supreme Court and an appeal on merits to the Governor in Council. The exception was the statutory provision that the eastbound grain and flour rates embodied in the Crow's Nest Pass Agreement of 1897 should be continued and applied to the entire prairie area.

This provision was the continuing remnant of the extensive agreement of 1897 between the Dominion Government and the Canadian Pacific Railway. Between those who thought the Crow's Nest Pass Agreement Act (which antedated the Bill creating the Board of Railway Commissioners by six years) should be repealed, leaving freight rates in the West to be fixed by the railways subject to appeals to the Board, and those who held that these rates should be continued as a protection to an area which was not favoured with water competition, a conflict began in 1922 which was fought out in special Parliamentary committees, in cases before the Board of Railway Commissioners, in references to the Supreme Court, in appeals to the Governor in Council and in Parliament itself. In the result, the principle that it was proper for Parliament to put statutory limits to the powers of the Railway Commission was clearly established by the retention in the Order in Council of June 5, 1925, of the grain and flour provisions of the Crow's Nest Pass Agreement. Again in 1927 there was a further exercise by Parliament of its power to fix maximum rates in the passage of the Maritime Freight Rates Act.

The present situation as to rate-making is therefore this: The railways are free to make such rates as the Board of Transport Commissioners (which is the successor of the Board of Railway Commissioners) will approve subject to the power of Parliament to fix limits within which both the railways and the Board must exercise their powers. But the Board, in its supervision of rates, is under obligation to observe the principles of rate-making laid down in the declaration of policy contained in Order in Council P.C. 886 of 1925, part of which reads as follows:

"The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada and as being the method best calculated to facilitate the interchange of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade."

Again:

"The Committee are further of the opinion that as the production and export of grain and flour forms one of the chief assets of the Dominion, and in order to encourage the further development of the great grain growing provinces of the West, on which development the future of Canada in large measure depends, it is desirable that the maximum cost of the transportation of these products should be determined and known, and therefore are of opinion that the maximum established for rates on grain and flour, as at present in force under the Crow's Nest Pass Agreement, should not be exceeded."

1 For a general discussion of the right of a province or a region in Canada to make a claim in respect of federal policies see Section F, Chap. I, "Compensation for the Adverse Effects of Federal Policies."
The next paragraph of the Order instructs the Board that its power, except for the Crownsnest Pass rates, is "unfettered by any limitation". The order proceeds:

"The Committee therefore advise that the Board be directed to make a thorough investigation of the rate structures of railways and railway companies subject to the jurisdiction of Parliament, with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion and the expansion of its trade, both foreign and domestic, having due regard to the needs of its agricultural and other basic industries...."

Summary of Representations.—The representations bearing upon these matters made to us may be thus summarized:—

The Transportation Commission of the Maritime Board of Trade, speaking as representative of the interests of the three Maritime Provinces and with the approval of the governments of these provinces, raised an important and difficult question with respect to the effect of the reduction of freight rates made by the railways in Central Canada to meet truck competition. It was claimed that the 20 per cent differential in freight rates granted to the Maritime Provinces under the Maritime Freight Rates Act had been nullified by these reductions. The suggestion was therefore made that the differential should be restored by a new adjustment; and that adjustments should continue to be made whenever necessary to maintain the relationship. This is discussed later in this chapter.

The Nova Scotia Government in its brief also referred to this partial breakdown of the benefits conferred by the Maritime Freight Rates Act and stated that if the present conditions are to continue "then certainly some compensation must be made to the people of the Maritime Provinces."

The representations of the Ontario Government were not with respect to freight rates in the Province of Ontario. The freight rate structure of Western Canada was criticized on the ground that it was too low. Premier Hepburn said that grain rates in the West were 9 cents per bushel lower than comparable rates in the United States. "I shall not attempt", he said, "to compute the 'excess' burden shouldered by the people of the eastern provinces as a consequence of what I am told are the world's lowest per mile rates on wheat, but multiplying the number of bushels of wheat exported (in even a bad year) by nine cents gives promise of being a substantial sum." A request was made for a statement by this Commission of "the distribution of federal expenditures for railways on a per capita basis by provinces." The share of each province in payments to meet the Canadian National deficit was computed in the brief on the basis of traffic originating in the province, which made Ontario's share in 1936-37 30 per cent as against 31 per cent for the Prairies.

