

94, 1930

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR
THE PROVINCE OF MANITOBA

BETWEEN

WILLIAM YOUNG,
(Plaintiff) Appellant,

AND

CANADIAN NORTHERN RAILWAY COMPANY,
(Defendant) Respondent.

RECORD OF PROCEEDINGS

RECORD OF PROCEEDINGS.

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In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR
THE PROVINCE OF MANITOBA

BETWEEN

WILLIAM YOUNG,
(Plaintiff) Appellant,

AND

CANADIAN NORTHERN RAILWAY COMPANY,
(Defendant) Respondent.

RECORD OF PROCEEDINGS

Between : **IN THE KING'S BENCH**
WILLIAM YOUNG
and
CANADIAN NORTHERN RAILWAY COMPANY,
Defendant.

RECORD
In the
King's
Bench
No. 1
Original
Statement
of Claim

ORIGINAL STATEMENT OF CLAIM

(Not Printed)

No. 2
Defendant's
Demand for
Particulars

10 Between : **IN THE KING'S BENCH**
WILLIAM YOUNG
and
CANADIAN NORTHERN RAILWAY COMPANY,
Defendant.

Kindly furnish us forthwith with the following particulars of the plaintiff's statement of claim herein:

- 20 1. Whether the hiring alleged in paragraph 2 was in writing or verbal. If in writing, the date and names of the parties to the said agreement, and by whom the same was signed.
2. Whether the contract of hiring alleged in paragraph 5 was in writing or verbal. If in writing, the date of same, and the names of the parties to the said agreement, and by whom the same was signed.
3. Particulars of the applications by the plaintiff to the defendant, and the refusals thereof by the defendant, alleged in paragraph 11, with the dates of said applications and refusals, and the names of the officials of the defendant.
- 30 4. Particulars of the applications by the plaintiff to the local committee and General Committee, and refusals by said committees alleged in paragraph 11, with the dates of said applications and refusals, and names of the alleged committees.

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(continued)

5. Particulars of the arrangement and agreement alleged in paragraph 13, with the dates of said arrangement and agreement, and the names of the officials and of the members of said Division No. 4, and of the officials of the defendant.

6. Particulars of the special damages alleged in paragraph 15 (b).

Dated at Winnipeg the 16th of August, 1927.

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK,
Solicitors for the Defendant.

To the above named Plaintiff, and 10
to his solicitors, Messrs. McMurray
& McMurray.

No. 3
Plaintiff's
Reply to
Demand for
Particulars

IN THE KING'S BENCH

Between:

WILLIAM YOUNG

Plaintiff,

and

CANADIAN NORTHERN RAILWAY COMPANY,

Defendant.

Reply to Defendant's Demand for Particulars 20

Answer to Question 1.

The contract of hiring between the defendant and the plaintiff was partly verbal and partly in writing. The written part consisted of wage agreement No. 4 dated the 12th day of November A.D. 1919, and made between the Canadian Railway War Board and Division No. 4 Railway Employees Department, American Federation of Labor, and schedules thereto; and of wage agreement No. 6, dated the 1st of December, 1922, and made between the Railway Association of Canada and Division No. 4, Railway Employees Dept. American Federation of Labor, and 30 Supplementals thereto.

Answer to Question 2.

The said contract referred to in paragraph No. 5 of the Statement of Claim was in writing; was dated the 1st day of December, A.D. 1922, and was made between the Railway Association of Canada and Division No. 4, Railway Employees Department, American Federation of Labour, and was signed for the Railway Association of Canada by Grant Hall, Chairman Operating Committee, and C. P. Riddell, General Secretary, and for the Railway Employees Dept. Division No. 4, American Federation of Labour by R. J. Tallon, President; Frank McKenna, Vice-President; and
 10 Charles Dickey, Secretary.

RECORD
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 King's
 Bench
 No. 3
 Plaintiff's
 Reply to
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 Particulars
 (continued)

Answer to Question 3.

On June 9th, 1927, the plaintiff made application, as provided for in Rule 35, Wage Agreement No. 6, to A. Bassett, his foreman, who refused to take up his case. On the same date he made application to Luke Wedge, Supt. Motive Power Shops, who applied to Mr. Hedge, Works Manager, who refused to see the plaintiff, and on June 11th, 1927, the plaintiff made application to W. A. Kingsland, General Manager, who declined to see the plaintiff.

Answer to Question 4.

20 On June 15th the plaintiff made application to George Anderson, Chairman of the local committee, Fort Rouge Shops, and requested Mr. Anderson to take up his case, and delivered to Mr. Anderson the following notice:

Winnipeg, Man., June 15th, 1927.

Mr. George Anderson,
 Chairman of Local Committee,
 Fort Rouge Shops,
 Canadian National Railways,
 Fort Rouge, Man.

30 Dear Sir:

On June 9th I was advised by letter as follows:

"Fort Rouge, June 9th, 1927.

Your services will not be required after 5:00 p.m.
 June 13th, 1927, on account of reduction of staff.

L. Wedge,
 Supt. Motive Power Shops."

RECORD
 In the
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 Bench
 No. 3
 Plaintiff's
 Reply to
 Demand for
 Particulars
 (continued)

I have 8 years seniority and my dismissal is in contravention of Wage Agreement No. 6, and supplementals thereto, as provided by rule 35.

I make application to the Local Committee through you, of which you are Chairman, to take this case to the officials described in Rule 35 until reinstatement is had. I ask the opportunity of attending upon the committee in order to state my case.

Kindly advise me when your Committee would hear me and also whether you will take the steps provided for in Rule 35, Wage Agreement No. 6, between the Railway Association of Canada and Railway Employees Department. Yours truly, Wm. Young." 10

On July 6th, 1927, the plaintiff made application to Mr. A. W. Gibson, President, and George E. Shaw, Secretary, Railroad Employees Department, Western Division, Division No. 4, American Federation of Labour, and delivered to them a written request, copy of which is as follows:

Winnipeg, Man., July 6, 1927.

To A. W. Gibson, President, 20
 and Charles E. Shaw, Secretary,
 Railway Employees Dept. Western Division,
 Division No. 4, American Federation of
 Labor, General Committee,
 Winnipeg, Man.

Dear Sirs:

On the 9th day of June, 1927, I was dismissed from my position as a machinist in the Fort Rouge Shops, the dismissal being as follows:

CANADIAN NATIONAL RAILWAYS 30

Railway Service Telegram

Fort Rouge, June 9th, 1927.

"Your services will not be required after 5:00 p.m. June 13th, 1927, on account of reduction of staff.

L. Wedge,
 Supt. Motive Power Shops."

I was a machinist in the Fort Rouge Shops of the Canadian National Railways and had 7 years continuous service and the seniority rights accompanying such.

I claim that my dismissal is a breach of Wage Agreement No. 6, and refer to Rules 27, 28, 29, 30 and 31, also to reduction clauses and seniority rights in Schedules A and B.

At the time of my dismissal and at the present time, there are many men working in the Fort Rouge Shops in my craft who are junior to me in length of service.

10 As provided under Rule 35 of the said Wage Agreement I endeavored to take up my case directly with the officials referred to therein, and was refused a hearing. I then made application, as therein provided to the Local Committee and the Local Committee declined to take up my case. I am now making application to the General Committee, as provided in Rule 35 to appeal, on my behalf, to the higher officials designated to handle such matters in their respective order.

20 I make the request that I shall be privileged to appear before the General Committee and state my case to them in order that they may have full advice and knowledge of my case when they present the same to the officials of the railroad.

I would also like to have the privilege of appearing at the conference between the Committee and the designated officials.

I was released from work on the 13th day of June, 1927, and am suffering severely as a consequence thereof, and would ask that the matter be taken up with dispatch.

Kindly advise me what course the Committee will adopt.

30

Yours very truly,

“Wm. Young.”

Answer to Question 5.

The plaintiff is not in possession of all details of different negotiations and agreements made between various officials of Division No. 4 and members thereof and certain officials of defend-

RECORD

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(continued)

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 Plaintiff's
 Reply to
 Demand for
 Particulars
 (continued)

ant, arranging and agreeing for the dismissal of the plaintiff in breach of wage agreement No. 6 and supplementals thereto, but alleges an arrangement and agreement for the dismissal of the plaintiff and nine others who were dismissed at the same time from the Fort Rouge Shops of the defendant Company was entered into between R. J. Tallon, President of Division No. 4, Railway Employees Dept. American Federation of Labor; A. W. Gibson, Charles E. Shaw, and Harry Kempster, officials or members of Division No. 4, Railway Employees Dept. American Federation of Labor; S. J. Hungerford, Vice-President; W. A. Kings-10 land, General Manager; Luke Wedge, Supt. Motive Power Shops, and other parties at present unknown to the plaintiff; such negotiations, arrangements and agreements for dismissal of the plaintiff occurred and were carried on for a period of some months prior to plaintiff's dismissal; the full extent and dates of such negotiations and names of all present are unknown at present to the plaintiff.

Answer to Question 6.

The special damages claimed is for wages for the four weeks immediately following the dismissal of the plaintiff by the de-20 fendant.

Dated at Winnipeg, the 18th day of August, A.D. 1927.

McMurray & McMurray,
 Solicitors for the Plaintiff.

To the above named defendant
 and to Messrs. Munson, Allan, Laird,
 Davis, Haffner & Hobkirk, its
 solicitors.

No. 4
 Original
 Statement
 of Defence

ORIGINAL STATEMENT OF DEFENCE

(Not Printed)

30

IN THE KING'S BENCH

Between:

WILLIAM YOUNG

Plaintiff,

and

CANADIAN NORTHERN RAILWAY COMPANY,

Defendant.

the 12th day of August, A.D. 1927.

Signed "G. H. Walker."

¹⁰ Amended this 7th day of March, 1928, under order dated the 6th day of March, 1928. (Sgd.) G. H. Walker, Prothonotary.

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is a machinist and resides in St. James in the Province of Manitoba, and the defendant is a railway corporation operating a line of railroads within and without the Province of Manitoba and has its head office for the said Province in the City of Winnipeg.

2. On or about the 10th day of June, A.D. 1920, the defendant hired the plaintiff as a machinist under the provisions and ²⁰ rules as to working conditions, hours of labour, wages to be paid and provisions for the length of employment and method of dismissal as set forth and contained in Wage Agreement No. 4 made between the Canadian Railway War Board and Division No. 4, Railway Employees Department.

3. The terms of Wage Agreement No. 4 aforesaid constituted a part of the contract of hiring of the said plaintiff by the defendant.

4. In pursuance of said contract of hiring the plaintiff commenced work on the 10th day of June, A.D. 1920, as a machinist ³⁰ in the shops of the Defendants commonly called the Fort Rouge shops in the City of Winnipeg aforesaid, and worked under the terms and provisions of said Wage Agreement No. 4 and supplementals thereto and under the terms and provisions of Wage Agreement No. 6, made between the Canadian Northern Railway Company inter alia and the Railway Employees Department Division No. 4, American Federation of Labor and supplementals thereto, to which agreements and supplementals the plaintiff begs

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of Claim

leave to refer at the trial of this action and continued to work until and including the 13th day of June, A.D. 1927.

5. Wage Agreement No. 6, made between the defendant and Division No. 4 of the Railway Employees Department came into effect on the 1st day of December, A.D. 1922, and superceding the said Wage Agreement No. 4 and supplementals thereto and became a part of the contract of hiring of the plaintiff from that date until the plaintiff was dismissed from the service of the defendant, which dismissal became effective on the 13th day of June, A.D. 1927.

10

6. The plaintiff, from the 1st day of December, A.D. 1922, until dismissal received wages from the defendant as provided in said agreement No. 6 and supplementals thereto and worked under the provisions and rules as to hours of labor, working conditions and other terms of said Wage Agreement No. 6 and supplementals thereto and was bound by and conformed to said Wage Agreement No. 6 and supplementals thereto.

7. Said Wage Agreement No. 4 and supplementals thereto provided for seniority in each craft and in case of reduction of staff preference of employment was to be given to men who had been longest employed. Rule No. 27 of Wage Agreement No. 6 provides inter alia as follows:

Rule 27—When it becomes necessary to make a reduction in expenses at any point, the force at such point, or in any department or sub-division thereof, shall be reduced by dispensing with employees with less than six months' continuous service in such department or sub-division thereof, after which the hours may be reduced to forty (40) per week before further reduction in forces is made. When the force is reduced seniority as per rule 31 will govern; the men affected to take the rate of the job to which they are assigned.

and rule 31 inter alia provides as follows:

Rule 31—Seniority of employees in each craft covered by this agreement shall be confined to the point at which employed.

Sub-divisions of the carmen for seniority shall be as follows:

Patternmakers, upholsterers, painters, other carmen. If on account of falling off in work of a particular class, on which "other carmen" are engaged, it is necessary to displace them, they will, according to seniority, have the right to displace carmen junior to them performing other classes of work, if qualified to perform it, at the rate paid for such work.

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10 The seniority lists will be open to inspection and copy furnished the committee.

NOTE: When it becomes necessary to make a reduction in expenses as provided for in Rule 27, employees in any craft may, under this rule, exercise their seniority in any position belonging to their craft, in shops, roundhouses, or train yards under the jurisdiction of the same general foreman or shop superintendent or other officials having like jurisdiction, provided that the exercise of seniority on a staff comprising both back shop and running work by change from one class of work to the other shall be conditional upon qualifications for the performance of the work in any individual case. If, however, an employee, from this or any other cause, is transferred from one shop, roundhouse, or train yard to another in the same terminal, he will retain his original seniority in the terminal in which employed.

20

8. On the 9th day of June, A.D. 1927, the defendant wrongfully and without cause and in violation of its contract of hiring
 30 of the plaintiff and contrary to the provisions contained in the hereinbefore referred to Wage Agreement and Supplementals thereto gave notice of dismissal by delivering to the plaintiff a notice in the following words:

"CANADIAN NATIONAL RAILWAYS"

Railway Service Telegram

Fort Rouge, June 9th, 1927.

"Your services will not be required after 5.00 p.m. June 13th. 1927, on account of reduction of staff.

L. Wedge,

40 Supt. Motive Power Shops."

and did thereby break its contract with the plaintiff.

9. At the time of the dismissal of the plaintiff by the defendant and at the present time there are many employees in the craft to which the plaintiff belonged, namely, the machinist in the shops of the defendant at Fort Rouge where the plaintiff was engaged, who were and are junior to the plaintiff and who were and are employed by the defendant subsequent to June 10, 1920.

10. Rule 35 of Wage Agreement No. 6 provided inter alia as follows:

Rule 35—"Should any employee subject to this Agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated (which he is unable to adjust directly) the case shall be taken to the Foreman, General Foreman, Shop Superintendent, or Master Mechanic, each in their respective order, by the Local Committee or one or more duly authorized members thereof, and a decision will be rendered without any unnecessary delay. 10

"If stenographic report of investigation is taken the committee shall be furnished a copy. 20

"If the result still be unsatisfactory, the General Committee or one or more duly authorized members thereof, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application."

11. The plaintiff immediately after dismissal in pursuance of the provisions of said Wage Agreement No. 4, and in particular Rule 35 thereof applied directly to the officials of the defendant designated in Rule 35 to be heard on the ground that he had been unjustly dealt with and that the provisions of the Agreement had been violated by his improper dismissal. The designated officials of the defendant refused any interview to the plaintiff and refused to hear him. The Plaintiff then as provided in said Wage Agreement No. 6, applied to the Local Committee to take his case to the officials therein designated and the Local Committee refused. The plaintiff then as provided in Agreement No. 30

6 applied to the General Committee to take such action as is set forth in said agreement for him and on his behalf and the General Committee refused to act for him as is provided for by the Rules of Wage Agreement No. 6 and supplementals thereto.

12. For some years the defendants have considered grievances of the employees and violations of contract solely through representatives and committee of Division No. 4, American Federation of Labor and has refused to meet committees of other employees of the defendant to discuss grievances and violation
 10 of said Wage Agreement and supplementals thereof. Division No. 4 has refused to act on behalf of employees of the defendant who are not members of said Division No. 4 or of the unions of the American Federation of Labor. The plaintiff is not a member of Division No. 4 and has endeavored to comply with the terms and provisions of said Wage Agreement No. 6 and supplementals thereto by applying directly to the officials of the defendant and by securing the assistance of the committee as provided for in rule 35 of the said Wage Agreement No. 6, and has been
 20 refused to be heard by the officials of the defendants and the committee to whom he has applied have refused to assist him.

13. Various officials of said Division No. 4, and members thereof arranged and agreed with the defendant and certain officials of said defendant to dismissal of plaintiff in breach of said Wage Agreement No. 6 and supplements thereto.

14. By reason of such breach of contract and improper dismissal the plaintiff has been injured in reputation and sustained loss of time and by reason of his dismissal after years of seniority will be unable in future to obtain employment in his occupation as a machinist which is the only occupation in which the
 30 plaintiff is skilled and the plaintiff will suffer great financial loss.

15. In said Wage Agreement No. 6 and supplements thereto it is provided that while questions of grievance are pending there will neither be a shut down by the employer nor a suspension of work by the employees. The defendant violated the said contract of hiring by shutting down and releasing numbers of employees with seniority rights, including the plaintiff.

16. In the alternative the plaintiff alleges that on the 10th day of June, A.D. 1920, there were in existence in the defendant's shops certain rules and provisions other than those agreements
 40 numbers 4 and 6 already referred to covering the employment of machinists, as to working conditions, hours of labor, wages to

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be paid, settlement of grievances, provision for the length of employment, method of dismissal and seniority rights during the time of employment and continuance of service at the time of the reduction of staff, under which rules and provisions the defendant hired the plaintiff. The seniority rights provided inter alia that on the reduction of the staff men whose length of service was longest should be retained in employment and men whose length of service was shortest should be released. The said rules and provisions provided inter alia that no machinist should be dismissed without an investigation into his case, at which investigation he could appear and also be represented by a fellow employee. The said rules and provisions were in existence during the whole term of the employment of the plaintiff by the defendant, namely, from the 10th day of June, 1920, to the 13th day of June, 1927, and expressly or impliedly constituted and were part of the terms of contract of hiring of the plaintiff by the defendant.

17. —(This paragraph was withdrawn at trial. See record, Page 2.)

18. In the further alternative the plaintiff alleges that he was hired on the 10th day of June, 1920, by the defendant as a machinist in its shops in Winnipeg under the provisoes then in existence as set forth in a certain agreement known as Wage Agreement No. 1, bearing date Sept. 2nd, 1918, and Schedule "A" thereto bearing date October 25th, 1918, and made by the Canadian Railway War Board of the first part, and Division No. 4, Railway Employees Department, American Federation of Labour, of the second part, which agreement contained provisoes as therein set forth, providing as to working conditions, hours of labour, wages to be paid, settlement of grievances, provisions for length of employment, method of dismissal and seniority rights during employment and rights of discontinuance at the time of reduction of staff as therein set forth. It was provided in the said agreement inter alia that "this agreement shall be effective from May 1st, 1918, for Locomotive and Car Department Employees covered by expired agreements or who have not an existing agreement. For other Locomotive and Car Department employees this agreement shall become effective on the date of expiry of existing agreements, but not later than August 1st, 1918." The said agreement provided inter alia that employees who had been hired prior by the Company should be retained while employees employed later should be dismissed at the time of the reduction of staff. Wage Agreement No. 1 and Schedule

“A” thereto was in existence at the time of the hiring of the plaintiff by the Defendant and continued in existence during the whole term that the plaintiff worked for the defendant and expressly or impliedly constituted and was part of the terms of hiring of the plaintiff by the Defendant.

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19. In the further alternative the plaintiff alleges said wage agreement No. 4 and supplements thereto was made between the Railway War Board of Canada and Division No. 4, Railway Employees Department, American Federation of Labour, and wage
 10 agreement Number 6 and supplements thereto was made between the Railway Association of Canada and Division Number 4, Railway Employees Department, American Federation of Labour, and that if said wage agreements and supplements thereto did not expressly provide that the terms and provisions thereof should apply to and govern and become part of the contract of hiring of all machinists and other craftsmen as set forth in said agreements and supplements and in particular the plaintiff, that
 20 by reason of the contents of the same and of the relationship existing between the plaintiff and the defendant and by reason of the said communications written between officials of the Company and representatives of machinists outside of Division No. 4, and in particular of the plaintiff, the said agreements and supplements impliedly constituted part of the terms of the hiring of the plaintiff by the defendant.

20. In the alternative the plaintiff alleges that on the 9th day of June, A.D. 1927, the defendant wrongfully, illegally and without cause and in violation of its contract of hiring of the plaintiff, dismissed the plaintiff.

THE PLAINTIFF THEREFORE CLAIMS:

- 30 (a) That an order do issue from this Honourable Court reinstating the Plaintiff.
- (b) Special damages in the sum of \$120.00.
- (c) General damages in the sum of \$50,000.00.
- (d) The costs of this action.
- (e) That it be declared that the plaintiff was wrongfully deprived of his seniority rights and that his dismissal was in contravention of his agreement of hiring with the Company.

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(f) Such further and other relief as the nature of the case may require and as to this Court may seem meet.

ISSUED this 7th day of March, A.D. 1928, by McMurray & McMurray, 410 Electric Railway Chambers, Winnipeg, Man., Solicitors for the Plaintiff.

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IN THE KING'S BENCH

Between:

WILLIAM YOUNG

Plaintiff,

and

10

CANADIAN NORTHERN RAILWAY COMPANY,

Defendant.

Amended this 12th day of April, 1928, under order of the Referee dated 11th day of April, 1928.

(Sgd.) G. H. Walker,

Prothonotary.

**AMENDED STATEMENT OF DEFENCE TO
AMENDED STATEMENT OF CLAIM**

1. The defendant did not on or about the 10th of June, 1920, or at any other date, hire the plaintiff as a machinist, or at all, under the provisions or rules as to working conditions, hours of labour, wages to be paid, length of employment or method of dismissal, set forth or contained in the alleged wage agreement No. 4, alleged to have been made between the Canadian Railway War Board and Division No. 4 Railway Employees Department or otherwise. The alleged wage agreement No. 4 was not made between the Canadian War Board and Division No. 4, Railway Employees Department. The alleged wage agreement No. 4 was not a contract in law. There was no consideration therefor, and the same was void for want of mutuality. Neither the plaintiff nor the defendant was a party to or bound by the alleged wage agreement No. 4. No action can be brought or maintained by the plaintiff upon or in respect of the alleged wage agreement No. 4.

2. The terms of the alleged wage agreement No. 4 did not

and could not constitute a part of the alleged or any contract of hiring of the plaintiff by the defendant.

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3. The plaintiff did not commence work or work on the 10th of June, 1920, or at any time, as a machinist or at all in the Fort Rouge Shops of the defendant, or in any shops of the defendant, in pursuance of the alleged or any contract, or at all. The plaintiff did not work or continue to work until or including the 13th of June, 1927, under the alleged terms or provisions of the alleged wage agreement No. 4 or any supplemental thereto, or under the terms or provisions of the alleged wage agreement No. 6, or any supplemental thereto, or otherwise.

4. The alleged wage agreement No. 6 was not made between the defendant and Division No. 4 Railway Employees Department. The alleged wage agreement No. 6 was not a contract in law. There was no consideration therefor, and the same was void for want of mutuality. Neither the plaintiff nor the defendant was a party to or bound by the alleged wage agreement No. 6. No action can be brought or maintained by the plaintiff upon or in respect of the alleged wage agreement No. 6. The alleged wage agreement No. 6 did not come into force on the 1st of December, 1922, or at any time, and did not and could not supersede the alleged wage agreement No. 4 and supplementals thereto. The alleged wage agreement No. 6 did not and could not become a part of the alleged or any contract of hiring of the plaintiff by the defendant from the 1st of December, 1922, to the 13th of June, 1927, or for any other period. The plaintiff was not dismissed from the service of the defendant on the 13th of June, 1927, or at all.

5. The plaintiff did not from the 1st of December, 1922, to the 13th of June, 1927, or for any other period, receive wages from the defendant as provided in the alleged wage agreement No. 6, or any supplemental thereto, or by reason thereof, or at all. The plaintiff did not work under the alleged provisions or rules as to hours of labour, working conditions or other terms of the alleged wage agreement No. 6 or of any supplemental thereto or of any such agreement. The plaintiff was not bound by, and did not conform to the alleged agreement No. 6, or any supplemental thereto.

6. Neither the alleged wage agreement No. 4 nor any supplemental thereto provided for seniority in each or any craft, nor that in case of reduction of staff, preference of employment was to be given to men who had been longest employed. Neither the

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alleged wage agreement No. 6 nor any supplemental contained the terms set out in paragraphs 7, 10 and 15 of the amended statement of claim or any of them.

7. The defendant did not on the 9th of June, 1927, or on any other date, wrongfully or without cause or in violation of any contract of hiring of the plaintiff, or contrary to the provisions contained in any alleged wage agreement with the plaintiff, or to any supplemental thereto, or to any wage agreement which was applicable to any contract of hiring between the plaintiff and the defendant, give the alleged or any notice of dismissal to the 10 plaintiff. The defendant did not wrongfully or at all dismiss the plaintiff from its employment, and did not by giving any such notice or at all break the alleged or any contract with the plaintiff.

8. Neither at the time of the alleged dismissal nor at the present time, were or are there any employees in the craft of machinists in the shops of the defendant at Fort Rouge. The plaintiff was not engaged by the defendant at the said shops or at all.

9. The plaintiff did not immediately after his alleged dismissal or at any time, in pursuance of the alleged wage agree-20 ment No. 4 or of the alleged wage agreement No. 6, or at all, apply directly or at all to any official of the defendant designated in the alleged or any rule or otherwise, to be heard on the ground that he had been unjustly dealt with, or that the provisions of the alleged or any agreement had been violated by the alleged dismissal of the plaintiff. No officials of the defendant alleged to be designated for such purpose refused an interview to the plaintiff nor refused to hear the plaintiff. The plaintiff did not thereafter or at any time apply to any local committee as provided for by said alleged wage agreement No. 6 or at all to take his 30 case to any official of the defendant designated in the said alleged wage agreement No. 6, nor did any local committee refuse to take the case of the plaintiff. The plaintiff did not thereafter or at any time apply as provided in the said alleged wage agreement No. 6 or at all to any General Committee to take any action as set forth in the said alleged wage agreement No. 6 for him or on his behalf, nor did any General Committee refuse to act for the plaintiff.

10. The defendant has not for some years or for any period of time considered any grievance of its employees or alleged vio-40 lations of any contract solely through representatives or committees of Division No. 4 American Federation of Labor, and has not refused to meet committees of any of its employees to

discuss grievances or alleged violations of the said alleged wage agreement or of any supplementals thereto. The defendant has no knowledge of the actions of Division No. 4 alleged in paragraph 12 of the amended statement of claim, or of any committee of such Division, and does not admit the truth thereof. The plaintiff has not complied or attempted to comply with the terms or provisions of the said alleged wage agreement No. 6, or of any supplementals thereto. The plaintiff has not applied directly to any official of the defendant, and the plaintiff has not been refused to be heard by any official of the defendant. No official of the defendant has refused to hear the plaintiff.

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11. The defendant further says that if the said alleged wage agreement No. 6 and supplementals and additions thereto are a part of any contract of hiring between the plaintiff and the defendant, the plaintiff has not complied with the terms thereof, and is not entitled to any relief or recourse against the defendant and has no right to bring or maintain this action. The said paragraph 12 of the amended statement of claim discloses no cause of action against the defendant.

20 12. In the alternative, the defendant says that the allegations set forth in paragraphs 10, 11 and 12 of the amended statement of claim are irrelevant and embarrassing and disclose no facts entitling the plaintiff to recover any relief against the defendant.

13. No official or member of the said Division No. 4 arranged or agreed with the defendant or with any official of the defendant for the dismissal of the plaintiff in alleged breach of the said alleged wage agreement No. 6, or any supplemental thereto, or at all. Paragraph 13 of the amended statement of claim is im-
 30 material, irrelevant and embarrassing, and should be struck out.

14. The plaintiff has not been injured in his reputation and has not sustained any loss of time by reason of the alleged breach of contract or improper dismissal or at all. The plaintiff will not be unable in the future to obtain employment in his occupation by reason of any alleged dismissal, and has not suffered and will not suffer any financial loss.

15. The said alleged wage agreement No. 6 and supplementals thereto do not contain the provisions set forth in paragraph 15 of the amended statement of claim. There has been
 40 no violation of any contract of hiring between the plaintiff and

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the defendant by shutting down or releasing any employees or at all.

16. The defendant denies that on the 10th day of June, 1920, or at any time subsequently there were in existence in its shops any rules or provisions other than the said alleged wage agreements Nos. 4 and 6 covering the employment of machinists as to working conditions, hours of labor, wages to be paid, settlement of grievances, provisions for the length of employment, method of dismissal or seniority rights during the time of employment or continuance of service at the time of the reduction¹⁰ of staff, and denies that it hired the plaintiff under such alleged rules or provisions. The defendant denies that the alleged seniority rights, if any existed, provided that on the reduction of the staff men whose length of service was longest should be retained in employment or that men whose length of service was shortest should be released. The said rules or provisions did not provide that no machinist should be dismissed without an investigation into his case or that he could appear at any such investigation whatsoever or be represented by a fellow employee or by anyone. No such rules or provisions were in existence during the²⁰ whole or any part of the term of the alleged employment of the plaintiff by the defendant, nor did they expressly or impliedly or at all constitute or form part of the terms of the alleged contract of hiring of the plaintiff by the defendant.

17. None of the alleged communications or letters referred to in paragraph 17 of the amended statement of claim took place, or were made or written. If any such communications took place, the defendant did not by such communications or by any communications or at all, agree with any representative of the machinists, other than those who were members of Division No. 4 or with³⁰ any of such machinists, or in particular with the plaintiff, that any provisoes as to working conditions, hours of labour, wages to be paid, settlement of grievances, or any provisoes for the length of employment, method of dismissal or seniority rights during employment or rights of continuance at the time of reduction of staff set forth in the alleged wage agreement No. 4 or supplements thereto, or in the alleged wage agreement No. 6 or supplements thereto, were made on behalf of all or of any of the machinists in the employ of the defendant, or in particular on behalf of those outside of Division No. 4, or in particular on⁴⁰ behalf of the plaintiff. Any alleged agreement contained in the said letters or in any of them is void for want of consideration and of mutuality. The said letters or communications or the al-

legations alleged to be therein contained, or the position alleged to be then taken, did not and could not expressly or impliedly or at all constitute any part of the terms of the alleged hiring of the plaintiff by the defendant. The defendant did not agree as alleged in paragraph 17 of the amended statement of claim or at all.

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18. None of the parties to the alleged communications referred to in paragraph 17 of the amended statement of claim represented or acted for the plaintiff in the making or receiving
 10 of any of the alleged communications, or in making any alleged agreement.

19. The plaintiff was not hired on the 10th of June, 1920, or at any time, by the defendant as a machinist or at all, under the provisions alleged to be set forth in wage agreement No. 1 or schedule A thereto. No such agreement or schedule was in existence at the time the plaintiff claims to have been hired, or at any time subsequent thereto. The alleged wage agreement No. 1 or schedule A thereto was not made by Canadian Railway War Board and Division No. 4 Railway Employees Department Amer-
 20 ican Federation of Labour. The alleged agreement was not a contract in law. There was no consideration therefor, and the same was void for want of mutuality. Neither the plaintiff nor the defendant was a party to or bound by the alleged wage agreement No. 1 or supplemental thereto. Neither the alleged wage agreement No. 1 nor any of the provisos therein contained, expressly or impliedly, or at all, constituted or formed part of the terms of the alleged hiring of the plaintiff by the defendant. In the alternative, the alleged wage agreement No. 1 and schedule A thereto were in any case superseded and set aside by the al-
 30 leged wage agreement No. 4. No action can be brought or maintained by the plaintiff upon or in respect of the alleged wage agreement No. 1 or schedule A thereto.

20. The alleged wage agreements Nos. 4 and 6, or either of them, or any of the alleged supplements thereto, by reason of the alleged contents of the same, or by reason of any alleged relationship alleged to be existing between the plaintiff and the defendant, or by reason of any of the said alleged communications written between officials of the defendant and alleged representatives of machinists outside of Division No. 4, or of the
 40 plaintiff, or for any other reason, did not impliedly or at all constitute part of the terms of the alleged hiring of the plaintiff by the defendant.

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21. The defendant did not on the 9th day of June, 1927, or at any time wrongfully or illegally or without cause, or in violation of any contract of hiring or at all dismiss the plaintiff.

22. In further alternative, the defendant says that none of the wage agreements or supplementals thereto mentioned in the statement of claim refer to or govern any employment of the plaintiff. The plaintiff is not a party to any such wage agreements or supplementals and is not entitled to any benefits or liable to any obligations thereunder.

23. The statute of Frauds has not been complied with, and the defendant pleads and relies upon the said Statute.

24. The defendant says that if there was any contract of hire for personal service between the plaintiff and the defendant, the same was not in writing, and was not signed by the defendant, and further, that if there was any such contract of hire for personal service, it was a voluntary one. The defendant pleads and relies upon The Masters' and Servants' Act.

25. In further alternative, the defendant says that if there was any contract of hiring for personal service between the plaintiff and the defendant, it was a contract at an hourly wage, and at the will of the defendant, and that the same could be terminated at any time, and that if the defendant dismissed the plaintiff, such dismissal was in accordance with the said contract of hiring and the law applicable thereto.

26. In the further alternative, if the defendant terminated the employment of the plaintiff, it did so by proper and sufficient notice.

27. If the said alleged wage agreement No. 6 and supplementals or additions thereto were or are applicable to the plaintiff, which the defendant denies, it is provided in and by said agreement under Rules 35 and 36 thereof, as follows:

“Rule 35—Should any employee subject to this agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated (which he is unable to adjust directly) the case shall be taken to the Foreman, General Foreman, Shop Superintendent, or Master Mechanic, each in their respective order, by the local commit-

tee or one or more duly authorized members thereof, and a decision will be rendered without any unnecessary delay.

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If stenographic report of investigation is taken the committee shall be furnished a copy.

10 If the result still be unsatisfactory, the General Committee, or one or more duly authorized members thereof, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application.

All conferences between shop officials and shop committee to be held by appointment during regular working hours without loss of time to Committeemen."

20 "Rule 36—Should the highest designated railway official or his duly authorized representative and the corresponding representatives of the employees fail to agree, the case shall then be jointly submitted in writing to the Railway Association of Canada and to Division No. 4, Railway Employees Department, American Federation of Labor, for adjudication or final disposition.

30 Prior to the adjudication or final disposition of grievances by the highest designated authorities as herein provided, and while questions of grievances are pending, there will neither be a shut down by the employer nor a suspension of work by the employees.

To the extent that these rules may remain in force if and when the Railway Association of Canada may cease to exist, the methods of procedure will thereafter be such as may be agreed to by the representatives of the railways affected and the representatives of the employees herein specified."

28. If the said wage agreement No. 6 and supplements or additions thereto were applicable to the plaintiff, the observance

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of the said terms and conditions of Rules 35 and 36 by the plaintiff was and is a condition precedent to any right of action on the part of the plaintiff against the defendant, and the claim or case of the plaintiff has not been taken to the Foreman, General Foreman, Shop Superintendent or Master Mechanic mentioned in said Rule 35 by the local committee or one or more duly authorized members thereof, and neither the General Committee nor any authorized member or members thereof referred to in said Rules appealed to any higher officials designated in said Rules, and the defendant further says that there has been no¹⁰ failure to agree between the highest designated railway official, or any duly authorized representative thereof, and any representative of the employees, and the case has not been submitted to the Railway Association of Canada or to Division No. 4, Railway Employees Department, American Federation of Labor for adjudication or final disposition. The plaintiff has not complied with the conditions of the said rules in the respects above set forth, and is estopped and debarred from making any claim against the defendant under or by virtue of the wage agreement No. 6 and supplements or additions thereto. 20

29. The defendant further says that if the said rules and wage agreements Nos. 1, 4 and 6 and supplements or additions thereto, or any of them, are applicable to or form a part of any contract of hiring between the plaintiff and the defendant, any right or remedy the plaintiff has by reason of the matters alleged is as provided for by the said rules and agreements, and under and by the said rules and agreements the plaintiff has no right of action against the defendant, and this Honourable Court has no jurisdiction to hear this action.

30. If the said wage agreement No. 6, and supplements and³⁰ additions thereto were applicable to the plaintiff, the same provided that all grievances and the application and interpretation of the provisions of the said agreement should be handled between the defendant and the committee of its employees, comprising said Division No. 4. The plaintiff is estopped and debarred from bringing or maintaining this action by reason of the said provisions and by the action and decisions of the defendant and of the Committee of said Division No. 4 in respect of the plaintiff.

31. In the further alternative, if the alleged wage agreement No. 1, 4 or 6, or any supplemental or addition to any of them, was⁴⁰ entered into as alleged, the plaintiff was not a party thereto, and did not adopt or ratify the same. On the contrary, the plaintiff

has repudiated the alleged wage agreements Nos. 1, 4 and 6, and supplements thereto, and has repudiated the right, power or authority of the said Division No. 4 to represent him or to enter into any agreement on his behalf.

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32. The plaintiff has no right to bring or maintain this action. This action has not in fact been brought by the plaintiff, but by other persons or organizations who are illegally maintaining and conducting this action, and who are assisting the nominal plaintiff by money, instructions, documents and otherwise,
10 to prosecute the action, and who are to receive some part or profit of any sum recovered.

33. In the alternative, the defendant says that if the plaintiff was employed by the defendant, the plaintiff while in the service of the defendant misconducted himself, and was guilty of wrong and improper conduct, and there were good and sufficient grounds justifying the dismissal of the plaintiff by the defendant for cause and without any notice. The defendant during 1924 adopted in its shops where the plaintiff claims to have been employed and working, a system or plan known as the Canadian
20 National Railways joint co-operative plan, and popularly called the "B. & O." System, and the defendant has continued the said plan in force as part of its policy in the operation of the said shops. The plaintiff was a member and officer of an organization known as the One Big Union. The said One Big Union actively and vigorously opposed the introduction and operation of the said plan by the defendant in its said shops and endeavored to defeat and destroy the satisfactory working thereof, and endeavored to have the fellow employees of the plaintiff in the said shops oppose, defeat and destroy the operation of the said plan. The
30 plaintiff was a party to the said opposition, acts and proceedings, and opposed the said plan, and its operation in the said shops. The plaintiff also disobeyed the orders, rules and directions of the defendant relating to his said employment, and neglected to attend to his duties and work in the said employment, and failed to perform the same. The services of the plaintiff by reason of his attitude towards the defendant, his superior officers, and his fellow employees, and by reason of the manner in which work entrusted to him was performed, and by reason of his character and workmanship, were unsatisfactory to the defendant.

40 34. The railway and shops operated by the defendant are owned or controlled by His Majesty on behalf of the Dominion of Canada, and are operated as part of a national system of rail-

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ways. In the conduct, operation and management of the said shops the defendant is required to decide and determine all questions respecting seniority among employees, reduction of staff, and the order and method of dismissal.

35. The defendant says it is not guilty by statute.

By Statute:

Chapter 52 of the Private Statutes of the Dominion Parliament passed in 58 and 59 Victoria, section 1:

Chapter 57 of the Private Statutes of the Dominion Parliament passed in 62 and 63 Victoria, section 1:

Chapter 68 of the Public Statutes of the Dominion Parliament passed in 9 and 10 George V., sections 1, 2, 3, 72, 122 (1) and (3), 162 (1), 289, 290, 391 (3):

Chapter 170 of the Revised Statutes of Canada 1927, sections 1, 2, 3, 72, 122 (1), and (3), 162, 289, 290, 391 (3).

36. The American Federation of Labor, its Railway Employees Department, its Division No. 4, its Canadian National Railways System Federation No. 11, each of its Departments, Divisions, Districts, Lodges, Locals, Unions, or other component subsidiary or affiliated organizations is an unlawful and illegal association or organization. The American Federation of Labor and each of its subsidiary or affiliated organizations is unlawful and contrary to public policy in its constitution, by-laws, regulations, rules, operations, practice and procedure. No contract made by or on behalf of the American Federation of Labor, or by or on behalf of any of its component subsidiary or affiliated organizations, can be enforced by law or form the basis of any action or proceeding.

37. Each and every of the alleged wage agreements Nos. 1, 4 and 6, and of the respective schedules and supplementals thereto, is in restraint of trade, and contrary to public policy, and illegal and null and void. No action can be brought or maintained to enforce any of the alleged agreements.

38. Neither the American Federation of Labor, nor any of its Departments, Divisions, Districts, Lodges, Locals, Unions, or other component subsidiary or affiliated organizations is registered under the Trade Unions Act of Canada. The said Act does not apply to the American Federation of Labor or to any of its component affiliated or subsidiary organizations as aforesaid. In the alternative, if the said Act or any part thereof should be held to apply thereto, or to the matters in question in this action, the same is unconstitutional and invalid and beyond the powers of the Parliament of Canada to enact.

39. The said One Big Union, the Winnipeg Central Labour Council thereof, and each of the Departments, Divisions, Districts, Lodges, Locals, Unions, Committees, or other component subsidiary organizations of the One Big Union, is an unlawful and illegal association or organization. The One Big Union and each of its said subsidiary organizations is unlawful and contrary to public policy in its constitution, objects, by-laws, regulations,

rules operations, practices and procedure. No contract made by or on behalf of the One Big Union, or by or on behalf of any of its component subsidiary organizations, can be enforced by law, or form the basis of any action or proceedings.

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40. The alleged agreement referred to in paragraph 17 of the amended statement of claim is in restraint of trade and contrary to public policy, and illegal and null and void. No action can be brought or maintained to enforce the said alleged agreement.

10 41. Neither the One Big Union nor any of its Departments, Divisions, Districts, Lodges, Locals, Unions, Councils, Committees, or other component subsidiary organizations is registered under the Trade Unions Act of Canada. The said Act does not apply to the One Big Union or to any of its component affiliated or subsidiary organizations as aforesaid.

42. The amended statement of claim does not disclose any cause of action against the defendant, and the plaintiff has not suffered any damages and is not in any event entitled to the relief claimed.

20 43. The defendant asks that this action may be dismissed with costs.

DELIVERED this 12th day of April, 1928, as Amended by MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK, Victory Building, 333 Main Street, Winnipeg, Manitoba, Solicitors for the Defendant.

IN THE KING'S BENCH

Between:

WILLIAM YOUNG

30

and

CANADIAN NORTHERN RAILWAY COMPANY,

Defendant.

Plaintiff,

No. 7
Reply to
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Statement
of Defence

REPLY TO STATEMENT OF DEFENCE AND AMENDMENTS THERETO

1. The Plaintiff repeats the allegations contained in the

Statement of Claim and amendments thereto.

2. In general, the Plaintiff says that he was hired on or about the 10th day of June, 1920, by the defendant and worked for the defendant until on or about the 9th day of June, 1927, when he was improperly dismissed by the defendant.

3. In reply in particular to Paragraph 9 of the amended Statement of Defence, the plaintiff says that he did apply personally to officials of the defendant Company designated in the rules, and his grievance was refused consideration, and the plaintiff says further that he did apply to the local committee and other committees as provided for in said rules and the said local committee and other committees including the general committee refused to take the matter up on behalf of the plaintiff. 10

4. In reply to the allegations contained in Paragraph 10 of the defendant's statement of defence, the plaintiff says that he has complied with the terms and provisions of Wage Agreement No. 6 and Supplements thereto and has made personal and direct application to the proper officials of the defendant and the said officials and committees have refused to hear the plaintiff.

5. In reply to paragraph 13 of the defendant's statement of 20 defence the plaintiff says and as the fact is that officials or members of Division No. 4 did arrange and agree with the defendant through its officials for the dismissal of the plaintiff.

6. In reply to Paragraph 14, the plaintiff says that although he has made repeated applications to obtain work he has been unable to secure employment and has suffered loss and has been injured in his reputation and will be unable to obtain employment by reason of such dismissal.

7. In reply to Paragraph 16 of the defendant's statement of defence the plaintiff says that there was in existence on the 10th 30 day of June, 1920, and subsequent thereto in the shops of the defendant, rules regulations and provisoes other than said Wage Agreement Nos. 4 and 6 covering the employment of machinists as to working conditions, hours of labour, wages to be paid, settlement of grievances, provisions for the length of employment, method of dismissal and seniority rights, and that by reason of the existence of said seniority rights the plaintiff was wrongfully and improperly dismissed by the defendant: the said rules and regulations provided inter alia that no machinist should be dismissed without investigation into his case. 40

8. In reply to paragraph 19 of the defendant's statement of defence the plaintiff repeats the allegations set forth in his statement of claim concerning Wage Agreement No. 4 and supplements thereto and Wage Agreement No. 6 and supplements thereto, but says in the alternative that if the said Wage Agreement No. 4 and schedules thereto and Wage Agreement No. 6 and schedules thereto and provisions therein do not constitute part of the terms of hiring of the plaintiff by the defendant that alternatively Wage Agreement No. 1 and Schedule "A" thereto was
 10 in existence on the 10th day of June, 1920, and for some time prior thereto and continued during the period which the plaintiff worked for the defendant, and constituted part of the terms of hiring of the plaintiff by the defendant and that said Wage Agreement No. 1 and Schedule A thereto and the provisos contained therein for adjustment of grievances, seniority rights, working conditions, etc., enured to the benefit of the plaintiff and the plaintiff by reason of the provisos therein contained was improperly and illegally dismissed by the defendant.

9. In reply to Paragraph 23 of the defendant's statement of
 20 defence the plaintiff says that all the requirements of the Statute of Frauds so far as it applies to this case have been fully complied with and in the alternative says that the said Statute of Frauds and the provisos thereof did not apply to the plaintiff's hiring by the defendant.

10. In reply to Paragraph 24 of the defendant's statement of Defence, the plaintiff repeats the allegations contained in the statement of claim in so far as the hiring of the plaintiff by the defendant is concerned and says that all the rules, regulations and provisions then in existence at the time of the plaintiff's hiring
 30 with the defendant and during the term the plaintiff worked for the defendant and in particular Wage Agreement No. 1 and Supplement A thereto and Wage Agreement No. 4 and Supplement thereto and Wage Agreement No. 6 and Supplements thereto and provisos therein contained, constituted and were part of the terms of the hiring of the plaintiff by the defendant, and the defendant was bound by the said provisions, and the agreements referred to in the plaintiff's statement of claim were executed by officials of the defendant or persons delegated to sign on its behalf.

40 11. In reply to paragraph 25 of the defendant's statement of defence the plaintiff denies that the said contract was one that could be terminated at the will of the defendant and at any time,

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and denies that the plaintiff was dismissed by the defendant in accordance with the contract of hiring.

12. In reply to paragraph 26 of the defendant's statement of defence the plaintiff says that he was improperly dismissed and that the notice of his dismissal given was insufficient.

13. In reply to the allegations contained in paragraphs 27 and 28 of the defendant's statement of defence, the plaintiff says that he has fully complied with the provisions of Wage Agreement No. 6 and supplements thereto as far as he possibly could; that he made application to the committees therein referred to and the said committees refused to act on his behalf. The plaintiff renews the allegations contained in paragraphs 12 and 13 of his statement of claim and says that the defendant through its officials agreed with Division No. 4 and its officials that the committees of Division No. 4 referred to in Wage Agreement No. 6 and supplements thereto should make no representation on behalf of the plaintiff and should refuse to act on his behalf and the defendant was a party to the refusal of the said committees and thereby prevented the plaintiff from having carried out the provisions of the Wage Agreement No. 6 and supplements thereto relating to the adjustment of grievances between the plaintiff and the defendant.

14. In reply to paragraph 29 of the defendant's statement of defence the plaintiff says that he has complied with all the requirements of Agreement No. 1, 4, and 6 and supplements and additions thereto and that he has full right of action against the defendant and says that this Honourable Court has jurisdiction to hear this action.

15. In reply to paragraph 30 of the defendant's statement of defence the plaintiff denies that all grievances should be handled between the defendant and the committee of its employees, comprising said Division No. 4, and says that the plaintiff was entitled to have his grievance adjusted by direct application to officials of the Company, and that the plaintiff made such application and was refused. The plaintiff says that officials of the defendant company and officials of Division No. 4 agreed together to break the contract, Wage Agreement No. 6 and supplements thereto, and to prevent the plaintiff from taking the steps set forth in said Wage Agreement No. 6 and supplements thereto, and the defendant will not be heard in setting up such lack of action by said committees as a ground of defence. The plaintiff says that

Division No. 4 and the defendant, or officials of either of them, had no power to break the provisions of Wage Agreement No. 6 or supplements thereto in so far as depriving the plaintiff of his seniority rights and as a consequence thereof the plaintiff was improperly dismissed.

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16. In reply to Paragraph 31 of the defendant's statement of defence the plaintiff denies that he has repudiated the alleged Wage Agreement No. 1, 4, and 6 and supplements thereto and denies that he has repudiated the power or authority of Division
 10 No. 4 to represent him or to enter into any agreement on his behalf. The Plaintiff has set up in his pleadings alternatively Wage Agreement No. 4 and 6 and supplements thereto as constituting part of the terms of his hiring.

17. In reply to Paragraph 32 of the defendant's statement of defence, the plaintiff says he has a right to bring this action and that the action is brought by the plaintiff and that no persons or organizations are illegally maintaining and conducting or otherwise maintaining or conducting this action, and denies that the plaintiff is being assisted by money, instructions, documents or
 20 otherwise in prosecuting this action, and denies that any other persons or organizations are to receive some or any part or profit of any sum recovered. The plaintiff says that this pleading is immaterial, irrelevant and embarrassing and should be struck out.

18. In reply to Paragraph 33 of the defendant's statement of defence, the plaintiff denies that he ever misconducted or was guilty of wrong or improper conduct and denies that there was good and sufficient grounds justifying his dismissal, and the plaintiff denies that he or any labor organizations that he was con-
 30 nected with actively and vigorously opposed the introduction and operation of the said "B. & O." scheme and endeavored to defeat and destroy the satisfactory working thereof, and denies that he endeavored to have his fellow employees defeat and oppose the operation of the said Plan, and the plaintiff denies that he was a party to any opposition of the said Plan and the plaintiff denies that he disobeyed the orders, rules and directions of the said defendant relating to his employment and the plaintiff denies that he neglected to attend to his duties and the plaintiff says that he was a loyal, earnest and efficient servant of the defen-
 40 dant and was guilty of no misconduct and had no charge of any kind against him at the time of his dismissal, but was improperly and illegally dismissed in violation of his contract of hiring.

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19. In reply to paragraph 34 of the defendant's statement of defence, the plaintiff denies that the shops and railways are controlled by His Majesty on behalf of the Dominion of Canada, and denies that the defendant is required to decide and determine all questions respecting seniority rights, length of employment, reduction of staff and order and method of dismissal.

20. In reply to paragraph 35 of the Statement of Defence the plaintiff denies the position taken by the defendant and says that said statutes set forth in said paragraph are not applicable and do not support the plea of not guilty by statute. 10

21. The plaintiff denies the allegations contained in paragraph 36 of the defendant's statement of defence, and denies that the American Federation of Labor and its various component parts as set forth in Paragraph 36 are unlawful and illegal associations or organizations, and denies that their constitution, by-laws, regulations, rules and operations are unlawful and contrary to public policy, and denies that the contract made between the American Federation of Labor or its subsidiary affiliations with the defendant cannot be enforced. The plaintiff says that Division No. 4 is a lawful and legal association or organization 20 and that the contract, namely, Wage Agreement No. 4 and No. 6 and schedules thereto are lawful and binding and in the alternative that the defendant is estopped from alleging the said agreement to be unlawful, illegal and not binding. The Plaintiff says that Wage Agreement No. 1 and Supplement A thereto is a lawful agreement.

22. In reply to Paragraphs 36, 37 and 38 of the defendant's statement of defence, the plaintiff denies that the unions referred to are not registered under the Trade Unions Act of Canada, and the plaintiff says that the said Act does apply to the said American Federation of Labor and says that the said Act is constitutional and valid and intra vires of the Parliament of Canada to enact.

23. The plaintiff denies the allegations contained in Paragraph 39 of the defendant's statement of defence and denies that the One Big Union and its subsidiary departments, committees, etc., are unlawful and illegal associations, and denies that they are contrary to public policy in its constitutions, objects, by-laws, regulations, etc., and denies that a contract made by or on behalf of the One Big Union cannot be enforced by law or form the basis 40 of any action or proceedings, but says that the alleged contract made between Sir Henry Thornton and the One Big Union was a

valid, lawful and binding contract and that the defendant is bound by the same.

24. In reply to Paragraph 40 the plaintiff says that the said contract is a legal contract and can be enforced.

25. In reply to paragraph 41 of the defendant's statement of defence the plaintiff denies that the One Big Union is not registered under the Trade Unions Act of Canada and denies that the Trade Unions Act of Canada does not apply to the One Big Union or to any of its component affiliated or subsidiary organizations.

DATED at Winnipeg, Manitoba, this 13th day of April, A.D. 1928, by McMurray & McMurray, 410 Electric Railway Chambers, Solicitors for the plaintiff.

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In the King's Bench

Between

WILLIAM YOUNG

Plaintiff

and

CANADIAN NORTHERN RAILWAY COMPANY

Defendant

The trial of this action had and taken before His Lordship, Mr. Justice Dysart, at the court house, at the city of Winnipeg, 10 in the Province of Manitoba, on the 14th day of May, A.D. 1928, commencing at the hour of 10:30 o'clock in the forenoon.

PRESENT: Honorable E. J. McMurray, and Mr. H. A. Bergman, K.C., for the plaintiff, and Messrs. D. H. Laird, K.C., E. F. Haffner, K.C., Mr. G. M. Hair, K.C., and Mr. G. P. R. Tallin for the defendant.

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MR. McMURRAY: I served my learned friend some days ago with notice of amendment at the trial, my lord, on the 8th day of May, dealing with paragraph 9 of the amended statement of claim. It is simply a continuation of paragraph 9, in the following words: "who were and are junior to the plaintiff, and who were and are engaged and employed by the defendant subsequent to the 10th day of June, A.D. 1920." I move for that amendment.

THE COURT: Is that the entire motion?

MR. McMURRAY: I am discontinuing as to paragraph 17. I ask the Court to grant the plaintiff leave to withdraw paragraph 10 17.

MR. LAIRD: In regard to the proposed amendment there is no evidence to support it, and I suggest it be left open for your Lordship to pass upon when the evidence is heard.

THE COURT: If there is any evidence to support it we will admit the evidence—

MR. LAIRD: It sets up that we engaged and employed many men since the 10th of June. It is something I haven't investigated, and the clause 9 as it stands is not very intelligible, and has not been throughout, and my learned friend's attention was drawn to 20 it. I think myself there should be some amendment.

THE COURT: We will allow any evidence that might support this, and then leave the amendment to be decided later. What do you say as to clause 17?

MR. LAIRD: I can't object to paragraph 17 being withdrawn.

THE COURT: Yes, the only thing is terms.

MR. LAIRD: Yes, my learned friend took it up with the learned referee and got that amendment after my opposition and my argument that the amendment should not be allowed. The 30 learned referee allowed it on terms of payment of costs, and I would suggest it be disallowed on those same terms.

THE COURT: I suppose you don't object to that?

MR. McMURRAY: No objection.

THE COURT: Any costs entailed by clause 17 will be to the defendant in any event.

MR. LAIRD: My lord, in that connection, as your lordship has probably seen, my learned friend has pleaded certain letters in that clause.

THE COURT: In clause 17?

MR. LAIRD: Yes, I was assuming that he would prove those letters having pleaded them. An arrangement has been made between my learned friend and myself as to the admission of copies. He asked me to admit these letters, and certain admissions were made. Now, when he withdraws that clause, and I may
10 wish to prove the letters, I may have to ask that the copies which I desire to be put in be admitted the same as arranged between my learned friend and myself when he desires to prove the letters. That is, when he pleaded certain letters he asked me to admit them, and I did agree on certain terms to admit them. Now he withdraws the plea.

THE COURT: And you want the arrangement to stand.

MR. LAIRD: I may want to use some of those letters and I want the arrangement as to the use of copies to apply to me.

THE COURT: What do you say, Mr. McMurray?

20 MR. McMURRAY: Well, if my learned friend can establish he is entitled to use them I would not seriously oppose it.

MR. LAIRD: I can only establish my right to use them by arrangement with my learned friend.

THE COURT: That is, to use copies instead of the originals, if he is entitled to use the original?

MR. McMURRAY: If he is entitled to use the original he is entitled to use the copy. So far as the arrangement goes I will live up to it absolutely.

MR. LAIRD: That is satisfactory.

30 MR. McMURRAY: The pleadings in the case, at bar, my lord, as you will probably have observed are quite lengthy. The statement of claim as originally issued has been amended several times, and also the statement of defence. The scope of the action has continually widened until it brings before your lordship some

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issues of a very great importance in the field of labor, and possibly I could aid your lordship by a very brief outline of the labor conditions and hiring in connection with the railroads and certain trades in Canada.

When I first commenced this case, my lord, I found myself, as most lawyers would be, considerably handicapped by a mere lack of knowledge of labor organizations in this country, and I think possibly if I could just sketch that to your lordship it would be of assistance to you.

Years ago there was formed in the United States an American Federation of Labor. That has a constitution. It was a craft organization with a constitution composed of such groups as carpenters, plasterers, &c.—I think there are about 114 altogether—each one with a head, and with delegates elected to it. All these craft organizations send delegates to an annual convention, and that central body is known as the American Federation of Labor. This American Federation, in various labor matters, reached over into this country. Our carpenters belonged to the Carpenters' Union. It was the union of carpenters affiliated with the American Federation of Labor. Now, sometimes carpenters may be pushed out of the American Federation of Labor altogether, but their craft organization still exists.

THE COURT: May be pushed out?

MR. McMURRAY: For instance, in this way, the American Federation of Labor might cause or give certain instructions in connection with that particular craft, and if that craft would not obey they would lose their affiliation, but still they would exist as an international union of carpenters.

THE COURT: But outside of the Federation?

MR. McMURRAY: Outside of the Federation, but still there would be a craft of carpenters. We have often had in this city certain unions that were affiliated with the American Federation of Labor, which are not affiliated with it now, but they are still an American Labor organization.

THE COURT: They are not the same, but their organization is similar?

MR. McMURRAY: They haven't the affiliation. That is not important, my lord. It is only a passing remark. Now, ordinarily twenty-five years ago we in this country were familiar with individual hiring. A man went to an employer and was hired as an individual. Each man working on our railroads, and so on, even

if he belonged to the American Order of Machinists, this, that or the other, was hired as an individual. Later on some progress was made, and they began to hire men by a craft, it might be machinists, boilermakers, pattern makers, or so, in the shop. This craft would enter into negotiations with the employer, the railroad. This generally was confined entirely to employees on the one railroad.

In Canada there were two regions, the Western region and the Eastern region. For instance, on the Canadian Northern Rail-
 10 way the machinists as a group—because the man we are dealing with here is a machinist—would bargain in the shops with the railroad company as to hours of labor, wages to be paid, working conditions, settlement of disputes, and all that. The railroads refused to recognize the union as such. In England in 1896, a railway case, the Taff Vale case, was fought out on the refusal of the Northwestern Railroad to deal with the trade union. They said we will deal with our own men, but we will not deal with the trade union. That was the case here. They refused to recognize
 20 the American union, but they said we will deal with you as our machinists.

THE COURT: Just there, you are referring to machinists. Would they deal with all the machinists they had in one center?

MR. McMURRAY: Yes, in the Western region, from here to the Coast, they would bargain with representatives of the machinists, that is, their own employees, but they refused to let that get out of their shops where they would deal with the machinist union in the United States. But they would deal with it as a craft.

THE COURT: Insofar as members were employed here?

30 MR. McMURRAY: Yes. There is a distinction between a craft, and a craft union. The International Order of Machinists is a craft union, but the machinist trade itself is a craft. That is, I suppose "craft" could be used synonymous with the word "occupation." Now, that was carried on here for a number of years, and we had difficulty here in this city in connection with the iron workers, a number of years ago—

MR. LAIRD: I think my learned friend is going very very much afield in opening this case. He is making statements which no evidence on these pleadings can possibly be admitted to cover, and I would like him to confine himself to opening the pleadings
 40 before your lordship, and to confine himself to what he hopes to prove.

MR. McMURRAY: I propose to prove most of that except—

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THE COURT: I take it you were explaining the American Federation of Labor mentioned in the pleadings?

MR. McMURRAY: Exactly.

THE COURT: You should confine yourself to the pleadings.

MR. McMURRAY: I grant that, my lord, but I was just giving you a brief outline. As I said that was the condition prevailing on these railroads at that time. They bargained with the craft, but they refused to recognize those unions.

MR. LAIRD: Surely a statement of that kind does not arise, "they refused to bargain with the union." 10

MR. McMURRAY: I am going to prove all that. Later on that thing widened until they dealt with a group of these different crafts, what they called the federated crafts, they would deal with them altogether. I think the reason of that was, the laboring men began to see they were pitted against each other, the machinists, the boilermakers, the plasterers against the car men, and those of that type. Then they began to deal with them as systems, that is, from one end of the country to the other. That is, my lord, bargains would be made by these federated trades. One of these that I am putting in in evidence was a bargain made 20 in 1916, between the federated trades of the one hand and the Canadian Northern Railway System of the other, that is, it took in not only the Canadian Northern Railway but all its component branches and everything connected with it. There was a bargain made between all the shopmen on the one side in 1916 and 1917, and the Canadian Northern System on the other. That contract was made even after the war was in progress.

War conditions pressed very heavily on the railroads in Canada. Conditions of living were very hard, and the working man on the railroads were demanding more pay, and the same in 30 the United States. The only way they could get this was to increase the rates. There was created what was known as the Railway War Board. That Railway War Board was practically the heads of the different railways, formed into an association, for the purpose of dealing with such matters of what were then of national importance on these lines as would come up, and particularly the question of labor. That Railway War Board was formed, my lord, I think in 1918. I haven't got the exact date, but I will supply your lordship with it before I am through.

The Railway War Board afterwards grew into what was 40 known as the Railway Association of Canada, which was really

a continuation of the Railway War Board. Along about the time of the creation of this Railway War Board there was created right here in this city what was known as the Division No. 4. To understand that, my lord, you will have to understand something of the various kinds of work and crafts on the railroad. There are the running trades, I think about six branches of those, various orders, and these running trades make contracts of their own with the roads. They do not come under Division 4 at all. Division 4 as you will see when we go into the contracts that
 10 were made, covers men working in the shops not only in the shops of the defendant company—

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THE COURT: What is the Division, territorial, or—?

MR. McMURRAY: I will explain that to you, my lord. There is in the United States an organization with a constitution known as the Railway Employees Department. It has a head of its own. It is affiliated with the American Federation of Labor. In the United States there are three divisions, territorial divisions, one taking in one portion of the United States, another taking in another portion, and another another portion. Along about 1918
 20 Division No. 4 of this was formed in Canada, taking in all the Canadian railroads. That is, all the machinists and the men working in the shops belonged to this Division No. 4.

THE COURT: The American Federation of Labor is a department in Washington, is it a governmental department?

MR. McMURRAY: Oh, no, nothing to do with the Government at all. We might say, there are the engineers in the United States, an organization there affiliated with the American Federation of Labor. Then they have over there the Railway Employees Department. I don't know why it has that name.

30 THE COURT: A department of what, of the Government?

MR. McMURRAY: No, it would be a department of the American Federation of Labor, but they simply call it Railway Employees Department. It is a bad name. But this Railway Employees Department deals purely with shopmen, men manufacturing cars, boilermakers, and so on, workers on the railroad. They have three divisions under a grand head in the United States. They had never come up into Canada before. Now, the crafts organizations run right along with them. The machinists would be under the jurisdiction of the Railway Employees Department, and at the same time he would be under the jurisdic-

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tion of the machinist's organization, both affiliated with the American Federation of Labor. In 1918 or thereabouts there was organized in Canada—it did not come from the United States; we organized it here ourselves—Division No. 4 Railway Employees Department. The real object of that was for stabilizing conditions on all the roads.

THE COURT: That is, an organization of the men?

MR. McMURRAY: Yes.

THE COURT: It is not from the Railway or from any other authority; it is an organization of the men themselves? 10

MR. McMURRAY: It is an organization from the men themselves. In 1918 they proposed to form that. The real object of it is that it gives them greater force and power and also stabilizes conditions. This Division No. 4, Railway Employees Department, endeavored to take in all the Railway Employees of the shops on the Grand Trunk Pacific, Grand Trunk, Canadian Northern Railway, and Canadian Pacific Railway, and all roads that we had in Canada. The Railway War Board saw an advantage in dealing with such an organization. Instead of the Canadian Pacific Railway fighting over wages with their men, and paying more or less 20 than the Canadian Northern did, an arrangement could be made on behalf of the railways on the one side and on behalf of the men on the other, and that was formed as Division No. 4, and they proceeded to enact wage agreement No. 1. Negotiations in that started sometime in March in 1918.

THE COURT: They reached a settlement?

MR. McMURRAY: Yes. I used that word "enact" loosely. In March, 1918, they proceeded to form Division No. 4 here, and proceeded also to negotiate a contract with the Railway War Board. That dragged along until finally on the 2nd day of Sept-30 ember, 1918, that contract was signed by the Railway War Board on the one part and Division No. 4, Railway Employees Department of the American Federation of Labor on the other part. At the time of that negotiation it is possible that Division No. 4 here had not come absolutely under the Railway Employees Department in the United States. That contract was signed. Large numbers in these shops do not belong to Division No. 4. Division No. 4 has its convention bi-annually. It appoints its officers, president and vice-president and secretary. The committees at these

conventions negotiate with committees from the railroads upon matters that come up between them.

But there is a large body of men who do not belong to that organization at all. There are two other large organizations existing in these shops here on these railroads. One is known as the Canadian Brotherhood of Railway Employees, and there is another one known as The One Big Union.

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THE COURT: They do not overlap?

MR. McMURRAY: They do not overlap. In fact, the three
 10 of them are struggling for supremacy and representation. Then there are a number of men working in the shops who do not belong to any of them, who prefer to be simply independent. Now, it is right there the question comes up.

In 1918 Wage Agreement No. 1 was made. Later on another Wage Agreement, No. 4, came into existence, later in 1919, I think, that will come out in evidence. Later on another agreement known as Wage Agreement No. 6 was signed.

MR. LAIRD: I am surprised that you say it was signed after the evidence you have taken.

20 MR. McMURRAY: What happened is that Agreement No. 6 is really a consolidation of Wage Agreement No. 4 and certain schedules connected with it, all of which will come before your lordship, and all this bargaining, and so on, when the matter comes before your lordship this morning.

Your lordship will see that there is a contract made between Division No. 4 and the Railway Association of Canada. Division No. 4 has machinists from all the railroads of Canada within its organizations, boilermakers, car men, etc. These different men, my lord, do not pay a per capita tax direct to Division No. 4, but
 30 this tax is collected by the craft. The machinist craft collects its tax from the members belonging to its craft, and sends it on down to headquarters. And the same way with the other branches. We have all the railroads under the Railway Association of Canada now bargaining with this Division No. 4. We say, and we interpret it for the plaintiff, that the bargain they made is on behalf of every man on that road.

My learned friend's contention is that Division No. 4 has bargained purely and simply for its own members. Really, that is the question before your lordship, whether this contract covers
 40 every employee in the shop upon these roads, or whether it only covers members of Division No. 4.

In these shops at the present time, in Fort Rouge, because those are the ones we are dealing with specifically in this case,

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belonging to the Canadian Northern Railway Company, there are numbers of men belonging to Division No. 4. There are large numbers of men who do not belong to Division No. 4, large numbers of them do not belong to any union, others of them belong to the Canadian Brotherhood of Railway Employees, and others belong to the One Big Union.

THE COURT: Did the plaintiff belong to Division No. 4?

MR. McMURRAY: The plaintiff did not belong to Division No. 4. On or about the 10th day of June—

THE COURT: The issue then is that the plaintiff who was¹⁰ not a member of Division No. 4 wants a benefit of the contract made between that Division and the Railway Association?

MR. McMURRAY: Here is what we say: We first come out and say that contract was made for him, and made for every other employee in the shops. We say if that was not so, then some form of collective bargaining was made on his behalf. We may have to go back to Wage Agreement No. 1, or we may have to go back to the Federated contract of May, 1916. My learned friend says, "We hired this man as an individual." We say individual hiring disappeared many years ago on this road. 20

THE COURT: You say if bargain No. 6 does not govern the case, then either No. 4 or No. 1 must?

MR. LAIRD: That is not the way you put it.

MR. McMURRAY: No, I can see the great difficulty of this matter, it being absolutely new to your lordship. Agreements 4 and 6 are the same.

THE COURT: If 6 does not, what do you suggest does?

MR. McMURRAY: We say if 4 and 6 do not cover the case, then our man must have been covered either by Wage Agreement No. 1 or by the Federated contract made in May, 1916, or³⁰ if he is not covered—

THE COURT: What is the Federated Agreement of 1916? How do you refer to it? What is the short title to that agreement?

MR. McMURRAY: It is the Federated Metal Trades Agreement with the Canadian Northern Railway System.

MR. LAIRD: I do not think my learned friend has pleaded that at all. You have pleaded Agreement No. 1, but that is the earliest one you have pleaded.

MR. McMURRAY: Yes, I have. It became effective in May, 1916.

MR. LAIRD: Please do not refer to it.

MR. McMURRAY: His lordship asked for it.

THE COURT: There seems to be a dispute about it. Where is it?

10 MR. McMURRAY: We claim if this agreement did not apply then there were in force certain rules and regulations governing it, and this is described within it as rules and regulations. Yes, the following rules and rates will govern the Canadian Northern System.

When he was hired on the 10th June, 1920, Wage Agreement No. 4 was in existence. Later on Wage Agreement No. 4 evolved into Wage Agreement No. 6, still in existence, and in existence when he was dismissed, and we say it was a changing agreement, and his employment changed with that. But we say if neither of
20 those agreements apply and Wage Agreement No. 1 did not apply there were rules and regulations.

THE COURT: How could No. 1 apply?

MR. McMURRAY: In this way, Wage Agreement No. 1, we will argue, covered all employees. If my learned friend's contention that No. 4 and No. 6 only applied to certain men then the residue applies to us. That is, we say if at the time he was hired Wage Agreement No. 4 did not apply to him, there were rules and regulations bargained for by some form of collective bargaining, that when this man came in all these were part of his
30 contract. The situation was entirely different to a man going out to hire with a farmer in the country, where he bargained with the farmer as to hours he would have to work, how much he was going to have for pay, and what day he would have for rest, and this, that and the other. When this man came to the shop there was no bargaining made as to wages. He came in there, as the evidence will show, had a talk with one of the officials, and the officials were satisfied that he had the qualifications for the machinist trade. He showed some credentials from the Old Country where he came from, and they sent him down,

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and he signed an application form, which is here, and went to work. We say all this bargaining was before, and it wasn't made for one machinist or for another, but for all.

THE COURT: That will develop.

MR. McMURRAY: Yes. I think I have outlined that as well as I can to your lordship. Now, on the 10th June, 1920, Young, who had just came over from the Old Country, went down and saw Mr. Hough, and Mr. Hough asked him some questions, and so on. He showed him what references he had, and he was hired, and went down and signed the usual application form. 10

A card system is kept there of a record of the men. That was kept all the way through, and he worked under it apparently with them until I think it was the 9th day of June, 1927, when he was given notice of his dismissal, and some nine other men. Young had seniority rights at this time. I think there were 35 or 40 junior to him, but he was dismissed on the ground set forth in the notice of reduction in staff.

We say he was improperly dismissed. We go further and we say he was dismissed by reason of negotiations with this Division No. 4, who were trying to force all these men to belong 20 to that Division, and then he was wrongfully let out, and let out in violation of the provisions of seniority rights. Your lordship will see the Agreement as we go into it, that a man after being there a certain length of time takes on a degree of permanency, and he cannot be dismissed without a thorough investigation, and if there is a reduction of staff he must be released in order of his seniority. This was all violated, and Young comes into Court and asks for damages.

I will read the Statement of Claim.

THE COURT: I have read it. You do not need to read the 30 Statement of Claim unless there is some particular paragraph you want to point out.

MR. McMURRAY: I will call your lordship's attention to paragraph 7.

Rule 27—When it becomes necessary to make a reduction in expenses at any point, the force at such point, or in any department or sub-division thereof, shall be reduced by dispensing with employees with less than six months' continuous service in such department or sub-division thereof, after which the hours may be reduced to forty (40) per week before further reduction in 40 forces is made. When the force is reduced seniority as per rule

31 will govern; the men affected to take the rate of the job to which they are assigned.

Rule 31—Seniority of employees in each craft covered by this agreement shall be confined to the point at which employed.

Sub-divisions of the car men for seniority shall be as follows:

Patternmakers, upholsterers, painters, other carmen. If on account of falling off in work of a particular class, on which "other carman" are engaged, it is necessary to displace them, they will, according to seniority, have the right to displace car-
10 men junior to them performing other classes of work, if qualified to perform it, at the rate paid for such work.

The seniority lists will be open to inspection and copy furnished the committee.

THE COURT: Does the plaintiff as a machinist fall under that term "other car men"?

MR. McMURRAY: No, my lord.

THE COURT: Does this apply to him?

MR. McMURRAY: Oh, yes, my lord.

THE COURT: He is not a pattern maker, an upholsterer
20 or carpenter.

MR. McMURRAY: These are subdivision of the car men.

MR. LAIRD: He wasn't a car man at all; he was a machinist. You do not claim he was a car man.

MR. McMURRAY: The preceding rule explains. When the force is reduced Rule 31 will govern, that includes all men working in the shop. No, he wasn't a car man.

MR. BERGMAN: No. 27 covers every class of employees. Car men are subdivided there; the others were not.

THE COURT: Still that may be a matter of argument.

30 MR. McMURRAY: At the commencement of Rule 31, it says: "Seniority of employees in each craft covered by this agreement shall be confined to the point at which employed." In the agreement that was made among other crafts covered was the machinist craft. Apparently this subdivision of car men is outside of machinists, boilermakers and so on.

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At the top of page 4: "When it becomes necessary to make a reduction in expenses as provided for in Rule 27, employees in any craft may, under this rule, exercise their seniority in any position belonging to their craft, in shops, roundhouses, or train yards under the jurisdiction of the same general foreman or shop superintendent or other officials having like jurisdiction, provided that the exercise of seniority on a staff comprising both back shop and running work by change from one class of work to the other shall be conditional upon qualifications for the performance of the work in any individual case. 10 If, however, an employee, from this or any other cause, is transferred from one shop, roundhouse, or train yard to another in the same terminal, he will retain his original seniority in the terminal in which employed."

Then, paragraph 10, where a man is dismissed, Rule 35: "Should any employee subject to this agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated (which he is unable to adjust directly) the case shall be taken to the foreman, general foreman, shop superintendent, or master mechanic, each in their respective order, by the Local Committee or one or more duly authorized members thereof, and a decision will be rendered without any unnecessary delay." 20

"If stenographic report of investigation is taken the Committee shall be furnished a copy."

"If the result still be unsatisfactory, the General Committee or one or more duly authorized members thereof, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application." 30

Those are the ones I call your lordship's particular attention to.

MR. LAIRD: There is a matter which I wish to mention to your lordship. The Trade Unions Act of Canada may arise in the case. Briefly, my position is that the Act does not apply to the case. My learned friend may argue otherwise. My alternative position is that if it should apply in your lordship's judgment, then the Trade Unions Act of Canada is invalid as impinging on Provincial legislation. Your lordship will know the King's Bench rule which prevents my questioning any statute without notice to the Minister of Justice. I mention this now 40 that the Minister of Justice was served with a notice that the question would arise.

THE COURT: What is the number of that section?

MR. LAIRD: It is section 28: "When in any action or other civil proceedings, the constitutional validity of any Act of the Parliament of Canada, or of the Legislature of Manitoba, comes into question, the same shall not be adjudged to be invalid until a notice thereof has been served on the Minister of Justice, and the Attorney General of Manitoba, or at their offices, respectively." The Deputy Minister of Justice was served on the 1st day of May with a notice, and I have the affidavit proving the service of the notice here. I can file it probably when I came
10 to the defence.

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THE COURT: Perhaps you had better file it now.

MR. LAIRD: Very well. The notice reads: "In the King's Bench, between William Young, Plaintiff, and Canadian Northern Railway Company, Defendant, TAKE NOTICE that in this action the constitutional validity of The Trade Unions Act passed by the Parliament of Canada, and being Chapter 202 of the Revised Statutes of Canada, 1927, comes in question, and that this case is to be tried and the said question to be argued on the fourteenth day of May, 1928, at the Court House in Win-
20 nipeg. Hereto annexed are true copies of the plaintiff's amended statement of claim as amended on 6th of March, 1928, of the defendant's amended statement of defence as amended on the 12th of April, 1928, and of the plaintiff's reply thereto of the 13th of April, 1928, in this action, and the constitutional question proposed to be argued is set forth in paragraph 38 of the said amended statement of defence, and paragraph 22 of the said reply. Dated the 27th of April, 1928."

And I file the affidavit of George F. Macdonnell of the 1st of May, 1928, proving the service of the notice of the 27th April,
30 and of the copy of the pleadings.

THE COURT: Both attached to the affidavit?

MR. LAIRD: Yes.

(Notice to Department of Justice in regard to Trade Unions Act and documents referred to produced and marked "exhibit No. 1.")

MR. LAIRD: I do not see anybody here representing the Honorable the Minister of Justice, and I might say the intimation I had from the Ottawa agent was that the matter was referred to the Department of Labor. Of course, the question will
40 not likely arise further until the argument, and I have no doubt your lordship would hear the Minister of Justice at any stage.

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I do not think I have any place to further object to my learned friend's statement, but I must beg your lordship to be guided by the evidence. My learned friend has covered a very wide field, and I have, I suppose, no position to question his statement.

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MR. LAIRD: I would suggest, my lord, that the witnesses be excluded from the Court Room during the trial.

THE COURT: Yes.

MR. McMURRAY: I am calling Mr. Eager under rule 474 for the purposes of cross-examination.

THE COURT: Not cross-examination. You can call him as 10 an adverse witness under that rule.

MR. McMURRAY: At any rate, my lord, it is under rule 474.

THE COURT: All right.

ALBERT H. EAGER being first duly sworn, testified as follows:

EXAMINED BY MR. McMURRAY:

Q What is your occupation? A General Superintendent of Motive Power and Car Equipment, Western Region.

Q Of what? A Locomotives and cars, that is, everything in the Mechanical Department. 20

Q Of what railway? A Canadian National.

Q That includes the Canadian Northern? A Yes.

Q So that you are also an officer in the same capacity in the Canadian Northern Railway? A Yes.

Q How long have you been such, Mr. Eager?

A Since May 1, 1910. Not in this particular capacity. I have been in this particular capacity since early in 1915.

Q You were with the Canadian Northern Railway before the amalgamation, weren't you? A Yes.

Q What is the exact scope of your occupation? I only ask generally. A General charge of all mechanical matters.

Q In the shops? A In the shops and on the road.

Q What do you mean by general charge of mechanical matters in the shops. A Well, general charge in the maintenance of equipment, and in connection with the repairs to same, and the shops as well.

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Q You have from time to time while with the Canadian Northern Railway negotiated on behalf of the railway with representatives of the men in the shops schedules of rules and rates, haven't you?

MR. LAIRD: Objected to. We are not concerned with any negotiations. My learned friend pleads agreements or contracts. He is not questioning the negotiations.

THE COURT: You might lead to that specific agreement. In the present form it is objectionable.

MR. McMURRAY: I was simply leading up to the agreement. I will come right straight at it.

Q Did you negotiate an agreement dated the 1st of May, 1911, between the Canadian Northern Railway and the men: "Schedule of rules and rates governing boilermakers, boilermakers' apprentices, specialists and helpers in all shops, round-houses. Effective, May 1, 1911."

MR. LAIRD: I object.

THE COURT: Would that be in issue in 1911?

MR. McMURRAY: What I am showing is that there was that bargaining.

THE COURT: If it is objected to I think I will exclude it. You might work back to those from the present agreement, but I don't think you should come up to that that way.

Q Did you negotiate the contract of May 1st between the Federated Metal Trades and the Canadian Northern Railway System? A May 1st of what year?

Q 1916?

MR. LAIRD: Objected to.

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THE COURT: Objection upheld, for the same reason.

Q From your position as superintendent you would know the rules and regulations prevailing in your shops, wouldn't you, concerning the relationship of mechanics to the company, so far as wages, working conditions, settlement of grievances, and so on were concerned? A Generally, yes.

Q You would know that over quite a long period of time, wouldn't you? A Yes, sir.

Q Were there rules and regulations in existence on the 10th 10 of June, 1920? A Yes.

Q Do you know what they were? A Well, in a general way.

Q What were they?

THE COURT: Were they in writing?

A Not that I negotiated.

MR. LAIRD: My lord—

A What do you say, Mr. Laird?

BY MR. McMURRAY:

Q Were they in writing? Mr. Laird was going to suggest something.

A Well, they are in printed form.

Q That is, wage agreement No. 4?

MR. LAIRD: Objected to.

THE COURT: What is that printed form? Where is it?

Q That is the printed form you refer to?

A Yes, at that time in 1920.

MR. LAIRD: I object to that; it is not the original.

MR. McMURRAY: We have the original here or it is on the road here.

THE COURT: Why not use the one you propose putting in?

BY THE COURT:

Q What does the witness say on it?

A The original of this, I suppose, is in Montreal. This is the printed copy that is handed out for the carrying out of the regulations it contains.

10 BY MR. McMURRAY:

Q Who is it handed out to? A To the different officers of the railway.

BY THE COURT:

Q Did you have one? A Yes.

Q What would you say as to the question put a moment ago as to whether or not that is a statement of the rules and regulations you referred to as being in force on June 1st, 1920?

A They were.

BY MR. McMURRAY:

20 Q It is contained in this written—printed pamphlet I hand you? A Yes.

THE COURT: That may go in.

MR. LAIRD: I object to it, as attempting to prove an agreement. My learned friend obtained a commission from this Court to Montreal for the express purpose of proving this agreement.

THE COURT: This for what it is worth is admitted as exhibit 2. It may not prove the agreement.

(Wage Agreement No. 4 referred to, produced and marked exhibit 2.)

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BY MR. McMURRAY:

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Q You say that each of the officials of the company would have a copy similar to exhibit 2 that was shown to you a minute ago.

THE COURT: How could he answer that?

Q What do you say about that? A The officials in the mechanical department that have charge of these shops have a copy of the regulations as in effect on the date in question.

Q You saw they were supplied with that, did you?

A Yes, they are sent out from our office. 10

Q Are these posted up in the shops, copies similar to exhibit No. 2? A No, sir.

Q They are not put up in the shops anywhere.

A No, sir.

Q They have never been put up in the shops?

A No, sir, not to my knowledge.

Q Are they handed out to the men? A Not by the company's representatives.

Q Not by the company's representatives? A No.

Q How were the men advised as to those rules and regulations? A I presume through their own organizations.

THE COURT: By "the men" whom do you mean?

Q Employees in the shops, witness? How do they know?

A I suppose they get that information from their organization.

BY THE COURT:

You suppose; do you know? A I have no means of knowing.

BY MR. McMURRAY:

Q Now, I show you another printed booklet. What is that? Can't you answer without the assistance of counsel?

MR. LAIRD: I object to that, Mr. McMurray. I wanted to see the document you handed the witness.

THE COURT: Let us confine ourselves nicely to the issues.

MR. LAIRD: Objected to on the ground that it is entirely irrelevant.

THE COURT: You may answer.

10 A I can't say yes or no. He asked me what this is.

BY THE COURT:

Q The question is do you know what it is?

A Yes, it is the printed copy of wage agreement No. 6.

MR. LAIRD: Objected to; the document is inadmissible.

THE COURT: It is not proven yet in the way that entitles it to be made an exhibit.

BY MR. McMURRAY:

Q Were those the rules set forth in this wage agreement No. 6 under which the shop employees worked in the Fort Rouge 20 shops of the Canadian Northern Railway?

A Yes.

Q And they were working under these rules set forth in this from the 1st day of December, 1922, on until the plaintiff was dismissed in June, 1927? Is that a fact?

A Yes.

Q And this booklet, or other copies of it, were distributed by you to the foremen and officials in the shops in Fort Rouge, were they? A They were sent from our office.

Q You didn't do it yourself, of course. A No.

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MR. McMURRAY: I would ask that be filed as an exhibit.

THE COURT: Very well.

MR. LAIRD: Objected to.

(Wage Agreement No. 6, referred to, produced and marked exhibit No. 3.)

Q Who had these booklets printed, do you know, Mr. Eager?

A I couldn't say from first hand knowledge; I don't know.

Q Were they printed by the company? A I haven't any knowledge of them. That matter was negotiated in Montreal.

Q That is, the original. A Well, all of the copies. As far¹⁰ as my office is concerned we had nothing to do with the printing.

Q You had nothing to do with the printing.

A No anything whatever.

Q Were there rules and regulations in existence prior to Wage Agreement No. 4 governing employees in your shops at Fort Rouge? A There were certain rules and regulations in effect, yes.

Q Would they be the same in all the shops of the Canadian Northern Railway system in the Western Region?

A Yes.

20

Q There would be the same rules and regulations. What would those rules and regulations cover?

MR. LAIRD: Objected to.

THE COURT: Are they in writing?

Q Were they in writing? A Insofar as we are concerned they are in a printed pamphlet.

Q You are referring to Wage Agreement No. 1?

A To Wage Agreement No. 4.

Q But prior to Wage Agreement No. 4? A Prior to Wage Agreement No. 4, we had Wage Agreement No. 1.

Q And the rules and provisions set forth in Wage Agreement No. 1 were in force in your shop? A Yes, sir.

Q They were distributed through your office, or under your instructions to your different officials?

A Yes.

Q And prior to Wage Agreement No. 1 you had the Federated Metal Trades agreement? How long did that run?

10 MR. LAIRD: Objected to.

Q What did you have prior to the second day of September, 1918?

MR. LAIRD: Objected to. We are not concerned with that. Agreement No. 4, exhibit 2, is in 1919. The plaintiff alleges in his statement of claim he entered in 1920.

THE COURT: But he has spoken about some prior arrangement. Of course, "prior" is very indefinite.

MR. McMURRAY: I don't want to go back very far. My learned friend says that wage agreement No. 4 does not apply 20 to my client. Then I say some rules and regulations do.

THE COURT: I know you have said that, but put the question to the witness, and we will deal with that.

BY MR. McMURRAY:

Q Wage agreement No. 1 became effective on the 2nd day of September, 1918. What rules and regulations—

THE COURT: Is that what the witness says?

A I think there was a supplement to wage agreement No. 1. The supplement came into effect in the early part of the year 1918, if my memory serves me right.

30 Q I may tell the witness, if he will accept it, that the wage agreement of 1918 came into effect on the second day of September, 1918, with a schedule a month later in October.

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A Well, my memory doesn't serve me just correctly on that.

Q Now, immediately before that what rules and regulations had you in effect in your shops in Fort Rouge?

THE COURT: Would we be interested in anything prior to 1918? If we are not there is no purpose going into it.

MR. McMURRAY: I think this was in force in 1918.

THE COURT: How would we be interested prior to that time?

MR. McMURRAY: In this way, wage agreements Nos. 1, 4 and 6 were negotiated by Division No. 4. This Federated Metal Trades agreement was negotiated by a collective group, whom we claim represented all the men. If the wage agreements 1, 4 and 6 do not apply to our man, then those rules and regulations did.

THE COURT: You said "prior."

BY MR. McMURRAY:

Q What rules and regulations had you in your shop in the early part of 1918 prior to the signing of wage agreement No. 1?

MR. LAIRD: I must object. The plaintiff alleges he was employed in 1920. What we would have to do with earlier rules and regulations I am at a loss to see.

20

THE COURT: I exclude your question in that form.

Q Witness, in 1920 what rules and regulations were in force in your shops in Fort Rouge?

THE COURT: What time?

Q 10 June, 1920.

MR. LAIRD: Were those in writing?

Q I am asking you what rules and regulations were in force in your shops? A Wage agreement No. 4.

Q In employing your men how do you apply these rules and regulations that may be in existence to them?

30

MR. LAIRD: Objected to. We are dealing with one case; we are not dealing with a thousand.

Q Do you treat all your men the same so far as the rules and regulations are concerned in your shops?

MR. LAIRD: Objected to.

THE COURT: You are dealing with a specific instance, and you base your right on the contract. Would it be relevant if others were used in the same way or in a different way?

MR. McMURRAY: The great difficulty I have, my lord—
10 if your lordship would let me go back a little I would have no difficulty in coming to this.

Q Were there contracts made at any time by you a short time prior to the hiring of the plaintiff which covered all the men in those shops, which covered wages, working conditions, and so on?

MR. LAIRD: Objected to.

MR. McMURRAY: If I can't get back to this, and I put this witness up against answering a question of law, while he is very capable, I don't think he is competent to answer as to an ab-
20 struse legal question.

THE COURT: Perhaps there is some other witness who will lay a foundation for what you want. But put the question and get the witness' answer, and that will have to dispose of it as far as the witness is concerned.

Q When Young was hired in 1920, on the 10th of June, there were certain rules and regulations in force in your shop?

MR. LAIRD: Is my learned friend giving evidence?

Q When Young came on as a machinist the next day after he was employed on the 10th of June, what rules and regula-
30 tions would apply to him?

MR. LAIRD: I object to that.

THE COURT: I will allow that question.

A The rules that were generally in effect in the shop.

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Q What do you mean by that? What rules were generally in effect in the shop? A Insofar as hours of service, rate of pay, and such like.

Q Those would be the rules set out in the written contract, wage agreement No. 4, I take it.

MR. LAIRD: Objected to.

Q Is that right? A Whether the rates are exactly specified in there I can't say.

Q I imagine those would be set out in the schedule, the rates of pay? A No, they were compiled by rates that were in¹⁰ existence at the inauguration of agreement No. 1, and according to the understanding of increases or decreases they were simply applied, and those rates stood, but they were not handled in our office, neither are they in that document.

THE COURT: The document being exhibit 2.

MR. LAIRD: He said the rates of pay are not in exhibit No. 2.

MR. McMURRAY: I take the witness to understand that there were rates of pay set forth in wage agreement No. 1.

A Wage agreement No. 1 was the application of the McAdoo²⁰ award, which was brought into effect during the war period.

Q Just while we are on that, this wage agreement No. 1, how did it come to be signed?

MR. LAIRD: That is objected to; that is what your lordship has ruled out.

THE COURT: Wage agreement No. 1 is not in.

Q What brought about the signing of wage agreement No. 4, exhibit 2, witness, do you know? A Possibly some negotiation in Montreal, of which I had no particular knowledge. I wasn't present. 30

Q Do you know if there was a demand made at this time by the mechanics and employees for increased wages, and a threatened strike?

THE COURT: What was that? 1918?

Q 1919?

MR. LAIRD: Objected to.

MR. McMURRAY: My learned friend stated this agreement is bad for a variety of things, and I wanted to show what the conditions were, and the considerations for the signing of the agreement.

THE COURT: The agreement, I suppose, is what governs. I suppose we are not interested very much in what led up to it.

10 MR. McMURRAY: My learned friend alleges that the agreement is bad in his pleadings. He has pleaded that the agreement is bad for being a voluntary contract, and for lack of mutuality.

THE COURT: For consideration?

MR. McMURRAY: Yes.

THE COURT: Let me see that. This agreement No. 4, states it is an agreement between the Canadian Railways War Board and Division No. 4 as to certain things. Consideration is not expressed in the agreement.

20 MR. McMURRAY: No; I want to prove what it was.

THE COURT: I think I will allow you to, if you can.

MR. LAIRD: At this point the plaintiff was not in the service of the company at all. How he can come along some time later and attempt to show consideration for an agreement to which he was not a party, I don't know.

THE COURT: He claims that this agreement governs his employment. You set up that the agreement is without consideration as between Division 4 and the other party to the agreement, but he is not a member. That is another issue, but he might
30 in some way establish, or he claims at least this governs his employment. He may not be able to establish that, but while he has a claim I think we ought to allow him to establish it if he can, which means that he ought to set up if he can the consideration for the agreement, especially when you plead that the agreement had no consideration. So I will allow him to prove that.

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MR. LAIRD: The point is that the consideration would not operate, would not pass to the plaintiff because he alleges that he wasn't concerned in 1919.