The Saskatchewan Government, in its submission to the Commission, made a detailed survey of freight rates to show not only that the Prairie rate structure was higher than the Eastern rate structure but that terminal and other classes of rates bore heavily upon the Province. The Saskatchewan Government referred with approval to the suggestion in the Report of the Duncan Commission that the jurisdiction of the Railway Board be enlarged permitting, in the words of submission, the Board in regulating freight rates to "deal with broader aspects than the mere question of the reasonableness of the rate charged for a particular service... and questions of unjust discrimination and undue preference"; and suggested that these recommendations be studied as a means of securing the adjustment of rates on a more equitable basis. "The west", it declared, "can no longer pay...higher transportation charges."

Several briefs dealing with freight rates were submitted to the Commission in Alberta. Their common burden was that Alberta is at the apex of the transcontinental freight rate structure and that in every classification and division of rates Alberta pays the topmost charge. "Alberta must sell the bulk of its agricultural products in world markets at world prices less transportation costs, and must buy the bulk of its purchases within Canada at prices...to which must be added the cost of long-haul transportation under a varying schedule that reaches its peak on shipments to Alberta." A grievance of Alberta which was specially stressed is that through rates to Vancouver—put in operation...
by the railways to meet water competition via the Panama canal—enable goods in certain cases to be shipped by rail to Vancouver and back into Alberta more cheaply than they can be shipped direct. Much attention was paid in these briefs to the “Spokane Decision” of the Interstate Commerce Commission under which intermediate points (Spokane, for example, in relation to Seattle) were not to be charged rates higher than their fair proportion of through rates without the permission of the Commission. The submissions in Alberta called for relief from so-called high rates and from rates which appeared to the witnesses to be discriminatory and indefensible.

The British Columbia submission presented other aspects of the same rate problem. The complaint most strongly voiced in the brief presented by the Government was that freight rates on goods brought in from Eastern Canada—under compulsion because of the tariff—were higher than the rates on bulk goods shipped from British Columbia to markets in Eastern Canada, though there was no corresponding difference in haulage costs. This it was asserted was a discrimination against British Columbia consumers. “On the surface,” it is stated in the brief, “this situation is apparently inequitable, since for almost similar services performed very dissimilar freight tolls are exacted. The principle of charging what the traffic will bear has an inherent spirit of discrimination, at least when applied to whole areas. Primary producing regions selling a comparatively low value product are compelled to pay the relatively high freight tolls; while, on the other hand, secondary producing areas receiving revenue from their comparatively high value products pay the relatively low freight tolls.” Comparative regional rates are quoted to show that they are higher than rates on similar articles for similar distances in the Ontario-Quebec district; and it is denied that these are related to costs of operation. A special protest was made against the high rate on grain shipped to Vancouver for local consumption in comparison with the export rate.

Ontario Representations.—The Ontario representation, it will be seen, differed in content and direction from the representations made by other provinces in that it did not make specific observations suggesting reduction in the rates in the area for which it spoke. It was largely directed toward suggesting that the Western Provinces, which complained of high rates, were in fact the recipients of unusually favourable treatment in the existing freight rate structure to the disadvantage of other areas. We propose to deal with these observations before proceeding to a discussion of the other submissions which raise questions of general rate policy affecting the whole Dominion.

Among the Ontario suggestions was one that the distribution of federal expenditures for railways on a per capita basis by provinces should be ascertained. This information is in part supplied by Mr. R. A. C. Henry in a study prepared by him for the research staff of the Commission. The following table gives a summary of the cost of railway facilities, in respect of which the Dominion has assumed financial responsibility either as public works or by reason of ownership through stock control, allocated by regions as at the end of 1936:

<table>
<thead>
<tr>
<th>Region</th>
<th>Cost</th>
<th>Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maritimes</td>
<td>$162,414,000</td>
<td>$158</td>
</tr>
<tr>
<td>Quebec</td>
<td>291,591,000</td>
<td>94</td>
</tr>
<tr>
<td>Ontario</td>
<td>653,429,000</td>
<td>177</td>
</tr>
<tr>
<td>Prairies</td>
<td>408,426,000</td>
<td>169</td>
</tr>
<tr>
<td>British Columbia</td>
<td>166,453,000</td>
<td>222</td>
</tr>
</tbody>
</table>

The tabulation indicates how valueless calculations of this kind are in any attempt to allot responsibility to regions for their supposed contribution to over-investment in railway facilities. To sort out instances of sectional extravagance from the mass picture of nation-wide over-expansion would be a difficult if not impossible task; and instead of attempting it we prefer to associate ourselves with an observation on this aspect of the transportation problem made by an earlier Royal Commission, under the chairmanship of Sir Thomas White:

“As some reference has been made to the vast sums expended by the Dominion or by Government-controlled railway systems upon the construction of transcontinental lines and local branch lines in the Western Provinces it seems desirable to point out that such expenditure was regarded as essential by the various governments of the Dominion in pursuance of the policy of promoting settlement as rapidly as possible in those extensive areas in the interest not alone of the Western Provinces but of all the Provinces of Canada. The express purpose of Confederation was to bind together the scattered Provinces and territories of British North America as a national and economic unit capable of unlimited growth and development to the benefit and advantage of all its inhabitants. For the realization of this great undertaking in nation-building the construction of transcontinental railways linking together east and west was a paramount necessity. It is not too much to say that the policies of all Dominion Governments during the fifty years following Confederation were

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8 Ex. 172, Brief of B.C., pp. 299-301.
9 Ex. 296, p. 25; Ex. 297, p. 29.
directed to this end. The various forms of public assistance given in promoting the construction of the Canadian Pacific, the Canadian Northern and the Grand Trunk Pacific Railway systems and the construction by the Government of the Intercolonial and the eastern section of the National Transcontinental System were all motivated by this policy. That we have built in excess of our real transportation requirements is undoubtedly true and that Dominion Governments or Dominion-owned railway systems in respect of the construction or acquisition and betterment of local lines in various provinces (including the Maritimes) have had regard to local conditions or local benefit is also true but the latter action was not exclusively taken in the case of the Western Provinces and the former with the object of benefitting all parts of the Dominion. It must also be remembered that hand in hand with our railway development, has gone the development, at the general expense of the Dominion, of our ports and harbours on the Atlantic and Pacific Coasts. This development, although in its physical aspect confined locally to British Columbia and the Maritime Provinces has enured like that of our railway systems to the benefit and advantage of all Provinces of Canada and not exclusively to those in which it has actually taken place.10

There is also in the Ontario submission the somewhat definite statement that an excess burden has to be shoudered by the Eastern Provinces because of the Western rates on grain and the suggestion that this burden can be computed by "multiplying the number of bushels of wheat exported by nine cents per bushel,"11 which would run into a large sum of money even in a year of limited export. The figure, nine cents, represents what the railways claimed was the difference between United States and Canadian rates on wheat. This was an ex parte statement recently made by them as a justification of rates on petroleum products which were admittedly higher in Western Canada than the rates in the adjoining states.12 As this supposition, that the rates on wheat in Western Canada are unremunerative and therefore a large contributing factor in the difficulties of the railways, constantly finds expression in the discussion of the railway question, the Commission, without undertaking to express an opinion, thinks it desirable to draw attention to the statements available in the records bearing upon this point, which tend to show that this is an open question upon which a variety of views may be held.

In the 1921-22 freight rates investigation and again in the General Freight Rates Inquiry, 1925-27, counsel for the Prairie Provinces sought to prove by analysis of the statistical material submitted by the railways and by examination of their expert witnesses, that in the preceding years—which were years of large grain movements—the railway earnings on their Western lines, largely arising from the carrying of wheat, made much the greatest contribution to the gross operating income of the railways. The heart of the argument was that, while the rates were undeniably low, the movement of the grain in train loads over relatively long hauls with resulting cheapness of operation, netted substantial profits. It was contended that the American rates, cited by the railways, were for shorter hauls and a smaller volume of freight than those that prevailed in the Canadian West. A summary of this evidence showing comparative earnings and operating expenses for a period of years was submitted to this Commission by the Saskatchewan Government in its brief.12 Counsel for Manitoba in the General Freight Rates Inquiry of 1926-27 in presenting his case to the Board, urged it to make a finding on the profitability or otherwise of these statutory rates on wheat. His argument was that, since the earnings of the Western lines were high, it followed that the grain rates were profitable or alternatively that the rates on other commodities were unduly high since they more than made up the loss.13

No formal finding was made; but there were references to the question by two of the Commissioners. Deputy Chief Commissioner Vien gave it as his opinion that "no accurate and definite conclusion can be drawn from the information on the record as to the actual cost of moving grain in trainload lots from Armstrong to Quebec"—an opinion equally applicable to the moving of grain in the West. He quoted the statement of Mr. E. E. Lloyd, a Canadian Pacific Railway official, who gave evidence about earnings and rates, that "I do not know what the cost of handling grain is." Commissioner Oliver discussed the question at length. After a summary of the inferences to be drawn from the material produced he said: "It was also shown that the net returns were higher in the years of largest crop. In view of these facts it does not seem possible to accept as proven the

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11 Ex. 296, Brief of Ont., Part I, p. 28.
12 Ex. 34, Brief of Sask., pp. 211, 212.
13 "I am going to ask the Board, if they will, to make a finding with respect to the profitable nature of the grain traffic. So long as it is left in the realm of speculation you will have the large amount of propaganda which has gone over this country, contributed to by the railways. I think, on the material before the Board, that that question ought to be settled. . . It seems to me essential to decide whether or not these grain rates do or do not pay because if they do I say we are entitled to considerations of some other rates." (From argument of E. J. Symington, K.C., counsel for Manitoba, April 6, 1927, proceedings of Board of Railway Commissioners in General Freight Rates Inquiry.)
first contention of the railways that the present grain rates are in themselves unprofitable.”