THE COURT No, but it carries on from that time during the period when he came into the service with the other party, but he wasn't a party to the making of the agreement. Supposing Division No. 4 had paid \$10,000 to the Railway Company provided they would enter into the agreement. That would not operate to the plaintiff's benefit, but it would show that the agreement had a consideration, and it was therefore valid to 10 this extent, and you plead that it wasn't a valid agreement because it had no consideration. You make that an issue yourself, and the plaintiff then is entitled to meet it by establishing the agreement is a valid agreement. Whether or not the plaintiff can get the benefit of that is a different issue. He may not fall under it at all, but that is another issue. The first issue is the consideration. You raised that issue yourself.

MR. LAIRD: Yes.

THE COURT: And they claim they are entitled to it so we must allow them to prove it if they can. 20

Q Would the Court Reporter please read the last question?

(Last question read: "Q Do you know if there was a demand made at this time by the mechanics and employees for increased wages, and a threatened strike.")

Q (Continuing) "In 1919 when wage agreement No. 4 was signed? A Yes. I wasn't attending the negotiations. I didn't have anything to do with it.

Q You didn't advise from this end upon it?

A No, there was no discussion upon it in Winnipeg between the— 30

Q Who would look after it at the other end? Mr. Hungerford in Montreal? A Possibly; it was negotiated, I think, with the War Board, was it not?

Q Yes, it was negotiated with the War Board.

A Just who the officials of the company that handled that were, I can't say.

Q So you don't know what agency or condition brought about the signing of wage agreement No. 4?

A No, I have no first hand information on that.

Q You said something of the McAdoo award and wage agreement No. 1?

A That was also negotiated in the same manner.

Q With the War Board? A Yes.

Q What were the conditions that brought about wage agreement No. 1?

10 MR. LAIRD: Objected to.

MR. McMURRAY: These are all a series of negotiations very closely interwoven.

THE COURT: Is it disputed as to consideration in some way?

MR. LAIRD: It is not pleaded at all, and it is irrelevant.

MR. McMURRAY: Wage agreement No. 4 is pleaded.

THE COURT: There is some reference to it in the pleadings. Paragraph 18, page 9.

MR. McMURRAY. I haven't got the original here; I expect
20 to have it.

THE COURT: Hadn't you better defer your examination on that?

MR. McMURRAY: Possibly, with this general remark, and then we might go on with that.

BY MR. McMURRAY:

Q Wage agreement No. 1 followed the McAdoo award in the United States, in 1918?

MR. LAIRD: Objected to.

Q I think you told us that? A Yes.

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Q What was the attitude of the shop employees in your shops as to wages at that time, in 1918?

MR. LAIRD: Objected to.

Q Prior to the negotiation of wage agreement No. 1, do you know? A Well, there wasn't any negotiations or discussion as far as I am personally concerned to the relative situation.

Q Was there a demand? A It wasn't made on me at Winnipeg.

Q Do you know of any demand for increased pay?

MR. LAIRD: Objected to.

10

Q Was the pay increased at the time of the execution of wage agreement No. 1?

MR. LAIRD: Objected to.

Q Do you know if wages were sharply increased at the time of the negotiation of wage agreement No. 1.

MR. LAIRD: Objected to.

THE COURT: Allowed.

A I can't say sharply. There were some increases and some decreases.

Q Can you send your memory back to that time when the war was on, or just at the close of the war, when the McAdoo award came out. What was the McAdoo award? Didn't it deal with wages?

A The McAdoo award is a document on the American side of the line, and dealt with wages.

Q And increased them very substantially.

A From time to time as wages in other branches of trade increased.

Q That in Canada was immediately followed by wage agreement No. 1. A Wage agreement No. 1 was the first agreement of that nature.

Q A sharp increase in wages. A In some respects; in others there was decreases.

Q What were the increases?

MR. LAIRD: Objected to.

A I can't say from memory.

Q What were the decreases?

THE COURT: Does the agreement cover those points?

MR. McMURRAY: It won't show the increases; it would just show the new rates.

10 Q Isn't it a fact that wages for machinists at this time were increased 21 cents an hour for an eight-hour day?

A I could not verify that from memory.

Q Do you know the Labor Gazette published at Ottawa?

A I know of it.

Q In it is reported all wage increases.

A Possibly.

Q Would this be right, referring to 1918?

A I have no means of disputing it.

Q "Early in July a committee—"

20 MR. LAIRD: I object to that; reading a statement from a newspaper.

THE COURT: You may ask it. He may not know it.

Q It is from the Gazette which is judicially noticed.

"Early in July a committee of the Federated Shop Trades brotherhood, representing men employed in the mechanical department of the various Canadian Railways presented demands to the Canadian Railway War Board for increased wages for

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machinist specialists and helpers of approximately 21 cents an hour for an eight-hour day."

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THE COURT: What is your question based on that?

Q I asked the witness if he knew of these demands being made at this time? A I knew there were negotiations going on in Montreal, but what the demands were, I don't know of.

Q Do you know there were substantial demands for increased pay following the McAdoo award?

A Naturally negotiations carry with it a request for increased wages. 10

Q The McAdoo award gave the American workmen a substantial increase in pay? A Yes.

Q And railway wages in Canada are governed by what our friends to the South do very largely.

A Very largely.

Q One follows the other almost consistently.

A Generally, yes.

Q And isn't it a fact that after the McAdoo award was made, as this Labor Gazette of July, 1918, says, a demand was made by the shopmen here, for an increase for the machinist²⁰ specialists, and helpers, of approximately 21 cents per hour?

A There was an increase granted. How, I have no way—

Q As an official of the railroad it must have appalled you, the demand made at that time? A No, why should I object? I didn't grant it.

Q You had to pay it? A I quite appreciate that.

Q And there was a great increase in freight rates at that time to meet it; that is a fact, isn't it?

A There might have been.

Q Wasn't there an increase of about 35 percent on the freight³⁰ rates to meet this 21 cents increase in wages? A I am not

particularly conversant with the negotiations in other departments.

Q Didn't your company make fourteen or fifteen million dollars out of the deal?

MR. LAIRD: I object to that.

Q Did you know at this time of a great many conferences and so on that were going on all summer long, demands being made by the men, threats of strike if there wasn't this increase of pay? A Not to my personal knowledge.

10 Q It might have been for all you know?

A For anything I know it might have been.

Q For all you can remember now. We are speaking of when Young came into the service, and I asked you what rules and regulations would govern, and you told me the general rules and regulations would cover him.

MR. LAIRD: Objected to.

A I think I stated the rules as regards the hours of service and the rates of pay, if I remember right.

Q Rules as to hours of service and rates of pay.

20 A Yes.

Q Those would be the same for all men in your shop.

MR. LAIRD: Objected to.

THE COURT: You may answer that.

A Generally speaking they are. There are some variations.

Q Some variations in other shops? A No, in the same shop.

Q Your men are all treated alike, aren't they, Mr. Eager?

MR. LAIRD: Objected to.

A Well, there are different regulations for different classes of men.

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Q That is, for different classes, you mean different occupations? A Yes.

Q But all men of a given occupation would be treated identically alike, isn't that right? A Yes.

Q And Young, a machinist, would be treated identically the same as every other machinist in that shop, isn't that right?

A Insofar as hours of work and wages are concerned, yes.

Q Where would these rules come from that govern him in his work? Where did they originate? A They are generally set forth in the understanding, in wage agreement No. 4. 10

Q In exhibit 2, wage agreement No. 4. You say they are set forth in there generally? A Yes.

Q Those are the ones governing Young.

A There are certain prescribed rules to follow; that doesn't imply they are actually in effect.

Q What do you mean by that? A We have the privilege of varying the working hours between certain periods according to the understanding in that book.

Q Exactly. But the understandings set forth in that book would apply to Young? A Naturally so far as— 20

BY MR. HAFFNER:

Q So far as what? A As far as wages and hours are concerned.

MR. McMURRAY: Why did you want to draw that out of him?

BY MR. McMURRAY:

Q Outside of the wages and hours you are talking about, what rules applied to him? A It depends on the situations as they arise. That is practically the only rules that do generally apply. The remainder of it depends entirely on developments. 30

Q Were there any other rules that applied to Young other than those set out in wage agreement No. 4, exhibit 2?

A There has never been any of them questioned in that manner.

Q It has never been questioned before? A By Young.

Q Anybody else?

MR. LAIRD: Objected to.

Q You say this wage agreement No. 4 was never questioned. A Not by Young to my knowledge.

10 Q He apparently took it for granted it applied to him.

A I don't believe it was discussed.

Q You don't believe it was discussed? A No, I haven't any knowledge of it.

Q What rules governed Young in his services while he worked for your company? A Any man who enters the service of the company in the shop is governed by the hours worked and rates of pay; that is what the man works for to get those standard wages.

Q Do you think that is all he works for?

20 A Well, generally. Why does he enter our employ if he doesn't?

Q You think he has no other consideration than the money he is going to get? A That is his means of livelihood the same as any other man.

Q And you could cut him off like a thistle before the frost any time you wanted to do it? A I didn't say that.

Q I think there are other considerations. Young was hired on the 10th of June, 1920—

MR. LAIRD: Objected to as a statement of fact.

30 Q When he went into your service there were certain rules

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and regulations that governed his conduct in a higher way than merely earning wages; what were they?

A I don't understand that Young was fired. He was laid off on a reduction of staff.

Q That is not answering my question. I am talking about the word "hired." When Young was hired certain rules and regulations wider than wages and so on applied to him and to every other man in those shops; what were they?

A General rules of wage agreement No. 4.

Q The general rules of wage agreement No. 4 applied to¹⁰ him? A Yes.

Q And you did apply it to him? A Insofar as the first two references was made, yes.

Q I see on exhibit No. 2—look at it. You have been familiar with it for years, haven't you?

A Yes.

THE COURT: That is agreement No. 4?

MR. McMURRAY: Yes, my lord.

Q Prepared and printed, I believe you told us, by your railroad down East, in Montreal? A Yes, negotiated for there;²⁰ I don't know where it is printed.

Q And this states that it is the "Rates of pay and rules of service for Locomotive and Car Departments." A Yes.

Q That is the way you interpreted that agreement to apply? A Yes.

Q To apply to all employees? A It doesn't say all employees.

Q Well, it is for the Locomotive and Car Departments.

A Yes.

Q Well, you didn't suppose it applies to the brick wall outside. It is to the workmen in there, isn't it. A Yes.

Q That is, to the men who work for the locomotive and car departments of your railway, isn't it? A Yes.

Q And this interpretation, this schedule and rules are printed and put on there by your own railroad, isn't it?

A We use those as our regulations.

Q It is your own printing.

MR. LAIRD: He didn't say that.

10 Q Didn't you tell me it was printed in the East under your instructions?

MR. LAIRD: No.

A No, no.

MR HAFFNER: It doesn't purport so to be on the front, does it?

Q Looking at wage agreement No. 6, exhibit 3, and looking at the outside of that, Mr. Eager—you have been familiar with that for a long time? A Yes.

20 Q And it states there "Rates of Pay and Rules governing services of employees in Motive Power and Car Departments Federated Trades." A Yes.

Q What were the Federated Trades? Would you just explain that? What do you mean by the term "Federated Trades"?

A Federated Trades compose the different crafts, that is, machinists, boilermakers, pattern-makers, blacksmiths, moulders, pipe fitters, and car men.

Q And they are federated for the purpose of contracting their schedules? A They are federated, I suppose, for their own interest.

30 Q But they federate together for the making of the contract?

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BY THE COURT:

Q You include machinists? A Yes, machinists.

BY MR. McMURRAY:

Q And they federated together for the purpose of making their contract, that is why they are called "Federated Trades."

A That is the name they have given to the organization.

Q But still the machinist is a craft by itself in the American Federation of Labor? A Yes.

Q But for the purpose of making a contract either with you or with the other railroads collectively they are federated together, and called the Federated Trades?

A Yes.

Q This is "Rates of Pay and Rules governing services of employees in Motive Power and Car Departments Federated Trades," and came into effect on the 1st of December, 1922? So I take it that you applied, as the inscription on the outside says, these regulations to all employees in the motive power and car departments?

A Generally, yes.

Q Why do you say that word "generally"? Why not come all the way and say that it did. It is a fact that it was done absolutely. There was no differentiation in the treatment of any men, was there, Mr. Eager? You never differentiated any of your employees?

A In some respects.

Q In respect to the provisions of this agreement they were all treated alike? A As far as the hiring was concerned, yes.

Q And as far as their work? A Yes.

Q You applied to those men the provisions set forth in wage agreements Nos. 4 and 6, didn't you? Isn't that right? A Yes, 30 generally.

Q Now, there did come a time about the 9th of June, last year, when you for the first time departed from that policy?

A I can't go on with that.

Q You what? A No.

Q Did you ever before differentiate from the provisions in that until the time came up for the dismissal of Young and his associates?

MR. LAIRD: Objected to.

A Certainly.

10 Q Can you recall a case where you did not apply the seniority rule in the reduction of staff?

MR. LAIRD: Objected to as irrelevant. What we have done in other cases has no bearing on what we did in this case.

THE COURT: It is relevant in this way, that the witness has said that the agreement applied generally, and the purpose of this is to narrow down that statement if he can. You may answer.

A Towards the year 1927 there were large numbers of men removed from the staff by reduction, and they weren't all done
20 by seniority.

Q That was on this very occasion? A No.

Q At the time Young was released there was a group of senior men released with him were there not?

MR. LAIRD: Objected to.

A There were other men released with Young.

Q Some ten other men?

MR. LAIRD: Objected to.

A I don't remember what particular number.

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Q A short time before that there was a reduction of staff in the C. N. R.; there was a reduction of staff in Transcona.

MR. LAIRD: Objected to as irrelevant.

THE COURT: You may answer it.

A Yes, there was.

Q And the seniority rule was applied in Transcona. You dismissed men in Transcona who were not members of Division No. 4, and men who were members of Division No. 4, and you observed the seniority rule as provided in wage agreements 4 and 6 in that reduction? 10

MR. LAIRD: Objected to.

Q Did you not, Mr. Eager?

THE COURT: You may answer.

A In the first instance; latterly not so.

Q In the first instance. That was in the year 1927. A Yes.

Q When was the first reduction in the shops in Transcona in 1927? A I couldn't say from memory.

Q In the early part of the year? A Yes.

Q In those occasions you observed the seniority rule?

A In the first instance; later that was changed. 20

Q Why did you change that? A In order to bring employees into the service that could not be dispensed with. Their seniority had no governing factor.

Q I am sorry I don't just get that. Would you mind repeating that answer? A In order to retain in our service employees whose duties found it necessary for us to keep them in our employ, and seniority was not a factor.

Q That is, it wasn't convenient for you to keep a senior man when you could get a better man who wasn't senior, is that the plain language of it? A Yes. 30

Q The company did not care what the contract was and got rid of the senior man if they could get a better one?

A These were men who did a special class of work, and the senior men were not capable of doing it.

Q Isn't it provided, as a matter of fact, and hasn't it always been provided that the efficiency of a man cannot be questioned after he has been in the service a certain length of time?

MR. LAIRD: Objected to.

A Well, there is a general provision in there that there is a certain length of time for him to qualify, but we have a perfect right to question his ability at any time.

THE COURT: Perhaps the rules ought to be referred to on that. We will adjourn for lunch.

(Court adjourned at 1 p.m. May 14, 1928 to 2.30 p.m. same date.)

2 p.m. May 14, 1928.

BY MR. McMURRAY:

Q You have had a working rule that after an employee had been a month in the service he could not be dismissed without an investigation? A Something to that effect, yes.

Q And you did keep a seniority list of the machinists in your shop? A We supply a list of the men in the order in which they entered our employ to the regular committee.

Q That is not what I asked. I asked you if you kept a seniority list of your machinists? A Yes, they do have that list.

MR. McMURRAY: I would ask my learned friends for that seniority list. (List produced.)

Q That is a list of the machinists in the Fort Rouge shops where the plaintiff worked was kept, and the men's names were entered on that according to the time at which they entered the service, is that right? A No, I don't think it is made out in

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detail like that. These lists are made up periodically for general information, principally for the committees, and as a man is hired they do not have that man right on the list.

Q They do not put him on the list? A No, it might be done but I don't think so.

Q Do you ever see one of those lists? A Oh, I see them when they are first made out.

Q How long have they been keeping those lists?

A I don't know; there was an understanding a few years ago where the committee was to be supplied with the list. Prior to that we did not keep them at all.

BY THE COURT:

Q Prior to what? A Prior to——

BY MR. McMURRAY:

Q To wage agreement No. 1 you did not keep a seniority list of names? A No, it is only five or six years.

Q Seniority rights were never recognized before?

A No, not in the shop.

Q Weren't you yourself a party to a bargain many years ago for seniority rights in those very shops? 20

A No.

Q Didn't you make an agreement in May, 1910?

A No.

Q Didn't you sign for the Canadian Northern Railway yourself? A I don't think so.

Q Did Mr. Hungerford? A Mr. Hungerford was the superintendent of rolling stock at that time.

Q Didn't he sign a contract in 1910 in May of schedules of rules and rates governing boilermakers, specialists, washout men, and helpers employed on the C. N. R. 30

MR. LAIRD: Objected to as irrelevant.

THE COURT: What is the date of that?

MR. LAIRD: 1910. The point is this, the witness has never said there were seniority rights in the shop.

THE COURT: Suppose there were some put in force in 1910, and they expired in 1918, what would be the use of them? It is only the present ones that are material. You had better work back.

BY MR. McMURRAY:

10 Q There are seniority rights at the present time?

MR. LAIRD: Objected to.

Q You keep that list?

THE COURT: At the time the plaintiff was employed?

Q At the time the plaintiff was employed?

BY THE COURT:

Q What is the answer to that? A Yes, there is a list.

BY MR. McMURRAY:

Q I show you a list. What is that?

A It is a list headed here "Fort Rouge machinists."

20 Q Do you know where it comes from? A It is a copy, I think, of the list.

Q Where is the list itself? A We do not keep any master list.

Q Well, this is a copy of something. What is it a copy of?

A That is made up of the record as carried in the record office at the station.

Q Is this a true copy of the record that you have at the station? A I can't say that it is or not.

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MR. McMURRAY: Well, I would ask my learned friend then to produce the original.

MR. LAIRD: You haven't asked to produce any such thing.

MR. McMURRAY: I have served a subpoena upon this witness to bring all documents, and anything bearing upon this matter.

MR. LAIRD: It was a mere matter of courtesy I handed my learned friend that. I wasn't required to.

MR. McMURRAY: This man was superintendent of the company. 10

THE COURT: I understand from what the witness said that this list that you have in your hand is made up by extracting certain entries from larger records kept at the office at the Depot?

THE WITNESS: Yes, kept in the record office.

MR. LAIRD: The subpoena, my lord, refers to documents connected with the hiring of the plaintiff.

BY MR. McMURRAY:

Q You say there is no seniority list kept?

A There is a list of the men kept with the record of when they entered the employ. 20

Q That is, a seniority list? A To all intents and purposes, yes.

Q In fact, it says on the outside of it that it is a seniority list, doesn't it? A That is what it says on there.

Q Mr. Tisdale put it in on his examination for discovery as the seniority list. The seniority list of the Fort Rouge Locomotive Shops as at June 1st, 1927; that is correct? A Yes, that is there.

THE COURT: You are reading from the title page of this document. 30

MR. LAIRD: A title page of a document does not prove a document. He produces an agreement here and says, "Is that so and so" and never proves the signature, or never proves anything. I can read the document as well as your lordship.

THE COURT: Put it in for identification.

(Document referred to as seniority list, produced and marked Exhibit "A" for identification).

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Q I see this list runs back to the 1st day of June, 1901 to Mr. Lister, who was pensioned on June 1st, 1917, so I take it—

10 THE COURT: That document is not in as evidence, and the contents should not go in.

Q Now, witness, you say there was seniority lists or lists supplied to the committee under these Wage agreements, 1, 4 and 6. You are trying to tell us that?

A We supplied a list of employees upon request of the committee, yes.

Q I suggest to you that seniority rights had been recognized by your company as far back as 1901, twenty-seven years ago?

MR. LAIRD: Objected to. What the company has done in
 20 other cases is quite immaterial.

THE COURT: 1901 is remote. They may have expired or changed. What we want is what was in force during his employment. Anything else is irrelevant. Of course, what may be in force at this time may have originated in 1901.

MR. McMURRAY: That is what I am trying to prove, my lord.

BY MR. McMURRAY:

Q When did this seniority provision under which the plaintiff continued in your hiring, when did that really originate?

30 MR. LAIRD: I object to that. My learned friend is making statements that are not justified by the evidence at all.

MR. McMURRAY: Well, I will have to work up to it.

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Q Is the plaintiff's name entered on that seniority list?

THE COURT: What one, exhibit "A" for Identification?

MR. McMURRAY: Yes.

THE COURT: It will speak for itself when it is put in. In the meantime, you can't use it.

BY MR. McMURRAY:

Q When was the plaintiff's name entered on that list?

A I couldn't say.

Q You don't know? A No.

Q Was the plaintiff's name entered on any seniority list when he entered the services of the company?

A No, not at that time, I don't believe.

Q When would it be entered? A That is hard to say definitely; whenever a list was made up, if there was one made up after he entered the service.

Q Did the plaintiff have seniority rights in any other way apart from the provisions of wage agreements 4 and 6?

MR. LAIRD: I object. My learned friend is assuming that which your lordship has to pass upon. He is assuming that the plaintiff had rights. 20

Q What seniority provisions had the plaintiff apart from wage agreements Nos. 4 and 6?

A Those are established if any workman performs his work properly and has good conduct.

Q What were they? A Not specified in anything.

Q But you must explain to us what they were. He had certain rights under the agreements—we will say for the sake of argument — 4 and 6.

MR. LAIRD: I object to statements of that kind.

THE COURT: You may assume a supposititious case.

BY MR. McMURRAY:

Q Had he any rights, and if so, what were they?

A He had the same rights generally accorded to workmen who conduct themselves properly.

Q What are they? A He continued in the employ as long as we required his services.

Q In preference to other men? A Not particularly.

Q In preference to men junior to him?

10 A Not particularly.

Q Where are there any seniority rights in that?

MR. LAIRD: He didn't say there were any.

MR. McMURRAY: Yes, he did. I will ask the question again.

Q I ask you this, witness: Is there any provision for seniority rights for the plaintiff other than those set forth in wage agreements 4 and 6? What is your answer?

A Not other than that document, except what he establishes by his good behavior. We treat every man in the shop as an individual.

20 Q What seniority rights would he establish by his good behavior? A His seniority rights by his good behavior, he would have the privilege of working in the shop provided everything was satisfactory between him and the company's representatives.

Q That is, if he was an efficient, good, workman?

A Certainly.

Q When staff would be reduced he would be continued while junior men would be released. A Not necessarily.

Q What do you mean by your statement not necessarily?

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A The seniority list is nothing more than a list of the employees as they enter the employment of the company.

Q You say that in the light of wage agreements 4 and 6?

A Certainly.

Q You know under wage agreements 4 and 6 you can't dismiss a senior man and retain a junior man?

A It has frequently been done.

MR. HAFFNER: That is a conclusion of law, my lord, from the agreement.

THE COURT: Unless it expressly provides that in words. 10

Q Immediately prior to wage agreement No. 1, two days prior thereto there was in existence a contract between you and your employees providing for seniority rights in your company, wasn't there?

MR. LAIRD: Objected to.

Q Just one day before this very thing you are talking about?

A I wouldn't say there was a contract. There has always been a gentleman's agreement between the representatives of the men and the railway.

Q What do you mean by a gentleman's agreement? Some-20 thing that can be broken any time you like?

A No, sir.

Q I think that would be a most ungentlemanly agreement.

A That is what we consider it.

Q Why do you call it a gentleman's agreement?

A Because we sat across the table and agreed to certain items of regulations, wages, and one thing and another, and there wasn't anything particularly binding to it. It was a gentleman's agreement.

BY THE COURT:

Q Was that gentleman's agreement you refer to reduced to writing? A Yes, latterly, and in printed form latterly. It used to be just typewritten, written in longhand.

MR. LAIRD: I object to that as irrelevant, something years ago.

THE WITNESS: This is 1917.

BY MR. McMURRAY:

Q And went up to the middle of 1918. It went up to when 10 wage agreement No. 1 came into effect? A Yes.

THE COURT: Unless it was in force during his time we don't want it.

MR. McMURRAY: It may be in force.

THE COURT: Well, you must prove it was in force. What are you going to do with that document you are examining on?

MR. McMURRAY: I was trying to put it in as an exhibit. Later on I feel I can get the witness to that point.

THE COURT: Then mark it for identification.

(Federated Metal Trades agreement with Canadian Northern 20 Railway System produced and marked Exhibit "B" for Identification.)

MR. BERGMAN: I don't think your lordship has got the point we are trying to make as to the seniority rights. There is no suggestion that they originated with agreements 4 and 6. They originated back years and years ago.

THE COURT: I am almost supposing that is the case. but at the same time when evidence is offered I think it should work back. But you may start off and prove something created in 1913 which went out of existence in 1918.

30 MR. McMURRAY: We are trying to show it as a right that existed years ago.

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THE COURT: If you show that has continued I will see what it is.

BY MR. McMURRAY:

Q I show you an agreement and supplement A to it?

A This is a copy of wage agreement No. 1 of the Canadian Railway War Board.

Q And the supplement to it? A This is wage agreement No. 1 and Supplement "A".

MR. LAIRD: The witness is just reading from the documents. These are not original documents. My learned friend might as well give the evidence.

BY THE COURT:

Q Do you know those documents you are looking at, witness? A Yes, sir.

MR. LAIRD: That purports to be a printed copy of a document, but it doesn't bear any signature.

THE WITNESS: No, it is all printed.

THE COURT: At most it would be a copy.

MR. McMURRAY: Yes, it is a copy, my lord.

THE WITNESS: Supposedly, yes.

20

BY MR. McMURRAY:

Q Did you have copies similar to that sent to your managers in the shops like you did with exhibits 2 and 3?

A Yes, I think they got copies of this wage agreement, No. 1. This is particularly the application of the McAdoo award.

Q And it was put out in your shops to your foremen and officials as wage agreements Nos. 4 and 6 were?

MR. McMURRAY: I tender that, my lord, as an exhibit.

MR. LAIRD: I object to that. It is a copy of a document. Another objection is that the plaintiff has no connection with it at all.

THE COURT: If this document were sent out it is an original. If it is sent from the office to the men, it is an original so far as the men were concerned, no matter whether it is only printed or not.

MR. LAIRD: If an agreement is signed and then copies are made and sent out broadcast throughout the world for the convenience of the men or the officers that does not, with deference, make it an original.

THE COURT: It does so far as the recipient is concerned. If I send out a copy of a letter to a person, that is really an original so far as I am concerned and he is concerned. It is what I gave him.

MR. LAIRD: Yes, it is what you gave him.

THE COURT: That is the case here.

MR. LAIRD: No.

THE COURT: If this document is what was sent out to the 20 men, that is the original so far as the men are concerned.

MR. LAIRD: It is the officers.

THE COURT: The recipients.

MR. LAIRD: But that does not prove it. It purports to be an agreement between two associations. We could very easily dispense with the rules of evidence if in the case of an agreement or contract of hiring having it signed, printed and broadcast over the country made it an original. With deference, it still remains a copy of an agreement.

THE COURT: In one sense, yes, and in another sense, an original.

MR. LAIRD: With respect, I do not see how there can be more than one original, or how anything is an original that is not an original.

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THE COURT: It is very simple; what was sent to the men was what guided the men.

MR. LAIRD: That may be.

THE COURT: So far as the men were concerned that was the document they received. That is the document he received and worked by. Now, it does not matter whether it corresponds with the one made out by hand and kept on file in the head office or not.

MR. LAIRD: Yes, but when my learned friend is pleading it as a contract and relying on it as a contract. 10

THE COURT: But in so far as it regulated the plaintiff's work.

MR. LAIRD: Just that far, my lord.

THE COURT: Well, insofar as that goes.

MR. LAIRD: There is the other objection, that it is entirely irrelevant, years before the plaintiff had any connection with it.

THE COURT: Well, that is another point.

MR. HAFFNER: When the witness says he sent this out he said he sent it to the other officers. No talk of sending it to the men. 20

THE WITNESS: We made no distribution to the men.

THE COURT: Sent to the shop where the men are employed.

MR. HAFFNER: No, to the foreman.

THE COURT: Foreman of the shop where the men are employed?

MR. HAFFNER: That is before the plaintiff's employment at all.

THE COURT: This is only evidence if it is connected up, or continued into the employment, and counsel has undertaken to connect it, and I am allowing it in the usual way. 30

THE WITNESS: What connection is to be made by that?

THE COURT: You will have to be patient.

MR. McMURRAY: You will find out in a minute.

MR. HAFFNER: Should it be for any more than for identification until it is connected up?

THE COURT: I will take counsel's undertaking that he will connect it up. If it is not, I will strike it out and disregard it.

(Wage Agreement No. 1 and Supplement "A" produced and marked Exhibit 4.)

BY MR. McMURRAY:

10 Q Exhibit 4 is dated the 2nd day of September, 1918. Clause 4, apparently provides in there, Mr. Eager: "When reduction of expense is necessary it may be effected either by reduction of working hours or by reduction of staff. Where staff is reduced the conditions outlined in existing, or immediately preceding schedules governing preference shall continue in effect." So that this agreement, Wage Agreement No. 1 made provisions for seniority, by a reference to other schedules that were in existence as to seniority rights. Do you know what those schedules were?

A Does that say "Seniority" in there?

20 Q "Where staff is reduced the conditions outlined in existing, or immediately preceding schedules governing preference shall continue in effect." That is dealing with reduction of the staff, and for preference. Now that preference would relate entirely to any rights a man would have by reason of his seniority, wouldn't he?

A Well, whatever preference existed, I should judge, in the previous understanding, would be covered by that article. That phraseology, or the formation of that is purely "McAdoo" originally, simply copied from it.

30 Q But it refers back to another schedule in connection with the rights of men at the time of the reduction of staff, doesn't it? A Yes.

Q What other schedules had you in force with your men at the time wage agreement No. 1 was contracted?

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A I believe there was an agreement of one or two years' standing.

Q Now, I will show you exhibit "B" for purpose of identification. That is the federated railway contract. I suggest to you that is the contract that is referred to in wage agreement No. 1. If you will turn to the back, Mr. Eager, you will see that it is signed by yourself?

A That is right.

Q That is the agreement which provides for the seniority rights in wage agreement No. 1? 10

MR. LAIRD: That does not refer to seniority rights at all.

MR. McMURRAY: The witness said it did.

MR. LAIRD: No, he corrected you.

BY MR. McMURRAY:

Q What does it refer to?

A It refers to the regulations under which the men in the shop work.

Q When the staff was reduced? A Yes, and hired.

Q "Where the staff is reduced the conditions outlined in existing, or immediately preceding schedules governing preference shall continue in effect." Now, that would be the only one in your shop, would it, at Fort Rouge, where the plaintiff worked governing seniority at the time of the reduction in staff?

A Yes, that is the arrangement we had in the shop.

Q That is the arrangement signed by yourself?

A Yes, sir.

Q Signed on behalf of the other parties to the contract by whom?

MR. LAIRD: I object to that.

MR. McMURRAY: That is a point I took, and your lordship made a ruling on it.

THE COURT: That is different.

THE WITNESS: There is no signature here.

BY MR. McMURRAY:

Q You negotiated this? A Yes, this one.

Q Who were the men who signed on behalf of the men?

MR. LAIRD: I object to that.

MR. McMURRAY: He was there.

10 MR. LAIRD: I dont' care whether he was there. That is not the way of proving the contract.

THE COURT: Too much involved in the question.

BY MR. McMURRAY:

Q I suppose that agreement in front of you was sent out by you or under your instructions to your shop?

A The superintendent of the shop, and his general officers would receive a copy.

Q Would receive copies of that? A Yes.

MR. McMURRAY: I would ask that that now be made an
20 exhibit, my lord.

MR. LAIRD: I would object. The document is not proved, and irrelevant.

THE COURT: It is in the same position as this exhibit 4. If you connect it up, on that undertaking I will put it in.

MR. McMURRAY: I think I can do that.

THE COURT: You will have to undertake to do it, otherwise I will have to exclude it all later. I do not want to put it in unless you connect it up, but if you do not they are absolutely

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irrelevant, both this exhibit 4 which I have allowed in on that understanding, and this.

MR. McMURRAY: I think I can do it; I don't think there is any doubt of it at all.

THE COURT: Well, you ought to know your case, and know what you are willing to undertake, otherwise it had better be left out. On that undertaking I will allow this agreement to go in as exhibit 5.

MR. McMURRAY: Yes, thank you, my lord.

(Federated Metal Trades agreement formerly marked exhibit 10 "B" for Identification now produced and marked exhibit 5.)

BY MR. McMURRAY:

Q Do you remember the drawing of this contract as set out in Exhibit No. 5? A I have some recollection of it, yes.

Q I presume that you and other men, the officials of the Canadian Northern Railway System, met with representatives of the machinists and others? A Yes.

Q And you carried on a long negotiation with them in connection with wages, working conditions, and all the other matters discussed, and which were afterwards embodied in this contract? 20

MR. LAIRD: Please, Mr. McMurray, don't—

Q Is that right? A Wages were the broad matter for discussion.

Q Now I see a clause in here, clause A—Article 5: "When reduction of expenses is necessary the hours will be reduced to at least eight hours per day, five days per week, in back shops before men are laid off." What are back shops? A Back shops are those in which the heavy general repairs to our equipment are conducted.

Q What was the nature of the shop that the plaintiff worked 30 in? A A back shop, Fort Rouge, if I remember right.

Q Was he a back shop man? A I think so.

Q "When force is reduced, men will be laid off according to seniority at each station, unless a satisfactory local arrangement is made otherwise." There is no question at all, is there, Mr. Eager, that this agreement as set forth in Exhibit 5 was made to cover every man in the shop?

MR. LAIRD: I object to that; that is a question of construction of the agreement.

Q Is that the agreement you made? A We made the agreement with the representatives of the Federated Trades.

10 MR. LAIRD: My lord, the agreement is in writing. What they did is there.

THE COURT: Let me see it. Mr. McMurray, this speaks for itself as to how far this agreement shall govern. I note also that it says it shall remain in force until May 1, 1917, unless continued.

MR. McMURRAY: That was continued until wage agreement No. 1.

Q Wasn't it, Mr. Eager? There was no intervening agreement drawn that you remember? A I can't just quite say. I
20 haven't any recollection of one. There might or there might not have been.

BY THE COURT:

Q Witness, let me call your attention to this language: "The above will remain in force until May 1, 1917, and from year to year thereafter unless thirty days' notice in writing by either party concerned on or before May 1 in any year." A Yes.

Q Do you know of any such notice being given?

A No, I can't say at the moment.

Q Would you know? A I can ascertain definitely on that.

30 Q You would know if one were given? A I would, notice would come to me.

Q Could you ascertain that? A I will.

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BY MR. McMURRAY:

Q I believe you told me just before lunch that this seniority right, whatever it may be, at the time of reduction of staff had been observed by your company up until some time in the year 1927 at the Transcona shops, isn't that right?

MR. LAIRD: Surely not.

A They were observed in accordance with that understanding, I just forget the wording of it. It is a subject for negotiation, the reduction of staff.

Q But I say it had been observed. You told me before lunch that there did come a time latterly in the Transcona shops when that rule was not observed so far as all the men are concerned?

A Not particularly the Transcona shops.

Q But we were talking about the Transcona shop and I asked you at the time men were reduced in the Transcona shops in 1927 wasn't the rule not observed then, the seniority rule in relation to all employees—

A No, not to all employees.

Q And didn't you tell me at the first instance it was, and afterwards on the second occasion it wasn't? 20

A Yes, with the same men that were originally affected.

Q Pardon me? A With the same men that were originally affected.

Q Would you explain that please? A Well, in the first instance, we will say for argument's sake, there were fifteen men laid off.

Q Yes? A According to seniority. And then a few days later after that some of those men that were not senior men were taken back into the service.

Q Some days afterwards? A Yes, within a very few 30 days.

Q That is, all the men were laid off, some fifteen men?

A Originally something like that, whatever the number was.

Q Were they laid off in accordance with the seniority?

A At that time, yes.

MR. LAIRD: I don't think this is relevant to the plaintiff's case.

THE COURT: No, the plaintiff wasn't in the Transcona shop.

MR. McMURRAY: No, my lord, but what I am trying to show is that this seniority covered all of them.

10 BY MR. McMURRAY:

Q The seniority rights are the same in all shops?

A Practically.

THE COURT: Yes, but if there were violations in Transcona it wouldn't affect you?

MR. McMURRAY: No, it is the very reverse I am trying to prove. At the same time they broke them here, they punctiliously observed them some place else. My learned friend argues there is no seniority rights at all.

20 THE COURT: No, but you establish there are some and they are violated, that is your case. Whether they were observed or violated with hundreds of others is immaterial. Let us not get far afield.

BY MR. McMURRAY:

Q Do you know Mr. Tallon, president of Division No. 4 personally? A Yes.

Q Mr. Tallon was here a good deal in the months of May and June, wasn't he? A Of this year?

Q Yes? A Possibly, I only saw him once.

30 Q I mean last year? A Well, I don't see Mr. Tallon very frequently. I don't suppose it would average once a year in Winnipeg.

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Q Did Mr. Tallon demand of you or enter into an arrangement with you that junior men of Division No. 4 should be retained while other senior men should be dismissed? A No.

MR. LAIRD: I object to the question.

THE COURT: I suppose it doesn't matter much with the answer given. What would be the difference if they did make any agreement with this fellow?

MR. McMURRAY: That my man was not honestly dismissed.

THE COURT: That would depend on his own rights, not upon conspiracy.

MR. McMURRAY: I submit it would be evidence of the fact that this man was not dismissed on the ground my learned friend contends.

THE COURT: That doesn't matter. Was it a violation of his rights? His rights depend on his contract, not on what outsiders did at all.

MR. McMURRAY: That may be, but I am using it to offset my learned friend's position.

THE COURT: Don't deal with an advanced position. Deal with the present position.

MR. McMURRAY: All right, my lord.

BY MR. McMURRAY:

Q Did you take part in the dismissal, or give instructions for the dismissal of the plaintiff?

A No, not any particular man.

Q Did you give instructions for the dismissal of any man?

MR. LAIRD: I object to that as irrelevant.

A No.

Q Who authorized the dismissal of the plaintiff?

MR. LAIRD: I object.

THE COURT: Wasn't there some notice in writing?

MR. McMURRAY: Yes, my lord, there was a notice, but I want to know from whom the authority came.

MR. LAIRD: It is a very peculiar position. Mr. Eager, the witness, is a defendant in another suit brought by my learned friend for another plaintiff where conspiracy is charged against Mr. Eager, and my learned friend is examining now on charges he has set up in the other suit against Mr. Eager personally, and
 10 I would ask your lordship to confine this evidence very strictly. I am taking technical objections, but it is not fair to Mr. Eager as defendant in another suit.

THE COURT: I didn't know that, but we have already ruled about keeping away from these outside issues, Transcona shops, and things of that nature, and you have got to keep that in mind, Mr. McMurray.

MR. McMURRAY: Yes, my lord.

THE COURT: Insofar as it affects the plaintiff you are entitled to have this information.

20 BY MR. McMURRAY:

Q. Now, Mr. Eager, who authorized the dismissal of the plaintiff?

THE COURT: You have pleaded that you got your notice from a man named Wedge.

MR. McMURRAY: That is where we got the notice, but I want to know who in authority gave that dismissal.

THE COURT: Is it denied that Mr. Wedge had authority to give such a notice?

MR. BERGMAN: Dismissal is denied. The letter is denied.

30 THE COURT: Everything is denied in the statement of claim. Is that letter in paragraph 8 of the statement of claim denied in the defence?

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MR. BERGMAN: The end of paragraph 4.

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THE COURT: That may be a very close interpretation of the letter. It does not use the word "dismissal" at all. The letter does not really state that he is dismissed.

MR. BERGMAN: In Paragraph 7, my lord, of the defence, he says: "And did not by giving any such notice, or at all, break the alleged or any contract with the plaintiff."

THE COURT: "The defendant did not on the 9th of June, 1927, or on any other date, wrongfully or without cause or in violation of any contract of hiring of the plaintiff," and so and so. Doesn't he frankly admit that he gave the notice, but denied that it was done wrongfully in breach of contract?

MR. McMURRAY: My own impression is that it was denied, and he made us prove everything.

BY MR. McMURRAY:

Q. Had Mr. Wedge authority to dismiss the plaintiff?

A. He had authority to make a reduction in staff, or in expenses.

Q. A permanent reduction? A. If need be.

Q. If need be? Now, Mr. Wedge takes his instructions from you, Mr. Eager, in matters of that kind?

A. Generally, I give the instructions, or they are discussed with Mr. Hedge, who is Works Manager, and Mr. Hedge is the gentleman who gives instructions to the shop superintendent.

Q. Mr. Hedge is ill at the present time and unable to give evidence? A. Yes, has been ill ever since the early part of January.

Q. Of this year? A. Yes.

Q. Was there a reduction of staff at this time?

A. Yes.

30

Q. Was that a permanent reduction? A. To all intents and purposes.

Q. And I believe you stated that Mr. Wedge would have authority to dismiss permanently? A. Mr. Wedge received the authority to reduce the staff, which reduces the expenses.

Q. And under that authority he would have authority to dismiss the plaintiff from service? A. Well, we didn't specify the dismissing of a man when we lay him off for reduction of staff.

Q. That is what it amounts to?

MR. LAIRD: Please don't. The document may be put in. Don't answer, Mr. Eager.

10 MR. McMURRAY: We claim there, my lord, that he was dismissed.

THE COURT: That is by this letter, by this notice?

MR. McMURRAY: Yes.

THE COURT: The notice then is the evidence. The plaintiff was wrongfully dismissed by this letter.

Prove the wrongful dismissal.

BY MR. McMURRAY:

Q. You told me you had authority over these chaps so far as the dismissal of the men, had you? A. I had authority insofar
20 as the dismissal or reduction of staff in all these shops.

Q. Do you know what arrangements were made, or negotiations, with Division No. 4, almost at this very time for the dismissal of the plaintiff?

MR. LAIRD: Objected to.

THE COURT: The question is harmless. Yes or no can be the answer. A. Does that apply particularly to that individual?

THE COURT: Your answer must be yes or no to that if you can remember. It is perfectly harmless.

MR. LAIRD: Yes, but he is a defendant in an action for con-
30 spiracy.

THE COURT: That is a different point. We are not going into the issues outside of this. The question may be answered.

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Q. You don't know? A. No, not about that particular question.

Q. Do you know if a list was drawn up in your office by officials of Division No. 4, and by Mr. Hedge and Mr. Wedge, and on that list the plaintiff's name was written?

MR. LAIRD: Objected to.

THE COURT: Objection sustained.

MR. McMURRAY: Of course, it may be contended, my lord.

THE COURT: It is very simple. The witness was in charge of the reduction of staff. Quite immaterial of who asked him or urged him to do it, if anyone did it.

MR. McMURRAY: That is the point that has been contended for a long time, but, with respect, my lord, may I not be permitted to do this, my learned friend is going to contend before he gets through that my client was a bad man, and inefficient, and all sorts of things, and I want to show through this witness that he was dismissed by reason of other forces altogether that were actually dominating and controlling the company.

THE COURT: You may have an action for damages against other persons.

MR. McMURRAY: My learned friend left the innuendo that he is afraid I am trying to get evidence in another suit. I say I am not trying to do that, but I want to show that this man was not dismissed for cause.

THE COURT: Do you strengthen it by stating other parties urged his dismissal?

MR. McMURRAY: Yes, with respect, I say so. If I can show there were other reasons why he was dismissed.

THE COURT: I don't care what the reasons were if there was no violation of your agreement, you have no cause of complaint.

BY MR. McMURRAY:

Q. There had been discussion from time to time with officials of your company concerning whether these agreements applied to all the men or not, had there?

A. I don't remember.

Q. It was taken for granted by you and your officials that they did apply to all the men, and was so administered, isn't that right?

MR. LAIRD: Objected to.

MR. McMURRAY: Here, my lord, is the position: Here is the wage agreement. We say it applied to all the men. We say
10 the company took that position and applied it to all the men.

THE COURT: Wage agreements are very indefinite. We have two or three put in.

Q. Take Wage Agreement No. 4. That was in force at the time the plaintiff was hired. As a matter of practice, and as a matter of fact, you applied the provisions of that to all the men in the shops, did you not?

A. Generally speaking.

Q. There had been a contest or a demand for a representation in negotiating those agreements or future agreements by men
20 who were outside of Division No. 4. Let me make myself clear. Employees who were not members of Division No. 4 made representations to officials of your company asking that they should have representation with your company at the time of negotiations for future schedules?

A. Not as far as my knowledge goes.

THE COURT: At that time. What time is your question aimed at?

Q. That would be in the years 1922 and 1923.

A. Those negotiations were carried on in Montreal, and I
30 was not present, and did not know anything about them.

Q. Didn't you and Mr. Hungerford and Mr. Warren meet a couple of Winnipeg gentlemen one time and discuss that matter with them?

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A. Oh, I think we have here, yes. Whether they make a representation—

Q. Even my humble self was present? A. —to the company in an official way I don't know.

Q. At that time Mr. Warren was manager here?

A. Yes, he was here then.

Q. Did it come to your knowledge that a communication had been received from Sir Henry Thornton upon that very matter by men here? A. No.

Q. You didn't know of that? A. No. 10

Q. Who would Sir Henry Thornton discuss that matter with if he would discuss it here in Winnipeg?

MR. LAIRD: I can't see the relevancy of this on the plaintiff's contract. We will be here until Christmas if we are going into discussions back to 1922.

THE COURT: Your question is not proper.

Q. Was it discussed with you? A. No, sir.

Q. Was it discussed with other men in your offices here to your knowledge? A. Not to my knowledge.

Q. Do you know if Sir Henry Thornton wrote a letter upon the subject? A. I do not. 20

MR. LAIRD: My learned friend had a plea in the statement of claim setting up certain letters from Sir Henry Thornton this morning, and asked your lordship's consent and approval to strike it out.

THE COURT: State your question, and we will deal with it.

BY MR. McMURRAY:

Q. If Sir Henry Thornton had said to the men, "We can't give you representation on these schedules, but while there is every desire to afford reasonable opportunities for different sections of the men to select their own representatives, as a matter of which 30

might be called 'practical politics' I can see no way of handling matters with success any differently to the present practice, and any change would probably offend a good many more of our men than it would please. In saying this, however, I want to make it quite clear that any individual who feels he has been unjustly treated as a result of this collective bargaining, has always the right to present his case to his officers for consideration, provided this is not carried to an impossible degree and to such a limit as to defeat the purpose of reasonable individual representation." 10 Now, do you agree with Sir Henry Thornton that that was collective bargaining on behalf of all the men?