14 Commissioner Oliver also discussed at some length the argument that since the grain rates in the Western states were higher than those in Western Canada the latter must be unduly low; and reached the conclusion that this inference was unwarranted. His opinion was that the United States Interstate Commerce Commission in an effort to put the American railways in a position to earn 53 per cent on their capital investment, recognized as reasonable by Congress, had “laid an undue share of the burden of general transportation costs on the basic product of grain.”

The record, thus summarized, leaves the question as to the profitability or otherwise of the grain rates undecided. This is not desirable if the charge of unprofitability is to be constantly made in discussions dealing either with the general railway problem or with the consideration of charges of discrimination as between regions. An examination of these conditions and a definite finding would be a contribution of value to the processes of adjustment; but upon the evidence available to us we cannot make such a finding.

Submissions on Behalf of the Maritime Provinces.—The other representations made in provincial submissions are illustrations of the difficulties and apparent inequalities that result from the competition of other forms of transportation with the railways. The Maritime complaint which we have summarized above arises from the unsettlement of the relationship, which had been established between Maritime and Central Canadian rates by the Maritime Freight Rates Act, through the necessity with which the railways were faced of either meeting the competition of trucks in the central area or abandoning to them a considerable share of their business in that area. This is an illustration of the effect which the development of trucking competition in particular areas can have upon the whole freight rate structure of Canada. The effect, if the railways decide to meet the competition, is to increase the rate differential between various regions thus checking or even reversing the present trend toward equalization. For the Maritime Provinces such results are especially unfortunate since they affect adversely the differentials established by the Maritime Freight Rates Act. The remedy suggested in submissions made to us on behalf of the Maritime Provinces is maintenance of the differentials fixed in the case of railways no matter what form the competition takes or what the consequences to the railway may be; but there is recognition of the difficulty of doing this in the absence of some measure of federal control over alternative systems of transportation.

We find ourselves unable to accept the argument that, in the circumstances now existing, a railway rate differential in favour of a region must be maintained against all forms of competition and regardless of the costs of operation. This difficulty about the maintenance of these Maritime rates is a consequence of truck competition and it can only be dealt with as part of the wider problems of transportation which are discussed in the following chapter.

Saskatchewan Submission.—The Saskatchewan submission is the restatement of a long-standing complaint of the Prairies—that the rates on freight in identical classifications differ between the Western and Central regions to the advantage of the latter. Whether or not this is a well-based complaint depends chiefly upon the answer to a question to which we have already given some attention. If grain which constitutes a high percentage of the freight moved by railways in the Western Provinces is carried at unremunerative rates the case, as set out in the Saskatchewan Brief, is obviously affected by that fact. A comment upon variations in regional rates due to differences in the character of the freight handled may be quoted:

“Whilst it has not been possible to devise any suitable criteria with which to test the relative regional incidence of railway rates, because of lack of appropriate data, it may be said that the rates on primary products have been consistently low and consequently such as to promote rather than discourage regional development. It may also be said that there has been throughout Canada a tendency towards rate equalization in a downward direction under which many of the factors which were formerly considered as justifying differences in rates are being disregarded. The possibility of a complete equalization in a downward direction of the higher class rates necessitating a higher level for rates applicable to primary products should not be overlooked. In this latter connection, it may be said with reasonable accuracy that the average revenue received per ton mile for the railway haulage of wheat is about one-half cent and, whilst the average haul is somewhat over seven hundred miles, the average revenue per ton mile is only about half that received for all railway traffic. The theory
upon which railway freight rates is based demands that consideration be given to the relation between low and high grade traffic, otherwise there would be no way of compensating for the failure of the low grade traffic to meet its full share of the cost of the whole service rendered. In other words a region whose traffic consisted of a large percentage of low grade traffic moving at very low rates, and small percentage of high-grade traffic ought to expect to be charged a relatively higher rate on the small percentage of high-grade traffic than a region where the high- and low-grade traffic maintained an even balance.18

This opinion gives support to the contention made to us, to which attention will later be drawn, that for rates on low-grade freight, where these are not remunerative, the railways must either make up the losses by steeper rates on freight in the higher classifications or look to the public treasury for compensation.