MR. LAIRD: I object to that.

THE COURT: If Sir Henry Thornton made this statement, do you agree with it? That is your question, Mr. McMurray?

BY MR. McMURRAY:

Q. Do you agree with that?

MR. LAIRD: How does that affect the plaintiff's case?

THE COURT: I don't know, I don't see it at the moment. I don't see what bearing it has on the issue.

20 BY MR. McMURRAY:

Q. Do you agree with this from Sir Henry Thornton?

MR. LAIRD: My learned friend is making statements of fact not in evidence.

THE COURT: You may embody that in a supposition, or his opinion, but the witness is not here as an expert on these things. Collective bargaining is not an issue here.

MR. McMURRAY: Oh, absolutely, my lord.

THE COURT: Not as a disputed issue.

MR. McMURRAY: I say there was a collective bargaining 30 that covered these men.

THE COURT: Well, there was in the sense that these men were represented by officers of an organization, some of them.

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BY MR. McMURRAY:

Q. Supposing Sir Henry Thornton in the light of what you said in regard to your dealing with wage agreements Nos. 4 and 6 refers to it as, "apparently, this practice, while it may have created a certain amount of dissatisfaction with respect to your own organization, has proven a reasonably efficient way of bargaining, and probably represents the only way in which certain bargaining can be carried on with any degree of satisfaction to either side, although as a matter of fact it largely rests with the men themselves collectively to say who shall represent them, and in such cases large majorities must necessarily rule." In that communication Sir Henry has apparently made the statement—

THE COURT: If he did.

Q. (continuing) Yes, if he has made that statement that this is a system of collective bargaining covering all the men in the shops, would you agree with him?

MR. LAIRD: I object to that. My learned friend is reading a statement and asking for an interpretation. That is for your lordship purely and simply.

MR. McMURRAY: I am asking him if he agrees with it. 20

THE COURT: What value would it be? His opinion may be entitled to the utmost respect, but it may not be of service to us in this issue.

BY MR. McMURRAY:

Q. Sir Henry Thornton is president of the Canadian National Railway Company? A. Yes.

Q. And of the Canadian Northern Railway. A. He is president of all the incorporated companies that constitute the Canadian National Railway.

Q. And he would have authority in connection with the hiring of the men? A. I should judge he would have authority.

THE COURTS: How would this witness prove the authority?

MR. LAIRD: Has he ever hired a machinist since he came to Canada?

MR. McMURRAY: There has been no individual machinist hired in twenty years, and my learned friend knows it.

MR. HAFFNER: How are they hired? Are they hired in squads?

BY MR. McMURRAY:

Q. Did the plaintiff wait upon you after his dismissal?

A. No.

Q. Did he come to your office? A. I can't say. I was out of the city at the time.

10 Q. Did a group of men, of whom Young was one, wait upon you in connection with the dismissal? A. No, sir.

Q. Would you deny that Young waited upon you?

A. I have no recollection of him waiting on me. I was out of the city from the 4th to the 16th of that month.

Q. From the 4th of June to the 16th of June you were out of town? A. Yes, I was in Montreal.

Q. Did you refuse to meet Young? A. No, I had never refused to meet him.

20 Q. Do you know Anderson, one of the machinists, and a member of the local council, G. B. Anderson? A. There are two or three Andersons in our employ.

Q. The local council of Division No. 4? A. I know in an indirect way a fellow by the name of Anderson, who is a machinist in Fort Rouge. I don't know whether that is his initial or not.

Q. Did he discuss with you the matter of making reductions on behalf of the men?

MR. LAIRD: Objected to.

THE COURT: The question is wide.

Q. The men who were dismissed?

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THE COURT: On behalf of the plaintiff and others perhaps?

MR. McMURRAY: Yes, the point is this: Under Agreement No. 4—

THE COURT: Yes, I know.

Q. Did anybody of Division No. 4, whose duty it was perhaps to make representations to officials of the company ever discuss with you whether they should make those reductions or not?

A. No, sir.

MR. LAIRD: Objected to.

MR. McMURRAY: That is all.

10

EXAMINED BY MR. LAIRD:

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Q. What territorial division do you have charge over?

A. Western Region of the Canadian National, extending from Armstrong and Port Arthur in the East, to the Pacific Coast, including Vancouver Island.

Q. Last year in June, 1927, there was a considerable reduction of employees in the Fort Rouge shops. A. Yes.

Q. And throughout the entire Western region?

A. Yes.

Q. Do you know roughly how many employees were laid off²⁰ in the Fort Rouge shops? A. Oh, I should say somewhere between 75 and 100.

Q. That was as result of what? A. Well, primarily it was a movement to stabilize the working hours in the shops.

Q. And what other purpose? A. Well, to bring our expenditures within the allotment for the year 1927.

Q. The wage agreement was a printed document, not bound?

A. Yes.

Q. Rather like ordinary letter size? A. Yes.

Q. Referring to exhibit 2, wage agreement 4, as it is called, did you ever see the original of this agreement at all? A. No.

Q. And you had nothing to do with the negotiation of it?

A. No.

Q. And a number of printed booklets in this form were sent to you? A. Yes, they generally came to me through the General Manager's office.

Q. I suppose you don't know where they are printed? You
10 assume they are printed in Montreal? A. I assume so, yes.

Q. Then referring to exhibit 3, called wage agreement No. 6, did you ever see the original signed agreement?

A. No, sir.

Q. And these booklets in this printed form, from whom did you receive copies? A. That comes through the General Manager's office.

Q. Through the General Manager's office to you?

A. Yes.

Q. My learned friend referred to Federated Trades on the
20 cover of exhibit 3, and you made some statement as to that being the name of the organization. To what did you refer? A. Well, Federated Trades is a phrase we use in conjunction with the different crafts that are in the shops, both metal and woodworking.

Q. Belonging to any organization, or to no organization or to— A. It is generally supposed they belong to the International organization or association of whatever craft is represented in the Federation.

Q. Represented in the Federation—what do you mean by that? A. Well, the machinists, boilermakers, and all these dif-
30 ferent crafts have an organization of their own. Like the machinists, if my memory serves me right, it is the International Association of Machinists, and those several associations are members of this Federation.

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Q. Federation of labor? A. Well, it is a federation of trades. I suppose they got the word probably from federation of labor.

Q. Of certain specific trades? A. Yes, it specifically covers machinists, boilermakers, patternmakers, tinsmiths, carpenters, sheet metal workers, carmen, who are members of these several international associations.

Q. Do you include in federated trades an employee in any trade who is not a member of any trade union organization?

A. No, we don't so negotiate with them.

Q. Wage agreement No. 1 has been referred to, and I would like to re-examine on that—

BY THE COURT:

Q. You say these trades that are federated into this organization known as Federated Trades are trades that have some international affiliation? A. Yes.

Q. Couldn't there be a trade in the shop without any outside organization at all, or just get together amongst themselves?

A. There never has been.

Q. In this agreement? A. These are all international men.

BY MR. LAIRD:

20

Q. Division No. 4, railway employees department, American Federation of Labor, as such does it organize one craft in the shops? A. Well, there are organizers or officials of the individual crafts who do organizing work.

Q. But Division No. 4, as I gather from your testimony, is a federation of a number of crafts?

A. Is a federation of a number of crafts, each of which in turn has its own craft organization. Federation No. 4, if my understanding of it is correct, is Dominion-wide.

Q. Division No. 4 is Dominion-wide? A. Yes, that covers 30 crafts employed on all the railways in Canada.

Q. Which are associated or affiliated with that organization?

A. Yes.

MR. LAIRD: My lord, some exhibits have gone in which my learned friend has undertaken to connect up, and I would like to re-examine, without prejudice, to my objection as to their being evidence.

THE COURT: Yes, unless you have to recall the witness, whichever way is the more convenient.

MR. LAIRD: It will be very short on what are in.

10 BY MR. LAIRD

Q. Exhibit 4 is the printed copy of wage agreement No. 1?

A. Yes.

Q. And attached to it is supplement "A" to wage agreement No. 1? A. Yes.

Q. What you have stated as to the printing of this and the seeing of the original in regard to wage agreements 4 and 6 applies to this also? A. Yes.

Q. This one does not appear to bear a stamp?

A. Supplement "A" is just a correction or a little revision of 20 classification and rates. That is all it amounted to.

Q. This bears the stamp of "Allied Printing Trades Council, Montreal, P.Q."? A. It is printed in Montreal.

Q. Do you know whether that concern prints for the Railway Company or for the Federation? A. I can't say.

Q. So your knowledge is that documents like that were received by you from the General Managers' office?

A. Yes.

Q. And you had nothing to do with the negotiation of wage agreement 1, Supplement "A" thereto, or wage agreements 4 and

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6? A. I was personally in Montreal in the early stages, or the commencement of the negotiations.

BY MR. McMURRAY:

Q. Of which one? A. That was during war time; but the final wage agreement No. 1 that came into effect I was not present.

BY MR. LAIRD:

Q. Once exhibit 3 was received by you and distributed to the officers under you, what happened to wage agreement No. 4, exhibit 2? A. No. 6 is supposed to supersede No. 4. 10

Q. Would it supersede No. 4 so far as its application to the shops in your region is concerned? A. Yes, generally speaking, yes.

Q. What effect has wage agreement No. 4, exhibit 2, upon wage agreement No. 1, exhibit 4, so far as the application of wage agreement No. 1 to the Fort Rouge shops is concerned?

A. None, except in the compiling of existing rates to determine whether they are correct or not.

Q. I don't understand. When agreement 4 was made in 1919, did you continue in force wage agreement No. 1? 20

A. No.

Q. What did you do with wage agreement No. 1?

A. That was discarded.

BY THE COURT:

Q. Why was it discarded? A. Because it was superseded by wage agreement No. 4.

BY MR. LAIRD:

Q. In June, 1920, was wage agreement No. 1, exhibit 4, in force in the Fort Rouge shops? A. No, wage agreement No. 6.

Q. In 1920? 30

MR. McMURRAY: I object to that.

A. Wage agreement No. 4.

MR. McMURRAY: It is a question of law whether it is or not. It is a question of law whether wage agreement No. 1 was in force or not.

THE COURT: Wage agreement No. 1?

MR. McMURRAY: My learned friend is asking about rules and regulations which were in force.

THE COURT: On what grounds do you object?

10 MR. McMURRAY: It is a question of legal interpretation of the documents themselves as to whether they bound the plaintiff or not.

THE COURT: Whether or not they are superseded is extraneous.

MR. McMURRAY: But my learned friend asked if they were in force or not. That is for the Court to decide and not for the witness.

BY MR. LAIRD:

Q. In June, 1920, supposing I had applied for a position in the
20 Fort Rouge shops, would wage agreement No. 1 have any bearing or application at all upon my employment?

MR. McMURRAY. I object. My learned friend is now cross-examining this witness.

THE COURT: Yes, he is cross-examining, but he is confined to the testimony that has been given. He can only cross-examine upon what the witness has stated to you.

MR. BERGMAN: It says, "Shall not be at liberty to cross-examine." There was a difference of opinion among the members of this Court. It says in express language it is not cross-examina-
30 tion.

THE COURT: He may cross-examine upon the matters brought out by the parties calling him.

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MR. BERGMAN: No, that is precisely what the rule says he must not do, "When a party to an action or proceeding or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or a director, officer, superintendent, or managing agent of a corporation which is a party to such action or proceeding is called as a witness by the adverse party or parties, or any of them, he may without the leave of the judge, be examined, as if an adverse witness. The opposite party or parties may then examine such witness in explanation of any matters brought out in such examination, but shall not be at liberty to cross-examine him or to examine him generally without the leave of the judge, without prejudice, however, to the right of such opposite party or parties to recall such witness in support of their own case."

THE COURT: Surely, he is not to examine generally without leave. The difficulty with the old rule was that the party's own client was put in the box under the rule and then the party's counsel went along and put his whole case in. To prevent that the rule was re-written. He is confined in this matter to the matter brought out by Mr. McMurray. 20

MR. BERGMAN: Is that the interpretation your lordship places upon it?

THE COURT: Yes.

MR. BERGMAN: My submission is that is not what the rule says.

MR. LAIRD: I will try to avoid cross-examination.

THE COURT: The effect of it is re-examination. Just confine yourself to the matter brought out. Your question did not go beyond that.

BY MR. LAIRD: 30

Q. In June, 1920, in case a machinist was hired in the shop did wage agreement No. 1 have any application to his case? What do you say? A. No.

MR. McMURRAY: I object to that, my lord. That is what we are trying, whether wage agreement No. 1, 4, or 6 did apply?

THE COURT: Probably that involves a matter of law. Still

you have sought to examine that it was in force, and you have undertaken to connect it up.

MR. McMURRAY: Not in force; I wanted to know if they were in existence.

THE COURT: You wanted to know whether an agreement was in existence?

MR. McMURRAY: In existence, but they may or may not apply. Here are a number of agreements, they are in existence, but they do not apply—

10 MR. LAIRD: Pardon me, no.

THE COURT: If an agreement is superseded, would you say it is still existing?

MR. McMURRAY: I don't agree that it was superseded.

THE COURT: That is the witness's statement that it was superseded. Perhaps the question is objectionable insofar as that goes.

BY MR. LAIRD:

Q. Mr. Eager, in the management and superintendence of the shops, after wage agreement No. 4 was negotiated did you act upon wage agreement No. 1 in dealing with any men in the shops either Division 4 or non-Division 4?

A. No.

Q. Why did you not? A. We used the existing agreement at the time.

Q. I notice that wage agreement No. 1 is with the Canadian Railway War Board. Agreement No. 4 is also with the Canadian Railway War Board. But the latter agreement No. 6 is with the Railway Association of Canada? A. Yes.

Q. In laying off the number of men you have referred to in 1927 in the Fort Rouge shops were men senior to the plaintiff laid off? A. I think there were some, yes; I can't say exactly.

MR. LAIRD: My learned friend has referred to this Feder-

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ated Metal Trades agreement. On the same conditions I wish to refer briefly to it. He has referred you to Article 5, clause A: "When force is reduced men will be laid off according to their seniority at each station, unless a satisfactory local arrangement is made otherwise."

BY MR. LAIRD:

Q. With whom would the making of such an arrangement be taken up? A. With the local committee.

Q. Of whom? A. Of the Federated Trades.

THE COURT: What is that one?

10

MR. LAIRD: That is exhibit 5, called the Federated Metal Trades.

BY MR. LAIRD:

Q. What do you mean by the representatives of the Federated Trades? A. That is a committee, that is an elective committee by their association, which represents the men in the shops.

Q. But, Mr. Eager, that was negotiated apparently in 1917?

A. Under that particular schedule it would be the representatives of the different crafts.

Q. I notice this one was signed, or purports to be signed, by 20 committees for exhibits for the various trades?

A. Yes.

Q. At that time there was no organization or federation binding them all? A. No.

Q. And you dealt with representatives from each craft?

A. Yes.

Q. Blacksmiths, and helpers, boilermakers, moulders, and patternmakers. In June, 1927, how many days a week were these Fort Rouge shops working? A. Forty hours, five days a week, eight hours a day.

30

Q. Had that been going on for some time? A. Yes, for in the neighborhood of between two and one-half and three years.

Q. My learned friend has asked you about rules and regulations being in force in the Fort Rouge shops in 1920 and you have referred to wage agreement No. 4, exhibit 2. In what way was that in force in the shops Mr. Eager?

A. Well, it was the order of procedure in regards the operating shop as regards the time men worked and the pay they received, and different methods of conducting negotiations from 10 time to time.

Q. You have in the shop, I think, it has been stated, men who are not members of Division No. 4?

A. Yes, I believe there are quite a number.

Q. The agreement is negotiated with Division No. 4?

A. Yes.

Q. And signed with Division No. 4? A. Yes.

Q. What do you do in respect of machinists or an employee who is not a member of Division No. 4 in respect to the wages to be paid? A. Well, there has never been any question arise in 20 that regard because we always pay them the standard rate.

Q. What does the company do? A. They pay the standard rate to every employee.

Q. Whether he is in Division No. 4 or not?

A. Yes, we have no particular means of knowing whether he belongs to the International Association or not at the time of hiring.

Q. Do you ask a man if he applies for a job if he belongs to Division No. 4? A. No, there is generally very little conversation when a man is hired other than to determine his qualifications 30 as a mechanic.

Q. Then in case of an increase in wages being negotiated by Division No. 4 and the Railway Association, as apparently has

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happened, what do you do as to the non-members of Division No. 4 who were in the shops?

MR. McMURRAY: I object.

THE COURT: Does he know?

Q. Do you know what you do after a new schedule or a new agreement has been negotiated between the Railway Association and Division No. 4, and wages are affected in regard to employees who are not members of Division No. 4?

A. We simply apply the rate to all the employees. That is done in the timekeepers office. 10

Q. And in case of a decreased rate? A. In the same manner.

Q. That is applied also? A. Yes, sir.

BY THE COURT:

Q. To all the men irrespective of whether they belong to Division No. 4 or not? A. Yes.

BY MR. LAIRD:

Q. Has that been followed since June, 1920? A. Yes.

Q. Then in what way was exhibit 2, being wage agreement No. 4, in force as respecting non-members of Division No. 4 in the Fort Rouge shops while the agreement was current? 20

MR. McMURRAY: I object to that. That is purely a point of law as to whether it applied or not. He has asked the witness to interpret it.

MR. LAIRD: No, I don't want the witness to interpret anything.

MR. McMURRAY: We say it was in force altogether. My learned friend comes and says how it was in force.

Q. Did you make any bargain with a man a non-member of Division 4 about putting those terms in force with him?

MR. McMURRAY: That is the same thing, my lord. 30

THE COURT: No, it is different. Had he negotiations or dealings with some individual? You may answer that.

A. No.

Q. You told my learned friend that the men were treated the same as to hours of work? A. Yes.

Q. That is whether they were Division 4 men or non-division 4 men. A. Yes, you couldn't very well work one bunch of men under one set of hours, and another bunch of men under other hours.

10 Q. What would you say as to working them at different rates of pay? Is that feasible? A. At one time we did have a sliding scale, but that was abolished a number of years ago.

Q. That is a higher scale of pay for the employee who belonged to the negotiating union and a lower scale for the non-union man.

A. No, it was a classification, more particularly—

Q. As regards experience and qualification?

A. Experience and qualification in his work.

Q. From your recollection, Mr. Eager, have you ever distinguished in the wages to be paid a union man and a non-union man?

20 A. No.

Q. Or the wages paid a union man and a non-union man?

A. No.

Q. And when I say you I mean the Company has not?

A. Not to my knowledge.

Q. You told my learned friend that these crafts were federated for the purpose of negotiating or making the agreements. What body did you have in mind?

A. These different International associations.

Q. They are federated under what name?

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A. They come in Canada according to the agreement under the American Federation of Labor, Division No. 4.

Q. Division No. 4 of that? A. Yes.

BY MR. McMURRAY:

Q. What, the Federated Trades? A. Yes.

BY MR. LAIRD:

Q. You, I believe, had nothing to do with the hiring of the plaintiff Young? A. No.

Q. And nothing to do with his alleged laying off in June, 1927?

A. No, nothing personally with it at all. 10

Q. Your knowledge was a reduction in staff was required to be made? A. That is right.

Q. Questions have been asked about the furnishing of printed copies of wage agreements 4, 6 and 1 through your office. To whom in the Company's service were, so far as you know, copies of wage agreements 4 and 6 furnished?

A. To our superintendent of Motive power, the shop superintendent, and the general foreman.

Q. That is, those three officials? A. In the Fort Rouge Shops it would be to the superintendent of Locomotive Shops, and 20 his general foreman under him, and he would supply it in turn to those later.

Q. The superintendent and the general foreman?

A. Yes.

Q. What about supplying them to the rank and file of machinists, boilermakers, or employees?

A. We do not undertake to do anything of that nature; that is carried on, I suppose, by the men.

Q. By what men? A. The employees in the shop of the Association. 30

BY THE COURT:

Q. Do you know whether the men are supplied in that way with these copies? A. The supposition is to that effect.

BY MR. LAIRD:

Q. But the company as such does not supply a copy of these to the individual employees? A. No, we do not.

BY THE COURT:

Q. Do you know whether the men generally are familiar with the terms of these agreements, with the contracts Nos. 4 and 6 while they are in force? A. Yes, I think they are.

BY MR. LAIRD:

Q. They are negotiated with Division No. 4 which represents their members, I take it? A. Yes.

Q. When an employee enters the service of a railway company for the first time is he furnished by the railway company with a copy of the current schedule in force between the railway company and Division No. 4? A. No.

Q. The superintendent of the shops is he, or is he not, furnished with copies for that purpose? A. No, we make no provision for supplying the employees in the rank and file with copies of those undertakings.

Q. But you have told his lordship that you believe that Division No. 4 does supply their members?

A. I would presume they did, yes.

MR. LAIRD: There are some points I may require to ask Mr. Eager about later on, but I think that is all in the nature of re-examination.

MR. McMURRAY: Might I, my lord, ask a question or two in explanation of what the witness has stated to my learned friend?

THE COURT: Yes.

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RE CROSS EXAMINATION BY MR. McMurray Under the Rule:

Q. Did I understand you to say, Mr. Eager, that these Federated Trades negotiating their contract were affiliated with Division No. 4 in Canada?

MR. LAIRD: There is no provision apparently made in the rule for such re-examination.

THE COURT: The witness comes in as part of the plaintiff's—

MR. LAIRD: But re-examination is on new matter that the 10 cross-examining counsel goes into. I have tried, whether I succeeded or not, to keep away from any new matter, and under that principle I do not see how there can be any re-examination.

THE COURT: If you succeeded? What is the question?

MR. McMURRAY: I understood Mr. Eager to say that these Federated Trades that negotiated that wage agreement of May 1st, 1916, were affiliated under Division No. 4 in Canada.

BY MR. McMURRAY:

Q. The question I ask, Mr. Eager, is it or is it not a fact that the wage agreement with the Federated Trades was made long 20 before Division 4 came into existence?

A. Possibly

THE COURT: That is really examination in chief, and I will allow you to cross examine on it if you desire, Mr. Laird.

A. I have no particular information as to when the American Federation of Labor, Division No. 4, was actually formed.

Q. Do you know if the matter of printing and distributing to all of the men in the shops wage agreement No. 4 was taken up with Mr. Warren in February, 1923?

MR. HAFFNER: That is new matter.

30

THE COURT: I suppose the purpose is to get at the facts

and I will allow him to put in new matter with the right to cross examine.

Q. Do you know if communications were held with Mr. Warren in January and February, 1923, concerning wage agreement No. 4 and the reprinting and posting of same up for all the men in the shop? A. I have no recollection of that. It may have been done.

Q. If I were to suggest to you that in February, 1923, Mr. Warren wrote as follows: "In order to overcome the difficulties
10 you mention regarding certain men being unable to learn the contents of the agreement with Division No. 4, arrangements are being made to reprint the agreement, and either have it posted up in the shops or distribute it to the men who may desire a copy. These arrangements are now on hand and will be completed within a short time." Would you say that Mr. Warren had not given those instructions?

A. Well, I wouldn't say that he had not, but I have no definite recollection of those agreements being reprinted and posted in the shops.

20 BY THE COURT:

Q. Or mailed to the men? A. Yes, it wasn't done through my office, and I made inquiries just recently, in some way that question arose and I could not obtain any evidence that it had ever been posted in the shops.

BY MR. McMURRAY:

Q. That was in connection with the copy that was supposed to have been posted in the blacksmiths shop in Fort Rouge. That came up at the time of the examination?

A. No, there was no particular shop mentioned.

30 Q. Would you say that Mr. Warren had not written that?
A. I have no means of saying that.

MR. LAIRD: I object to that.

Q. If Mr. Warren on January 31, 1923, wrote: "I am rather surprised that the statement is made that the contents of the

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agreement between certain Canadian railways, of which this company is one, and shop trades, as represented by Division No. 4, is not known to all men working in the shops of this company. If such be the case (and I must candidly confess that I cannot think it is), then I would advise that whatever information the individual man may require can be most easily obtained on request from his foreman or assistant foreman," would that be a fact if Mr. Warren wrote it?

MR. LAIRD: I object to that.

Q. Would it be a fact? 10

MR. LAIRD: Would it be a fact that he is surprised?

MR. McMURRAY: Oh, no.

Q. Would it be a fact if Mr. Warren wrote that that this information could be easily obtained by any workman from his foreman or his assistant foreman?

A. Certainly he could obtain it from his foreman if he asked him for it.

Q. The foreman would have given any workman the agreement? A. No, I wouldn't say he would do that, but he would give him the information, because the foreman would not have possibly the necessary number of these agreements to give out. 20

Q. I thought you told my learned friend a short time ago that they would be distributed by Division No. 4?

A. That may be.

Q. You don't know anything about it? A. No.

Q. But if Mr. Warren expresses surprise that the contents of these wage agreements are not known to every man on the job is that a surprise to you, him taking that attitude? A. Well, it is a pretty broad question. I wouldn't want to say that every man in the shop understood all about them and knew the whole contents of that agreement. 30

MR. McMURRAY: One question that did not arise out of my learned friend's examination I would ask permission to examine

on now, and that is the formation of the Railway Association of Canada. Probably Mr. Eager can tell us something about that.

THE COURT: Yes.

THE WITNESS: Well, I don't know as I could give you the correct details. The Railway Association is an Association that supersedes the Railway War Board.

BY MR. LAIRD:

Q. Is that in writing? A. I can't say. The origination of the War Board was on the part of the running trades originally.
 10 Some very important questions would arise, and there wasn't any way to definitely settle them during the war, and representatives of each of the running trades, with an equal number of representatives of the railways formed an understanding in Montreal—

Q. Were you there? A. Well, I wasn't there at the formation of it. I attended meetings of it, though. And there was a tentative understanding that any question that arose during the time of the war which could not be agreed upon satisfactorily between the representatives of the running trades and the com-
 20 pany it would be referred to this Board and their decision would be final. That at the expiration of the war was the nucleus of the Canadian Railway Association of Canada.

BY MR. McMURRAY:

Q. Did you come in contact with that Association?

A. I have once or twice representing the company about certain matters that have been referred to that Association.

Q. Do you know if they have a written Constitution or anything like that? A. I can't say.

Q. You don't know how they are organized?

30 A. No.

BY MR. LAIRD:

Q. Your knowledge of them is that you appeared as the representative of the railway company before a group of men and

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discussed certain questions? A. Yes, I was there represent-
 ing the company.

Q. About certain disputes that had arisen?

A. Yes.

Q. Not at all in connection with—

A. Not at all in connection with the Federated trades.

Q. In connection with what? A. The running trades. The
 engineers, firemen, conductors, brakemen, maintenance of way
 men, and telegraphers.

MR. BERGMAN: My lord, before he leaves the stand pos-10
 sibly you should call his attention to his undertaking this morn-
 ing that he would get information as to whether that exhibit 5
 was to be in force up to the 1st of May, 1917, and thereafter a
 certain notice was to be given. Possibly he could be back here
 in the morning with that information.

BY THE COURT:

Q. Do you remember the point you were to look up, any no-
 tices discontinuing agreement, exhibit 5?

BY MR. BERGMAN:

Q. That was originally in force up to the 1st of May, 1917,20
 and thereafter a thirty day notice to either party. You were to
 look up whether any notice was given, and see if there was any
 agreement between that wage agreement and wage agreement
 No. 4?

A. Yes, I will look that up.

Q. Could you be here with that information by 10:30 in the
 morning? A. Yes.

(Court adjourned at 5 p.m., May 14, 1928, to 10:30 a.m., May
 15, 1928.)

10:30 a.m., May 15, 1928. 30

MR. McMURRAY: I will recall Mr. Eager to give particu-

lars of some notices which he said he would try and get for us this morning.

ALBERT H. EAGER recalled:

BY MR. McMURRAY:

Q. In connection with the Federated Metal Trades agreement made in May, 1916, which was to run for a year, and continued from year to year, terminating with thirty days' notice, when was that agreement terminated, have you discovered?

A. I have not been able to put my hand on a notice, but Mr. 10 Hair has a document drawn up in May, 1917, which continued that in force for another year until May, 1918.

Q. So then you would be satisfied that this agreement continued up until May, 1918? A. That is my understanding, yes.

Q. We had better put that in. I show you this printed sheet of paper. Is that the notice that you referred to a moment ago?

MR. LAIRD: It is not a notice.

A. This is an understanding between myself on the part of the company and Mr. Smith on the part of the Federated Trades.

BY MR. McMURRAY:

20 Q. That is a copy of the agreement that you entered into on that occasion? A. Yes.

MR. LAIRD: I would formally object to the relevancy of this. It was made long before the plaintiff entered the service.

THE COURT: The objection is noted, but I will allow it in as an attempt to connect up with the terms of appointment. Read it.

(An agreement dated May 30th, 1917, referred to produced and marked **exhibit 6.**)

THE COURT: Is that for one year?

30 MR. McMURRAY: It says it will remain in force until May 30, 1918.

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THE COURT: At the end of this it states: "Such increases in rates to be effective from June 1, 1917, and the above mentioned rules and rates to remain in force until April 30, 1918, and from year to year thereafter unless thirty days' notice in writing is given by either parties concerned on or before April 1st in any year." The rules and rates shall continue from year to year. What does that refer to?

MR. McMURRAY: That refers to the rules and rates set forth in the Metal Trades agreement, my lord.

THE COURT: The first part of it says that the schedule shall remain in force until April 30, 1918, and then the lower part of the document says: "The above mentioned rules and rates shall remain in force." Where are the rules and rates mentioned above?

MR. McMURRAY: Those will be the rules and rates set forth in exhibit 5.

THE COURT: This document says "above mentioned." Where are they mentioned here? That only extends the schedule for a year.

MR. McMURRAY: They used the term loosely. They even used a whole agreement as a schedule of the rules and rates. 20

THE COURT: You have no evidence of that, but there is a schedule to that agreement you mention, exhibit 5. Exhibit 5 was some sort of an agreement, and there is a separate schedule attached.

MR. McMURRAY: The schedule attached is very small. It is not a schedule like the others.

THE COURT: It is simply a schedule of rates.

BY MR. McMURRAY:

Q. Mr. Eager, you will notice that wage agreement No. 1 was executed on September 2, 1918? 30

A. Yes, sir.

THE COURT: That is exhibit what?

MR. McMURRAY: Exhibit 4, my lord.

Q. Clause 2 of that says, "This agreement shall be effective from May 1, 1918." So that, my lord, covers the intervening space.

THE WITNESS: That agreement was made retroactive.

THE COURT: That is already in.

MR. McMURRAY: I was just calling his attention to it. I would like the permission of the Court to ask the witness a question on something I saw last evening.

BY MR. McMURRAY:

Q. I saw by the evening's press, The Winnipeg Tribune, of 10 last evening, Mr. Eager—

THE COURT: What has the witness to do with this?

MR. McMURRAY: It comes right under his jurisdiction. It is a question of recognition of seniority rights.

THE COURT: We are not going to try this according to the press.

MR. McMURRAY: No, but I want to base a question on that.

THE COURT: I don't want to involve the newspapers in this if I can help it. Ask a question.

Q. Witness, is it a fact that in preparation for the coming 20 summer season the C.N.R. has increased the staff in the coach department, promoting certain employees from one department to another, and choosing men according to seniority?

MR. LAIRD: Objected to as irrelevant.

THE COURT: You need not answer that.

BY MR. McMURRAY:

Q. The agreements, exhibits 5 and 6, Mr. Eager, are made not with Division 4, as you will see by the document. They are made for the Federated Trades, this exhibit 6?

A. Yes.

30 Q. That was before the formation of Division 4, I believe?

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A. Yes.

Q. And since Division 4 was formed your negotiations have been with Division 4? A. Yes.

Q. And exhibit 4, Wage Agreement No. 1, was made with Division 4? A. Made in Montreal, yes.

Q. And you were there in the preliminary stages of that one, I think you told the Court, and occupied several months?

A. Yes, in the early stages.

Q. After wage agreement No. 1 was made in Montreal, being exhibit 4, what happened so far as the operation of the shop 10 was concerned to exhibits 5 and 6?

A. Wage agreement No. 1 superseded those.

Q. In the operation and management of the shops?

A. Yes.

Q. And in the payment of wages? A. Yes.

Q. It was made, as you see, with a different organization?

A. Yes.

BY MR. LAIRD:

Q. Did it apply to the men in the shops? A. Yes, both locomotive and car. 20

Q. Since Division 4 has been formed, and since you have been negotiating with them in 1918, have you negotiated any schedules of rates of pay or hours of labor, or anything of that sort with any other body so far as the Federated Trades are concerned?

A. No, sir.

Q. Or so far as the machinists are concerned?

A. No, sir.

MR. McMURRAY: I am calling Mr. Wedge under the same rule, my lord, as an official of the company.

MR. LAIRD: My lord, my learned friend has spoken about calling Mr. Wedge under the Rule. I submit he is not such a person as comes within the Rule and I would ask my learned friend to qualify him at least before he proceeds under the Rule. There is another point, I don't know whether there is a limit to the number of witnesses. I don't know whether it has ever arisen in your lordship's experience. The same thing has arisen in the examination for discovery. You can not under the practice examine more than one officer for discovery except under very special circumstances.

THE COURT: It depends on the constructions of the rules. What does the rule say?

MR. McMURRAY: "When a party to an action or proceeding or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or a director, officer, superintendent or managing agent of the corporation which is a party to such action or proceedings is called as a witness by the adverse party or parties—" That is, a director, officer, superintendent or managing director.

THE COURT: Are you confined to one witness?

MR. McMURRAY: I would argue no, my lord, that any witness who comes on the stand from a corporation if he has got the qualifications, comes under the rule. The rule is that "when a party to an action or proceeding or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or a director, officer, superintendent or managing agent of a corporation—" If the witness comes on the stand and he is a director, superintendent, or managing agent, or anything like that, I take it that the principle is that he is a witness with a bias, and I ask for that permission.

THE COURT: The rule has only given you the right to call a witness as a right. I doubt very much whether you can call more than one. Of course, any person brought here might with the leave of the Court be treated as an adverse witness.

MR. McMURRAY: Well, this is the last witness I am calling from my learned friend's camp, and he is in the same position as Mr. Eager, and I take it the rule is not limited.

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THE COURT: I very much doubt it. When any one of these persons is called he may be treated as an adverse witness without the leave of the Court, but if you call more than one—

MR. McMURRAY: It does not say anything about more than one.

THE COURT: It says, "a witness." It mentions certain persons. I think you are limited to one. Without asking leave of the Court I don't think you are entitled to more.

MR. McMURRAY: Then I would ask leave of the Court.

THE COURT: Then you had better show the witness in ad-10
verse. You might as well understand that if he is not an adverse witness he is not under this rule, and you can't prevent the other side from full cross-examination. I am only pointing that out to you, that if you call this witness and ask him anything he is open to full cross-examination, which might be far beyond what you expected from your reading of the rule.

MR. McMURRAY: As I read that rule, if a person himself is put on the stand plaintiff, or a party to the action, he is treated as an adverse witness, a party for whose benefit such action or proceeding is prosecuted is the same. Then the third rule covers 20
officials of a corporation.

THE COURT: It doesn't say "officials," it says a party, officer, superintendent or manager.

MR. McMURRAY: It doesn't say one director. If he is the plaintiff he is treated adversely; if he is a party for whom it is brought he is treated adversely. If he has the status of a director, superintendent or any of these—it is not the number of these, but it is the man's status that governs.

THE COURT: The rule allows a witness to come in in the place of a company which could not of itself come. Now, if you 30
pick out a certain individual you have exhausted your rights.

MR. McMURRAY: With respect, my lord, I would argue it is not the fact that he is representing the company, but it is the fact of what we might expect from him is the governing principle.

THE COURT: I grant you, but he represents the company in this way, that the company is the party. If the company could

come into Court you would have exhausted your rights when you examine it under the rule. As the company cannot come, being an intangible entity, some individual comes representing it, and the individual takes the place of the company, and when you have examined him, you have exhausted your rights.

MR. McMURRAY: I was interpreting it the other way, my lord.

THE COURT: I thought you ought to know what interpretation I put upon it, rightly or wrongly, before you examine him.
 10 If you did not examine the witness at all you may be in a different position from what would follow if you did examine him.

MR. McMURRAY: With very great respect, my lord, I am going to go on with this witness, but I take exception to your lordship's decision.

THE COURT: Very well, that will be my ruling on the rule.

LUKE WEDGE, being first duly sworn, testified as follows:

EXAMINED BY MR. McMURRAY:

Q. Mr. Wedge, what is your occupation?

A. Superintendent of motive power, shops.

20 BY THE COURT:

Q. What shops? A. Fort Rouge shops.

Q. Of the defendant? A. Yes.

BY MR. McMURRAY:

Q. Of the defendant, the Canadian Northern Railway Company? A. Yes.

Q. For how long have you occupied that position?

A. Since 1915, February.

Q. Were you with the company before that, the Canadian Northern Railway? A. Yes.

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Q. How long have you been with the Canadian Northern Railway? A. Since 1908.

Q. Starting in what capacity? A. As a machinist in the shops.

Q. Your office, I think, is in the shops itself?

A. Just outside the shops.

Q. That is, you are down among where the men are working? A. Yes.

Q. How many machinists have you there in the shops?

MR. LAIRD: Objected to.

10

A. How many machinists?

Q. Yes? A. Must I answer that?

THE COURT: Yes, answer.

A. About 225 I would judge.

Q. About 225 machinists? That is the number you generally have there, is it? A. Yes.

Q. Have you anything to do with hiring of the men, of the machinists? A. Yes, I hire the machinists.

Q. You have full authority to hire? A. Yes.

Q. Where do you get that authority from?

20

A. From my superior officer.

Q. Who is that? A. Mr. Eager.

Q. You have authority to dismiss, have you?

A. Yes.

Q. From whom do you get that? A. From my superior officer.

Q. Who is that? A. Mr. Eager.

Q. In the case of dismissing men do you do that of your own volition for inefficiency and things of that kind?

MR. LAIRD: Objected to.

THE COURT: Objection upheld.

Q. In dismissing men on the reduction of staff where do you get authority from? A. I use my own judgment as far as possible.

Q. What do you mean by that?

10 BY THE COURT:

Q. What is the difference between reducing the staff and dismissing men? Will you explain that to me?

A. Reducing on account of the reduction of the staff, you lay off a certain number of men; dismissing men, they are out of the service entirely. They are laid off on account of the reduction in staff with the option of being returned to service when required.

Q. When you speak of reducing the staff you mean suspending men for a time? A. Yes.

20 Q. Dismissing them would be letting them go permanently. That is what you understand by these terms?

A. Yes.

BY MR. McMURRAY:

Q. Do you know the plaintiff, Young?

A. I know of him, yes.

Q. Will you answer the question? I asked you, if you knew the plaintiff Young? A. Yes.

Q. Did you hire him? A. I presume I did.

Q. Do you know if you did without presumption?

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A. Yes, he could not be put on in any other way.

Q. You hired him personally? A. Yes.

Q. When did you hire him? A. I don't just remember, back in 1920 sometime.

Q. Sometime in 1920? A. I think that was about the date.

Q. What were the terms of hiring? A. No terms at all. He was hired as a machinist.

Q. Explain what you did? A. He came in and asked for a position, I presume, I can't remember just the words at the time.

Q. Do you remember anything about it? A. No, we hire 10 so many men I can't just remember personally.

Q. Do you know if you hired him at all?

A. No.

Q. Wasn't it Mr. Hough that hired him?

A. No.

Q. Why do you say that? A. Mr. Hough does not hire the men.

Q. What would you do in the hiring of Mr. Young?

A. I would have the man fill out an application form, and I would apply my signature to it and hand it to the timekeeper, and fill the dates in.

Q. You would send it to the timekeeper? A. Yes.

Q. Where would that form be kept? A. There would be a copy kept in my office, and a copy go to the timekeeper, and naturally a copy to Mr. Eager's office.

Q. There would be three copies? A. Yes.

Q. So that when Young would come to hire there this is what would happen, I take it, he would come to you and tell you that he wanted a position? A. I presume so.

Q. And you inquired concerning his capacities, and so on?

A. Yes, I would ask him that.

Q. And if you were satisfied with his capacities, and character, and as you sized the man up you would employ him?

A. Yes.

Q. Would anything be said as to wages?

A. He might ask what rates.

Q. What would be the answer? A. What we were paying at that time.

10 Q. That is, he would get what the rest were getting?

A. Yes.

Q. Now there are rules and regulations governing the employment of machinists that the company have, are there?

A. No, not any special rule that I know of.

Q. You don't know of any rule? A. No special rule.

Q. That is, a machinist can do anything he likes around there?

MR. LAIRD: I object to that.

A. In the hiring of the machinists?

20 Q. Yes, a machinist comes in there and is hired and there must be some provision somewhere as to what pay he is to get, some rule governing that? A. We show that on the form.

Q. That he signed? A. On the form that I signed, it shows the rate of pay.

Q. I show you a document, application for employment, form 1, dated June 9, and signed by William Young. Is that the application forms you are referring to?

MR. LAIRD: I object to his statement on that. You are not proving documents.

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THE COURT: You are making a statement to the witness that you should not make.

Q. Is that the document? A. That is not the form used; there is no rate on that form.

Q. Is that your signature? A. As near as I can judge it may be the clerk's. It doesn't look like my writing.

Q. Is that the rate?

THE COURT: Don't start with the contents until the document is proven.

MR. BERGMAN: We called for that from the other side, 10 and they produced it, my lord.

MR. McMURRAY: That is produced from my learned friend.

MR. LAIRD: It is produced as an application for employment, but you have to prove it.

THE COURT: But is that the document?

BY MR. McMURRAY:

Q. Is that your signature? A. I can't say, it may be the clerk's.

Q. You don't know your signature? A. I don't make an L as large as that. 20

Q. Is that Young's signature? A. I can't tell you; I don't know his signature.

(Application form referred to produced and market exhibit "C" for identification.)

Q. Then there were certain rules at the time you hired Young as to pay in the shops? A. Yes.

Q. Were there any other rules in connection with machinists in the shops at this time? A. Yes.

Q. What were they? A. I can't remember them all now. We have the book of rules. 30

Q. You have that book? A. Yes.

Q. All these machinists had it? A. I presume they did.

Q. You presume all the machinists had the book?

A. I could not say all the machinists had the book.

Q. But you would say machinists generally had the book?

A. I would say so.

Q. Those rules would vary from time to time. You have been superintendent—

MR. LAIRD: Are those rules in writing? My learned friend
10 can read the document.

THE COURT: They mean absolutely nothing unless you get them in.

MR. McMURRAY: They are in, my lord.

THE COURT: But this witness does not say so. Where are they?

MR. McMURRAY: I was coming to that when my learned friend flashed into the air. My learned friend has a habit of anticipating me.

BY MR. McMURRAY:

²⁰ Q. I show you exhibit No. 2. Is that a book of rules and regulations that you were referring to?

A. That is one of them.

Q. That is one of the sets of rules?

A. Yes, it says so right on there.

Q. What does it say on there that attracts your attention?

A. Rates of pay.

Q. Read the whole of it. A. "Wage Agreement No. 4 between the Canadian Railway War Board and Division No. 4 Rail-

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way Employees Department governing rates of pay and rules of service for locomotive and car departments.”

Q. And that is why you recognize it as being the rules and regulations governing in the shops of which you are the superintendent, is that right?

A. Not the shops.

Q. Well, what? A. Certain employees.

Q. What does it say? Does it say certain employees?

MR. LAIRD: I object to that.

THE COURT: It speaks for itself. 10

MR. McMURRAY: All right, my lord.

BY MR. McMURRAY:

Q. I show you exhibit No. 3, would you look at that, witness. Do you recognize those as the rules and regulations under which you conducted the shops?

A. Yes.

Q. I show you exhibit No. 4, Wage agreement No. 1, do you recognize that? A. Yes.

Q. You had a copy of that. Those are the rules and regulations that you used in dealing with machinists under you, is that right? A. Yes.

Q. I also show you exhibit No. 5, Federated Metal Trades agreement?

MR. LAIRD: I object to this as irrelevant, because of their being so far back, and I would ask that my objection be noted now. I do not wish to be objecting to each question.

THE COURT: They are in on the condition that they will be connected up. If not connected all this evidence goes by the board.

MR. LAIRD: There is a further point that they were made 30 long before the plaintiff entered our service.

THE COURT: That is the reason, but if they can be shown to have continued on the employment they would be relevant, but that connection must be established, otherwise they are excluded.

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BY MR. McMURRAY:

Q. Did you see these rules and regulations in your shops in 1916? A. I don't remember that.

Q. And renewed in 1917. The evidence is that it was renewed in the year 1917 up to the 30th of April, 1918.

A. I can't recall that.

10 Q. Would you have rules and regulations in those years under which you were operating in your shops?

A. Yes, I guess I would. I don't remember that one though.

Q. You have always had rules and regulations there in connection with the machinists since you have been in the service.

MR. LAIRD: Objected to.

BY MR. McMURRAY:

Q. Do you give the men copies of these rules when they come in? A. No.

Q. How do you make them familiar with them?

20 A. I don't know how they get familiar with them unless they get a copy from their officers.

Q. They get a copy from their officers? A. I wouldn't say that the men get a copy from their officers, no.

Q. Are these machinists all paid the same rate of pay? A. Yes.

Q. All paid the same rate of pay? A. Yes.

Q. All work under the same conditions, do they?

MR. LAIRD: Objected to.

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A. I can't answer that.

Q. Why can't you? I think if any man could you could. You are the superintendent.

THE COURT: You must not forget this is your witness, and if there is any attack upon him—

Q. Can't you answer that? You are there every day with them, aren't you? A. Yes.

Q. You are in the shops every day? A. Yes.

MR. LAIRD: This is highly irrelevant. It is an action by one party and what are we concerned about the conditions or the 10 contracts under which they work.

MR. McMURRAY: This, my lord, goes to the core of the whole matter. as to whether this man is one hired under the same terms as all the rest, and the fact of his treatment and the way they used him is absolutely evidence in support of this. I may have very great trouble in getting anything out of him. He even doesn't know his own name. He doesn't know the conditions under which the men worked, and I ask to be allowed to treat him as an adverse witness.