Alberta Submissions.—The various representations from organizations in Alberta,19 in addition to embodying a complaint as to higher local and distributing rates in Alberta than in the East, illustrate in particular the situation which was created for the railways by the water competition made possible by the construction of the Panama canal. To meet this competition the railways lowered their through transcontinental rates to hold the volume of traffic which they regarded as essential. It then became necessary for the railways to decide whether they should make the rates to intermediate points a proportion of the through rate as determined by water competition, or should fix these intermediate rates in the traditional manner having regard to the value of the service rendered and what the traffic would bear. The decision was in favour of the latter course and there resulted divergencies in charges from the East upon identical classes of freight to points in Alberta and to the terminals at the Pacific ports. These were drawn to our attention in the Brief and in the Evidence submitted by the Edmonton Chamber of Commerce, the most striking being the variation in the charges on a car of canned tomatoes from Aylmer, Ontario, to Edmonton, 2,200 miles, $1,038; to Vancouver, 2,900 miles, $450.20 The rates to Alberta in some cases, it was represented, were determined on the basis of the through-rate to Vancouver and the local rate from that port to Alberta points. It

18 From a Memorandum prepared for the information of the research staff of the Commission by Mr. R. A. C. Henry, para. 649.
19 Ex. 236, Brief of Edmonton Chamber of Commerce; Ex. 242, Brief of Municipal Districts of Alberta; Ex. 255, Brief of United Farmers of Alberta; Ex. 257, Brief of Alta. C.C.F. Clubs.
20 Ex. p. 6965.

was stated that Alberta is at the apex of Canada's freight structure and suffers in special degree from these variations in rates. These submissions, the Edmonton Chamber of Commerce took care to explain, were not in the nature of an appeal to the Commission for remedial recommendations but to indicate that there was from this cause an increase in living costs which bore heavily upon a pioneer economy.21 The suggestion was made that the situation might be met by the adoption by Canada of what is known in the United States as the "Spokane rate"—a ruling of the Interstate Commerce Commission that, without its special permission, no railway freight rate to intermediate points shall be higher than the rate to the terminal point. "If the principle of the Spokane Rate Case . . . were in force in Canada its effect on Alberta's position . . . within the Dominion would be tremendous."22 No evidence, however, was laid before us that any application has ever been made to the Board of Transport Commissioners that something analogous to the Spokane rate should be incorporated in the Canadian freight rate structure and this body alone would have the full authority to hear the argument and render a binding judgment; and this Commission is unable to go beyond taking note of this suggestion.

British Columbia Submission.—The British Columbia submission23 raises practically all the questions which arise in Canada from freight rate differentials and the distribution of rates on the basis of the present classification. It shows as well that the customs tariff is a factor in rate-making by protecting freight rates as well as manufacturing costs. "It is claimed," says the Brief (p. 313), "that the consumers of British Columbia are penalized not only because of geographical conditions but because of the freight rate structure of the Canadian railway system." A "freight rate structure . . . based on the principle of what the traffic will bear, works a hardship upon British Columbia because of our economy here."24 These complaints, however, do not require special discussion here; they are considered along with general complaints in the following paragraphs.

The Nature and Control of the Present Freight Rates Structure.—The pressures and necessities which have fashioned the traditional freight rate structure, with its variations in charges determined

21 Ex. p. 6064.
22 Ex. 236, Brief of Edmonton Chamber of Commerce, p. 30.
23 Ex. 172, Brief of B.C., pp. 289-314.
24 Ex. p. 8178.
by a complexity of causes of which actual cost of movement is often only of minor significance, have been frequently discussed. But this structure, in itself seemingly anarchic to those who see no reason why rates should not be fixed on simple considerations of mileage and expense of handling, could only be maintained with rigid uniformity in territory where a virtual monopoly of transportation by railways is possible. Such a monopoly does not exist in Canada. Wherever there are alternative means of transportation by water or truck or airplane, the railways are faced with a choice between meeting the competition or abandoning the traffic. Moreover, the railways must always be mindful of their balance sheets and must as a minimum seek to meet operating expenses. In consequence of adjusting the rate structure to meet both the revenue needs of the railways and the competition offered by other systems of transportation apparent inequalities and injustices have arisen.

The result of these conflicting pressures is to be seen in the bewildering conglomeration of rates which comprise the freight rate structure of Canada. In fact, it is not haphazard. It has been built up in conformity with the Railway Act's provisions under the constant supervision of the Board of Railway Commissioners which has never lacked the services of able men and a staff of competent experts.

Study of the judgments which the Board has delivered down the years shows clearly that the complaints lodged with our Commission are of long-standing. Most of them have been passed upon by the Board of Railway Commissioners, and, indeed, many of them have been gone over again and again in the Board's judgments. A brief summary of the Board's rulings on the issues raised by the complainants will indicate why remedial action in the form of a technically complete equalization of rates has not been considered either desirable or attainable.

The Board of Railway Commissioners is purely a regulatory body. The powers conferred upon the Board are regulatory and not managerial. "It is not the Board's function, as delegated by Parliament, to make rates . . . but to deal with the reasonableness of rates either on complaint or of its own motion." The Board has power to see that there is equality of tolls and facilities under substantially similar circumstances and conditions and that there is no unjust discrimination or undue or unfair preference as between persons or places. The discretion of the Board to decide what are substantially similar circumstances and conditions is unrestricted. In practice the Board has chosen to deal with each complaint of discrimination on its merits. Application of a general formula to all cases has not been thought practicable. While the railways determine their rates (the Board has no power to initiate rates) the Board must authorize all rates before they come into force. The railways are the judges as to where and how competition is to be met; they may, between specified points, lower rates below the level approved by the Board. The railways may do so for reasons of water or other competition, the promotion of trade, or the development of the general business of an area; and they may do so without lowering the general level of rates or the rates between intermediate points. Once a competitive rate has been put in, the Board may equalize competitive rates to other points. This was done, for example, in the one cent rate on wheat from Quebec eastward. The Board made the rate equal to both Maritime ports. Whether such a reduction in rates by the railways is or is not discriminatory would be for the Board to decide, but it is to be noted that the Board, unlike the Interstate Commerce Commission of the United States, has no control over minimum rates. Its control is restricted to the maximum that the railways may charge. The Board has no power to act as an arbiter concerning industrial and commercial policy. If the Western farmers are suffering because of the low price of wheat and, in their view, the high price of manufactured goods, the Board has no power to adjust freight rates to moderate these conditions. Nor can the Board make rates to offset the incidence of high-grade commodities, since it would not have enough revenue to meet all its requirements..."
of public policy in one or other sections of the country. Rates to benefit producers here or there; rates to serve national or patriotic purposes; rates to promote new industries—all rates of these kinds must be initiated, if at all, by the railways themselves or by statute. Only if questions arise as to their fairness, can the Board intervene. It is concerned, in a word, with the reasonableness of rates and with questions of discrimination and preference.

Most of the complaints made to this Commission have to do with discrimination. In this regard the Board of Railway Commissioners has said:—

"The Railway Act . . . authorizes and justifies discrimination. It is only an undue, unfair or unjust discrimination that the law is aimed against."28

"Discrimination may or may not fall within the provisions of the Act." [Railway Act]. "The Act, as it has always been interpreted by the Board, only forbids discrimination when it is undue or unreasonable."29

"Mere mileage comparisons do not afford criteria of discrimination, but all facts material must be given weight. In other words, under the body of regulation which is developed under the Railway Act, mileage is not a rigid yardstick of discrimination; discrimination, in the sense in which it is forbidden by the Railway Act, is a matter of fact to be determined by the Board."30

A mere comparison of distances without consideration of the peculiar circumstances affecting the traffic is not the final criterion of discrimination."31

"As the result of various freight rate investigations by the Board, particularly the Western Rates Case in 1914; re Freight Tolls, 1922; and the General Freight Rates Investigation, in respect to which judgment issued in September, 1927, it is a matter of general knowledge that there are differences in the rates on the same traffic for similar distances in different parts of the country, and that this does not constitute unjust discrimination of the character forbidden by the Railway Act."32

Numerous other citations upon this point could be given.

The Board's rulings on cases dealing with water competition, which have particular relation to the Alberta complaints, are equally clear:—

"The Railway Act contains specific provisions authorising a reduced charge on traffic handled to meet competitive conditions without necessitating corresponding reduction in normal rates, and it has been held in numerous decisions of the Board that comparison as between competitive rates and normal rates is no evidence of the unreasonableness of normal rates per se."33

"So far as water competition is concerned it has been recognized over and over again in various decisions of this Board that the extent to which water competition shall be met is in the discretion of the railway. The Board has also held that it is not the privilege of the shipper to demand less than normal rates because of such competition, unless the railway, in its own interest, chooses to meet it. This principle of water competition has also been recognized practically by all rate-regulating commissions."34

The question of export rates and domestic rates which is raised by complaints from British Columbia was dealt with by the Railway Commission in a judgment issued January 3, 1935. The existing rate structure was confirmed and the past decisions of the Board on the point in issue were reviewed:—