THE COURT: He has not shown any adverseness so far. 20

BY MR. McMURRAY:

Q. Are the conditions under which the machinists work the same for all of them in the shops at Fort Rouge?

A. So far as the shop conditions, do you mean?

Q. That is what I asked you? A. Yes.

Q. Are the same? A. The shop conditions are the same.

Q. Young, the plaintiff, was treated identically the same as all the machinists are treated there?

A. Yes.

Q. No differentiation made between him and any of the rest 30 in any way. And that continued during the whole term of six years that he was with you?

A. Yes.

Q. Do you keep a seniority list there?

A. We have a seniority list, yes.

Q. What rights would seniority give among the machinists in those shops?

BY MR. LAIRD:

Q. Are these rights in writing? A. No.

BY MR. McMURRAY:

Q. What rights would they give? A. In regard to what?

10 Q. By reason of seniority, what preference would there go to a senior man?

BY MR. LAIRD:

Q. Are these preferences in writing at all, Mr. Wedge?

A. No.

MR. McMURRAY: Mr. Wedge says no.

Q. You say it gives no preference at all?

THE COURT: What gives no preference?

MR. McMURRAY: Seniority.

Q. Do you say that? A. I wouldn't say that for all the 20 men, no.

Q. What preference would it have given the plaintiff supposing he was away up on the seniority list as a machinist? A. I don't know.

Q. You don't know what preference that would give him?

A. No.

Q. No idea at all? A. No.

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Q. Did you ever take part in collective bargaining? Were you ever a delegate or a party to it?

A. No.

Q. Did you have seniority rights yourself?

A. I never thought of it in that way if I did.

Q. Isn't it a practice to lay off, isn't it a practice all the time you have been in the C.N.R. shops in Fort Rouge to lay off junior men before senior machinists were laid off? A. Not always.

Q. Has that been the general practice?

A. No, we have laid men off—

10

MR. LAIRD: Objected to.

A. —ignoring the seniority list.

Q. Come, come, you are fencing with me?

A. No, that is right.

MR. LAIRD: Objected to.

Q. I am asking you if it has not been the general practice?

A. I can't say that it has been the general practice.

Q. Suppose for bad conduct, and so on, seniority would not go in the dismissal? A. No, it would not.

MR. LAIRD: I don't understand that question at all. 20

MR. McMURRAY: Well, it is very simple; in the reduction of the staff.

THE COURT: Make your last question a little more clear.

MR. McMURRAY: It was simply a passing remark that where a man was dismissed for cause seniority would not govern.

THE COURT: If you wish to put it in as testimony frame it better.

BY MR. McMURRAY:

Q. In the reduction of the staff for economic cause, where men are laid off, as you told me a little while ago, the seniority rule invariably governs? A. Not always.

MR. LAIRD: Objected to.

Q. When wouldn't it govern? A. Well, in some cases a man was not efficient in his work and we might choose him, the man could not do the work as well as another man.

Q. And you would lay him off? A. Yes.

10 Q. Isn't there a rule that a man can't be laid off for inefficiency? A. No, I don't know that.

Q. You don't know of any rule? A. No.

Q. After a certain length of time? A. I don't know of any rule that we could not lay a man off for inefficiency.

Q. Would you be surprised if it was in wage agreement four and in wage agreement six? A. It might be possible.

Q. You did not study them? A. No, I just refer to them when necessary.

Q. You do not read them every night? A. No.

20 Q. Then in a case possibly of inefficiency you say the seniority rule would not govern in the reduction of the staff, but generally the seniority rule in the reduction of the staff governs, doesn't it, witness?

MR. LAIRD: Objected to.

THE COURT: You may answer if you can.

Q. Would the Court Reporter repeat the question? ("Then in a case possibly of inefficiency you say the seniority rule would not govern in the reduction of the staff, but generally the seniority rule in the reduction of the staff governs, doesn't it, witness?")

30 A. Not always.

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Q. Can you answer a straight question? I asked you generally. You are answering, "Not always." You have given me the exception, now answer my question.

A. It does not always govern.

Q. Does it generally govern? A. I wouldn't like to say it does generally govern.

Q. What does it do? A. We use our own judgment in many cases.

Q. That is, you do as you like? A. Not always.

Q. There are seniority rules and they have been in the shops 10 for years and years and you know it? Do you pay any attention to them in the reduction of the staff?

MR. LAIRD: Objected to.

Q. Do you pay any attention to these seniority rules in the reduction of the staff? A. Some of them.

Q. What attention do you pay to them?

A. I generally work with the committee.

Q. You what? A. Work with the committee.

Q. When have you started generally doing that?

A. If the committee are satisfied.

20

BY THE COURT:

Q. Who are the committee? A. A federated committee.

BY MR. McMURRAY:

Q. Under this federated agreement you are referring to?

A. Yes.

Q. Under the federated agreement there was a federated shop committee? A. Not a shop committee, a federated committee.

MR. LAIRD: You are referring to a document he said he didn't know anything about.

MR. McMURRAY: He is learning more all the time.

BY MR. McMURRAY:

Q. Who is this committee in your shop that you are referring to? A. They are not in our shop.

Q. Where are they? A. I don't know where they are now, I believe there is a change in that committee.

Q. Who is the committee? A. I don't know.

10 BY THE COURT:

Q. What do they represent? A committee representing whom? A. Representing the federated crafts.

BY MR. McMURRAY:

Q. Representing them in what way?

BY MR. LAIRD:

Q. Is that provided for in the wage agreements?

A. Yes.

MR. LAIRD: My lord, it is in the wage agreement.

BY MR. McMURRAY:

20 Q. How do you know? You never read them, you never read your agreements, you just told me that?

A. I do sometimes.

Q. Show me where it is provided? A. I don't know that it mentions any names.

MR. LAIRD: What are you showing the witness?

MR. McMURRAY: The exhibits put in.

THE COURT: What exhibits are you showing him?

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MR. McMURRAY: Wage agreement 4, and wage agreement 6.

THE WITNESS: I don't suppose it shows that committee in here.

BY MR. McMURRAY:

Q. You just said it is in there, and you say now you don't suppose it is in there? A. I didn't say I was familiar with it.

Q. You said you knew it was there?

MR. HAFFNER: He didn't say that even.

THE WITNESS: It doesn't refer to it in any way, I guess, 10 the federated committee.

BY MR. McMURRAY:

Q. The committee you were thinking of is the committee that made the contract? A. No, not the committee that made any contract.

MR. LAIRD: The witness refers to some place in the book and my learned friend closed it up and nobody is any the wiser.

MR. McMURRAY: I will try and make somebody wiser.

THE COURT: Give me the page and the exhibit number.

MR. McMURRAY: The place where the witness referred to 20 is page 3 of agreement six. It is part of the preamble.

MR. HAFFNER: It speaks about Division No. 4, of the American Federation of Labor.

BY MR. HAFFNER:

Q. Finish what you were referring to?

A. Yes.

Q. A committee of that Division? A. Yes.

BY MR. McMURRAY:

Q. A committee of Division No. 4? A. Yes.

Q. There was a committee in your shops?

A. Yes, we have a committee in the shops.

Q. That takes up the agreement? A. Yes.

Q. But there was another committee you are referring to of Division 4 outside of your shops? A. The federated committee.

Q. That came in when you were reducing the staff, didn't it? A. No.

Q. Why did you mention them too? I was talking to you
10 about the reduction of the staff, and you told me about some committee outside of the shops. What committee were you thinking of there? A. When we came to the reduction of the staff, that this committee was in?

Q. Yes. A. Yes, I dealt with the committee in the reduction of the staff.

Q. You dealt with the committee on the reduction of the staff? A. Yes.

Q. That is, a committee outside of your shops altogether?

A. Yes.

20 Q. How many years have you been dealing with committees outside of your shops in the reduction of staff?

MR. LAIRD: Objected to as irrelevant and immaterial.

THE COURT: Go on.

A. Well, I can't just say how many years.

Q. Did you ever see one before this occasion?

A. Yes.

Q. When? A. I can't remember when.

Q. You can't remember when you saw one of them before

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this time. In any reduction of the staff prior to the reduction when the plaintiff was let out did you yourself personally ever work out an arrangement with this outside committee? A. I never worked one out?

Q. You never worked one out before. This was something new to you. This occasion was something new to you, meeting these outside men? A. No.

Q. Well, if you have never worked out one before?

A. Well, we never worked out any arrangement.

Q. You never worked out any arrangement with people out-10 side before? A. No.

MR. HAFFNER: He said he never did.

MR. McMURRAY: Precisely.

BY MR. McMURRAY:

Q. This then was new to you? A. I never did work out an arrangement with the committee.

Q. At any time? A. No.

Q. I thought you were one of the parties who drew up the list of men to be released? A. I was a party to it.

Q. Who were you with when you did that? 20

A. The committee, I myself and some of my foremen, when I picked out this list of men.

Q. But what about these two outside men that came in, that committee outside, how did they come into it?

A. I met them and produced this list, or these names, that I proposed to lay off.

Q. You produced the list of names that you proposed to lay off? A. Yes.

Q. Why didn't you lay them off and be done with it?

A. That is another matter?

Q. Why was it another matter?

MR. LAIRD: Objected to.

Q. There was a list you say you selected. Was it required by the rules that you had to consult with somebody else before you let these men out? A. Yes.

Q. What rules? A. In that book there.

Q. Do you know what union these men belonged to when you hired them? A. No.

10 Q. You make no inquiry at all? A. None at all.

Q. It makes no more difference to you what union a man belongs to than what church he goes to?

A. It makes no difference at all.

Q. And you make no inquiries while the men are in your service as to what union they belong to?

A. No.

Q. Or whether they belong to any union?

A. No.

Q. It makes no difference at all? And a seniority list is kept?

20 A. Yes.

Q. Generally in the reduction of staff you told me heretofore unless inefficiency occurred, or a particular reason, seniority would govern.

MR. HAFFNER: He did not say that.

MR. McMURRAY: Please don't prompt him.

MR. HAFFNER: No, you are doing that. He didn't say that at all.

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MR. McMURRAY: You make your objection in the proper way; these sotto voce objections are bad for the witness.

Q. In the reduction of staff you told me that sometimes seniority rights would not govern in a case where you felt that a man was not efficient?

A. That is right.

Q. Then I take it that except for exceptions like that seniority as a general thing would govern?

MR. HAFFNER: My learned friend was over this before, my lord. 10

BY MR. McMURRAY:

Q. Isn't that right? A. Possibly, yes.

Q. But in this particular instance you say you selected the list of men to be released, machinists and others. I show you a list. Is that a list of men?

MR. LAIRD: Objected to as irrelevant, my lord. We are only concerned with the plaintiff. His action is an action for wrongful dismissal, and all the negotiations leading up to it are entirely immaterial and irrelevant.

THE COURT: But seniority rights are alleged at the basis²⁰ to certain extent.

BY MR. McMURRAY:

Q. What do you say? What is that paper?

A. A list of men that were laid off on June 9th.

Q. Was that the list that you selected?

A. Yes, that is the list that was selected.

Q. Was the list made out in your own handwriting?

A. No, I did not write the list out.

MR. McMURRAY: I would ask my learned friend to produce the original list. 30

MR. LAIRD: We have not been asked to produce this, and I don't know whether we can produce it or not. It may happen to be here or it may not. We have got no notice to produce at all.

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BY MR. McMURRAY:

Q. Young was upon the list to be laid off?

A. Yes.

Q. Young, the plaintiff, was a senior man?

MR. LAIRD: What do you mean by that?

Q. Well, there were a good many men machinists who had been employed later to Young in the shop?

A. No, not employed.

Q. What do you mean by that? A. No new men taken on later than Young than I can remember.

THE COURT: After Young was hired in 1920, is that what you mean?

MR. McMURRAY: Yes, my lord.

THE COURT: The Witness does not understand your question, apparently.

THE WITNESS: Young was one of the last machinists I think we hired, as near as I can remember.

Q. I show you exhibit A for identification. You see the name of Young as No. 92 on that list?

A. Yes.

Q. How many names are there on the list altogether.

THE COURT: That has not been proven yet.

MR. McMURRAY: No, my lord.

THE COURT: Then you should not question the witness on the contents.

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BY MR. McMURRAY:

Q. You have 250 machinists in the shop at the present time?

A. I wouldn't say 250.

Q. Didn't you say about 250? A. About 225.

Q. Do you know how many names there are on your seniority list? A. They would be all on there I suppose. I don't know how many, about 225.

Q. Do you know where Young comes on that list?

A. No.

Q. You do not? A. No. 10

Q. Would you say that you have not hired 200 machinists since Young entered your service?

A. Yes.

Q. How many have you hired? A. I can't remember hiring any since Young.

Q. The seniority list that you have, the names would appear in the order of hiring, wouldn't they?

A. Yes.

Q. Does anybody hire these machinists except yourself?

A. No. 20

Q. Do you know how long ago it is that you hired Young?

A. 1920.

Q. Eight years ago? A. Yes.

Q. And you say you haven't hired a machinist in eight years? A. Well, very few I think, as nearly as I can remember.

Q. At any rate, you selected, you say, a number of men to have released, is that right? A. Yes.

Q. Were there any American Federation men among them?

MR. LAIRD: Objected to.

THE COURT: I don't think you need answer that.

MR. McMURRAY: My lord, the point is this. We are alleging discrimination against this man, and one of the grounds of the discrimination is that he did not belong to Division No. 4.

THE COURT: Your witness has told you it is no concern of the defendant what the men belonged to.

MR. McMURRAY: Yes I know, but I want to let his action
10 possibly speak louder than his words.

THE COURT: You may, but you must follow some rules of evidence.

BY MR. McMURRAY:

Q. You selected these names as appears on the list I showed you? A. Not all the names.

Q. What names did you select? A. I selected Young.

Q. You did not select any of the others?

MR. LAIRD: Objected to.

Q. You say you selected Young? A. Yes.

20 Q. Did you select any of the others?

MR. LAIRD: Objected to.

THE COURT: You are dealing with some document there that is not in evidence, I don't know what is on it. It has not been put in. You should not be examining upon it unless it is in?

BY MR. McMURRAY:

Q. What is this document, witness?

A. A list of names of men laid off.

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Q. Is that a true list of the names of the men laid off?

MR. LAIRD: Objected to.

A. I couldn't say.

THE COURT: The Witness cannot prove it, and having examined on it you had better put it in for identification.

(Statement showing list of employees laid off June 9, 1927, referred to, produced and marked exhibit "D" for identification.)

BY MR. McMURRAY:

Q. Then you say, witness, that you selected Young?

A. Yes.

10

Q. Did you select the others?

MR. LAIRD: Objected to.

THE COURT: We are not trying the others.

BY MR. McMURRAY:

Q. Then you took the list with you, did you?

THE COURT: We know of no list that is proven.

BY MR. McMURRAY:

Q. Did you take the list with you? A. I did not.

Q. You did not take the list with you? A. No.

Q. Did you sign a list at any time? A. Yes.

20

Q. Who prepared that list? A. Mr. Hedge, Works Manager.

Q. Mr. Hedge, Works Manager, he prepared the list?

A. Yes.

Q. Where did he get it from? A. Members of the committee and myself.

Q. Who were they?

MR. LAIRD: Objected to.

Q. Who were the members of the committee?

MR. LAIRD: My lord, my learned friend is conducting an action in the Court against this very witness, and against a number of men.

THE COURT: I know that, but this is a question of a committee, I take it to be. I am not sure it has been so stated, but a committee of the men, is that correct?

10 MR. LAIRD: A committee of Division No. 4.

THE COURT: Well, they were taken to represent the men.

MR. LAIRD: To represent their men. I don't suppose they could represent anybody else. A committee, as he said, of these parties with whom the agreement was made.

THE COURT: If the committee represented the men in the shops, the machinists, they were the proper persons to deal with.

MR. McMURRAY: Surely, my lord, but if they did not purport to represent the men in the shops, then I am not interested in them. I would like to get that.

20 BY MR. McMURRAY:

Q. Who was this committee? A. The names of the committee?

Q. Yes? A. Charles Shaw and A. B. Page.

Q. Charles Edward Shaw and A. B. Page were the committee? A. Yes.

Q. That was a committee from whom? A. Representing international association, and the management, Mr. Hedge, as Works Manager.

Q. That is, there was a committee, as you say, representing
30 the internationals?

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BY THE COURT:

Q. What do you mean by the management?

A. That is, of the plant, the locomotive shops.

BY MR. McMURRAY:

Q. And Mr. Hedge and Mr. Wedge represented the shop?

A. Yes.

Q. And you met in Mr. Eager's office, did you?

A. Yes.

Q. And a list was drawn up and signed? A. Yes.

Q. Signed by yourself and Mr. Hedge. Who is Mr. Hedge? 10

A. Works Manager.

Q. Mr. Hedge was the Works Manager for the defendant?
And it was signed by Charles Edward Shaw and A. B. Page?

A. Yes.

THE COURT: I have three names on the committee—

BY MR. McMURRAY:

Q. Mr. Hedge was not on the committee? A. He was re-
presenting the company.Q. He represented the company? A. Mr. Hedge and
myself. 20

Q. Who were the committee? A. Charles Shaw and Page.

Q. Do you know where Shaw and Page worked?

MR. LAIRD: Objected to.

Q. Were they in the Fort Rouge shops? Were they em-
ployees in the Fort Rouge shops? A. No.

Q. They were not in the Fort Rouge shops?

A. No.

Q. Where did they work? A. In Transcona.

Q. They were Transcona men. Do you know on what date this list was signed by the four parties in Mr. Eager's office?

A. No, I don't remember the date.

Q. Would it be about the time of the dismissal?

A. Yes, previous to that.

Q. Did you give notice to Young? A. Yes.

Q. I show you a paper writing, is that your signature?

10 A. Yes, that is my signature.

Q. Is that the notice of dismissal of Young?

MR. LAIRD: It speaks for itself.

A. As far as I know.

Q. What did you do with it? A. I sent it out in an envelope.

Q. Did you deliver it to him? A. Not personally.

Q. You sent it with your messenger? A. Yes.

MR. McMURRAY: I would ask that that be marked as an exhibit.

20 (Notice reading: "Your Services will not be required after 5 p.m. June 13, 1927, on account of reduction of staff," produced and marked Exhibit 7.)

BY MR. McMURRAY:

Q. Were notices sent to the other men on the list?

MR. LAIRD: Objected to as irrelevant.

THE COURT: Objection sustained.

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BY MR. McMURRAY:

Q. Did Young come to see you? A. Yes.

Q. When did he come to see you? A. I believe he came in the day he received the notice.

Q. What occurred?

MR. LAIRD: I don't think this is material what took place after notice was given.

MR. McMURRAY: Yes it is because it is pleaded that he did not do what he should have done.

MR. LAIRD: There was a certain procedure through the 10 committee.

THE COURT: It is pleaded.

MR. McMURRAY: That is what I am trying to prove.

BY MR. McMURRAY:

Q. Witness, you saw Young that same day?

A. Yes.

Q. What did he say to you? A. He asked me something about the reason he was laid off, or something like that, I just forget the exact words.

Q. What did you say? A. I referred him to the shop 20 committee.

Q. You referred him to the shop committee?

A. Yes.

Q. But he questioned you about why he was laid off? A. I don't remember.

Q. Did you tell him you had nothing to do with laying him off at all? A. No, I did not.

Q. Did Young come alone to you or with other men?

A. The first time he was alone.

Q. Then did he come to you a second time?

A. Yes.

THE COURT: How long after?

Q. When? A. I believe it was the following day.

Q. What occurred then? A. Nothing more than when he had his first visit, I referred them to the committee.

Q. You referred them? A. Yes.

Q. The second time? A. Yes.

10 Q. How many men were there on the second occasion?

A. Possibly four or five, I would say.

Q. What did they say to you? A. I don't remember now.

Q. What did you do? A. Referred them to the committee.

Q. To what committee? A. To the shop committee.

Q. Who were the shop committee, do you know?

A. I believe, Anderson was chairman.

Q. Is that G. B. Anderson? A. Yes.

Q. Do you know if the men went to Anderson?

A. I couldn't say.

20 Q. Did Anderson see you about it?

MR. LAIRD: Objected to.

Q. Did Anderson discuss that with you?

MR. LAIRD: Objected to.

THE COURT: What is the order of the regulations? I

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don't think there is anything provided that makes it necessary for Anderson to see the witness.

MR. McMURRAY: No, my lord. We have charged in paragraph 13 that there was an agreement entered into to wrongfully dismiss this man all the way through, and part of that agreement was that when Anderson and his men got notice they would not act in the matter. Now I want to endeavor to prove that this witness and Anderson discussed the matter, and Anderson was instructed possibly not to go on with the—

THE COURT: That would not either add to or detract from 10 the rights and remedies of the plaintiff. What did the plaintiff say? It is quite proper to say that he came to see the witness and came the second time. What else did he then do? We are not concerned with what Anderson did.

BY MR. McMURRAY:

Q. Did you come into contact with the plaintiff again in connection with this matter of hiring?

A. No.

Q. Do you know what the local committee is?

A. Would that be the grievance committee? 20

Q. That is what I am asking you? What is the distinction between the local committee and the shop committee? A. There is no distinction, the local is the shop committee.

Q. The local is the shop committee? A. Yes.

THE COURT: Is that the committee of which Anderson is chairman?

BY MR. McMURRAY:

Q. Who is chairman of that committee?

A. Anderson was at that time, I believe. I believe I am mistaken there—I think R. B. Webb was chairman of the shop 30 committee.

Q. But you don't know the distinction between the local committee and the shop committee? A. No.

BY THE COURT:

Q. Webb was chairman of the shop committee?

A. Yes.

Q. Then it was not Anderson as you thought a moment ago?

A. No.

Q. You wish to correct that? A. Yes.

MR. McMURRAY: I would ask, my lord, for the original list. I think it ought to go in. My learned friend gave me a copy from it on the examination for discovery of Tisdale, and I think
10 we ought to have that list with the signatures, of these parties. I accepted a copy from him rather than insisting on the original on the examination for discovery.

THE COURT: Perhaps you can put it in in that way when you come to it.

MR. McMURRAY: I would ask for it now.

THE COURT: You may ask for it, but I can't produce it.

MR. LAIRD: We have not had a notice to produce.

MR. McMURRAY: I am asking for it now.

(List produced by Mr. Laird.)

20 BY MR. McMURRAY:

Q. I show you what purports to be a list. Is that the list that was assigned by Wedge, Hedge, Shaw and Page? A. That is my signature there.

Q. That is your signature? A. Yes.

Q. Is that the list you signed on that occasion?

A. Well, I would have to check that over man for man to see. I don't remember all the names offhand, but as nearly as I can remember—as nearly as I can remember that is the list that I signed.

RECORD
—
In the
King's
Bench
—
No. 10
Plaintiff's
Evidence
Luke Wedge
Examination
(continued).

RECORD

In the
King's
Bench

No. 10
Plaintiff's
Evidence
Luke Wedge
Examination
(continued).

Q. You have no doubt that is your signature?

A. That is my signature.

MR. McMURRAY: I would ask that to be an exhibit, my lord.

MR. LAIRD: Objected to as immaterial and irrelevant.

THE COURT: It includes the plaintiff.

MR. LAIRD: Yes, but my point is, as I mentioned before, the negotiations here are what took place leading up to the dismissal.

THE COURT: But that shows some step leading up to the10 dismissal of the plaintiff. I think I will have to admit it.

MR. LAIRD: Very well, I bow to your lordship's ruling.

(Original of exhibit D for Identification, list of men to be laid off, produced and marked exhibit 8.)

MR. McMURRAY: That is all.

EXAMINED BY MR. LAIRD:

Q. Have you anything to refresh your memory as to the chairman of the local or shop committee?

A. In regard to the chairman of that local shop committee?

Q. Yes, you said Mr. Anderson, and then you switched to20 Mr. Webb. I am instructed you were right in the first place.

A. I got it into my head that Mr. Anderson was chairman of the local federation.

Q. What is that? A. That is of the federated trades of Fort Rouge.

Q. That would include the machinists, boilermakers, carmen and everything? A. Blacksmiths and everything.

Q. And it is your understanding that Anderson was chair-

No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination

man of that, and Webb was chairman of the machinists' committee? A. Yes.

BY THE COURT:

Q. Then the shop committee headed by Anderson cannot be the same as the local committee headed by Webb? A. No.

Q. Then you wish to vary that do you?

BY MR. LAIRD:

Q. The shop committee and the local committee are one and the same, is that right? A. Yes, the shop and the local committee, yes, but then there is the local federated committee.

Q. Covering more than one craft? A. Yes.

Q. But when you told the plaintiff to see the committee, what committee did you refer to?

A. I would consider the local or shop committee.

BY THE COURT:

Q. Represented by whom? A. By Webb, is my understanding at that time.

BY MR. LAIRD:

Q. What position did Charles E. Shaw have in Division No. 204, do you know? A. I think he was chairman of the Western machinists, on the Western Division.

Q. Had you to do with him in other matters than the reduction of staff? A. Yes, some.

Q. You have met him? A. No, not in regard to reduction of staff.

Q. But you have met him in regard to matters affecting Division 4 and the schedules? A. Yes.

Q. As chairman of the Western Region?

A. For the machinists.

RECORD

In the
King's
Bench

No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

RECORD
 In the
 King's
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 —
 No. 10
 Plaintiff's
 Evidence
 Luke Wedge
 Cross-
 examination
 (continued).

Q. Is he a machinist? A. Yes.

Q. A. B. Page, what position did he occupy in Division No. 4, can you state? A. I guess he was the Western Chairman for the boilermakers.

Q. What is his occupation? A. Boilermaker.

Q. Had you met Mr. Page before on any other matters in connection with these schedules between Division 4 and the company? A. At different times.

Q. And he acted as representing Division 4 in other matters? A. Yes. 10

Q. Previous to the 9th of June you received instructions, I take it, from some superior officer to reduce your staff?

A. Yes.

Q. Those instructions came from whom?

A. Mr. Eager.

Q. And in reducing the staff you consulted with the chairman of the Division No. 4 with whom you had made the agreement? A. Not chairman of Division No. 4.

Q. No, I beg your pardon, with Mr. Shaw and Mr. Page, the chairmen of the machinists and boilermakers of the Western 20 Region? A. Yes.

Q. And Winnipeg is in the Western Region?

A. Yes.

BY THE COURT:

Q. Why did you consult with Shaw of the boilermakers, witness? A. No, Shaw of the machinists.

Q. Then Mr. Page of the boilermakers?

A. Yes.

BY MR. LAIRD:

Q. His lordship's question is, why you did that?

RECORD

A. Well, there were boilermakers involved, boilermakers laid off at the same time.

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King's
Bench

Q. Mr. Shaw and Mr. Page together constituted what committee of the federated crafts under Division No. 4, do you know?

No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

A. Boilermakers and machinists.

Q. What are the two men sitting together called, do you know? What do they constitute? A. I think they are chairmen of the Western Federation of machinists and boilermakers.

10 Q. You told me that already, but the heads of the committees sitting together, boilermakers and machinists, what do they together constitute of the trades affiliated with Division No. 4?

A. Boilermakers and machinists only.

Q. Do you know what is called the general committee of Division No. 4? A. No, I never met the general committee.

Q. Do you know the general committee of the Western Region of Division No. 4? A. Yes, I have met the general committee of the Western Region.

20 Q. Who constitutes it, do you know?

A. That will be a representative from each craft.

Q. A representative from each craft engaged in the shops, is it? A. Yes.

Q. Who chooses these chairmen, do you know, or these committees of the federated trades in Division No. 4? A. The members themselves.

Q. The members of the federated crafts? A. Yes.

Q. Has the company anything to say in the choice of these committees or the appointment? A. No.

30 Q. So your instructions were to reduce the staff. Were any

RECORD
 In the
 King's
 Bench
 No. 10
 Plaintiff's
 Evidence
 Luke Wedge
 Cross-
 examination
 (continued).

reasons given to you? A. It was found necessary to reduce the amount of the pay roll equal to the previous year.

Q. It was found necessary to reduce the pay roll?

A. Yes.

Q. How many hours a week were the Fort Rouge shops running on in June 1927? A. 40 hours a week.

Q. That is eight hours a day for 5 days a week?

A. Yes.

Q. These shops were closed on Saturdays?

A. Yes.

10

Q. You knew Young before June, 1927? A. Yes.

Q. You had met him about matters in the shops?

A. Yes.

Q. What have you to say as to his work and general conduct in the shops, Mr. Wedge? A. His work was not what you would call satisfactory.

Q. In what respects? What do you complain of his work?

A. One thing, he did not do enough work.

Q. Did not do enough work? A. No.

Q. Anything else? A. Well, I have heard—

20

MR. McMURRAY: I object.

THE COURT: No, no.

BY MR. LAIRD:

Q. Had he been before you? Had you occasion to discuss with him personally his work and his conduct in the shops while he was employed? A. I did, at one time his work, one time.

Q. What led to that? A. Well, not doing enough work.

Q. What led up to that? Did you come along and find him not working and reprimand him? Tell the Court what took place? A. The foreman came up to me and told me that Young was not doing enough work.

Q. Was Young present when the foreman came to you?

A. No.

Q. The foreman came to you, and later on was Young present? A. Yes.

Q. And the foreman too? A. Yes.

10 THE COURT: And then what took place?

Q. Then what took place?

A. Well, I can't remember what took place at that time. I can't remember the conversation, but it was in regard to the work, about him not doing enough work.

Q. Who suggested that he wasn't doing enough work?

A. His foreman.

Q. His foreman complained about his not doing enough work? A. Yes.

Q. What is the name of his foreman?

20 A. Alfred Bassett.

Q. Alfred Bassett complained about his not doing enough work, and took him up to your office?

A. Yes.

Q. Is your office on the same floor?

A. You go up a stairs. At that time it was in the shops.

Q. And Mr. Bassett took him up to you after first seeing you and complaining about his not doing enough work? A. Yes, also the machine shop foreman.

BY THE COURT:

RECORD

In the
King's
Bench

No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

RECORD
In the
King's
Bench
No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

Q. On this first occasion what did Young have to say to that that you remember? A. Oh, I don't remember what took place that time.

BY MR. LAIRD:

Q. That is, Mr. Bassett complained that he wasn't doing enough work, and you can't tell his lordship what Young said in respect of the complaint?

A. No, I can't.

BY THE COURT:

Q. When was that? A. It must have been a couple of years 10 ago now.

BY MR. LAIRD:

Q. And that would be 1926? A. I would say about 1926, yes.

Q. Did you reprimand him or admonish him in any way about his work? A. I did at that time, yes.

Q. Then you refer to another occasion, when the general foreman mentioned him, was Young present at that time?

A. No, that machine shop foreman was present at that time.

Q. The machine shop foreman was present at the time 20 Bassett and Young were present? A. Yes.

Q. Who was he? A. Mr. Hough.

Q. And he was present too? A. Yes.

Q. Did he make any complaint about Young's works in Young's presence? A. I believe he did at that time, yes.

Q. Do you recall Young being before his foreman by reason of complaints about his work on other occasions?

A. No.

BY THE COURT:

Q. That was the only occasion, then? A. Yes.

BY MR. LAIRD:

Q. I am instructed that there was an occasion when he was before you about some absence from work on account of St. Johns Ambulance course, or something of that sort?

A. I don't recall that.

Q. In your position as superintendent are you in a position from your own observation, apart altogether from what your foreman told you, or reported to you, to say what kind of a work-
10 man he was? A. I get that from the other foremen.

Q. That is, you do not pretend to keep in touch with the individual man? A. No.

MR. LAIRD: I think I should be allowed to ask if he had complaints from the foremen. The man was dismissed.

MR. BERGMAN: That would not be evidence, the fact that you have complaints. You will have to show there is justification for them.

THE COURT: Without stating what the complaints were, you might connect it up.

20 BY MR. LAIRD:

Q. Did you have complaints from the foremen in the shops as to Young's work in the shop? A. Yes.

BY THE COURT:

Q. On how many occasions? A. On several occasions.

BY MR. LAIRD:

Q. On several occasions? A. Yes.

Q. Can you tell his lordship approximately the number of occasions when you had complaints?

A. Oh, I would say half a dozen times.

RECORD
In the
King's
Bench
No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

RECORD

In the
King's
BenchNo. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

BY THE COURT:

Q. When? What is the most recent?

A. I had them before he was brought to me in 1926, I had some, but I don't remember any after that. That is, as nearly as I can remember it was 1926 he was up to my office.

BY MR. LAIRD:

Q. Then when you were directed to reduce the staff you met Mr. Page and Mr. Shaw, that is, these officers of the boilermakers and machinists, and the question of the man to be laid off came up, I suppose? 10

A. Yes.

Q. And what did you have before you? Did you have a list of the names you were supposed to lay off?

A. No, I did not have a list of names. I just referred to the individual.

Q. You referred to the individual? A. Yes.

Q. Had you discussed the matter at all before going to that conference, discussed the matter with your foremen in the Fort Rouge shops? A. Yes.

Q. And at that conference I think you said that Young's²⁰ name was decided upon? A. Yes.

Q. Can you tell me who mentioned Young's name first, you or some of the others? A. I think I said, "What about Young?" And he was on the list, and he was ticked.

Q. You think you said, "What about Young?"

A. Yes.

Q. Why did you say that? A. Well, I considered through conversation with my foremen that he would be a good man to get rid of.

Q. Why? A. He wasn't doing the work.

30

Q. And Mr. Hedge did not object, I suppose?

A. No.

Q. I suppose Mr. Hedge would have to take largely your report on an individual? A. Yes.

Q. Mr. Hedge is your superior officer? A. Yes.

Q. But his office is not in the shop? A. No.

Q. It is in the Union Station? A. It is in the Union Station.

Q. Did the representatives of the boilermakers of Division 10 No. 4, and the machinists, Messrs. Page and Shaw, did they raise any objection to Mr. Young being dropped? A. No.

Q. Mr. Young came to you the same day he received the notice of the 9th of June? A. Yes.

Q. And wanted to know why he was being laid off, is that it? A. I just forget the words that were used, but it would naturally be something of that sort.

Q. Do you recall the conversation?

A. There was very little conversation carried on.

Q. He left his work and went up to your office?

20 A. Yes.

Q. Was there anybody present but you and him?

A. No, not that I remember.

Q. And what did you tell him? A. I told him to see the committee.

Q. What committee did you mean? A. The shop committee.

Q. Then he came back to you the following day?

A. Yes.

RECORD
In the
King's
Bench
No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 10
 Plaintiff's
 Evidence
 Luke Wedge
 Cross-
 examination
 (continued).

Q. With somebody else? A. Yes.

Q. And what did you say to him then?

A. As far as I can remember I said the same thing, to see their committee in the shop.

Q. Referring to the interview at which the plaintiff Mr. Young, Mr. Bassett, and Mr. Hough were present, do you recall at all what was said about Young's work? You said a complaint of not doing enough work had been made. Do you remember expressly what it was?

A. No, I don't remember that. 10

Q. You don't remember the details? A. No.

Q. Do you recall at all the hiring of Young in 1920? A. No, I do not.

Q. You say that Mr. Hough has no power to hire? Does he sometimes interview applicants for work, or do you do that?

A. He may have a talk to them before they come in to me.

Q. He may have a preliminary talk to them?

A. Yes.

Q. But you are required to see them all, interview them all?

A. Yes. 20

Q. Do you recall at all Mr. Wedge interviewed Mr. Young in June 1920? A. No, I do not. That was in June. I wouldn't be on my holidays at that time, no.

Q. You don't recall any conversation about wages or terms of employment, or anything of that sort?

A. No.

Q. Did you give him any paper writing or agreement at all at that time? in June 1920? A. No.

Q. Did he ever receive any written agreement from the company? A. No. 30

Q. The written application for hiring is signed by the applicant and filed in the offices of the company?

A. Yes.

Q. And kept as part of his records? A. Yes.

Q. But these schedules being given to the men, exhibit 2, wage agreement No. 4, do you as superintendent of the shops distribute exhibit 2 while it was current to the employees, machinists, or boilermakers?

A. No.

10 Q. You are furnished with, I take it, a copy for your own use? A. Yes.

Q. And more than one I suppose in your office in Fort Rouge? A. Oh, yes, I might have half a dozen.

Q. And the foremen, would they have them?

A. Yes, some of them, the general foremen have them.

Q. But it is not the policy of the company to distribute these among the employees? A. No.

Q. You told my earned friend I think that you presumed that the men had them. Do you know how they are distributed
20 among the employees? A. I do not.

Q. The company does not do it? A. No, the company does not do it.

Q. You had nothing at all to do with negotiations of wage agreement No. 4, exhibit 2, or wage agreement No. 6, exhibit 3?

A. No.

Q. They were negotiated, I believe, in Montreal?

A. Yes.

Q. Had you anything to do with the negotiations of wage agreement No. 1, exhibit 4? A. No.

RECORD

In the
King's
Bench

No. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

RECORD

In the
King's
BenchNo. 10
Plaintiff's
Evidence
Luke Wedge
Cross-
examination
(continued).

Q. Nor the supplement to it? A. No.

MR. LAIRD: That is all.

No. 10
Plaintiff's
Evidence
Luke Wedge
Re-
examination

 MR. McMURRAY: There has been a lot of new matter brought out by my learned friend that I would like to examine on.

THE COURT: Yes.

EXAMINED BY MR. McMURRAY:

Q. There is a merit system in your shops, is there?

A. Yes.

Q. A man's record is kept, and on that record is entered any complaints that might be made against him? 10

A. Not all complaints, no.

Q. There are demerit marks? A. Yes.

Q. They would be entered? A. Not in all cases.

Q. Why? If you had some favorite man you wouldn't enter them up? A. No.

Q. Explain it, please. A. I was using the demerit marks just in cases of non-punching of the clock, and things like that, minor offences.

Q. That is, where a man did a small trivial thing, that was a demerit? A. Yes. 20

Q. If he did anything seriously wrong he was not marked?

A. He was penalized in other ways.

Q. In what other ways? A. He may be laid off for a week or ten days, suspended for ten days.

Q. That would show on his card record that was kept?

A. Not on his card record, just in the time office, it would show where he had lost the time.

Q. As a matter of fact was Young ever laid off?

A. No, Young was never laid off.

Q. There was never any demerit mark against him?

A. Not that I know of.

Q. Not that you know of at all? A. No.

Q. And he was never penalized in any other way that you know of? A. No.

MR. McMURRAY: I would like to ask a question as to apprenticeship seniority as it affects the seniority list. I overlooked it when I was asking questions before.

10 THE COURT: Yes?

BY MR. McMURRAY:

Q. How many apprentices have you in the shops?

A. In the machinist trade?

Q. Yes? A. Possible 40, not in the machinist trade, I may be mistaken about that number.

Q. Those men would all come through and be employed by you. They would all become machinists? A. Yes.

Q. And they would all be junior to Young, that is, those who came through after he was hired?

20 A. They may consider it that way on the seniority list, yes.

Q. And then possibly you would have 150 apprentice machinists who would become machinists, apprentices who had graduated to machinists subsequent to Young's hiring?

MR. LAIRD: I object to that.

Q. There would be a large number of these apprentices become machinists subsequent to Young's hiring? A. Yes.

Q. And they would be with the company still, a great many of them? A. Yes.

RECORD

In the
King's
Bench

No. 10
Plaintiff's
Evidence
Luke Wedge
Re-
examination
(continued).

RECORD

In the
King's
BenchNo. 10
Plaintiff's
Evidence
Luke Wedge
Re-
examination
(continued).

Q. Have you taken on, either by way of graduation apprentices, or hiring new men, after Young was dismissed?

A. No, we have not hired any men since Young was dismissed.

Q. Have you taken on new men as distinguished from hiring new men? A. New machinists, you mean?

Q. Yes. A. No.

Q. No new machinists. That is all.

No. 10
Plaintiff's
Evidence
Luke Wedge
Re-Cross-
examination

MR. LAIRD: Could I crave your lordship's indulgence to a question.

THE COURT: You would be entitled to touch upon this new matter.

BY MR. LAIRD:

Q. You have about 40 apprentices generally in the shop.

A. Yes.

Q. How many reach the stage of machinists a year, can you give that information? A. I could not offhand.

Q. It depends entirely on when they enter?

A. Yes, some years would have more than others.

Q. Is it a three years' training?

A. Five years' training.

20

Q. And it would depend on the number who entered in any particular year? A. Yes.

Q. Do you know, for example, in 1926 how many apprentices graduated into the machinist class?

A. No, I could get that but I couldn't say now.

Q. Would it be as large as 40? A. Oh, no. It might be 9 or 10 in a year.

Q. What is the policy of the company in respect to the ap-

prentices who have served? A. We like to keep those men on.

Q. Then how do you hire men? Does Division No. 4 or International Machinists supply men to the company to work.

A. They never have.

Q. You hire them individually? A. Yes.

Q. What about men, machinists, quitting work, Mr. Wedge? Do they give you a notice quitting work?

A. Very seldom. Sometimes they will come up with their overalls on and tell you they are quitting, and walk down and
10 take them off.

Q. There is nothing, as I see it in these schedules requiring them to give you a week's notice or an hour's notice? A. No.

MR. McMURRAY: I object to that and ask that the answer be stricken out. It is an interpretation of the rules, and I ask for a ruling.

MR. LAIRD: I withdraw the last question.

THE COURT: Yes, the rules speak for themselves. Strike out the last question and answer.

MR. LAIRD: That is all.

20 (The Court adjourned at 1 p.m. May 15, 1928 to 2.30 the same date.)

WILLIAM YOUNG, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McMURRAY:

Q. You are the plaintiff in this action, I believe?

A. Yes.

Q. And you are by occupation a machinist?

A. Yes.

RECORD

In the
King's
Bench

No. 10
Plaintiff's
Evidence
Luke Wedge
Re-Cross-
examination
(continued).

No. 11
Plaintiff's
Evidence
William
Young
Examination

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Examination
 (continued).

Q. Were you hired by the defendant the Canadian Northern Railway Company? A. Yes.

Q. When? A. In June, 1920.^{*} The day was the 10th, I believe it was the 10th of June.

Q. The 10th of June, 1920. Would you describe your hiring?

A. I went into the shops and I saw Mr. Hough, the machine shop foreman, and I asked him if there was a job for a machinist. He asked for my qualifications. I showed him a reference from the Old Country. I had been out one week. He looked through the reference and he told me I could start the following morn-10 ing—

MR. LAIRD: Objected to. Mr. Wedge has stated that Mr. Hough had no authority to hire men.

A. Mr. Hough was the man who hired me. And he was the man I made the arrangements with. He took me up into the office where I was entered up on the list, made out on that form which has been produced.

Q. I show you exhibit C for identification, is that your signature? A. Yes, that is my signature.

Q. Was that the form that you signed on that occasion? 20

A. Yes.

MR. McMURRAY: I would ask that now be made an exhibit.

THE COURT: All right.

(Application form for employment, formerly exhibit "C" for Identification, produced and marked Exhibit 9.)

MR. LAIRD: There are some writings and matters on the back which are not proved at all. It is just what is signed by Mr. Young that is all that is proved.

THE COURT: You had better clear that up, Mr. McMurray. 30

BY MR. LAIRD:

Q. Is that the 9th or 10th?

A. I started on the 10th, on the following morning.

BY MR. McMURRAY:

Q. You signed this application, and that is your signature?

A. Yes.

Q. What about the memoranda on the back? Do you know anything about them? A. I don't clearly recollect ever having read that.

BY THE COURT:

Q. Were they on when you signed? A. I couldn't swear
10 to that.

MR. McMURRAY: This, my lord, is headed, "Canadian National Railways, Application for Employment." "Note:— This form must be filled out in applicant's handwriting. The applicant will not be deemed to be in the service of these railways until his application shall have been fully approved, except that he will be paid for actual work done, whether application is approved or not."

(Mr. McMurray reads the exhibits signed to the Court.)

BY MR. LAIRD:

20 Q. Is it Stamp End Works, Lincoln, England?

A. Yes, that is the name of the place.

MR. McMURRAY: I would ask your lordship to note that this comes from the custody of the defendant.

BY THE COURT:

Q. What about the memoranda on the back?

MR. McMURRAY: We can prove it if my learned friend forces me to.

THE COURT: Then the front portion of it is in as the exhibit?

RECORD

In the
King's
Bench

No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Examination
 (continued).

MR. McMURRAY: May I recall Mr. Eager at this stage to prove this?

THE COURT: Does anything depend on it?

MR. McMURRAY: No, nothing depending on it.

THE COURT: You can do it later. If there is, you can do so.

MR. BERGMAN: Just to save it going in piecemeal it might be done now.

THE COURT: If it is a matter of convenience.

MR. McMURRAY: Yes, I would like to recall Mr. Eager. 10

THE COURT: Then the witness may stand down. Perhaps counsel would admit it.

MR. McMURRAY: I can't get my learned friend to admit anything. He is taking his early training too seriously on the point.

ALBERT H. EAGER, recalled:

EXAMINED BY MR. McMURRAY:

No. 9
 Plaintiff's
 Evidence
 Albert
 H. Eager
 Re-
 examination
 Under
 Rule 474

Q. I show you, Mr. Eager, the back of exhibit 9. The front of it is an application made by Mr. Young for a position, June 9th, 1920, and on the back of it is recommended by this name, 20 approved by that, and approved by that?

A. This is Mr. G. H. Hedge's initials, and the other are my initials, A. H. Eager.

Q. Did you approve of this? A. No, not personally, that was done by a clerk in my office by the name of Life. I generally approve of any form that represents an increase in staff or an increase in expenses. This man was replacing another fellow, succeeding another man.

Q. Would this person who has signed or initialled have authority to do so? A. Yes. 30

Q. He would have authority to approve of it?

A. Yes, sir.

Q. And you say these are the initials of Mr.—

A. G. H. Hedge.

Q. He would have authority to approve of it?

A. Yes.

MR. McMURRAY: I would ask should go in.

THE COURT: All right.

MR. LAIRD: I don't know what purpose my learned friend is putting it in for, as the evidence explained this morning it was
10 an office record of the company, of the time keeper, and the pay-
master, and is not—

THE COURT: It is relevant on the point even of office authority. You say Hough had no authority. This is an approval and would do away with the question of his authority.

EXAMINED BY MR. LAIRD:

Q. It is a fact, Mr. Eager, what I have said, that this was not delivered to Young at all, it was simply kept in the office records of the company?

A. Yes, that is particularly a form in order to place the man
20 on the pay roll, and give authority to the pay roll and the auditors to pass the vouchers for the checks for the services he has rendered?

Q. Was any duplicate or copy of this given to Young, the plaintiff? A. No, not at all. It is not given to any employees.

MR. LAIRD: That is all.

MR. McMURRAY: That is all.

WILLIAM YOUNG, recalled:

EXAMINED BY MR. McMURRAY:

Q. You signed exhibit 9, you say? A. Yes.

RECORD

In the
King's
Bench

No. 9
Plaintiff's
Evidence
Albert
H. Eager
Re-
examination
Under
Rule 474
(continued).

No. 9
Plaintiff's
Evidence
Albert
H. Eager
Re-
examination
Under
Rule 474

No. 11
Plaintiff's
Evidence
William
Young
Examination

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Examination
 (continued).

Q. Then what did you do? What was said or done?

A. Well, he told me to start the following morning.

BY MR. LAIRD:

Q. Who said this. A. Mr. Hough. This was an office up-stairs in the shops, and I proceeded to walk down the steps, when just as an after thought I turned around and asked him what wages I was going to receive, and his statement to me was the going rate, which I understood at that time—

THE COURT: Just what he said.

MR. LAIRD: It was the going rate for the going wage. 10

THE WITNESS: The going rate.

BY MR. McMURRAY:

Q. Any further discussion? A. No, only instructions to start work the following morning.

Q. You say this was Mr. Hough. A. Yes.

Q. Did you have any talk with Mr. Wedge about it?

A. No, I never saw Mr. Wedge at that time.

Q. Did you know what the rules and regulations, etc. governing machinists in the shops were at that time of your hiring?

A. Yes. 20

Q. How did you know that? A. Because I had happened to become acquainted casually with two or three men working in the shops, and they told me—

MR. LAIRD: Objected to.

Q. You can't say what they told you.

A. I read the books, the agreements.

Q. What agreements did you read? A. Agreement No. 4, which was in existence at that time.

Q. You read agreement No. 4 which was in existence at that time? A. Yes?

Q. And you went to work next day, did you? A. Yes.

Q. How long did you work for the company?

A. Seven years.

Q. From the 10th of June until when? A. Until the 13th day of June, 1927.

Q. Were you ever punished for disobedience? A. No.

Q. Laid off? A. No.

10 THE COURT: The question might imply that they let him off for his offence of disobedience.

MR. McMURRAY: Well, I was meaning earlier, my lord, than this.

BY. MR. McMURRAY:

Q. Prior to this you say you were never laid off?

A. No, I never was laid off in any way.

Q. You left the company's service, did you, on the 13th of June, 1927?

A. Yes, I was paid off on that date.

20 Q. Will you just tell the Court about your leaving the service, and what brought it about?

A. Well, on the 8th of June, the day prior to receiving the notice, a man informed me there was to be a reduction—

MR. LAIRD: Objected to.

Q. You can't tell that.

A. Well, on the 9th June, about 4:35 p.m., the foreman, Alfred Bassett, whom I was working under came and presented me with an envelope which contained the dismissal notice.

RECORD

In the
King's
Bench

No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Examination
 (continued).

MR. LAIRD: Well, it is a paper.

Q. This is exhibit 7. Is that the notice you received?

A. Yes, that is the notice I received.

Q. You say that your foreman, Alfred Bassett brought exhibit No. 7 to you, and what did you do?

A. Well, I opened the envelope and read the notice. I had to read it twice, because I could not understand it. I noticed a man working alongside of me was still working and had not received a notice, and I knew this man was junior to me, so I proceeded to Mr. Wedge's office and I asked Mr. Wedge the reason for my dismissal, saying a number of men junior to me was still retained.

BY MR. LAIRD:

Q. Is that what you said to Mr. Wedge?

A. Yes, that is what I said to Mr. Wedge.

BY MR. McMURRAY:

Q. And what further did you say to Mr. Wedge, if anything? Just describe your conversation with Wedge.

A. Well, I went in to see Mr. Wedge and asked him the reason for my dismissal, saying a number of men junior to me was still retained. His reply to me was he had nothing at all to do with the notices, all he did was to sign them, and he referred me to the shop committee— he referred me to the committee, and I asked him what committee, and he said, "You are a machinist, aren't you?" I said, "Yes." "Well," he said, "the machinist committee, I suppose." I then left Mr. Wedge and proceeded back to work.

Q. You say that Wedge told you— what do you say he told you, that he had nothing to do with?

A. That he had nothing to do with it, except that he had signed it.

Q. Yes, what did you do next?

A. I went back to my work. It was around 5 o'clock at that time, and I was told on entering the shop that eight or nine more men—

MR. LAIRD: I object.

Q. You can't tell what anybody said except an official of the company?

A. I went back into the shops and went to my work. It was just about 5 o'clock then, time for leaving work.

Q. Did you go to see Mr. Wedge again?

10 A. On the following morning.

Q. How many went to see Mr. Wedge?

A. As near as I can say, eight or nine men?

Q. Eight or nine men along with yourself went to see Mr. Wedge. Are these men who have been released.

MR. LAIRD: I object to that. We are not concerned with anybody except Mr. Young.

A. I went along with those other men and we went and interviewed Mr. Wedge in a body. I asked Mr. Wedge the reason for our dismissal, as we knew there were other men junior to us in
20 the shop. He said that he had nothing at all to do with the dismissals, that all he did was to sign the notices, and that a reduction of the staff had been authorized, and a number of men had to be laid off, and all he could do was to refer us to the committee. After that we asked Mr. Wedge if we could see Mr. Kingsland, as we understood Mr. Eager was out of town. He told us that Mr. Eager was out of town, and that if we thought it was any good we could go and see Mr. Kingsland. Then I asked him if we could get pass-outs to punch out to go down to Kingsland's
30 office. He told us that he could give pass-outs, but he thought it would be better to stay at work. He then phoned Kingsland's office and found that Mr. Kingsland was in town, but he advised us to continue work and go down and try and see Mr. Kingsland on Saturday, and therefore, we would not lose any time between that Monday night. We then decided we would do that. On leaving Mr. Wedge's office Mr. Wedge wished us luck. What he meant by that I don't know.

RECORD

In the
King's
Bench

No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Examination
 (continued).

Q. Good luck or bad luck? Who did you go to see after that?

A. The following morning a number of us went down to Mr. Kingsland's office.

Q. Where was that office? A. In the Union Depot.

BY THE COURT:

Q. Were you among them? A. Yes.

BY MR. McMURRAY:

Q. What occurred?

A. First of all we saw Mr. Kingsland's secretary. He asked us our business, and we told him that we wished to have an interview with Mr. Kingsland. He asked us what we wanted to see him for and we told him we had been laid off and we wanted an interview with Mr. Kingsland regarding our discharge. He asked us if we were members of Division 4, and we told him no. He said, "Where is your shop committee?" We told him we had no shop committee; we were our own committee. He then told us he did not think that Mr. Kingsland would see us, but advised us to wait a few minutes, as Mr. Kingsland was not in his office. A few minutes afterwards Mr. Kingsland came into his office, and he went in to see him and came back with the information that Mr. Kingsland refused to see us without the shop committee. Then he said, "Have you seen Mr. Hedge and Mr. Eager?" And we told him we did not know we had to see Mr. Hedge and Mr. Eager was out of town. We then asked him if we saw Mr. Eager first would he meet us there collectively or individually—

MR. LAIRD: I object to that; all this takes place with a secretary?

BY MR. McMURRAY:

Q. Did you ever see Mr. Kingsland? A. No.

Q. Who else did you see?

30

A. After he told us we could not see Mr. Kingsland without the shop committee, we went down to see Mr. Hedge.

Q. Where is Mr. Hedge?

A. His office is in the same building. We saw his secretary, and his secretary went in to tell him that we wished an interview, and he came back with the information that he absolutely refused to see us without the shop committee. We told him that we had no representatives outside of ourselves as were individuals, and were not represented by Division 4. He told us that Mr. Hedge absolutely refused to meet us without his shop committee.

RECORD
—
In the
King's
Bench
—
No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

Q. Did you go to see Mr. Eager? A. Mr. Eager was out of town, at that time.

10 Q. What about the committee, did you see them?

A. We went over to the shops about Tuesday, I believe, it was.

Q. And where were you reading from, witness?

A. I have some notes, which I kept.

THE COURT: Don't read from anything until you are given permission.

BY MR. McMURRAY:

Q. Did you make those notes at that time?

A. Yes.

20 Q. Under whose instructions? A. Well, my lawyer advised me it would be better to keep notes.

Q. An exact statement of everything you did?

A. Yes.

Q. When did you make these particular notes you are now going to refer to?

A. On the exact date that the different items were entered, on the dates that they happened.

BY THE COURT:

Q. What is the first date?

RECORD

In the
King's
BenchNo. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

A. The first date I believe is June 9th. There is only one difference, and that was made afterwards, that is the note of June 8th and 9th, I believe it was.

Q. When were they entered? A. They were entered subsequently.

Q. How long afterwards? A. About a week after. No, I am making a mistake, they were entered on the Saturday, that was the first day that we actually started this.

BY MR. McMURRAY:

Q. You were dismissed on Monday? A. No, this started 10 before Monday.

Q. How long after the event was it that you made the entry?

A. I made the first entry on the Saturday, which was the 10th, and I received my notice on the 9th and that was Thursday, and then on Saturday I made the first entry in this book.

Q. Three days afterwards? A. Yes, my time in the shop was not ended until Monday night.

Q. Did you get your instructions to make these entries before the events happened? A. No, before most of them, except those days I spoke of. 20

Q. Did you make those entries immediately at the time of the happening of the conversations?

A. Within a few minutes afterwards, yes.

MR. LAIRD: I object to that. He may make all the entries in the world under instructions of my learned friend and that is not evidence against us.

MR. McMURRAY: The question is can he refresh his memory from his notes.

THE COURT: But you are leading him too much for refreshing purposes. But it seems to me that the witness's notes, particularly as to the events of the first few days can be used for the purpose of refreshing his memory if he can't otherwise remember them.

(To the witness): Don't use your memoranda unless you are given permission.

BY MR. McMURRAY:

Q. You went to the shop committee, did you?

A. Yes.

Q. Tell what occurred there?

A. I first of all went to H. Davis over in the blacksmith shop. I was under the impression at that time that he was chairman of the committee. We presented him with a notice calling upon
10 him to take up our grievance with the management for our dismissal. He told us that he was not responsible, that he could do nothing in the matter, that it was up to their committee.

MR. LAIRD: Objected to.

THE COURT: No, we don't want all that.

BY THE COURT:

Q. Davis wasn't the man to apply to, was he?

A. I was just stating what he said.

Q. He wasn't the proper man to apply to?

A. No.

20 BY MR. McMURRAY:

Q. Who did you go to next?

A. We proceeded from H. Davis to G. B. Anderson, in the locomotive shops. We presented him with a notice calling upon
him—

BY THE COURT:

Q. Was he the proper man?

A. He was the proper man; he was chairman of that com-

RECORD
In the
King's
Bench
No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Examination
 (continued).

mittee. This notice was calling upon him to take up our grievance as called for in the schedule.

MR. LAIRD: I object to that.

BY THE COURT:

Q. You gave him a notice? A. Yes.

Q. Was it in writing? A. It was in writing, yes.

BY MR. McMURRAY:

Q. That was to Anderson, you say? A. G. B. Anderson.

Q. Have you a copy of the notice that you served on him?

A. No, I don't think so. I don't think I have one in my pos-10 session.

Q. I show you a memorandum. Is that the notice you sent or delivered to Mr. Anderson?

A. Yes, that is the notice.

Q. Is that your signature at the bottom of it?

A. Yes, that is my signature.

MR. LAIRD: I object to this, my lord. I don't think a document or writing addressed to Mr. Anderson can be put in evidence.

THE COURT: It is an issue that the plaintiff did not go²⁰ through the regular provided channels for redress.

MR. LAIRD: Yes, we say if the agreement applies to him—

THE COURT: If it should be found that it does this is very important to him.

MR. LAIRD: As to what took place between him and the committee?

THE COURT: Showing that he took the steps which the regulations say he should take.

MR. LAIRD: Just on that point I don't know of any regulation which says he should do that. I agree with your lordship entirely if the regulation said he should give that notice it would be relevant.

THE COURT: There is something in the pleadings that they are to follow it through certain officers, and so on. He was told to go to this committee, and Mr. Anderson was the chairman of it. I think I will allow it in.

MR. LAIRD: Subject to objection.

10 (Letter dated June 15, 1927, referred to, produced and marked exhibit 10.)

MR. LAIRD: Is that a copy?

MR. McMURRAY: It is the original delivered to Anderson.

(Reads Exhibit 10 to the Court.)

BY MR. McMURRAY:

Q. How was the letter given to Anderson?

A. I presented it to Anderson personally in the Fort Rouge shops.

Q. How did you get possession back of that original letter?

20 A. That was returned by registered mail to H. Powell.

BY THE COURT:

Q. Returned to H. Powell? A. Yes, he was one of the men let out at the same time.

BY MR. McMURRAY:

Q. How do you know it was returned to him?

A. Because he brought it down.

Q. Powell brought it to you? A. Yes.

Q. Powell did not give it to you?

RECORD
—
In the
King's
Bench
—
No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Examination
 (continued).

A. Yes, Powell brought it down to me, and then I turned it over to my lawyer.

Q. What next step did you take? When you handed this to Anderson did you have any conversation with him?

A. Yes, he asked what this was and we told him it was notices calling upon him and his committee to present our case to the management.

MR. LAIRD: I would formally object, but bow to your lordship's ruling.

Q. And what did Anderson say? A. Anderson told us he would have nothing at all to do with it.

THE COURT: Let me see that rule 35 that is referred to in the notice: "Grievances. Rule 35—Should any employee subject to this agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated (which he is unable to adjust directly) the case shall be taken to the foreman, general foreman, sub-superintendent, or master mechanic, each in their respective order, by the local committee or by one or more duly authorized members thereof, and a decision will be rendered without any unnecessary delay." What passed between an aggrieved person and his agent would not be evidence.

MR. BERGMAN: Mr. Shaw of the local committee refused to take it up. How can we show it otherwise.

MR. LAIRD: There is the remedy of going to Court.

THE COURT: There is remedy of going direct. You tried that?

MR. BERGMAN: If the committee takes the position they are only dealing for members of Division No. 4 we are entitled to show what attitude he took. 30

MR. McMURRAY: That is all we are endeavoring to show what attitude he took.

THE COURT: I think I will allow that, but do not introduce unnecessary conversations. Did Anderson take it up?

BY MR. McMURRAY:

Q. Did Anderson take it up for you?

A. That was about three minutes to twelve. We told him he would see him again about half past one, which would give him an opportunity to meet his committee. We went back into the shops about half past one, and we had some little difficulty in getting into contact with him. However, two of us met Anderson. We saw the committee talking together, and we went towards them, and when they saw us coming they split up. Some
10 went one way and some went the other, and we saw Anderson, and we asked him if he was prepared to do anything in the matter. He refused to speak. We followed him over to his locker, where two of the other men had accosted him, and he was just telling them at that time that their committee absolutely refused to do anything in the matter because we were not members of their organization.

Q. What was that again? A. Anderson said that their committee—

Q. To whom? A. That was all together, four of us at that
20 time.

Q. What did he say?

A. He said they refused to do anything in the matter as we were not members in their organization.

Q. Did he ever do anything for you afterwards dealing with this matter?

A. No, he never did anything.

Q. Anderson was president of the local committee?

A. Yes.

Q. Who were the officers of the general committee?

30 A. There was Page, and Shaw, of Transcona shops. They, I understand, are the general committee.

MR. LAIRD: Does he know anything about it?

RECORD

In the
King's
Bench

No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD

In the
King's
BenchNo. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

BY MR. McMURRAY:

Q. Did you ever see them in this connection?

A. Two of the other men presented notices, I think.

Q. Did you? A. No, I never saw them personally.

Q. Did you ever see any of the other officials of Division
No. 4? A. No.

Q. Did you ever communicate with them?

A. No, only through my lawyers.

Q. Did you interview any officials of the machinists' or-
ganization? A. No. 10Q. Were there men in the shops junior to you at the time
of your dismissal? A. Yes.

Q. Many? A. As far as I could find out about 30?

Q. About 30 men junior to you? A. Yes.

Q. Were they dismissed at the time you were?

MR. LAIRD: Objected to.

A. No.

Q. Do you know if there was any arrangement made by any
official of the company to supply all the employees with these
wage agreements? 20

A. I know communications passed between the officials—

MR. LAIRD: I object to that. The communications speak
for themselves.

Q. Yes, I saw those communications.

Q. You say you know there were communications?

A. Yes.

Q. Did you see them? A. Yes.

Q. Who were they from? A. One from Mr. Warren, from Mr. Hungerford, and Mr. Thornton.

Q. I show you a copy of a letter. My learned friend has agreed to admit this.

THE COURT: Don't show it to the witness.

MR. McMURRAY: My learned friend has agreed, and I have his written agreement that I can use these letters for all the purposes for which I could use the original. I was about to take
10 out a commission for the examination of Sir Henry Thornton and Mr. Warren, and he agreed with me that if the originals could be used in Court that I could use the copies.

THE COURT: In lieu of the originals.

MR. McMURRAY: Yes, to the extent to which the originals could be used.

MR. LAIRD: That was when clause 17 was on the record, when he pleaded certain letters, which he afterwards asked your lordship to strike out, and it has been struck out.

THE COURT: You had a few remarks in connection with
20 whether you might want to use the letters?

MR. LAIRD: It was agreed that if the original letters were evidence under that plea copies could be used, but there is no plea on the record, and they can't use them.

MR. McMURRAY: I think there is a plea in connection with it at an earlier date.

THE COURT: You are now proposing to deal with certain letters that the witness has just referred to?

MR. McMURRAY: Yes.

THE COURT: Under what portion of your pleadings do you
30 propose to introduce them?

MR. McMURRAY: That there were certain rules and regulations in the shop that applied to the plaintiff, that this wage agreement No. 4 applied to the plaintiff.

RECORD

In the
King's
Bench

No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD
 In the
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 Evidence
 William
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 Examination
 (continued).

THE COURT: I want the authority in the pleadings. Paragraph 17 has been eliminated yesterday.

MR. McMURRAY: Paragraph 4, that deals with wage agreement No. 6, also paragraph 1 deals with wage agreement No. 4.

THE COURT: "And he worked under the terms and provisions of these wage agreements Nos. 4 and 6?"

MR. McMURRAY: Yes.

THE COURT: And the agreements you beg leave to refer to at the trial. Does that entitle you to introduce those letters? 10

MR. McMURRAY: The witness was working there, and he is advised by communications on his behalf, that these agreements applied to him. He gets that from the highest authority.

THE COURT: We are dealing now with the pleading, not the evidence.

MR. BERGMAN: The point there is in paragraph 17 we pleaded that these letters constituted an agreement. We abandoned that part of it, and we say if there is any ambiguity on the face of the document that the practical construction put upon it by the parties in working it out is the best possible evidence 20 of what it means. The agreement speaks and names as parties to it certain railway companies of the one part, and Division No. 4 of the other, but it speaks of it being made for employees. Is that for employees belonging to Division No. 4 or for employees generally? And these letters from the President of the defendant company—

THE COURT: Bearing upon the interpretation?

MR. BERGMAN: The question has been raised, are those who are not members of Division 4 entitled to the protection of that agreement? Isn't that the best possible evidence to assist 30 the Court in settling any question of ambiguity? That is what Mr. McMurray is tendering it for.

THE COURT: That is quite all right, but to introduce these letters, where is the allegation that would admit them?

MR. BERGMAN: We do not have to plead our evidence.

THE COURT: In paragraph 4 you say you worked under that agreement. Of course you might show they really did govern your work.

MR. BERGMAN: Look at agreement No. 6. It starts off, "between the following railways represented for the purposes of this agreement by the Railway Association of Canada, and the Railway Employees' Department, Division No. 4, American Federation of Labor, in respect of rates of pay, work hours and conditions of service, for employees in the locomotive and car department of the several railways specified." Is that for employees generally or for such employees only as are members of Division No. 4? If there is any ambiguity we are certainly entitled to introduce evidence whether orally or in writing to show the highest officials of the defendant Company so construed it, and so represented it to men similarly constituted to the plaintiff.

MR. HAFFNER: To this man?

THE COURT: Even under paragraph 4, where you say you worked under that agreement, I suppose you are entitled to show they were under that agreement.

MR. BERGMAN: We say we are under it on the proper interpretation of that agreement, and that is evidence to show that it is the proper interpretation.

THE COURT: Well, make the tender of the evidence so that we can deal with it more specifically.

BY MR. McMURRAY:

Q. You say you saw this letter?

MR. LAIRD: I object, my lord, to the copies of the letter. I did agree to admit copies when my learned friend had clause 17 on the record, and when he moved to take evidence of Sir Henry Thornton and Mr. Warren, alleging it was necessary to prove the correspondence. I agreed to admit the copies, but he has now withdrawn that plea and I object to the copies of the letters now being admitted.

MR. McMURRAY: I would ask my learned friend to see the copy of the letter he wrote to me in that regard.

MR. LAIRD: If my learned friend is going to refer to a letter from me, his earlier request should be referred to.

RECORD

In the
King's
Bench

No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

RECORD

In the
King's
Bench
—
No. 11
Plaintiff's
Evidence
William
Young
Examination
(continued).

THE COURT: Addressed to whom?

MR. McMURRAY: A letter addressed by my learned friend's firm to my own, on March 19, 1928: "Re Young v. Canadian Northern. Dear Sirs: We have now considered your letter of the 14th inst., asking us to make admissions as to certain letters and also your motion for commissions. We are prepared either to produce at the trial originals of the letters addressed by M. H. Davey to Sir Henry Thornton, or to Mr. Warren of 6th Feb., 26th Feb., 28th Feb., 19th March, 1923, or failing that, to admit that the documents Nos. 21, 23, 24 and 25 in the first schedule of the 10 plaintiff's affidavit on production of Jan. 19th, 1928, are respectively true copies of such letters, and that such copies may be treated as originals. We are also prepared to admit that Sir Henry Thornton and Mr. Warren wrote and signed letters of the 2nd January, 31st January, 2nd February, 20th February, and 10th of April, 1923, to R. B. Russell or M. H. Davey, and that the copies you have produced as Nos. 16, 18, 20 and 22 in said schedule, are true copies of the first four of such letters, and that the document No. 17 in said schedule is the letter of the 10th April, 1923. We also are prepared to admit that Sir Henry²⁰ Thornton was President of the defendant and that Mr. Warren was General Manager of its Western Division at the dates covered by these letters.

So far as we can see this is all that Sir Henry Thornton or Mr. Warren could prove in respect of these letters and we trust it will be satisfactory for your purpose. We do not admit that the original letters are evidence in this action and this admission saves and reserves all just exceptions to the admissibility of the documents. Yours truly, Munson, Allan, Laird, Davis, Haffner and Hobkirk, per D. H. L." 30

MR. LAIRD: What is the date of the letter you were referring to the witness?

THE COURT: You do not admit that, even the original?

MR. LAIRD: My learned friend amended his statement of claim, or at least an order was got on the 6th of March. I think he amended it on the 7th, setting up paragraphs 16, 17 and 18 on the Order of the learned Referee. As your lordship sees paragraph 17 is the one that applies to those letters. He wrote me on the 14th of March asking me to admit the copies of the letters from Thornton to Russell and from Warren to Davey, and gives⁴⁰ the numbers of them, 16, 18, 20 and 22 in said schedule.

THE COURT: That is, the letters mentioned in paragraph 17?

MR. LAIRD: Yes, substantially. "Are true and correct copies of the originals, and that for the purpose of the trial of this action they are to be used as originals, and exhibited as such by the Court in lieu of the originals, and you agree they are to have the full force and effect as if the originals themselves were adduced in evidence. Furthermore, that the letters were signed by Sir Henry Thornton" and so on and so on.

10 Then I wrote him on the 15th of March, 1927: "Your two letters of the 14th inst. received today. Yesterday afternoon we were served with your notices of motion returnable on Saturday 17th inst. for the issue of commissions to Toronto and Montreal to take evidence in this case. We would have appreciated your request for these admissions before you launched the motions. We shall at once take up with our clients the questions of the genuineness of the documents and our agreeing to admit them as requested in your letters. Under the circumstances we beg to suggest that your motion should stand until this can be con-
20 sidered. Unless you can agree to this it will be necessary for us to ask the Referee to so direct. We would suggest that the motions should stand until, say, Wednesday or some later day next week."

That was on the 15th of March, and further to that I wrote my learned friend a letter to which he has referred, while the motion for the commission to examine Sir Henry Thornton and Mr. Warren was before the Court, and while that plea was on the records of the Court.

MR. BERGMAN: Surely, my lord, my learned friend can-
30 not qualify his admission.

THE COURT: Let me see the letter and the affidavit as to documents.

(Mr. McMurray shows document to the Court.)

THE COURT: In this letter you agree to produce at the trial the originals or admit that certain alleged copies are true copies, but there is no qualifications as to clause 17. I think that may have been prominent in your mind.

MR. LAIRD: I admit that, but I do want to address you on the admissibility.

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THE COURT: I will hear you on that, but if the originals are admissible I will allow the copies to go in as originals.

MR. LAIRD: As your lordship observed my learned friend pleads wage agreements 4 and 6, to which agreements and supplementals he begs leave to refer. Now, it is an elementary rule that an agreement is to be interpreted by the Court by reading the agreement, and no subsequent document or statement by either of the parties to the agreement can vary or add to the agreement in any way. My learned friend pleaded these letters as the contract in clause 17. The learned Referee allowed him 10 to do that. He has abandoned that, and I submit that that is an end, that no statement or letter or writing by one party to the agreement is evidence to interpret the agreement, is admissible in evidence to interpret the agreement. It just as well might be that because certain writing is there I meant so and so, and another party says I meant something else.

THE COURT: Suppose there was no question about the meaning of the contract at all, and it applied exclusively to Division No. 4, and then by a series of correspondence between Russell and Davey on the one part, and between Sir Henry Thorn-20 ton and Mr. Warren on the other, the agreements were extended to these men whom Mr. Russell and Mr. Davey represented.

MR. LAIRD: That is all right, that is making a new contract. That was the argument of my learned friend before the Referee, that there was a contract, and he read the letters. I did the best I could to submit there was no contract. However, the learned Referee allowed him to have the amendment. A new contract can be made, but he has abandoned that. Now he is asking to put in letters, ex parte letters to interpret a contract signed 30 years before. I submit the letters are not admissible in evidence to interpret, to vary, add to or extend in the slightest degree a written document. Your lordship will see, Mr. Haffner points out, if they were between them and Division 4, it might be a new agreement or a variation, or something like that, but here are statements, or letters, from one party to the contract to other parties.

THE COURT: To a stranger to the contract.

MR. LAIRD: Yes.

THE COURT: But even such letters might extend the benefit of the contract to such strangers. 40

MR. LAIRD: I agree to that.

THE COURT: Only your ground is it is not pleaded.

MR. LAIRD: They might form a contract. I will agree with my learned friend that the provisions of a certain agreement might apply to certain other circumstances, but my learned friend presses them upon your lordship solely to interpret a written contract.

THE COURT: In certain circumstances the understandings of the parties and the long course of conduct and treatment of
10 it is accepted as evidence of the interpretation. The parties may be confined to certain people, for instance between parties, and a certain understanding between them, and a long course of dealing is often accepted as evidence of what the contract meant. If you like, a modification of it read into the contract sometimes. What would you say on that phase of it here.

MR. LAIRD: There are no actions or conduct here to put in. They are ex parte statements. Supposing Sir Henry Thornton had stated that agreement does not apply, and has no application to the plaintiff at all, could I come into Court and put that
20 in, and ask your lordship to interpret the agreement as to what Sir Henry Thornton said one way, or what Mr. Warren said the other way? It is for your lordship, difficult as it may be, to read the contract in the light of the circumstances existing when it was made, and what one party says or may have meant is entirely irrelevant. We would have no end of litigation if Sir Henry Thornton could write and say the contract means one thing, and the Court is to be bound by that. It is there and can be interpreted as best we can.

MR. BERGMAN: I simply wish to repeat what I said before
30 if it is clear from the language of the contract that it does not apply, or if there is any ambiguity at all, then we have a right to tender to your lordship evidence to show.

THE COURT: What kind of evidence?

MR. BERGMAN: Well, the expression that is commonly used is "practical construction," the parties have construed it in a particular way.

THE COURT: Isn't it rather to show the circumstances under which it was made and the special meaning attached to

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Division No. 4. For instance, Division No. 4 means nothing to me if you do not explain it.

MR. BERGMAN: If we show, for instance, by the letters from Sir Henry Thornton we could ask your lordship to admit that as an admission by the defendant. Supposing my learned friend made an admission in Court that the agreement meant a certain thing; supposing Sir Henry Thornton made a written admission that the agreement meant a certain thing, surely that could be used as an admission, apart from the question of practical construction.

10

THE COURT: Apart from it?

MR. BERGMAN: But if we can show that this agreement was negotiated with Division No. 4 as representing a large body of employees, showing it to govern all the employees, and has been so interpreted, and we put witnesses on the stand now, Mr. Eager and Mr. Wedge, both of whom say there was no differentiation made between the men at all—

THE COURT: Then so far as that evidence is in it is in.

MR. BERGMAN: Yes, if you look at this agreement you know now there is going to be two different suggestions made to your lordship in the argument at the close of the evidence. My learned friend is going to argue that the expression "employees" means only such employees as were members of Division No. 4, and we are going to argue that it means all employees. It is to govern rates of pay, work hours, and conditions of service, for employees in the locomotive and car departments of the several railways specified.

THE COURT: If that clearly applies to all the men you do not need the letter.

MR. BERGMAN: We would not be arguing it before your lordship if it was entirely clear, but any time you get an agreement where there is an ambiguity—if the thing is perfectly clear it is purely a matter of interpretation, but if there is any ambiguity we are entitled to show both on the ground of practical construction and also in the form of admissions.

THE COURT: What kind of evidence? Isn't it rather evident that has a little more implication of what took place at the time the contract was made, and you may throw in additional

circumstances to show what the parties had in mind. What you propose to do is to introduce letters written long afterwards.

MR. BERGMAN: Your lordship is dealing with one phase and I am dealing with another.

THE COURT: Are you not confined to that?

MR. BERGMAN: That is one phase of it, but if after the agreement has been made, and in the carrying out of the agreement the parties had for years worked upon it—

THE COURT: That is usage.

10 MR. BERGMAN: The courts speak of that as being practical construction, as being the best evidence possible as to what the agreement really means. And I submit we are entitled to put it in both as being an admission by the defendant through its highest officers that this agreement applies to us, and also as an aid to the interpretation.

THE COURT: I don't see how you get an admission there, if it adds anything to the contract by way of qualification or implication.

MR. BERGMAN: No, we don't say it does.

20 THE COURT: If it varies the contract at all?

MR. BERGMAN: No, just interpreting it, assisting your lordship in clearing up an ambiguity, if there is an ambiguity. We are going to argue there is no ambiguity, that "employees" means employees without any qualification. The opposition say that this was made with Division No. 4 and you are outside the pale. Mr. Anderson said to Young when he went to him, "We have nothing to do with you."

THE COURT: Can you go on with some other branch? I will reserve it until the morning, and I would like to get any
30 authorities you may have on these matters.

CROSS-EXAMINED BY MR. LAIRD:

Q. You were in Wedge's office when you were hired upstairs in the Fort Rouge shops?

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A. No, Mr. Hedge's office.

Q. You were in Mr. Wedge's office?

A. No, Mr. Hedge's office.

Q. Were they side by side? A. Yes.

Q. You don't recall seeing Mr. Wedge there at all at the time? A. No, I didn't see Mr. Wedge at all.

Q. You did not see Mr. Wedge? A. No.

Q. You told my learned friend that you got and had seen a copy of what is known as wage agreement No. 4. It is marked exhibit 2 before his lordship. That is the book you referred to? 10

A. Yes.

Q. That is the one you have in mind? A. Yes.

Q. You did not see that or a copy of that until you worked for several weeks, did you? A. That was made just prior to my entering the service.

Q. But you did not see it until you had been working for the company for some time? A. I saw one, I took it to be agreement No. 4 at the time, I saw the agreement that was in force at that time.

Q. That was after you had been working for the company²⁰ for several weeks? A. No, before. I saw an agreement before I was working.

Q. Where? A. It was in the possession of some men working there.

Q. But you did not get it and read it?

A. Why not?

Q. Did you? A. Sure, I read it. I told you I had familiarized myself with it.

Q. You remember my asking you on your examination for discovery, and you told me you got a copy of wage agreement³⁰

No. 4 from one of your fellow employees after you had been at work sometime, is that not correct?

A. No, I did not say that.

Q. You did not tell me that? A. No, I said before I entered the service.

Q. And you say before you entered the service you got from one of the men in the shops a copy of wage agreement No. 4?

A. Yes.

Q. You arrived from England on the 5th June, did you not?

10 A. No, I arrived here on the 2nd June.

Q. And the first time you went to the shops was on the 9th June looking for work? A. Yes, looking for work.

Q. And you asked for Mr. Hough or asked for the foreman?

A. Yes.

Q. And you were sent to Mr. Hough? A. Yes.

Q. And hired at that time? A. Yes.

Q. You did not know anybody in the shops?

A. I had met several men who were working there.

20 Q. When had you met them? You had not gone to the shops until that day? A. Well, when I came from the Old Country I had letters of introduction to various people.

Q. Had you met any of the men in the shops prior to that time? A. Yes, I had met several of the men. They were perfect strangers to me at the time.

Q. The only thing said between you and Mr. Hough was that you would get the going rate. You asked what were your wages?

A. Yes.

Q. And he said you would get the going rate?

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A. Yes.

Q. That was after you had signed exhibit 9?

A. Yes.

Q. This application, after you had signed that?

A. Yes.

Q. And you did not get from Mr. Hough or from anybody at anytime during your employment any writing of any kind, did you? A. No.

Q. You were paid up to and including the 13th of June?

A. Yes.

10

Q. And you received the notice on Thursday the 9th day of June? A. Yes.

Q. And you are not a member of Division 4 of the Railway Employees' Department of the American Federation of Labor?

A. No.

Q. And not a member of any of the affiliated unions, not a member of any of the trade unions affiliated with that organization? A. No.

Q. And you never have been? A. No.

Q. And you are not a member of any machinists' union at 20 all in Canada? A. No.

Q. And never have been? A. No.

Q. You are, I believe, a member of the trade union known as the One Big Union? A. Yes.

Q. You joined that in July or August, 1920?

A. It would be around about that time.

Q. And you have been for some time a delegate to the Winnipeg Central Labor Council of the One Big Union.

MR. McMURRAY: I object to that, my lord.

THE COURT: What is the purpose of that?

MR. LAIRD: We have pleaded that the One Big Union actively opposed the company in respect of the organization of the workmen in the shops, and the plaintiff was a member of that organization, and that because of his hostility to the company's policy in the shops, irrespective of any contract or any matter of that kind, there is a just cause for dismissal.

MR. McMURRAY: There is no evidence of any hostility.

10 THE COURT: He pleads it, and he may introduce some. How do you plead it in your pleadings?

MR. McMURRAY: We deny it absolutely.

THE COURT: If it is raised here in the pleadings, whatever the merits may be, we have to hear it. He raises this as a ground of showing the hostility of the plaintiff.

MR. McMURRAY: Even if this plaintiff was, my lord, a member of that One Big Union and the One Big Union was carrying on agitation and so on, surely this witness is not responsible for that.

20 THE COURT: That is a different thing from the question of the defendant offering evidence in support of his plea. I will allow that if you are going to show hostility.

MR. LAIRD: I am going to try to show hostility.

THE COURT: I will allow it.

BY MR. LAIRD:

Q. Mr. Young, it is correct that you have been a member of what is known as the Winnipeg Central Labor Council of the One Big Union for sometime?

A. Yes.

30 Q. For how long approximately? A. You mean up to date, or up to the time of my dismissal?

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Q. Up to date? A. About two years.

BY THE COURT:

Q. I thought you said you had been a member since 1920?

A. I have been a member of the Union, yes.

Q. But a delegate to the Winnipeg Central Labor Council for the past two years? A. Yes.

BY MR. LAIRD:

Q. Can you tell his lordship what the Winnipeg Central Labor Council is? as respecting the One Big Union? Is it right to say it is really the governing body? 10

A. Well, it is a body of workers, different delegates from different local bodies met on this Council.

Q. And really the governing body of the One Big Union is the Winnipeg Central Labor Council, is it not?

A. Yes, as far as Winnipeg is concerned.

Q. As far as Winnipeg and the West is concerned, is that right? A. Not necessarily.

Q. Just Winnipeg and the suburbs, would you say?

A. Possibly.

BY THE COURT:

20

Q. Possibly. Do you know? A. Well, I am not altogether sure of that.

BY MR. LAIRD:

Q. Delegates sit there say for St. Boniface and Transcona?

A. Yes.

Q. You are and have been assistant secretary of the Fort Rouge Railway Workers' Unit of the One Big Union?

A. Yes.

Q. For how long? A. About 14 months.

Q. That is, the unit that is organized in Fort Rouge, and includes the members of the One Big Union working in the Fort Rouge shops of the defendant?

A. Yes.

Q. You are also secretary-treasurer of the Railroad Employees' Department of the One Big Union, are you not?

A. Yes.

10 Q. What is that, can you tell his lordship?

A. It is like an advisory body for the different railroad units in Winnipeg.

Q. That is, the different railroad units in Winnipeg combine into a railroad employees' department?

A. Yes.

Q. And you have been secretary-treasurer of that since it was formed, was it? A. No, for about two years, I should say.

Q. And I suppose I am right in saying that you are a pretty active and aggressive member of the One Big Union in promoting the business of the Union, are you not?

A. No.

Q. You are not? A. No.

Q. You have been a delegate to the central governing body for some time? A. Yes.

Q. And you attend those meetings. A. Sometimes.

Q. They meet how often, when the occasion arises?

A. Twice a month sometimes.

Q. The Railroad Employees' Department meet every month?

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A. Not always.

Q. It is supposed to, doesn't it? A. Well, it is supposed to, yes.

Q. You attend those, of course, as secretary-treasurer, you attend those meetings? A. Yes.

Q. You know of the plan adopted in the Fort Rouge shops by the defendant company known as the B. & O. plan, Mr. Young? A. No, I am not familiar with it.

Q. You are not familiar with it? A. No.

Q. You have heard of it, of course, and heard it was in force 10 there? A. I have heard of it.

Q. Will you look at this book and if you can tell me what it is, Mr. Young? A. I can't say that I can recognize that?

Q. You can't say that you can recognize that?

A. No.

Q. You don't know what it is in other words?

A. No.

Q. Have you ever seen one of them before?

A. I don't remember.

Q. You don't remember? A. No.

20

Q. Have you any recollection at all of ever seeing one?

A. No.

Q. How is the One Big Union constituted, Mr. Young? A. Well, they organize the workers of all classes, and all occupations, into one organization.

Q. Have they a written constitution? A. Yes, I presume they have a written constitution.

Q. Have you ever seen a written constitution of the One Big Union? A. Well, I don't remember, I may have.

Q. You don't remember, you may have? A. Yes.

Q. And you have been an officer for the times you have told me? A. Yes, I am pretty familiar with its general—

Q. You are pretty familiar with its general workings?

A. Yes.

Q. Isn't the constitution distributed to all members? A. I wouldn't guarantee it is distributed to all members.

Q. Didn't you get a copy? A. Well, I don't remember clearly whether I did or not.

10 Q. You don't remember clearly whether you did or not?

A. No.

Q. You visit the headquarters of the One Big Union very frequently by reason of your official position, I suppose? A. It just depends on what you mean by frequently.

Q. When you were working for the Canadian Northern Railways I suppose you would be there twice a month?

A. Oh, sometimes I never went near the place in a month.

Q. Sometimes you never went once in a month? Do you know an organization as the Western Railroad Shopmen's Committee, Mr. Young? A. I have heard of it.

Q. That is part of the One Big Union I presume?

A. Well, another organization.

Q. That is one of its subordinate organizations or subsidiary organizations? A. No, as I understand it, it is composed of men in the O.B.U. and other organizations outside of the A.F. of L. and other men not in any organization.

Q. That is, it is composed of members of the One Big Union, and men who did not belong to any organization?

A. Certainly.

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Q. But did not include members of the A.F. of L.—that is the American Federation of Labor, is it?

A. I don't know for sure, not to my knowledge.

Q. And you understand it, the Western Railroad Shopmen's Committee did not include any members of Division No. 4 of the American Federation of Labor?

A. No, all men outside of that.

Q. That is, it was a rival organization to Division No. 4?

A. No, it was simply a committee of men right on the job who had no representation to Division No. 4. 10

Q. A committee of men on the job, that is, on all the railways about Winnipeg? A. Yes.

Q. The Canadian Pacific Railway and the Canadian Northern Railway, and the Midland Railway, I suppose?

A. I presume so.

Q. They organized themselves because they were not represented by Division No. 4? A. Yes.

Q. Of course, Division No. 4 did not represent you at all in any way?

MR. McMURRAY: I object, that is a question of law; purely 20 a question of the interpretation of the contract.

THE COURT: No, I don't think so.

BY MR. LAIRD:

Q. You never, of course, authorized Division No. 4 to act for you in any way, did you? A. I never authorized them because I wasn't— but I always had to accept their agreements as applicable to me.

Q. That is, if they got an increase of wages for their members, you would get the benefit of it?

A. I got the same privilege. 30

Q. And if Division No. 4 submitted to a reduction of wages you submitted too and stayed on the job?

A. Yes.

Q. You didn't have to stay on the job?

A. No.

Q. So in your negotiations you never authorized anybody in Division No. 4 to act for you at all?

A. No.

Q. You wouldn't think of such a thing, would you?

10 A. Well, because they represented at one time a very small minority of the men, but still they negotiated.

Q. And you belonged to a rival organization, the One Big Union? A. I belonged to the One Big Union when I first entered the shops, which represented the majority of the men in that shop.

Q. Which was a rival to Division No. 4?

A. A rival, yes.

Q. And you have remained with the One Big Union?

A. Yes.

20 Q. And it has never negotiated any arrangements or agreements with the railway company that you know of at all?

A. No.

MR. McMURRAY: I did not get the name of the organization.

MR. LAIRD: Western Railroad Shopmen's Committee.

BY MR. LAIRD:

Q. The shop employees' committee is another committee of the One Big Union, is it not? A. I don't know.

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Q. You don't know what the Shop Employees' committee is?

A. Well, it may have been operating before—

BY THE COURT:

Q. Do you know? Don't guess. A. No.

BY MR. LAIRD:

Q. You don't know what the Shop Employees' Committee was? Do you recall that question coming up in your examination at all? A. No, I don't.

Q. Can you tell us what is the attitude of your organization, the One Big Union, towards what is known as the B. & O. Plan? 10

A. No.

Q. No, you can't. Division No. 4 assisted and supported that B. & O. Plan and its introduction into the shops? A. I don't know anything about that.

Q. You don't know that? A. No.

Q. And you don't know anything at all of the attitude of the One Big Union to the B. & O. Plan?

A. No.

Q. You don't know? A. No.

Q. You never heard or read of its attitude while you were 20 a member of the One Big Union? A. No.

Q. Do you know of anything the One Big Union did in respect of the B. & O. Plan? A. No.

Q. Not anything at all? A. No.

Q. The One Big Union Bulletin, I believe, is the publication of the One Big Union? A. Yes.

Q. It is published by the Winnipeg Central Labor Council I have already referred to? A. Yes.

Q. And you had been a member of that council, you have told us, for fourteen months, is it?

A. Somewhere about that.

Q. Had you heard the B. & O. Plan discussed and debated outside the Fort Rouge shops while you were working there, Mr. Young? A. No.

Q. Never at all? A. No.

Q. You never were present when any members of the One Big Union opposed the Plan and condemned it?

10 A. No.

Q. Never at all? A. No.

Q. Do you know or have you heard of meetings being held there by the One Big Union in opposition to that Plan? A. No.

Q. Have you ever seen a group of men at lunch hour in front of the shops discussing matters affecting their occupation at all?

A. I don't know, they might have been discussing, but I didn't pay much attention to it. Whenever I listened there was no discussion of that kind.

Q. You never heard any discussion about the B. & O. Plan, 20 or the co-operative plan? A. I don't recollect any.

Q. I suppose you read the One Big Union Bulletin published by the Central Labor Council of which you are a member? A. Sometimes.

Q. Don't you read every issue? A. No.

Q. It is published once a week, I believe?

A. Yes.

Q. How often do you read it? Once a month?

A. I might read a little every time, or I might pass it up. I have too much to do to read it.

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Q. You have too much to do to read it. Your hours in the shops were that you quit at 5 o'clock in any event, didn't you?

A. Yes, but I had other activities outside of that.

Q. The other activities were those of your secretarial work of the One Big Union? A. Outside of that too.

Q. Your wages were increased under some of these wage schedules while you were with the company?

A. Yes.

Q. And they were also reduced? A. Yes, exactly at the time that the schedules went into effect. 10

Q. You spoke about 30 machinists, junior to you in the shops. Those were apprentices who had grown up in the shops and graduated into the machinist's trade, I take it, Mr. Young? A. Not necessarily.

Q. Well, were they or were they not? A. I recollect some that was apprentices, men started in since I was hired and served an apprenticeship.

Q. And then became machinists? A. Yes.

Q. But nearly all of the 30 were men who had served their apprenticeship, five years in the shops? 20

A. As far as I could gather.

Q. As a matter of fact, you do not recall anybody, do you, who was hired in the shops as an outside machinist after you came, do you? A. Well, yes, I believe I recollect one individual.

Q. You recollect one man who was hired as an outside machinist? A. That I knew personally?

Q. Yes, do you remember his name? A. Mulby. He is now out West.

Q. He is not now in the service? A. I believe he left the service a month after I was dismissed. 30

Q. So that there is now nobody in the service so far as you

know who was hired after you? A. Well, the apprentices are hired in such a way that they are hired into the service, and they serve five years, and when they finish their apprenticeship they are allowed two years' seniority. The one I have in mind worked along with me. He started in as a helping machinist, he was reduced to a helper, and then he started in as an apprentice. He served three years, and came out of his time four months before I was dismissed, and he had two years' and five months' seniority, and I had seven years. Therefore, that shows he was junior to me.

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10 Q. That is, the apprenticeship served in the shops gives them two years' and five months' seniority?

A. No, two years.

Q. And that will enable them to take precedence on the list over men who have come in—

A. Within that two years.

MR. LAIRD: That is all.

MR. McMURRAY: There is a question I forgot to ask this witness, if your lordship will permit me to do so.