"Commenting very briefly on the broad question of import or export rates lower than the domestic rates, it may be stated that the rate structure has always recognized such a condition, and the Board has also approved of it as being, under certain circumstances, a proper one, not contrary to the provisions of the Railway Act. In many decisions of the Board, the carriers have been required to establish import and export rates lower than governing when the same traffic is moving locally between the same points in Canada, and the Board has stated, in many decisions, that an import rate is in no sense a necessary measure of the reasonableness of the domestic rate, or proving that unjust discrimination exists. Such rates are but proportions of through tolls governing on the traffic from point of origin to final destination. Further, import, as well as export, traffic is subject to port competition."35

On the point specifically raised in the British Columbia submission objecting to rates on grain from the Prairies to the Coast being higher than rates on grain for export, the Board has made findings on more than one occasion. One such judgment is in these terms:—

"Application was made on behalf of British Columbia that the domestic grain rate to Vancouver be lowered to an export basis. This was urged partly on the ground that it costs no more to move the one class of grain than the other, and an improper discrimination is set up by reason of such difference, and by a comparison of grain rates elsewhere.

"The first contention altogether disregards the reasons lying at the basis of export rates, and ignores also the primary test of domestic rates; which is, whether the rate be reasonable and fair. It is not intended to repeat any more fully the arguments justifying an export basis lower than that accorded

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28 11 C.R.C., 375.
29 18 C.R.C., 424.
30 Judgments, Orders, Regulations and Rulings of the Board of Railway Commissioners for Canada, Vol. XII, p. 78.
31 Ibid., Vol. XVIII, p. 467.
32 Ibid., Vol. XVII, p. 564.
to domestic traffic further than to say that the former is simply part of a through rate, and it is thoroughly justifiable from that standpoint. It does not compete with grain transported for domestic purposes and consequently no comparison between the two rates is properly drawn."  

These are some of the judgments which apply with respect to the specific complaints submitted to the Board, but the Commission, while declining to embark upon any scrutiny of these cases both on the ground of lack of knowledge and of authority, has thought it not beyond the scope of its duties to consider what contribution these disputes about railway rates make to friction between the Dominion and the provinces and whether the tendency of our national rate policy is to moderate or increase this friction. That policy is defined in the Order in Council of 1925 as one "of equalization of freight rates to the fullest possible extent as being the only means of dealing equitably with all parts of Canada." Is progress being made toward the fulfillment of the purpose thus avowed? Upon this point the Commission has had the benefit of extensive studies by members of its research staff; and there is agreement in their conclusions that despite very special difficulties due to conditions of geography and terrain the tendency of rate making has been and still is to lessen the regional differences and, what is also very important, to keep for Canada a position of relatively low railway rates.  

The movement has been toward a lessening of differentials which handicap regions. There was prepared for the information of the Commission a comparative statement in the most minute detail of maximum standard mileage rates for representative distances in the various rate territories and also "town tariff" and "distributing" class rates. These cover the whole period since the creation of the Board of Railway Commissioners (some of the comparative tables indeed going back to 1876) and in accompanying schedules there is a record of decisions by the Board. Every fluctuation and change in the rates since 1903 is thus shown and, save for the War years, there is plainly a trend toward bringing about equalization throughout Canada. The summaries of the Board's decisions show this to be a constant factor, restrained in its application, however, by the need for considering competitive influences and also by the variations in regional earning capacity due to the freight classifications.

A set of diagrams prepared for the Commission to show mileage rates for various distances in all classes for the whole Dominion covering a long term of years, indicated in every case a drawing together of the regional rates in contrast with the wide spread of former years. The relation between the standard rates, first class, 400 miles distance, at present is: Central (Ontario and Quebec) basic; Maritimes 20 per cent under; Prairies 26 per cent above; British Columbia 46 per cent above. For fifth class freight: Central basic; Maritimes 20 per cent under; Prairies 14 per cent above; British Columbia 32 per cent above. There are variations but they lie in the shelter of Board findings rendered in the light of rate-governing conditions.

We draw attention to certain conclusions dealing with these matters reached by Dr. W. A. Mackintosh in his study entitled The Economic Background of Dominion-Provincial Relations, which was prepared at the instance of this Commission and is published as an appendix:—

"The outlines of the rate structure . . . have been profoundly modified by decisions of policy expressed in legislation or in orders of the Board of Railway Commissioners . . . . the direction of such policy has been unmistakable. It has been toward low rates on basic commodities—rates lower than comparable rates in the United States—and toward the reduction of regional differentials or in the case of the Maritimes the restoration of favourable differentials. From the time of the Crow's Nest Pass Agreement down to the Maritime Freight Rates Act, policy, in the main, has moved in this direction. The result has been that transportation rates have been modified to the advantage of those regions least favoured by competitive influences. The chief, and important, exception was in the period 1913 to 1923 when rate changes were distinctly adverse to the Maritime Provinces." (Ch. VII, s. B.)

Variations in regional freight rates Dr. Mackintosh believes cannot be entirely ironed out unless changes involving consequences of great moment are made. His conclusions in this respect are thus stated:—

"If it is argued that it would be desirable that all regional differentials should be removed from railway rates, it is necessary to note that such a policy would involve the following accompaniments:—

1. complete jurisdiction by a single authority over all alternative means of transportation, water, rail, road, and air; and
2. the raising of rates on basic commodities and of rates generally in the regions most subject to highway and water competition; or

3. the meeting of a part of railway costs out of taxation through payment of railway deficits by government.

The second is not possible without the first and if the first two are rejected, the third is very difficult to avoid.\(^9\) (Ch. VII, s. B.)

Whether either of these alternatives would serve the general public interests better than the existing system may be said to be highly doubtful. The attainment of the first would be difficult whether it should be sought by continuing agreement by ten governments or by an enlargement of Dominion jurisdiction. The second is, of course, attainable should it be decided after due inquiry that the burden of moving bulky basic commodities, essential to the national commodity, at non-remunerative rates should be borne by the taxpayers instead of being placed, as at present, upon other classes of freight by means of higher rates.

**Proposal to Enlarge Powers of Board of Transport Commissioners.**—We have now dealt with all the submissions embodying freight rate complaints with one important exception. The Saskatchewan Government, in its Brief, urged the study of the observations by the Duncan Commission upon the powers of the Railway Board with accompanying suggestions as to their possible enlargement presumably in the hope that we would endorse the recommendation made by that Commission.\(^9\) Our attention was also drawn to this matter by the Transportation Commission of the Maritime Board of Trade, which strongly urged our approval of the proposition.\(^40\) The recommendation of the Duncan Commission, if given effect, would have substantially altered the powers of the Board of Railway Commissioners. The Railway Commission, it is pointed out in the Report,\(^41\) "does not feel itself empowered to pass under its review, when appeals are made to it, the same wide range of business considerations which railway companies themselves can take into account in forming a judgment as to the extent to which they should develop trade and business." While deprecating the view which had been presented to them that "the railways should be operated to the advantage of the trader irrespective of the financial results to the railway" the Duncan Commission goes on to say: "On the other hand, from a public point of view, in return for the statutory and other public privileges which railway companies enjoy, it may not be unreasonable that there should be a responsible review of their policy (as interpreted in their rate structure) in its relation to the natural basic products of the country, and the development of these products and associated enterprises." It therefore recommended that the Board of Railway Commissioners be given power in weighing an application involving the considerations suggested—the development of industries through rate adjustments to overcome handicaps of geography and "such reasonable compensation over all as to permit of a certain amount of trade development"—"to order an accounting investigation at their own hand, into the incidence of the railway charge on the costs of production of the commodity, and its relationship to other costs, and to the general trading results of the interest involved.

Such a change in the powers and function of the Board of Transport Commissioners would give it managing powers of a kind which it has hitherto repudiated when urged to exercise them.\(^42\)

If the Board were given these powers to be exercised in the manner suggested, the Government of Canada would clearly be involved in responsibility for the financial consequences to the railways thus obliged, perhaps against their own judgment, to adopt policies designed for the development of particular areas or special enterprises. The recommendation, in the twelve years that have passed

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\(^{40}\) Ex. 366, pp. 18-20.

since it was made, has not been implemented, as
the submission of the Maritime Transportation
Commission points out, by any modification of the
Railway Act in the direction suggested; and we do
not feel that the public interest would be served
were we to renew the suggestion that the power of
the Board of Transport should be enlarged in these
respects.

The present balance of regional railway rates is
the outcome of adjustments over a long term of
years made voluntarily by the railways or under the
direction of the Railway Board. The possibilities
of this procedure are not exhausted. The review at
intervals of the freight rate structure as it affects
particular regions or the whole Dominion, has had
useful results in adjusting revealed inequalities as
far as it is practicable to do so. This Commission
makes no specific recommendation but it suggests,
having regard to the length of time that has elapsed
since the last general inquiry, the change in con-
ditions due to the increased range and effectiveness
of alternative means of transportation and the
increasing signs of a revival of regional questioning
as to the justice of the existing structure, that the
present might be an opportune time to have a
review of the railway freight rate structure on a
Dominion-wide scale. This would make it possible
to deal with the rates for water-borne transport
which is now to some extent under the Board of
Transport Commissioners and would permit the
governments who have made representations to us
to present their claims for consideration to a
qualified body having power to make appropriate
awards.