THE COURT: Yes.

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20 EXAMINED BY MR. McMURRAY:

Q. What wages did you receive from the company at the time of your hiring? A. 70 cents per hour.

Q. How many hours a day? A. Eight hours a day.

Q. Were those wages increased shortly afterwards?

A. Yes, to 85c an hour.

Q. How about employment, was it fairly regular?

A. Yes.

Q. How many days a year would you work?

A. Well, I never figured up the days in the year, but we had 30 the schedule holidays.

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Q. How many holidays a year did you get?

A. I believe it goes down for two or three days at Christmas time, and then several general holidays during the year. There was generally steady work until the beginning of the following year when they started taking shorter time.

Q. During the time you were working, the first year did you work constantly? A. Until about September or August, I can't recollect.

Q. How long were you off then? A. They kept laying off I believe at that time two days at the end of the month. 10

Q. How much would you be off that year by lay-offs approximately? A. Well, we might lose sixty days in a year through that.

Q. What about the next year? 1922? or 1921?

A. I think it was around 1922 when they reduced to three days a week, we lost about half the time. I imagine we only worked about 150 days in the year, that year, as a rough estimate.

Q. And the next year? A. Then later on they reverted, they went on steady five days a week and kept on five days a week until the time of my dismissal. 20

Q. Now, in the year 1926 what length of employment would you have received that year? A. I was working five days a week.

Q. The whole year through? A. Yes, for the whole year 1926.

Q. There would come out of that the national holidays? A. Yes, there was I believe a full week at New Year's or Christmas, and then the national holidays besides.

Q. So that what you really lost that year out of the whole working part was the half day per week? 30

A. Yes.

Q. Eight hours a day? A. Yes, 40 hours a week.

Q And in 1927 did the same apply? A Yes.

Q You worked five days a week? A Yes?

Q Are you a strong and healthy man? A I never lost any time in the shops through sickness. I worked full time in the shops except in 1924 for three weeks. I had an accident to my finger, which kept me off work for just over a week, and then I went on a holiday for ten days to the Coast, and that is the only time I lost in the shops in the eight years.

Q You say you are strong and healthy? A Yes.

10 Q How old are you now, Mr. Young? A 34.

Q When you were dismissed and left the service on the 13th June, were you able to get employment in your trade as a machinist? A No.

MR. LAIRD: Objected to.

Q What wages were you getting at the time of your dismissal? A 74c per hour.

Q You are a married man, I believe? A Yes.

Q Your home is in the City? A In St. James.

Q That is adjoining to the City.

20 Q Have you a family? A Two.

Q They are young, are they? A One was born last November, and the other is seven years last February.

Q Did you endeavor to get employment when you left?

MR. LAIRD: This is all new matter.

MR. McMURRAY: Yes, I asked the Court's permission.

THE COURT: Yes, you will have the right of cross-examination, Mr. Laird.

BY MR. McMURRAY:

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Q. Did you endeavor to get work? A. Yes.

Q. What effort did you make? A. Well, I went to a place on Main Street, a steam fitters. I also went to different iron works around the City, the C.P.R., Eaton's, the Hudson's Bay, and any place I heard of a job where I would likely get work.

Q. Over what period of time did those efforts continue? A. Over the whole time of the time I was out of work.

THE COURT: You claim the loss of one month's wages.

MR. McMURRAY: We did at that time.

THE COURT: Did you change that?

10

MR. McMURRAY: We claim damages now. We claimed one month's wages because I think at the time we drafted the statement of claim he had been out of work for one month. That was merely actual damages sustained at that time.

THE COURT: You are confined to that as far as special damages are concerned, are you not? One month \$120. So that anything beyond that is extraneous?

MR. McMURRAY: The original statement of claim was issued on the 11th day of July.

MR. LAIRD: The original statement of claim is on the 12th 20 day of August.

MR. McMURRAY: The original statement of claim was issued by Young against the Canadian Northern Railway and the Canadian National Railways joint defendants on the 11th July, 1927, and that was one month after he was dismissed or thereabouts.

THE COURT: What became of that action?

MR. McMURRAY: That action was withdrawn.

THE COURT: That is not the action we are trying here?

MR. LAIRD: That action was discontinued; please forget³⁰ about that.

MR. McMURRAY: I don't have to take instructions from my learned friend.

MR. LAIRD: Then I have to take objection. I object to any reference to a discontinued action.

MR. McMURRAY: In that action we pleaded special damages, \$120.00, and general damages in the larger sum, and in the new statement of claim, the one we have now, we pleaded special damages in the \$120.00 and general damages in the sum of \$50,000. I think I will have to ask your lordship to grant me leave to amend
10 that to the actual amount of the special damages that the witness has lost.

THE COURT: That is another matter. I was just calling your attention to the fact that your plea for special damages is for \$120.

MR. McMURRAY: Yes, what we had intended at that time was a little over a month.

THE COURT: And the evidence you are introducing now is a little over that.

MR. McMURRAY: I crave the Court to permit me to amend
20 the statement of claim to ask for special damages in the amount that I prove.

THE COURT: Let that stand, put in the evidence, and I will deal with it.

BY MR. McMURRAY:

Q. Over what period of time did these efforts continue? A. All the time I have been idle.

THE COURT: What time was that?

Q. What time have you been idle? A. I have been out of work up to three weeks ago.

30 Q. You say that from the 13th of June up to three weeks ago—do you remember the exact date three weeks ago? A. It was April 20.

Q. On April 20, during that period of time you have been out of work? A. Yes.

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Q. And you say you made a persistent effort to secure work?

A. Yes.

Q. Now you obtained work three weeks ago?

A. Yes.

Q. Are you able or trained to do any other work than machinist's? A. Well, I am working as a machinist now.

Q. But I say have you training in any other line of work beyond your own special line? A. No, not outside of the machinist trade, no.

Q. You are not a plumber by any chance, are you? 10

A. No, I never was.

Q. Or did you go to the woods and work?

A. No.

Q. Or to the mines? A. No, I have been at the machinist trade ever since I was 13 years of age.

Q. Now what loss have you sustained in actual wages? A. \$1,316.

Q. Have you made a computation of that? A. Yes.

Q. How do you make that up? A. On the basis of the amount of wages I would have received had I been in the company's service.

Q. That is, from the 13th day of June, 1927, up until what date have you computed that? A. Up until today.

Q. But you have been working for some time?

A. There is yesterday and today, which time I have been off for the Court.

Q. No, but up to the time you started to work?

A. There would be \$1,307.

Q. You have been working three weeks at how much?

A. That is, up to April 20, \$1,307.

BY THE COURT:

Q. Would you have earned only \$9 from April 20 up to date?

A. No, I am only counting half a day yesterday and today which I have attended Court.

THE COURT: I don't understand.

BY MR. McMURRAY:

Q. You went to work on April 20? A. Yes.

10 Q. Have you been paid for that time? A. Yes.

Q. That is not a loss? A. No, I have not included that as a loss. I have included half a day yesterday and today.

Q. You told me that you lost \$1,316 from the 13th day of June.

THE COURT: Let us not waste time; anyone can compute it. Let us discard this.

BY MR. McMURRAY:

Q. You are claiming general damages in the sum of \$50,000, how do you make up these damages? What damages have you sustained? A. The uncertainty of being able to obtain regular 20 employment and the loss of seniority rights in the shops.

Q. The loss of seniority rights in the shops?

A. Yes.

Q. What value are they to you? A. Well, under ordinary circumstances I would be retained in the company's services until I was 65 years of age, unless there was a reduction in staff that it would come to the time it would affect me as regards seniority, which wasn't likely with the number of men that was employed, if they went by strict seniority.

Q. If the seniority rule was enforced you expected to have 30 employment there until you were 65? A. Yes.

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Q. And what about the likelihood of advancing?

A. There is that possibility too.

MR. HAFFNER: That is not relevant, likelihood.

THE COURT: That falls really under the classification of special damages. You lost your employment for that period up until April 20th. Now you have got new employment.

MR. McMURRAY: Yes, but we don't know how long it will last.

BY MR. McMURRAY:

Q. What is this employment? A. I have been working as 10
 machinist. I have been told it may last one month or two months. It is a place where they close down pretty regularly every Fall. A number of the men are laid off every Fall, a big proportion of the men employed there, and I was told I could not figure upon steady work for some time.

Q. You say you lost your seniority rights. What else could you say you lost? A. Well, there was the opportunity for advancement, as you put forward. There was the chances I would be retained in the company's services until I was 65, that is the 20
 time they let men out as being too old for work.

Q. Do you know anything about pensions? A. Yes, there is also the loss of pensions which a man who has been in the company's services for 20 years is entitled to.

MR. LAIRD: I object to that.

A. That would give me quite a number of years after I was there until 65. I would have 30 years ahead of me yet.

Q. What are the pensions being paid? A. It is on a percentage basis.

BY THE COURT:

Q. Pension attaches when the man has been in the service 30
 how long? A. 20 years, I believe.

Q. It does not apply to people who have been in the service

shorter than 20 years? A. I don't think so, because there has been men let out at 19 years not eligible.

BY MR. McMURRAY:

Q. Any other loss or damage that you have suffered?

A. Well, I have to work at less money now than I would have been receiving in the shops.

Q. You are also asking that you be reinstated, are you?

A. Yes.

Q. Why do you want that? A. Because I feel that if I had
10 been justly dealt with I would have been still in the company's service, and kept on, and there would have been the likelihood of being kept on for years and years.

Q. Is there any provision for employees in the rights of travel on the railroad? A. Yes.

Q. What are they? A. A man—

MR. LAIRD: Objected to.

A. A man who has been in the company's—

MR. LAIRD: Objected to.

THE COURT: That may be worth something to the man.

20 MR. LAIRD: If it is in the schedule it is in writing.

THE COURT: Are they in writing?

BY MR. McMURRAY:

Q. Are they in writing? the rights to transportation?

A. Well, when a man has been in the company's service—

BY THE COURT:

Q. Just answer the question.

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A. No, I can't say that I know of it being in writing.

Q. How do you know they exist—free transportation?

A. Because I have already had the privilege of one in 1924, when I went to Vancouver, and I took my family, and I received a free pass on the railroad at that time.

BY MR. McMURRAY:

Q. Do you know of any posting on bulletin boards?

A. Yes.

MR. HAFFNER: That was in writing?

A. That is applicable to me with ten years or more service in the company. A man with—

MR. HAFFNER: That was in writing if it was posted up, my lord.

THE COURT: We may bring in the bulletin board, I suppose it is the brick wall of the shop?

MR. McMURRAY: I would like my learned friend to be ordered to produce it tomorrow morning.

(Court adjourned at 5 p.m., May 15, 1928, to 10 a.m., May 16, 1928, at the same place.)

10.30 a.m., May 16, 1928. 20

MR. BERGMAN: Yesterday, my lord, before the Court adjourned, I undertook to get some authorities and submit them this morning to show the letters in question yesterday were admissible to aid the Court in the interpretation of the contracts.

THE COURT: I have this difficulty that I don't know what they are, nor what they contain. How can I say whether they are admissible or not unless you give me the purport of them?

MR. BERGMAN: The general purpose, without reading them, is this—

MR. LAIRD: On that, my lord, let me suggest this: My learned friend said he was tendering them to interpret the written wage agreement; he was tendering them as writing to interpret the agreement, and I think for the present that is enough.

THE COURT: Let me hear his full statement on that and then I will rule.

MR. BERGMAN: Without stating the contents we want those letters in, my lord, showing that the highest officials of the Canadian Northern and the Canadian National Railways interpret these wage agreements, which were negotiated with Division No. 4, as applicable to all employees, and that all employees, all classes mentioned in those agreements are entitled to the benefits of them.

MR. LAIRD: Do you place it upon that ground that you want to aid the Court in the interpretation of a written document by bringing in the opinion of an official?

MR. BERGMAN: No, not the opinion. The acts showing how they were interpreted, and how they were applied, not opinions.

MR. LAIRD: Then the acts themselves would fall under a different heading.

THE COURT: Those are not acts, those are opinions. The acts would show the course of conduct in the shops, for instance. That would be usage showing how the parties themselves determined the contract.

MR. BERGMAN: If you have that in the form of a written statement of Sir Henry Thornton "that is how we are applying it," surely that is the same as if we called Sir Henry Thornton and he stated in the witness box, "that is how we are applying it."

THE COURT: There again I am met with difficulty. If you are offering Sir Henry Thornton's opinion as to the meaning of this contract I think it would fall very definitely under a certain rule, but if you are offering evidence of usage of the contract, an element perhaps of how the parties understood and interpreted the contract—

MR. BERGMAN: How the parties worked it out, as I called it yesterday, practical construction. That seems to be the expression used by a good many authorities.

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THE COURT: What that would mean would be this, if you want to show the usage in the shops, and you bring in a letter from some person, that is not the best evidence of usage.

MR. BERGMAN: Supposing Sir Henry Thornton was in the witness box, wouldn't your lordship say that his statement that that is the way it was worked out was the best evidence?

THE COURT: If he knew about it, and came here and gave evidence, that would be admissible testimony perhaps, but as to what took place in these shops, to get Sir Henry Thornton's letter, unsworn testimony, not subject to cross-examination at all, on something that is probably only hearsay so far as the actual conditions of the shops—

MR. BERGMAN: Well, it is their highest official. I don't care whether it is a sworn or unsworn statement, it is always admissible. An admission by a party is not subject to the hearsay rule.

THE COURT: But this is not quite an admission, as I see it.

MR. BERGMAN: Does your lordship not want to hear—

THE COURT: It depends on which way you are putting it. If you are putting it on the ground that you are to aid in the interpretation, I think I would exclude the letter, but if you put it on the ground of usage, that involves another principle.

MR. BERGMAN: Your lordship does not care to hear an authority on that?

THE COURT: I wouldn't say that.

MR. BERGMAN: I am afraid your lordship and I are not quite understanding each other.

THE COURT: Just to bring clearly to you what I had in view here, I will quote from Beale's Cardinal Rules of Legal Interpretation, Third edition, p. 138, citing an English case of **Lewis vs. Nicholson**: "It is always legitimate to look at all the co-existing circumstances in order to apply the language, and so to construe the contract; but subsequent declarations, showing what the parties supposed to be the effect of the contract, are not admissible to construe it." There are many more authorities along that line.

MR. BERGMAN: That is not the ground I am going on. It is a statement as to how the agreement was carried out.

THE COURT: Well, of course, that is different. I will hear you on that. I take it then it is on the ground of how the agreement was carried out?

MR. BERGMAN: Yes, the practical construction by the parties. The way they show they understood it by the way they carried it out. I will give your lordship English and Canadian authorities as well, but I am giving you first two decisions of the
10 Supreme Court of the United States, where the rule is very clearly stated and very clearly applied.

The first case is that of **Topliff v. Topliff, 122 United States Reports, p. 121 at p. 131.** The rule is stated in this language in a unanimous judgment of the Court: "In cases where the language used by the parties to the contract is indefinite and ambiguous, and hence of doubtful construction, the practical interpretation of the parties themselves is entitled to great, if not controlling, influence. The interest of each generally leads him to a construction most favorable to himself, and when the difference has be-
20 come serious and beyond amicable adjustment, it can be settled only by the arbitrament of the law. But in an executory contract, and where its execution necessarily involves a practical construction, if the minds of both parties concur, there can be no great danger in the adoption of it by the Court as the true one."

District of Columbia v. Gallaher, 124 United States Reports, p. 505 at p. 510. There a dispute arose as to whether the particular item was within or not within the contract that was before the Court: "The whole controversy between the parties as to this item, and also for a portion of the claimants' demands, arises out
30 of the fact that the letter of the contract and specifications, does not correspond with the plan of the work as furnished by the district engineer, and the sample of the work which had been done previously by other contractors, and with which that of the present claimants was to connect. The work as actually done was done under the direction and supervision of the district engineer and was performed in accordance with the plan and sample which was supposed and understood to be what was required by the contract, and to be paid for at the contract price. We think that the practical construction the parties put upon the terms of their own
40 contract, and according to which the work was done, must prevail over the literal meaning of the contract, according to which the defendant seeks to obtain a deduction in the contract price."

I will next cite the rule as applied by the late Chief Justice of this Court, in **Brandon Laundry Company v. Hanna, 19 Manitoba**

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Reports, p. 8 at p. 17. That was a case of a sale of land subject to a mortgage. Nothing was said in the agreement when the mortgage was to be discharged by the vendor, and so on, and some difficulty arose about that subsequently. Chief Justice Mathers admitted the correspondence that passed between the parties shortly after the contract was in fact issued. "The question then is when was the agreement to be completed by a conveyance? On this point the parties have very much assisted me to a conclusion. I know of no safer rule for the interpretation of a document than to adopt that which the parties themselves have placed upon it. 10 The agreement was dated May 11th and the plaintiffs' solicitors at once prepared and had signed conveyances in favor of the purchaser and wrote the defendant's solicitors a letter which they received on the 22nd May, notifying them of that fact and that this document would be handed 'on by Mr. Hanna in compliance with the terms of the bargain.'" What the defendant was to do according to the terms of the bargain was to pay \$10,000 and give six equal promissory notes for the balance. Nothing is said either in the agreement or in this letter about giving mortgages, but the defendant appears to have understood that he was to give a mort- 20 gage back, for, in their reply, his solicitors ask for 'the names of the persons to whom you wish the mortgage given.' This corresponds pretty well in accordance with the view that both parties thought the sale was to be completed by the conveyance when the \$10,000 was paid and the notes handed over, and that this was to be done immediately. The plaintiffs have given a further indication of their belief that the transaction was to be completed at once by bringing their action as one for specific performance of the whole agreement. If the contract was not to be completed until 1914 they have no right to bring such an action until that 30 time had arrived. Specific performance is not the remedy unless the whole agreement can be executed."

Then in **Hallsbury, Vol. 10, p. 451, paragraph 794:** "If, after other methods of interpretation have been exhausted, there remains a doubt as to the effect of the instrument, it is permissible to give evidence of the acts done under it as a guide to the intention of the parties; in particular, of acts done shortly after the date of the instrument."

Then there are two Ontario cases, the first of which is **Kny-Scheerer Company v. Chandler & Massey, 4 Ontario Weekly Re- 40 porter, p. 187 at p. 189.** There the Court had to deal with the construction of a contract of doubtful interpretation. It had been construed by the parties or carried out by the parties as if it meant one thing at that particular point. Chief Justice Moss in giving judgment of the Court says: "The course of dealing adopted by the parties worked out these provisions in a practical

way. Prices in the confidential catalog were taken as the basis, but from time to time alterations were made by both parties as the prices varied. Invoices and statements were received by defendants and entered in the accounts at the prices mentioned. Occasionally there were objections from one side or the other, but the correspondence shows no serious complaints as to the prices in general.

In view of these dealings, extending over a period of 20 months, it is too late to ask us to enter upon an inquiry involving
10 a revision of the prices, those fixed and acted upon by both parties."

That case went to appeal, and is reported in 36 Supreme Court Reports, p. 130, where your lordship will find at p. 134 that the Supreme Court points out that in the Ontario Court of Appeal apparently the controlling factor was practical construction put upon it by the parties, and the Supreme Court refused to interfere with that construction.

There is a later case in the Ontario Court of Appeal, the **City of Hamilton v. Hamilton Street Railway Company**, 10 Ontario
20 Law Reports, p. 594, reading from pp. 597, 598 and 603. There the Hamilton Street Railway had obtained a charter from the City of Hamilton, which required them to furnish workmen's tickets at a certain price between certain hours. The question arose after that—the street railway had been operating under that charter for a considerable length of time—as to whether all persons were entitled to these so-called workmen's tickets during the prescribed hours, or whether it was limited to workmen in the ordinary sense, in the sense of laboring men. Chief Justice Moss writes one of the judgments here, and he said: "It never could have been in
30 the minds of either parties that it should be left open to controversy as to who were or who were not entitled to use these tickets. Obviously the best and most convenient way of avoiding such questions was to provide generally, as has been done, for the issue of tickets at the reduced rates followed by a declaration, that they are to be 'good,' that is, available for the use by the holder during the specified hours. They were designated 'workmen's tickets' for the purpose of reference only, and not because they were intended for use by some special class of citizens supposed to come under the indefinite description of 'workmen,' and for years
40 the defendants acted upon that understanding of the terms; and in their amending by law they speak of these tickets not as 'workmen's' but as 'limited' tickets. There appears to be no substantial reason for now saying that the construction thus early adopted and long adhered to was wrong."

At p. 603: "The further fact that the defendants themselves for eleven years from 1893 to 1904, did not construe the agree-

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ment as they now desire to do, but sold such tickets on their cars to all who applied for them, and accepted them from all classes during the hours specified in the by law 'is not to be lost sight of.' "

I submit it is a well established rule of construction that where there is no doubt as to the meaning of the language, and both parties acted upon it, but in this case the Street Railway had acted on it in a particular way by selling these tickets and allowing anybody to use them, and that is the safest guide for the Court to follow.

THE COURT: I suppose you contend there is doubt here be-10
 cause in the pleadings you contend one thing and the defendant
 contends another?

MR. BERGMAN: Yes, we intend to argue to your lordship
 there is no doubt that employees—

THE COURT: But that view is challenged by the other side.

MR. BERGMAN: Yes, and that in itself creates a doubt
 which leads us to put in the evidence, if your lordship disagrees
 with me on that, but in that case I would ask that you allow para-
 graph 17 to be reinstated.

THE COURT: We will deal with that when we come to it. 20

MR. LAIRD: I do not think my learned friend can take the
 position he said he is taking. The plaintiff take the position that
 there is no ambiguity, and then he says we want this document
 in because there is ambiguity. He can't blow hot and cold. If
 the contract is unambiguous, as he says it is, all this talk is en-
 tirely irrelevant.

THE COURT: There is this, that on the pleadings he takes
 one view of the contract and you have another.

MR. LAIRD: That is so, but he takes the position that the
 contract is not ambiguous at all. 30

THE COURT: He maintains it extends to all men in the
 shops, and you take the position it extends only to those included
 in Division No. 4.

MR. LAIRD: Exactly, and he says it is not ambiguous at all.
 He can't blow hot and cold, and he can't ask to have that admit-
 ted on one ground and then say the case is different. I agree with

unless I have been very negligent during the course of the trial all this evidence would have been excluded if the law were different, but there is not one of the cases, except the Hanna case, which I will deal with, where any of the evidence was a written statement or declaration. I rely upon the statement your lordship read from Beale, and I read it myself, and there is not one of the cases as to a written statement at all, or a letter. It is what the parties did in actually carrying the thing out, and we have been hearing of that for several days now, as to what was done
 10 in the shops, in the way of discharging men, and ignoring seniority rights. You have heard that and I did not object to it because I believe the law says what the parties do is admissible, but that is not a written letter.

THE COURT: Suppose the letters recount what was done in the shops.

MR. LAIRD: That won't make the letters evidence. Proof of what was done and usage has got to be oral evidence, testimony under oath. Then all these cases are the acts between the parties to the contract. What the Street Railway did, or what
 20 the public did, what the citizens did. Here the communication is not between Division No. 4 and the Railway Company, it is between the Railway Company and third parties, and the cases are entirely distinct.

I do wish to refer very briefly to the Hanna case because that is one case in which there was a writing referred to, 19 Manitoba Reports, p. 17. There, my lord, the contract was incomplete. This is the way the agreement read. It was the sale of property: "I, E. W. Hanna, hereby offer the Brandon Steam Laundry \$40,000 for all of their property as more particularly set out in the invoice
 30 now here attached; said sum of \$40,000 payable as follows: \$10,000 cash, six equal notes with interest at seven per cent per annum for the balance, to be handed over for such time payments." Six equal annual notes, and his lordship points out, at p. 17, "a consideration of the agreement itself, apart altogether from the interpretation placed upon it by the parties themselves, would lead me to the conclusion that the conveyance of the property and the giving of the notes were to be concurrent acts." Then he says: "I am therefore prepared to hold, as I do, that upon the construction of the agreement itself, the time for completion was when
 40 the notes were to be handed over and I am strengthened in that position by the fact that such was the construction put upon it by the parties themselves. That then was the time when the defendant had a right to call for a clear title. His solicitors made

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it quite clear that such was their attitude. The correspondence shows that the plaintiff's solicitors believed the defendant was bound to accept the property with the encumbrances upon it, and leave it to the plaintiff to discharge the encumbrances out of the various payments when they came due." Then he says what my learned friend read, "the question then is when was the agreement to be completed by a conveyance? On this point the parties have very much assisted me to a conclusion." And then he deals with the law. "The agreement was dated the 11th May and the plaintiff's solicitors at once prepared and had signed conveyances 10 in favor of the purchaser and wrote the defendant's solicitors a letter."

Those letters were not used to interpret the contract, they were used to supply a lack in the contract, and of what the parties did, and as I say, the letters passed between the parties or their solicitors.

There were some authorities I had in mind to refer your lordship in addition to the statement in Beale. There is the case of **Robinson vs. Rudkins, 26 Law Journal, New Series, p. 56 of the Exchequer.** The volumes are divided into different Courts. This 20 is 56 of the Exchequer part of the Record. The judgment is that of Chief Baron Pollock: "Moreover there was an agreement in writing between the parties. To admit evidence to make a person liable on a written contract, who was not a party to it, would be to do away with the rule, that parol evidence cannot be allowed to alter the effect of a written instrument."

I refer to **Lord Hasting v. North Eastern Railway Company, 1899,** to the judgment of the Master of the Rolls Lindley, and he goes on after having regard to the position of the parties and the circumstances under which the agreement was made, and that for 30 more than forty years the parties had acted upon the agreement in the sense which the defendants said was its real meaning,— "It is true that the parties interested have acted upon the agreement for more than forty years and their conduct shows that they have always understood it until lately as meaning what the defendants contend it does mean. This circumstance renders it necessary for the Court to be careful not lightly to come to the conclusion that the parties have been for many years laboring under a mistake. But the agreement cannot be regarded as an ancient document, the language of which may not now convey 40 the same meaning as it did when written, and the language of which may therefore be properly construed by the light of contemporaneous and long usage."

"I have come to the conclusion that the rights of the parties must be decided now as the Court would have decided then as soon as the agreement became binding, and before the parties had

shown by their conduct how they understood it.”

My learned friend tendered it first on the ground of interpreting the documents, and now as to what they did. I submit there is not one of the cases, and no authority at all, of any right, as evidence as to what the parties did in the practical completion of the agreement, and in any event the writing is not between the parties to the contract at all.

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THE COURT: Inasmuch as the matter may be of some importance, and is of some difficulty, and may be carried to a higher
 10 court, I think the safer course would be for me to admit the letters subject to objection. When I come to consider judgment I will consider their admissibility more carefully, and exclude them from my consideration of the case if I come to the conclusion they are inadmissible. When carried to a higher court, if the case goes that far, the letters may there be reviewed, in case I am wrong in excluding them from my consideration. Not knowing exactly what the contents of the letters are I have that added doubt as to their admissibility. I therefore admit them subject to the objection, on the terms mentioned.

20 WILLIAM YOUNG, recalled:

CONTINUATION OF RE-EXAMINATION BY MR. McMURRAY:

Q. I would ask the Court Reporter to read the last question and answer.

(The following question and answer were then read: “Q. Are they in writing, the rights to transportation? A. Well, when a man has been in the company’s services—

THE COURT: Just answer the question? A. No, I can’t
 30 say that I know of it being in writing. Q. How do you know they exist, free transportation? A. Because I have already had the privilege of one in 1924. I went to Vancouver and took my family, and I received a free pass on the railroad at that time.

BY MR. McMURRAY: Q. Do you know of any posting on the bulletin board? A. Yes.

MR. HAFFNER: That was in writing. A. That is ap-

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plicable to men with ten years or more service in the company. A man with—

MR. HAFFNER: That is in writing if it is posted up, my lord.”)

MR. LAIRD: I object to that, the rules as to transportation are in writing.

BY MR. McMURRAY:

Q. Are the rules in writing as to the permanent pass? A. Not maybe as to the permanent pass, that is printed on the boards, but passes granted to men in the company's service after 10 one year which can be applied for to the general office.

BY MR. LAIRD:

Q. Where did you learn of that? A. I have had the privilege of a pass.

Q. I know you have had, you have told us that yesterday?

A. By application to the General Foreman and the Superintendent of Motive Power, Mr. Wedge.

Q. That is by reason of something posted up in the shops?

A. No.

Q. Some bulletin? A. No, it is an understood rule. 20

THE COURT: I don't think the witness is in a position to speak about the general rules. His own experience, of course, is evidence.

THE WITNESS: My own experience is that I applied for a pass in the year 1924 to go to Vancouver and take my family, and I received that pass from Mr. Luke Wedge, and that pass, if I remember correctly, is given for good conduct while in the company's service.

THE COURT: Well, you got it anyway.

BY MR. McMURRAY: 30

Q. My learned friend was asking you about this One Big Union, of which you are a member. Did you oppose the introduction of the B. & O. system on the Canadian Northern Railway?

A. No.

MR. LAIRD: Ask him what he did.

BY MR. McMURRAY:

Q. What did you do in connection with the B. & O. system?

A. I did nothing because I knew nothing about the B. & O. I just knew vaguely that there was such a scheme in operation, but 10 I didn't know anything about it.

Q. Do you know if the men down in the shops knew about the B. & O. system? A. So far as I am aware, the members of the Division No. 4 was familiar with its operations.

Q. Did you do anything during the time of your employment in connection with the B. & O. system?

A. No.

Q. Did you do anything outside of the shops in connection with the B. & O. System? A. No.

Q. Were you present in the organization of the One Big 20 Union when the B. & O. system was discussed, if it was discussed?

A. No.

Q. Did you ever hear it discussed there?

A. No.

Q. You heard Mr. Wedge's testimony on the stand yesterday to the effect that you weren't doing enough of work? A. Yes.

MR. LAIRD: I didn't touch on this at all. There must be some limit as to re-examination. I never touched about what Mr. Wedge said about work.

THE COURT: This is re-examination. When Mr. McMur-

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ray resumed with the witness he asked to continue with parts of your cross-examination.

MR. LAIRD: I got your lordship's indulgence on that, on the question of the alleged damages.

THE COURT: Of course, it would be advisable if when you have the witness up in the first instance you finish your examination in chief. You are going over a great deal of new ground that certainly ought to have been put in in the first instance.

MR. McMURRAY: The matter was not touched on yesterday at all, only very little, and in all probability it would have been had we not had the argument over the point of law, and I would ask for the indulgence of the Court.

THE COURT: There was very little delay yesterday on that point. What do you propose to deal with now?

MR. McMURRAY: There has been testimony put in, my lord, against the accused as to inefficiency.

THE COURT: You did go over that yesterday.

MR. McMURRAY: Not with this witness. Wedge, his foreman, gave that testimony.

THE COURT: I will allow it with this witness, but I do urge you to complete the evidence of your witnesses when you have them in the box in the first instance. This is all subject to the right of cross-examination.

BY MR. McMURRAY:

Q. Now, Mr. Young, you heard what Mr. Wedge said?

A. Yes.

Q. Is it true that you did not do enough of work?

MR. LAIRD: Objected to.

Q. What have you got to say about the work?

A. Mr. Wedge mentioned yesterday that I had been before him on several occasions. There were three occasions when I

appeared before Mr. Wedge. The first occasion was in 1924 when I had had an accident with my finger, and I applied for a pass. This was on the Friday. I was notified that Mr. Bassett, the foreman, had stopped the pass, and it was necessary to go and see Mr. Wedge. I went and saw Mr. Wedge and he pointed out that the foreman was laying objections to my going away at that time. I explained to Mr. Wedge the circumstances, that if I did not go away at that time I would be asking a little later on for a pass, and that it would be necessary to go back to work and perhaps
 10 lay off a little longer because my finger would not be healed up by the time I was going away to continue work. Mr. Wedge granted me that pass. That was the first occasion I think I was before Mr. Wedge. On the second occasion I appeared before Mr. Wedge it was in connection with my activities in connection with the first aid instruction. I had been very active in first aid work in the Fort Rouge shops, under considerable opposition from my foreman, Mr. Bassett. He laid strong objection when I entered the class, and he continued these objections all the way through. On this occasion I had to go for examination. Mr.
 20 Bassett refused to let me go on the ground, he said—

MR. LAIRD: I object to that.

THE COURT: This is not evidence.

THE WITNESS: I am only explaining to clear up the—

THE COURT: Counsel must keep the witness within the scope.

BY MR. McMURRAY:

Q. That is the time you were reprimanded because you belonged to the association.

MR. LAIRD: He didn't say that.

30 THE COURT: No. You are going too far afield with your suggestions.

BY MR. McMURRAY:

Q. Was there any other occasion on which Bassett made complaint against you? A. There was another occasion in 1926 when work was very slack where I was working. At the time I had no work to do. Mr. Bassett was fully acquainted with

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that fact, and had been for two days. He and the General Foreman, Mr. Hough, it appears had been watching me for some time. I was in the position of being idle and nothing to do and having to be brought up to the office upon it. Mr. Bassett came over to me and he said, "Out of work?" I said, "Yes." He said, "I am going up to Mr. Wedge to see that you get demerit marks." I said, "Just a minute, let me explain—

Q. What was the outcome? A. I went up to Mr. Wedge's office, and I was called up, and Mr. Wedge asked for an explanation. After I had given my explanation Mr. Wedge apparently¹⁰ was satisfied and told me to go back to my work, and protect myself. On that occasion I did not receive the demerit marks that Mr. Bassett had intended me to get.

Q. That was all there was to that? A. Yes.

Q. My learned friend was asking you some questions yesterday in connection with the Western Shop—in connection with the Shop Employees' Committee of the Western Railways Lines, do you remember that? A. Yes, I remember that question.

Q. I think you told me you were familiar with certain letters that were passing between Sir Henry Thornton and Mr.²⁰ Russell? A. Yes, I am familiar with the contents of them letters.

Q. And who else did these letters pass between?

A. Between various men outside of Division 4 and the officials of the company, that is men appointed for to look after their interests.

BY MR. LAIRD:

Q. What is that last? A. Men selected by the committee as a whole to look after their interest.

BY MR. McMURRAY:

30

Q. What was this Shop Employees' Western Rail line?

A. It was composed of shop employees outside of Division No. 4.

Q. Men outside of Division No. 4? A. Yes.

Q. Did it have officers? A. It appointed secretaries and others, I take it.

Q. Where was its headquarters? A. Well, I am not very familiar with the work of that committee at that time. I know of letters, and I have read the letters, but I don't know very much about the committee.

Q. I show you a paper writing. Look at that and tell me if you have ever seen that? A. Yes.

Q. That is a copy of letter of January 2, 1923, signed H. 10 W. Thornton, President, to R. B. Russell. You say you saw that?

A. I seen that.

MR. McMURRAY: I would ask that be filed as an exhibit, my lord.

THE COURT: Does that prove it?

MR. McMURRAY: My learned friend has admitted the signature. They admit the letter was written by Sir Henry Thornton, and admits it could be used for all purposes for which the original could be used.

THE COURT: But I want to know how far on the evidence 20 you have gone that I could admit that letter if it were the original? To bring a stranger in to this letter and say, "Have you seen this letter?" and then offer it as evidence.

MR. LAIRD: Your lordship ruled yesterday that a copy in view of my agreement should be admitted.

THE COURT: I am treating them as though they are the original. The witness has seen the letter. Does that prove anything?

MR. McMURRAY: It does with my learned friend's admission that this is Sir Henry Thornton's signature to it.

30 THE COURT: Is that enough?

MR. McMURRAY: Well, I may have to call Mr. Russell to prove that he got it.

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THE COURT: For all we know the witness may have seen that in Sir Henry Thornton's office desk, and it may have remained there.

BY MR. McMURRAY:

Q. Where did you see this letter? A. In the possession of Mr. Russell at the time.

Q. Who is Mr. Russell? A. He is general secretary of the One Big Union of which I am a member.

Q. How did you come to see the letter?

A. Well, I happened to be in his office at the time, and he¹⁰ showed it to me.

Q. You read the letter? A. Yes, and that satisfied me—

MR. LAIRD: Never mind.

THE COURT: Don't give us your impressions.

MR. McMURRAY: I submit that is enough to admit it. I have now proved that the—

THE COURT: A document signed by Sir Henry Thornton in the hands of Mr. Russell. How did Russell get it? How did it come into Russell's hands?

MR. McMURRAY: Well, there is the evidence. 20

THE COURT: If the admission is wide enough that will end it. You can mark it for identification if you like.

MR. McMURRAY: Very well, my lord.

MR. BERGMAN: I understood that the admission went so far as to admit these were the actual letters?

MR. LAIRD: I gave my learned friend a letter where I admitted a copy could be used to the same extent as an original, and your lordship says that applies, and I bow to your lordship's ruling, but I did save all objections to it as evidence.

MR. BERGMAN: This is what the letter says, and I submit we are justified in placing that interpretation upon it: "We are also prepared to admit that Sir Henry Thornton wrote and signed the letters—

THE COURT: And then what?

MR. BERGMAN: The letters, giving the dates, "and that the copies you have produced as Nos. 16, 18, 20 and 22 in said schedule are true copies of the first four of such letters, and that the document No. 17 in said schedule is the letter of the 10th April, 1923. We are also prepared to admit that Sir Henry Thornton was president of the defendant and that Mr. Warren was general manager of its Western Division at the dates covered by these letters."

THE COURT: It does not admit that you ought not to prove it?

MR. BERGMAN: It is a fair indication.

THE COURT: I don't think you ought to stretch an admission any further than necessary.

(Copy of letter dated January 2, 1923, from H. W. Thornton to R. B. Russell produced and marked **Exhibit E for identification**.)

BY MR. McMURRAY:

Q. I show you another document. Look at that and tell me if you have ever seen it before? A. Yes.

Q. Where did you see it? A. It was in the possession of Mr. M. H. Davy.

Q. Where? A. Well, I was at a meeting at the time I saw this.

Q. In Ireland or in Canada? A. In Canada, in Winnipeg.

30 Q. And was this in Mr. Davy's office?

A. No, not in his office.

Q. Where did you see it? A. In an office in the One Big Union.

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Q. Who was Mr. Davy? A. Mr. Davy was working in the shops, and he was also secretary at that time.

Q. Did you read the letter? A. Yes.

BY THE COURT:

Q. Secretary of what? A. Well, he was secretary of the railroad department.

Q. The railroad department of what? A. Of the One Big Union.

(Letter dated January 31, 1923, between A. E. Warren and M. H. Davy produced and marked **Exhibit "F" for Identification.**) 10

BY THE COURT:

Q. You saw this in the office of the O.B.U?

A. Yes, in one of the rooms.

Q. Who gave it to you there? How did you happen to see it? A. It was in the possession of M. H. Davy.

BY MR. McMURRAY:

Q. I show you another document, did you ever see that before? A. Yes.

Q. Where did you see that? A. In the possession of M. H. Davy. 20

Q. Where? A. In the same place.

Q. Did you read it? A. Yes.

Q. When did you read it? A. Just after the time it was received, a few days afterwards.

Q. What date? A. I can't remember definitely the date, but a few days after the letter was received.

(Letter dated February 2, 1923, between A. E. Warren and M. H. Davy produced and marked **Exhibit "G" for Identification.**)

BY MR. McMURRAY:

Q. And I show you another document dated April 10, 1923, from Sir Henry Thornton—I think it is only signed “H. W. Thornton” to M. H. Davy, did you ever see that before?

A. Yes.

Q. Where? A. In the possession of M. H. Davy.

Q. Where? A. In the building of the One Big Union.

Q. Did you read it? A. Yes.

(Letter dated April 10, 1923, between H. W. Thornton and M. H. Davy, produced and marked **Exhibit “H” for Identification.**)

Q. I show you a letter of January 31, 1923, from A. E. Warren to M. H. Davy?

MR. LAIRD: I object to that; that is entirely irrelevant. I have seen the letter before. My learned friend knows I object to it.

THE COURT: You are not pressing it?

MR. McMURRAY: I am not pressing it.

BY MR. McMURRAY:

Q. I show you a letter of March 19, 1923, from M. H. Davy to Sir Henry Thornton. Would you look at that?

MR. LAIRD: I abide by my admission, my lord, but my admission did not extend to admitting copies of letters by the parties here.

THE COURT: Who are not the officials named?

MR. LAIRD: These are letters from Davy to officials of the company, and I did not agree to admit copies of these.

MR. McMURRAY: Then we won't bother my learned friend any further with them.

THE COURT: Then that is withdrawn.

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MR. McMURRAY: Yes. I abide by your lordship's ruling, and by what I did agree by letter.

BY MR. McMURRAY:

Q. Witness, I was asking you last evening concerning the damages that you might have sustained or that you have sustained by reason of this dismissal. You said a number of ways in which you have been damaged. Do you recall any other?

A. There was the pass privileges.

THE COURT: You touched on that yesterday.

A. There is also the pension scheme. There is also the defa-10 mation of character.

Q. Would you just explain what you mean by that?

A. The defendant seeks to put in that I was idle on the job and a malingerer. They put in a claim which amounts to inefficiency, which if I go after other employment, if inquiries are made—

BY MR. LAIRD:

Q. Where did they put them? A. Mr. Wedge on the stand stated that.

Q. You called Mr. Wedge on the stand. You started your 20 action months before Mr Wedge came on the stand.

MR. McMURRAY: That is all.

CROSS-EXAMINATION OF THE PLAINTIFF BY MR. LAIRD:

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Q. You seem to have been a very frequent visitor to the O.B.U. offices in January, 1923, at any rate, Mr. Young?

A. I call there occasionally.

Q. At meetings of the Railroad department?

A. Sometimes.

Q. Very frequently? A. Sometimes.

Q. How much money have you received from the O.B.U. since the first of June, 1927? A. I don't get the question.

Q. How much money have you received from the One Big Union since the 1st of June, 1927? A. Since the 1st of June, 1927?

Q. Yes. A. I have only received certain money as regards the secretaryship, as assistant secretary of the Unit.

Q. That is not my question. How much money have you received? A. Well, if this is a point you are getting at, I have received a loan—

Q. I am getting at how much you received.

MR. McMURRAY: In what way, my lord?

THE WITNESS: That is what I want to know.

THE COURT: You are to answer the questions if they are proper.

MR. McMURRAY: I submit my learned friend may be inquiring of this witness matters of an entirely private affair, that are utterly irrelevant, if this witness has been paid money on other matters, moneys due to him or owing to him, or things like that. The question is, has he earned money during this time. The question is too wide and cannot be properly answered.

THE COURT: A private loan, or the collection of debts might be included in the question as framed, Mr. Laird. I think it is too wide.

BY MR. LAIRD:

Q. You have received money from the One Big Union since the 13th of June, 1927?

MR. McMURRAY: I object to that question. If he has received money in return for services.

THE COURT: No, that is quite all right.

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A. I received a loan of—

BY THE COURT:

Q. That is not an answer. You have received some money is the question? A. No.

BY MR. LAIRD:

Q. You haven't received any money at all from the One Big Union since the 13th of June, 1927. Do you mean to say that under oath, Mr. Young?

A. I was going to say I received a loan; I haven't received a gift. 10

Q. What was the loan?

BY THE COURT:

Q. You have received some money? A. Yes, the Union to which I belong has loaned me the sum of \$1,307 on the basis of the amount of wages I have lost while I have been away from the shops.

BY MR. LAIRD:

Q. Have you any papers or documents on that subject?

A. I have no documents, only a statement of my own.

Q. Have you got it with you? A. That is moneys I have 20 received.

Q. Did you sign any receipt or voucher for the money you received? A. I received the money by cheque.

Q. Did you sign any receipt or voucher for the money you received, Mr. Young? Please answer my question.

A. I signed a form which stated—

Q. You signed a form? A. Yes.

Q. Where is it? A. It is in the possession of the Fort Rouge unit of the One Big Union.

Q. Who is the secretary of it? You are yourself?

A. No, I am assistant secretary.

Q. Who is the secretary? A. A man by the name of Aird.

Q. John Aird, is it? A. Yes.

Q. And he has got the vouchers and receipts you signed?

A. I presume so.

Q. Do you know? Do you know?

A. No, I don't know for sure.

MR. McMURRAY: He might have lost them.

10 Q. Did you get this money at one time or at different times?

A. I got it to correspond with the regular pay days I would have had in the Fort Rouge shops.

Q. Every two weeks? A. Every fifteenth and the end of the month.

Q. Every fifteenth and the last of the month. Whose cheques were they? A. The cheques were drawn on the Winnipeg Central Labor Council, but the money was loaned to the Fort Rouge unit..

20 Q. The cheques were drawn on the Winnipeg Central Labor Council, is that a bank? A. Well, it was authorized by them through the bank.

Q. Cheques were drawn on some bank, I suppose, were they?

A. I presume so.

Q. Do you know? A. Yes.

Q. What bank? A. Bank of Commerce.

Q. What branch? A. I never cash them at the branch.

Q. On what branch were they drawn, please?

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A. I cannot say for sure because I never cashed them at the particular branch. I always cashed them through my own branch.

Q. Do you know on what branch they were drawn?

A. No.

Q. Then they were cheques of the Winnipeg Central Labor Council? A. Yes.

Q. Drawn on the Canadian Bank of Commerce, made out in your favor, William Young? A. Yes.

Q. And you got them from the secretary of the Fort Rouge unit? A. Yes, through the secretary. 10

Q. You got them at the headquarters of the One Big Union?

A. Yes; they were authorized by the secretary of the Fort Rouge unit.

Q. Mr. John Aird, secretary, wasn't there at all when you got the cheques? A. He had to authorize the cheques.

Q. Mr. Aird was not there at the time you got them from the office of the One Big Union every two weeks?

A. No.

Q. Where did you get them? Did they come to you by mail?

A. No, there was a letter authorizing the payment of these 20 cheques sent by Aird from time to time.

Q. Where did you get the cheques? A. I received those through the office of the One Big Union.

Q. At the office of the One Big Union? A. Yes.

Q. Who handed them to you? A. The girl, or stenographer.

Q. Various clerks in the office? A. Yes.

Q. And accompanying the cheque was some order or something signed by John Aird? A. No.

Q. You spoke of some authority? A. I said a letter of authority.

Q. Was that to accompany each cheque?

A. That was a statement to the secretary to authorize him to pay a certain amount of money.

Q. A statement of Mr. Aird to the One Big Union, was that it? A. Yes.

Q. Did you get that each time you got a cheque, each 15th and the end of the month? A. This money could not be paid unless it was authorized by the Fort Rouge Unit.

Q. I know, but I want to know what happened the authority from Mr. Aird. Did you take it? Did you get it and take it away with you, or leave it there? A. I don't get your question.

Q. There was some authority or order signed by the Fort Rouge Unit, or Mr. Aird, for it, wasn't there, to get that money?

A. Yes.

Q. And you said what happened to that? A. Well, as far as I know it was still there.

Q. Did you see it every two weeks or so? A. I seen it occasionally.

Q. This statement you produce is made up by yourself, or by the One Big Union. A. By myself.

Q. And it shows the dates and amounts of money you received? A. On each date.

Q. On the respective dates? A. Yes.

Q. And that money you received in the way you have told me? A. Yes.

Q. From the One Big Union? A. Yes.

Q. On the order of the Fort Rouge Unit? A. Yes.

30 Q. Of which you are a member, and still are a member?

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A. Yes.

Q. And on the 19th of April you received \$24.

A. Yes, that was up to date.

Q. And then on May 15th— A. I have crossed that out. I was really putting in for Monday and Tuesday. The total amount is \$1,307.04

Q. Tell me this, on Tuesday, the 15th of this month, did you receive \$9? A. Yes.

Q. You did? A. Yes.

Q. Why did you strike this off? A. Because the question¹⁰ arose, and I was told it wasn't admissible.

Q. It wasn't admissible in court? A. Yes.

Q. But you actually received the \$9? A. Yes.

Q. So then it is right to say you received from the One Big Union since and including the 30th of June, \$1,316.04? A. Yes, that is correct.

Q. The \$9 is up to the time you got a job, I suppose.

A. What time I have lost since I got the job through attending court.

Q. I notice on this "Received from C.N.R. back time to June²⁰ 13th, 1927, \$54.12." A. That is a cheque I received sometime afterwards. I didn't draw that cheque for sometime, and that is the amount I received sometime afterwards, and I noted it.

Q. When you left the company you did not draw your pay in full up to the 13th? A. No, I only received it up to the previous two weeks.

Q. Up to the end of May. A. I still had about nine days allowance.

Q. I thought I asked you about that yesterday, and you said you were paid up to the 13th? A. I don't remember. 30

Q. But anyway, do you know when you received that \$54.12 from the Canadian National? A. As nearly as I can recollect it was about the first of this year.

Q. You had left without getting your pay and they sent it to you? A. No, I went over and got it.

MR. LAIRD: I will file this statement of dates and amounts received by the plaintiff from the One Big Union.

(Statement referred to of payments to plaintiff by One Big Union, produced and marked Exhibit 11.)

10 Q. The ink and pencil writing at the foot are your own?

A. That is correct. The other was done on the typewriter.

Q. These amounts you received on the 15th of July and the 31st of July are the amounts you estimated you would have earned had you continued in the service of the railway company.

A. Yes, that was the basis of the days lost.

Q. And you figured five days a week, eight hours a day?

A. Up to the time of the company starting to work Saturday mornings.

Q. They have started to work Saturday mornings since you 20 left? A. Oh, yes, this year.

Q. And you have included Saturday mornings in this statement? A. Yes.

Q. Was there any written agreement between you and the One Big Union as to the terms upon which you got this \$1,300, other than the cheques vouchers or receipts you signed. A. No, the agreement is to the effect—

Q. Is there any agreement in writing? Answer me what I ask and we will get ahead. Is there any agreement in writing between you? A. Yes, to the effect—

30 Q. In writing? A. Yes, in writing.

Q. Have you got it with you? A. No.

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Q. You have it at home? A. No, I didn't have it at all. It is in the possession of the organization.

Q. Mr. Russell, the general secretary, has it?

A. No, it is in the possession of the Fort Rouge unit.

Q. The Fort Rouge unit. Mr. Aird has it?

A. Yes.

Q. That writing that Mr. Aird has sets forth the terms on which the money was paid you? A. No, Mr. Aird did not set that forth there.

Q. Does the agreement you refer to contain the bargain between you and the One Big Union as to this money?

A. No—

MR. McMURRAY: The written document will have to speak for itself.

THE COURT: That is a fair question.

THE WITNESS: The money was given to us—

THE COURT: No, confine yourself to the question.

BY MR. LAIRD:

Q. Does that document referred to contain the terms upon which you received the money from the O.B.U.? 20

A. Yes, certain terms.

Q. It does? In addition to this \$1,300 you received other moneys for work you have done for the One Big Union, Mr. Young? A. Only what I would have received in the ordinary course of business with the Fort Rouge unit had I been still working.

Q. That is, while you were working for the Railway company you were drawing some money as secretary?

A. Yes.

Q. And you continued to draw that ever since?

A. Yes, as assistant secretary.

Q. And you have not received any other money except this money for the secretarial duties, and the money shown here?

A. That is correct.

Q. And during this period from the 13th of June while you were in receipt of moneys under Exhibit 11, you were giving your time and services to the One Big Union.

A. No.

10 Q. Well, you spent a great deal of your time there about the office, about the organization? A. Not more than I would have done if I had been still working.

Q. Not more than you would have done if you had still been working? You were there at least every week?

A. I have been around, but I haven't been doing anything actively.

Q. You haven't been doing anything actively for the organization? A. No, not outside of what I was doing under ordinary circumstances.

20 Q. What about your promotion work, promoting the interests of the organization? Weren't you working at that?

A. I don't quite get you.

MR. McMURRAY: What does my learned friend mean by promotion?

Q. I thought that was a fairly simple word. You have been doing work in the interests of the One Big Union since June last year? A. The same amount of work as I would have done, the same kind of work as I would have done if I had been still actively employed in the Fort Rouge shops.

30 Q. Tell us what that was?

MR. McMURRAY: I object to this. This is something that

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happened long after the dismissal. The relationship this man may have with his organization after the dismissal has nothing to do with this case.

MR. LAIRD: He says he is doing the same thing as before?

MR. McMURRAY: That doesn't better my learned friend's position any. What he may have been doing before is another matter.

THE COURT: I thought the question was directed to what money the witness earned which might go to lessen the—

MR. McMURRAY: That is perfectly all right, but now he¹⁰ wants to know what he has been doing for the One Big Union since he left. He wants to send his probe down in to their private affairs.

THE COURT: What is the purpose of that question, to find out what the witness has earned, or what he was doing?

MR. LAIRD: What he was doing before and after. I was interested in his activities. We have charged he was a party to a policy of the One Big Union, and he says he is doing now what he was doing before, and it is rather important to show what he has been doing. 20

THE COURT: You do raise that issue in the pleadings?

MR. LAIRD: Yes, my learned friend questioned him on that yesterday, and the witness told him fully.

THE COURT: In as much as it is in issue I will allow it.

BY MR. LAIRD:

Q. What have you been doing? A. Well, considerable of my time has been taken up in trying to obtain work.

MR. McMURRAY: My learned friend's pleading limits this entirely to the action in connection with the B and O Plan.

MR. LAIRD: On the question of his activities, on what he³⁰ has done.

THE COURT: Paragraph 33 seems to be as Mr. McMurray

says in regard to the opposition of the O.B.U. to the B and O Plan, and its introduction, and that the plaintiff participated in that opposition. If the question is confined to that it is admissible, of course.

Q. You have been opposing the B & O Plan since June, 1927?

A. No.

Q. You have not? A. No.

Q. Haven't you been addressing meetings? A. No.

Q. The One Big Union is financing this litigation for you?

10 MR. McMURRAY: I object.

THE COURT: Is that in issue?

MR. McMURRAY: It is not in issue, my lord, the referee ruled it out.

THE COURT: Is it in the pleadings?

MR. HAFFNER: Paragraph 32 of the defence.

THE COURT: Paragraph 32 of the Defence raises that, and the reply to the defence makes it an issue. You may ask the question.

MR. McMURRAY: I submit that is an irrelevant issue.

20 THE COURT: I don't know why it is pleaded then. It is answered very deliberately in your reply, which brings it into issue.

MR. BERGMAN: We ask at this stage to strike it out.

THE COURT: It is too late to ask me to strike it out. It is here now before me.

BY MR. LAIRD:

Q. What do you say? Is the One Big Union financing this litigation? A. No.

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Q. It is not? A. No.

Q. You are personally financing it, I take it?

A. No.

Q. Who is? A. I don't know.

Q. You don't know? A. No.

Q. You don't know who is conducting this litigation?

A. No, I have no evidence.

Q. You aren't conducting it? A. Yes.

Q. Under instructions from the One Big Union?

A. No.

10

Q. From whom, from the Winnipeg Central Labor Council?

A. I took the question up with Mr. McMurray, and Mr. McMurray undertook to take the case up for me.

Q. And you were referred to Mr. McMurray by Mr. Russell?

A. Possibly.

Q. Were you? A. He was suggested as a good lawyer.

Q. And he is the solicitor for the One Big Union, is he not?

A. No.

Q. Mr. Russell, general secretary of the One Big Union told you to go to Mr. McMurray? A. He suggested Mr. McMurray as a good lawyer.

Q. Did he say anything about the cost of your litigation?

A. No.

Q. You have never paid Mr. McMurray anything.

A. No.

Q. The One Big Union has? A. The One Big Union, no.

Q. The Winnipeg Central Labor Council? A. No.

Q. Who has? A. I don't know.

Q. You don't know? A. No.

Q. What is the arrangement between you and the One Big Union in case you recover any money in the action?

A. The only arrangement is if I receive the money back for lost time I will repay the loan.

Q. That is, the moneys mentioned in Exhibit 11.

10 A. Yes, for lost time.

Q. And if you do not receive anything from the company as the result of the action, who pays the costs of your solicitor?

A. I don't know.

Q. You don't know? You are not responsible for it?

A. Well, it would be a pretty hard thing if I am.

Q. Well, you are not. It is the understanding you are not?

A. There is no understanding at all.

Q. You say Mr. McMurray is working here without any understanding at all as to who is to pay him?

20 A. He may be.

Q. That is your testimony on your oath? A. He may be doing it for the love of the thing so far as I know.

Q. And so far as you know he is? A. Yes.

Q. And there is no arrangement at all that the One Big Union is to pay Mr. McMurray? A. So far as I am aware.

BY THE COURT:

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Q. Are you quite frank in saying you don't know how this large lawsuit of yours is being financed?

A. Yes, my lord, I have no definite evidence.

Q. You don't know how it is done? A. I have no definite evidence.

Q. I am not asking you about definite evidence, I am asking you if you have any notion at all as to how this litigation is being paid for. Is that your statement? A. Yes.

Q. You don't know? A. All I know is that the organization has helped me in regard to the payment of my wages while I have been off work.

Q. Your knowledge may be confined to that as far as I know, but I am asking you the further question: Do you want me to understand that you are quite innocent as to how this litigation is being carried on and financed?

A. That is as regards any money being paid, yes.

Q. And you don't know who is going to pay, or if anybody has paid, or if anybody is going to pay?

A. No.

Q. You don't know anything at all about that? 20

A. No.

Q. You undertook this lawsuit with your counsel without even inquiring on that point? A. Well, I was interested in obtaining justice.

Q. Don't you think it would be a little part of justice to pay a man for helping you out with it?

A. Well, if I go to a lawyer and he undertakes the case—

Q. Do you or do you not, because I want to get your attitude? It is very difficult for me to understand that a man would engage a lawyer to enter into a large suit like this without at least inquiring or saying something about his compensation? 30

A. I had no idea it was going to be such a big case in the first place.

Q. If that is your evidence I will take it, but it is an amazing thing for a person who has had the business experience you have.

A. When I endeavored to get redress there was just a matter of a few days to go and report.

Q. I am not asking about that. It may be that you told your counsel your prospects were good and you would pay him out of the proceeds of the suit, or somebody else would back the account, 10 but to ask me to believe that you entered into this lawsuit without even mentioning, or without even knowing or taking the slightest thought about where the money was to come to pay for it, calls for a lot of credulity on my part. And I don't want you to be misunderstood. I want to get your statements as you make them. However, if that is your answer, I take it.

BY MR. LAIRD:

Q. Have you anything further to say, witness, to his lordship's question? A. No.

Q. The agreement between you and the One Big Union as to 20 the moneys which you may recover in the action is in writing?

A. Yes.

Q. Is that the same writing as the agreement as to the moneys mentioned in Exhibit 11? A. That is the one I am referring to.

Q. The one document covers it all? A. Yes, the one document is that I will repay the loan if I get the wages.

MR. LAIRD: I can't give evidence of the document unless my learned friends are willing that I should.

MR. McMURRAY: I never break the laws of evidence.

30 THE COURT: I take that to be a promise.

MR. McMURRAY: Subject to human infirmities.

BY MR. LAIRD:

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Q. You signed this agreement that you refer to yourself?

A. Yes.

Q. You signed one, not two or three? A. No, I signed my name to one paper.

Q. Just the one paper? A. Yes.

Q. Let me direct your attention to this: Isn't it a fact that Mr. Russell undertook to protect you from costs in respect of this litigation when he sent you to Mr. McMurray? A. No, there was no understanding.

Q. No understanding at all? A. No. 10

Q. He didn't tell you that he would pay the lawyer?

A. No, how could he? He is not the One Big Union. He is not the Central Labor Council.

Q. Well, perhaps the Central Labor Council, did, did they?

A. No.

Q. It has been discussed in the Central Labor Council?

A. It may have.

Q. And you have been there when it was discussed?

A. Not the question of costs.

Q. The litigation. This suit and the Davy suit. 20

A. As regards the progress of the case.

Q. And as regards the huge costs that were being piled up, the taking of evidence in Montreal, taking evidence in Winnipeg for two or three days. A. I haven't attended that regularly nor listened to every particle of matter that passed through the Winnipeg Central Labor Council.

Q. And the appeal in the Davy case to the Court of Appeal, and the dropping of the case against the railway.

A. I know all those things have happened.

Q. And they have all been discussed in the Winnipeg Central Labor Council with you present? A. Yes, but the costs have not been discussed. There has only been a bald statement of facts as regards what we knew as regards the progress of the case.

Q. What about Mr. McMurray's bills? Were they paid when you were present? A. I have never known of any being paid.

Q. None of his bills came before the Winnipeg Central Labor Council when you were present? A. No.

10 Q. Is there a smaller executive within the Winnipeg Central Labor Council? A. There is a business executive.

Q. Are you a member of it? A. No.

Q. Who are? A. I am not sure of their names.

Q. You are not sure of their names? A. No.

Q. Is Mr. Russell, chairman? A. He is the general secretary.

Q. And that is the organization that pays the bills, is it?

A. Mr. Russell would have to sign it, I suppose.

Q. Mr. Russell would have to sign the cheques. How much 20 money has the One Big Union paid for this litigation up to the present time. Have you any idea? A. How can I answer that question when I don't know that any money has been paid?

Q. Well, you have got some idea, haven't you?

A. No.

Q. Haven't you heard from Mr. Russell when you were around the office? A. I haven't heard any money has been paid.

Q. You have been around the office week after week.

A. He doesn't discuss the business of the organization with me.

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Q. You are the plaintiff in this action? A. He may ask me how the case is going; he has never discussed any costs with me; he never mentioned them.

Q. He never discussed or mentioned costs with you.

A. No.

Q. Nor any other officer or member of the One Big Union?

A. No.

Q. What position does Mr. Davy occupy? A. The same as myself.

Q. What? A. An independent witness. He is a man laid 10 off the same time as myself.

Q. What position does he occupy in the One Big Union?

A. No office at the present time at all.

Q. He is interested in this litigation? A. In his own case.

Q. And he has been sitting here in court instructing Mr. McMurray? A. Possibly he is interested in me as a fellow victim.

Q. Mr. Davy is an officer, is he not, of the One Big Union?

A. No.

Q. When did he cease? A. I superseded him as assistant secretary, and the other man was appointed secretary in Mr. 20 Davy's place.

Q. You know Mr. Davy has been instructed by the One Big Union to be here and assist and instruct counsel in this case?

A. No.

BY THE COURT:

Q. Is this the M. H. Davy referred to in the letters?

A. Yes.

Q. Was he an officer in January and February, 1923?

A. Yes, he was an officer at that time.

Q. And in April, of 1923? A. Yes.

Q. What office did he hold at that time?

A. He held the office of secretary of the Railroad department.

BY MR. LAIRD:

Q. And you now occupy that office? A. Yes.

Q. And it is right that Mr. Davy has been present and assisting counsel in the conduct of this trial?

10 A. Well, you saw Mr. Davy.

Q. Yes, I saw him here, but I am not giving evidence, Mr. Young. You saw him, and you know him, and you have been talking to him. A. He is interested in the case because he is a fellow victim.

Q. Don't be ashamed of it if he is here.

A. I am not ashamed of anything; I can face the world.

Q. Where are you working now? A. I don't think that question is necessary.

Q. By whom are you employed at the present time?

20 A. I am working at the Western Steel Works.

Q. They are a large steel plant in Fort Rouge?

A. No.

Q. Where? A. St. Boniface.

Q. Recently there has been a large increase in the undertaking of the works? A. Well, they have been increasing considerably these last few years, and they have a general shut-down every Fall.

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Q. When did you apply to them for work? A. I applied for work there on the 19th April.

Q. And you got it? A. Yes, there happened to be a position vacant.

Q. You did not apply to them earlier? A. Yes, I have been around there on several occasions.

Q. Looking for work? A. Yes.

Q. You told me you applied to Eaton's for work?

A. Yes.

Q. You went once? A. Many times. 10

Q. Did you ever leave your name and address with Eaton's as an applicant for work? A. No, because there was so many men there working.

Q. You applied to the Hudson's Bay? A. Yes.

Q. You never left your name and address with them?

A. No.

Q. You applied to the employment bureau, did you?

A. Yes.

Q. And you never left your name and address with them?

A. No, because there is no provision for it. 20

Q. No provision for it? A. No.

Q. For leaving your name and address with the employment bureau? A. We apply for work at the employment bureau, and possibly you are told, "Can't you see there is all these men waiting for work?" There were thousands of men waiting for work at that time, and they weren't taking any registrations.

Q. When was that? A. Last Fall.

Q. After harvest? A. Yes, it was after harvest.

Q. You did not apply for work there from June to October, did you? A. I was around there several times.

Q. Never asking for work? A. Yes, sure.

Q. I thought you applied for work only once there?

A. I told you that I was around on many occasions, and there was so many people there I did not see the necessity of waiting to ask if there was work, because I could see with my own eyes.

Q. You could see with your own eyes? A. Yes.

Q. You didn't know what kind of work they were looking
10 for? A. There was jobs bulletined on the board, and away out in the country, and had you inquired about them, you found it was impossible.

Q. You wouldn't take the work that was offered?

A. We was told it wasn't work in our line, and the wages were such that we couldn't possibly go, especially when my wife was ill at the time.

Q. You could have got work if you wanted to?

A. No, how could I when there was men walking the streets?

Q. When you went to the Western Steel, did they ask you
20 where you had been working before? A. Yes, in a casual way.

Q. What did you tell them? A. I told them I worked in the Fort Rouge shops for seven years.

Q. Did they ask you why you had been dropped?

A. No.

Q. So that the fact you had been dropped from the Canadian Northern did not hurt you there? A. No, but for the simple reason they wasn't interested in where I had worked before; all they were interested in had I the ability to hold my job.

Q. That is what most employers care about?

30 A. No, I could have got a job on the C.P.R. but for that very reason.

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Q. What reason? A. That I had worked in the Canadian National Railway and had been let out.

Q. Because they were reducing the staff? A. Because they knew there was something wrong, and at the present time this case was pending.

Q. It was really because of this case; they knew of this case pending? A. And they also knew I had been discriminated against in the Fort Rouge shops.

Q. When did you apply to the C.P.R.; that is, the Canadian Pacific Railway? A. Yes, somewhere early this year. 10

Q. In January 1928? A. Yes.

Q. You did not apply to them from June to the end of December? A. Yes, I had been up on several occasions, but I did not know the ropes, as I did on this occasion. The usual procedure is you go to the General Office, and you are told pretty straight you could not get a job, but on this occasion I managed to get in to see the Superintendent, I got to the man responsible for hiring.

Q. And he would have given you a job except you had a lawsuit with the Canadian Northern?

A. Possibly he inquired about this lawsuit. 20

Q. Did he tell you he would inquire of the Canadian Northern as to your record? A. No.

Q. It was all at one interview, you went in and he gave his decision right away at once? A. No, he took my name and address.

Q. And then let you know later? A. No, he never sent anything.

Q. So you did have an interview with Mr. Wedge in 1926 when Mr. Bassett reprimanded you for not working?

A. Mr. Bassett did not reprimand me at that time, he went up to me and told me he would get me demerit marks. 30

Q. Did Mr. Bassett tell you he would give you demerit marks?

A. He came over to me and he said, "I am going up to the office to get you demerit marks." I wanted him to let me explain, which any reasonable man would have done. Instead of that he rushed up to the office, and I was called up to the office.

Q. You were called up? A. Yes.

Q. And then the discussion took place as to your not working? A. Yes.

Q. And Mr. Wedge did reprimand you? A. No, how could he?

10 Q. How could he? A. How could a man reprimand a man for not working if there was no work to do.

Q. Did he or did he not? A. He asked me for an explanation and I gave him an explanation, and Mr. Wedge apparently was satisfied my explanation was correct. He told me to go back to my work and protect myself.

Q. What do you mean by protect yourself? A. I don't know what Mr. Wedge meant at that time, I wish I had asked him.

MR. LAIRD: My lord, in connection with these letters that are identified, I am in a rather embarrassing position. I do not
20 want to refer to them, and can't refer to them until they are put in. If they are put in I may wish to ask the witness something about them by way of cross-examination. That is the dilemma that I am in.

THE COURT: I have been following that practice and I certainly won't make an exception to the rule.

MR. LAIRD: If those letters go in I will have cross-examination.

THE COURT: If they are put in you may have any necessary cross-examination.

30 BY MR. LAIRD:

Q. I asked you yesterday about the Western Railroad Shopmen's organization, do you remember that?

A. Yes.

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Q. You were a member of that organization? through the One Big Union, only just an individual member?

A. That is not the One Big Union.

Q. No, but it was composed of members of the One Big Union? A. They were included.

MR. McMURRAY: He told you more than that: He said all men outside of Division 4.

BY MR. LAIRD:

Q. Were there any men except One Big Union men in that association? A. There must have been. 10

Q. Not what there must have been? A. There were C.B. of R.E., and men of no organization included in that body.

Q. Did they actually attend the meetings and take part in the organization? A. Yes.

Q. But you were, at any rate, a member of the organization?

A. Sure.

Q. Did you attend meetings of that organization, the Western Railroad Shopmen's? A. Occasionally.

Q. They were held in the One Big Union headquarters?

A. Sometimes. 20

Q. Generally? A. I believe so.

Q. You had quite a number of meetings in July of 1922, didn't you? A. Well, I don't know how many, I only attended some-times.

Q. You attended three or four times? A. Possibly.

Q. You believe you did attend three or four?

A. Yes, it is such a long way back.

Q. I know it is six years now, but you attended at least three or four? A. Yes.

MR. LAIRD: That is all.

MARY BOWDEN, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McMURRAY:

Q. Miss Bowden, what is your occupation?

A. I am a stenographer.

Q. I believe you work for the firm of McMurray and Company, my firm? A. Yes.

10 Q. Did you, Miss Bowden, send out a letter signed by Mr. Young addressed to F. Harrison, Secretary General Committee, C.N.R. System Federation, 33 Margaret, Bourgois Park, Montreal? A. I did.

Q. I show you a paper writing,

MR. LAIRD: Objected to.

Q. Was it a writing similar to that?

A. It was the original copy of this.

Q. It was the original copy of this? A. This is a carbon copy of the letter that was sent.

20 Q. You made it, did you? A. Yes.

Q. What did you do with it? A. I presented it to Mr. Young to sign, and after he signed it I folded it and put it in an envelope and handed it to a gentleman in the office, a Mr. Greschuk, and asked him to see that they were registered, because it was an important matter.

Q. You put it in an envelope and handed it to Mr. Greschuk?

MR. LAIRD: What are you trying to prove, the contents of some written document?

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MR. McMURRAY: I am trying to prove service of this notice upon the proper party.

RECORD

In the
King's
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No. 12
Plaintiff's
Evidence
Mary
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Examination
(continued).

MR. LAIRD: That is a new way to prove a letter, to produce the carbon copy.

MR. McMURRAY: What I am proving is I sent the original of this to the men.

THE COURT: Then I ask what of it? I don't know what that has to do with the case. Having examined upon that I think it should be marked for identification.

MR. BERGMAN: That is the proper way of proving mail- 10
ing, my lord.

THE COURT: But that does not satisfy me that the original was a document that ought to be admitted.

MR. BERGMAN: That is in working out the appeal under rule 35, showing that we applied to the proper authorities to take up our case.

MR. LAIRD: A copy of a document is not evidence.

MR. BERGMAN: We prove that we mailed a duplicate original.

THE COURT: You must make your demand and get the 20
original if you can, and then if you can't we will consider using
copies.

MR. LAIRD: You can't give secondary evidence.

THE COURT: Not with the primary evidence available.

MR. McMURRAY: We are handicapped there, my lord. This man Harrison resides at Montreal.

THE COURT: The rules will enable you to overcome that if you had followed them.

MR. McMURRAY: I can't bring him here. He is an absolutely hostile witness. My learned friend has no control over him. 30

MR. LAIRD: My learned friend has had a commission to Montreal already and examined two witnesses.

THE COURT: You may mark that for identification, and consider what further you are to do.

MR. LAIRD: My lord, when a document is marked for identification it is on the record.

THE COURT: It does not become evidence. Some other witness may come in and complete the chain.

MR. LAIRD: Why encumber our records with a lot of documents?

THE COURT: Well, because the witness has been examined 10 upon it and without it his examination on the record is meaningless.

MR. LAIRD: Properly so, and that examination should be struck out.

THE COURT: I always give counsel the benefit of the doubt, and if there is any chance of proving it I always give them the opportunity, but at this stage I will mark it for identification.

(Copy of letter of August 12, 1927, from Young to Harrison produced and marked **Exhibit "I" for Identification.**)

MR. BERGMAN: This, my lord, is what Phipson says on 20 this point: "To prove the posting of a letter it is relevant to show that it was delivered to a clerk though he had no particular recollection of the particular letter, who habitually took letters delivered to him to the post; or, that the letter was put in a given place, where all letters were regularly put for posting whence they were always carried to the post by a servant."

THE COURT: That does not arise here.

MR. BERGMAN: Then "To prove the delivery of a letter on a given date; it is relevant to show that the letter was properly addressed, posted in due time, and not afterwards returned."

30 THE COURT: That is all true, but that is not the point here.

MR. BERGMAN: We were trying to show that this particular letter was posted, sent by registered mail, and we prove both posting and delivery.

THE COURT: Even so the letter is presumably in existence,

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Examination
(continued).

RECORD
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 Plaintiff's
 Evidence
 Mary
 Bowden
 Examination
 (continued).

and in its absence you are offering secondary evidence and I can't receive it.

MR. BERGMAN: Mr. Young signed the carbon and the written copy?

THE COURT: The one that is here certainly was not delivered. The one you have here remained here. That is not evidence against the other party. The other document you do not account for.

MR. BERGMAN: But we show we mailed a duplicate of that, mailed in a proper way. 10

THE COURT: So far you have shown you have given a letter to a Mr. Greschuk?

MR. BERGMAN: Yes, that is quite right, and we will follow that up.

BY MR. McMURRAY:

Q. I show you, Miss Bowden, a document, what is that?

A. This is a copy of a letter that was sent to Mr.—

Q. A carbon copy? A. This is not the carbon copy. This is a ribbon copy of the original.

Q. Made at the time? A. Yes, they were all made at the 20 time.

Q. Was that signed by Mr. Young, the original?

MR. LAIRD: Objected to.

MR. McMURRAY: I asked if the original was signed by Mr. Young.

MR. LAIRD: I know, I object to the question.

THE COURT: I think you had better bring your original and prove it.

BY MR. McMURRAY:

Q. What did you do with the original, Miss Bowden? 30

MR. LAIRD: Objected to.

THE COURT: Of this document she has in her hands?

MR. McMURRAY: Yes.

THE COURT: She has not stated she had it; she is merely stating this is a copy of a letter.

BY MR. McMURRAY:

Q. Did you have the original? A. Yes, I had the original.

Q. You made the original? A. I made the original, and the original was signed by Mr. Young.

10 MR. LAIRD: Objected to.

THE COURT: That is not evidence.

BY MR. McMURRAY:

Q. What was done with the original?

MR. LAIRD: Objected to.

THE COURT: What did you do with the original? I think that is fair.

A. I put it in an envelope addressed to Mr. Roger.

BY MR. McMURRAY:

Q. What Mr. Rogers? A. Mr. W. R. Rogers, president, 20 General Committee, C.N.R. System Federation, 344 Cameron Street, Moncton, N.B.

Q. You say you handed that to Mr. Greschuk?

A. To Mr. Greschuk, yes.

Q. That is the Mr. Greschuk you referred to a short time ago? A. Yes, Mr. Greschuk in the office.

MR. McMURRAY: I would ask that be marked as an exhibit.

THE COURT: For identification.

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 In the
 King's
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 Plaintiff's
 Evidence
 Mary
 Bowden
 Examination
 (continued).

(Letter dated August 12, 1927, from Young to Rogers, referred to, produced and marked Exhibit "J.")

BY MR. McMURRAY:

Q. I show you a document, Miss Bowden, do you know what that is? A. That is a copy of a letter written to Mr. Tallon.

MR. LAIRD: Objected to.

BY THE COURT: How do you know that?

A. Because I made it myself. It is a copy of a letter that I wrote myself.

BY MR. McMURRAY: 10

Q. You wrote the original to Tallon? A. Yes.

Q. And this is a copy? A. Yes.

Q. Made at the same time? A. Yes.

Q. Is this a carbon copy? A. The second page is a carbon page, the first page is a ribbon copy.

Q. And this is dated September 7 to R. J. Tallon, President Division No. 4, Railway Employees Department, American Federation of Labor, Montreal.

MR. LAIRD: I object to anything being given of the contents of the document. 20

THE COURT: No.

BY MR. McMURRAY:

Q. What did you do with the original?

A. I put it in an envelope and handed it to Mr. Gréschuk along with two or three other letters.

Q. I take it that is a blank envelope?

A. No, the envelope was address to the man the letter was addressed to, Mr. Tallon.

Q. What was the address on the envelope?

A. It would be the same.

MR. LAIRD: I object, the envelope would speak for itself.

THE COURT: The envelope is not here and can't speak; the witness may if given a chance. How was the envelope addressed?

MR. McMURRAY: To R. J. Tallon, Esq.

MR. LAIRD: Please come away from the witness, Mr. McMurray, and don't let her see that letter.

MR. McMURRAY: Please mind your own business.

10 MR. LAIRD: My lord, I would ask that Mr. McMurray come back from the witness, and not show the witness that document.

MR. McMURRAY: I was assisting the Court in—

THE COURT: Let us try and avoid this unpleasantness.

BY MR. McMURRAY:

Q. Will you tell me how the envelope is addressed?

A. R. J. Tallon, Esq., Division No. 4.

MR. LAIRD: Please don't look at the document.

THE COURT: Is that all?

20 A. American Federation of Labor, or Federation System I think, I am not quite certain, I don't remember what he was, I know he was President of Division No. 4.

MR. McMURRAY: I would ask that be filed as exhibit for identification.

(Letter dated September 7, 1927, from Young to Tallon, referred to, produced and marked **Exhibit "K" for Identification.**)

BY MR. McMURRAY:

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King's
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—
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Plaintiff's
Evidence
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Bowden
Examination
(continued)

RECORD
 In the
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 No. 12
 Plaintiff's
 Evidence
 Mary
 Bowden
 Examination
 (continued).

Q. Miss Bowden, upon this Exhibit "K" for Identification I see some writing of names on there?

A. Yes.

Q. Were the names on the original document?

A. There was just one name, just Mr. Young's name on the original copy.

Q. How did these come on, this string of names?

A. There were letters written for each one of those names.

Q. I show you a paper writing, what is that?

A. It is a copy of a letter written to Mr. Rogers.

10

Q. Did you write the original? A. I did.

Q. And that is the copy? A. This is the carbon copy of it.

Q. What did you do with the original?

A. I put it in an envelope addressed to this man, Mr. Rogers, and I either handed it to Mr. Greschuk or put it in the basket where the letters were to be mailed.

MR. McMURRAY: I would ask, my lord, that be filed as an exhibit for identification.

THE COURT: There is nothing to show that is addressed to anybody in particular. 20

BY MR. McMURRAY:

Q. Who was that letter address to? A. To W. R. Rogers.

Q. Where was he? A. Where was the place?

Q. What address was on the envelope?

A. I don't remember now.

(Letter dated August 12, 1927, from Young to Rogers, referred to, produced and marked **Exhibit "L" for Identification.**)

BY MR. McMURRAY:

Q. I show you a document, Miss Bowden, did you ever see that before? A. I don't remember, I saw it in the office, a letter address to Mr. Young.

Q. You saw it in the office? A. Yes.

Q. That is all you know about it? A. Yes.

MR. McMURRAY: That is all.

CROSS-EXAMINATION BY MR. LAIRD:

Q. How long have you been employed by Mr. McMurray,
10 Miss Bowden? A. About six or seven years.

Q. You, of course, do not only the typewriting but the book-keeping. A. I do the typewriting; I do very little of the book-keeping.

Q. You make out the accounts? A. No, I haven't been making out the accounts.

Q. You type the accounts? A. Yes, I do.

Q. Who does the bookkeeping? A. Mr. McMurray; there is another Mr. McMurray in the office.

Q. Mr. S. W. McMurray, he looks after the books?

20 A. Yes, between the two of us.

Q. Do you make out the accounts? A. Yes.

Q. You, of course, are familiar with this Young suit, and the Davy suit? A. I am, sir.

Q. You have done a good deal of work about it?

A. I have, there has been a lot of work on it.

Q. Accounts of Mr. McMurray, or his firm, for work in this Young suit, are made out against the One Big Union? A. No, sir.

RECORD
—
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King's
Bench
—
No. 12
Plaintiff's
Evidence
Mary
Bowden
Examination
(continued)

No. 12
Plaintiff's
Evidence
Mary
Bowden
Cross-
Examination

RECORD
 In the
 King's
 Bench
 No. 12
 Plaintiff's
 Evidence
 Mary
 Bowden
 Cross-
 Examination
 (continued).

MR. McMURRAY: I object to that.

THE COURT: I think that is objectionable.

BY MR. LAIRD:

Q. Have you made out any accounts for services of Mr. McMurray's firm in the Young suit? A. No, sir.

Q. You haven't typed any account? A. No, sir.

Q. Have you written any letters asking for payment of money?

MR. McMURRAY: Objected to.

THE COURT: You may ask that. 10

Q. Have you written letters asking for the payment of money on account of this Young litigation?

A. Written letters to whom?

Q. To anybody? A. I don't know.

Q. You don't know. A. I don't know whether I have or not.

Q. Have you written any receipts for moneys received for the costs of this litigation? A. I don't know, I think I have written receipts.

Q. You have written receipts for money received? 20

A. Yes.

Q. From whom did that money come? A. I would have to look up the receipts.

Q. You would, would you? A. Yes.

Q. You can't tell me at all without looking at the receipts. What did you do with the receipts when you wrote them out?

A. If I acknowledged receipts I suppose I would send a letter acknowledging the receipt, and enclosing the receipt, or if any money had been handed to me I would have handed the receipt at the time. 30

Q. Do you remember money being handed to you, or checks handed to you? A. I don't know, I think there have been.

Q. I beg your pardon? A. I am not quite certain that there are or not.

Q. You are not quite certain whether you have or not?

A. No.

Q. It has been the chief work you have had?

A. Oh, no.

MR. McMURRAY: Oh, no, we do a little more than that.

10 MR. LAIRD: Well, I know it has kept me very busy, Mr. McMurray.

BY MR. LAIRD:

Q. You say you can't tell us whether you received any checks or cash in the office. A. I have received cash in the office, but I wouldn't say I have received any particular cash from any particular person.

Q. But you have received cash or checks on account of this litigation? A. I wouldn't say checks.

Q. But cash? A. I might have received a check.

20 Q. One check, you do recall receiving one?

A. No, I don't recall anything, but I am not denying that I received it. I don't recall— I don't deny I received it, but I don't recall any particular check.

Q. Do you recall ever getting any money from Mr. Young? You know Mr. Young? A. I know Mr. Young, and I don't remember ever receiving a nickle from Mr. Young.

Q. Either by check or cash? A. I don't think I did.

Q. You never wrote a letter to Mr. Young, of course, asking for money? A. I have written letters to Mr. Young, but I don't
30 know whether I asked him for money in them, or not.

RECORD
—
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King's
Bench
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No. 12
Plaintiff's
Evidence
Mary
Bowden
Cross-
examination
(continued).

RECORD
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 King's
 Bench
 No. 12
 Plaintiff's
 Evidence
 Mary
 Bowden
 Cross-
 examination
 (continued).

Q. Do you remember receiving any cash from Mr. R. B. Russell, you know him? A. Yes, I know Mr. Russell, and I don't think I ever received a check from Mr. Russell.

Q. Do you remember receiving any cash from Mr. Russell?

A. No, I don't think so.

Q. I rather gathered, Miss Bowden, from your manner and from your answers as well that you had some recollection of some money in connection with this suit. Am I right in that, that you have some faint recollection? A. Well, I am not quite certain whether money that I had received was in connection with this 10 suit or had anything to do with it.

Q. You have in mind certain moneys you received?

A. I have in mind certain moneys I received, but I don't know whether they had anything to do with this suit or not.

Q. Those moneys you received were received from whom?

A. I don't know, I would have to look it up.

Q. When were the moneys received? A. A long time ago.

Q. You have done pretty well to remember last August in connection with these letters you have testified to? A. I don't know. 20

Q. You don't know when it was? A. No.

Q. It was after the Young suit started. You remember the Young suit started last July or August?

A. Yes.

Q. It was after that? A. The particular thing I have in mind I don't know whether it was before or after.

Q. The particular thing you have in mind is receiving some money, but you don't know whether it was this suit or not. You receive money continually.

A. Yes, I receive money continually. 30

MR. LAIRD: That is all.

(Court adjourned at 1 p.m. May 16, 1928, to 2:30 p.m. the same date.)

RECORD
 In the
 King's
 Bench
 No. 12
 Plaintiff's
 Evidence
 Mary
 Bowden
 Re-
 examination
 (continued).

2:30 p.m., May 16, 1928.

MR. McMURRAY: Might I recall the last witness, my lord? There was one letter I overlooked.

THE COURT: I thought we had agreed that when you had a witness on the stand we had better close with him at one session. You may recall her, but I wish you would try and do that, otherwise it confuses the record.

10 MARY BOWDEN, recalled.

BY MR. McMURRAY:

Q. I show you a document, what is that? A. This is a copy of a letter that we wrote and sent to Mr. Grant Hall.

Q. That who wrote? A. That I wrote.

Q. What copy is that? A. That is the ribbon copy.

MR. LAIRD: I object to that. It is irrelevant.

BY MR. McMURRAY:

Q. What did you do with the original? A. The original was placed in an envelope—

20 MR. LAIRD: Objected to.

THE COURT: I am assuming it is in the same category as the others?

MR. McMURRAY: Yes.

BY MR. McMURRAY:

Q. What did you do with the original? A. It was addressed to the party, addressed to, and I put it in the envelope and handed it to the gentleman in the office to be registered.

RECORD
 In the
 King's
 Bench
 No. 12
 Plaintiff's
 Evidence
 Mary
 Bowden
 Re-
 examination
 (continued).

Q. What was the address on the envelope?

A. The address on the envelope would be the same as the address on the letter.

Q. Do you recall what that was? A. To Mr. Grant Hall.

Q. Where? A. I don't know where he was.

Q. You say it was the same as on the letter?

A. Yes.

Q. And the address on the letter I presume was the same as on the copy? A. Yes.

Q. What was the address on the copy? 10

MR. LAIRD: Objected to.

BY THE COURT:

Q. Can't you remember without looking at it?

A. No, I don't remember that.

BY MR. McMURRAY:

Q. You wrote that? A. Yes.

THE COURT: You may look at it.

A. The address on the envelope would be to Grant Hall, Chairman of the Railway Association of Canada, Montreal, P.Q.

(Letter dated September 7, 1927, from Young to Grant Hall²⁰ referred to, produced and marked Exhibit "M" for Identification.)

BY MR. McMURRAY:

Q. Who was the gentleman you gave it to in the office?

A. Mr. Greschuk.

Q. He is the gentleman you referred to before?

A. Yes.

MR. LAIRD: May I cross-examine on this without prejudice, my lord?

THE COURT: Yes.

BY MR. LAIRD:

Q. You have no recollection of these matters now, of handing these letters to Mr. Greschuk or putting them in envelopes?

A. I do, because I remember at the time I was told to see that they were registered because they were important letters.

10 Q. Do you remember actually these very letters?

A. I remember them because I have had the certificates of registration, and things which have been kept in my mind continually.

Q. This was away back last September, wasn't it?

A. About July, August or September.

Q. And you don't know whether you gave them to Mr. Greschuk or put them in some basket? A. The letters to be registered I handed to Mr. Greschuk.

Q. That is the procedure you followed?

20 A. Yes, because I handed them to him with the registration book.

Q. The letters not to be registered you put in some mailing basket? A. Yes.

Q. You did not see Mr. Young sign these letters?

A. I did. They were signed by Mr. Young in my presence.

Q. This last one is not signed at all?

A. That is just a copy.

Q. But you never saw the original signed?

RECORD
—
In the
King's
Bench
—
No. 12
Plaintiff's
Evidence
Mary
Bowden
Re-Cross-
examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 12
 Plaintiff's
 Evidence
 Mary
 Bowden
 Re-Cross-
 examination
 (continued).

A. I wouldn't say I saw the original of that particular one signed.

Q. This one M for Identification, you don't know whether Mr. Young signed the letter of which that purports to be a copy or not? A. I wouldn't say that I did see him, or I would not say I didn't see him.

Q. And the same with the others, you did not witness his signature at all? A. I did witness his signature to several, but I don't remember which ones.

Q. You typed the letters and gave them to Mr. McMurray? 10

A. No, I did not give them to Mr. McMurray at all.

Q. Didn't Mr. McMurray look over them after you typed them? A. No, Mr. McMurray doesn't usually look over any of my letters.

Q. He dictated them to you, and you had Mr. Young sign the letter in the office, some of them?

A. Yes.

Q. And you think this letter was addressed to Mr. Grant Hall, Montreal? A. Yes.

Q. Montreal is a pretty big place? 20

A. I imagine he is president or secretary or some big official, like that.

Q. Of the Railway Association of Canada. Had you ever heard of the Railway Association of Canada before this suit?

A. I don't know whether I had or not.

Q. Since lunch have you recalled anything further about this Young suit? A. I have been so busy getting my lunch I haven't thought about it.

Q. You haven't any further information to give the Court on that suit? A. No, I haven't discussed nor thought of it³⁰ particularly.

Q. You haven't discussed it or thought of it particularly. You have discussed it not particularly, is that right? A. Oh, we were talking about the— I haven't discussed the money. I was talking about just the general—

Q. What was the result of it, has it refreshed your memory?

A. It has not refreshed anything. I just talked over the question I had been asked here in Court.

Q. With Mr. McMurray? A. No, I never spoke to Mr. McMurray. Mr. McMurray wasn't in the office during the noon 10 hour.

Q. As a result of that talk or discussion, whatever it was, and with whom it was, I suggest to you that you were satisfied that your firm, Messrs. McMurray and McMurray received money in respect of this Young suit from the One Big Union? A. No, I never discussed anything like that.

Q. You haven't answered my question. Is that not the case that you are so satisfied? A. Of which? I didn't get your question.

Q. That you are satisfied that while you have been in the 20 service of the firm of McMurray and McMurray they have received money from the One Big Union in respect of this Young suit? A. Well, I never thought of that. We never discussed anything like that.

Q. I asked you about that this morning, and I am asking you now.

MR. McMURRAY: You got your answer this morning.

BY MR. LAIRD:

Q. What did you discuss? A. We were discussing the general questions I had been asked.

30 Q. Those were about the only questions I asked you.

A. Well, I would have no way.

Q. Did you look at the books or receipts?

RECORD

In the
King's
Bench

No. 12
Plaintiff's
Evidence
Mary
Bowden
Re-Cross-
examination
(continued)

RECORD
 In the
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 No. 12
 Plaintiff's
 Evidence
 Mary
 Bowden
 Re-Cross-
 examination
 (continued).

A. I did not look at anything.

Q. And you can't give me any further information?

A. No, sir.

MR. McMURRAY: I propose to prove the registration of these letters.

MR. LAIRD: Surely there is one law that copies of documents are not admissible without the originals being produced, and we are spending hours putting in copies or attempting to put in copies of documents.

THE COURT: You are going to be met with that sooner¹⁰ or later, as I mentioned this morning. If you intend at the end or sometime to account for the absence of the originals, it would be probably more logical to do it now, if you can do it. You have taken up quite a lot of time, and supposing you can't account for the originals you can't hope to use these copies. We have got a lot of evidence in here that has to be connected up, and if it is not connected it is all a waste of time, and worse than a waste of time because the record is loaded up with it.

MR. McMURRAY: What I am proving is this, that an original was written, of which this is a copy, that the original²⁰ was signed by Young, and was addressed to the different parties.

THE COURT: Yes, and suppose you prove a document was written in the office, signed by Young, and posted, there is a fair presumption it reached its destination, but that does not permit you to use the copy, if you let it stand at that.

MR. McMURRAY: Suppose, my lord, it never reached its destination. As long as I put it into the mail—

THE COURT: You are surely not going to argue it did not reach its destination.

MR. McMURRAY: As long as I put it in the mail— 30

THE COURT: There is no use of arguing further. You must account for the absence of the originals.

MR. McMURRAY: The witness is beyond my power; he is outside of my province.

THE COURT: You haven't shown that these people have refused to produce them or anything of that sort.

MR. LAIRD: And examined Mr. Grant Hall for hours at Montreal under commission of this Court, and not a word about this letter.

THE COURT: Even that, but if you had served notice upon them to produce them and they had not answered it, and you had then applied, you might be in a position to use these letters, but you haven't done that, as far as I know.

10 MR. McMURRAY: I have a letter here, my lord, about which I would like to recall Mr. Young.

THE COURT: How many sessions are we going to have with Mr. Young?

MR. McMURRAY: I thought I could get along without putting this letter in this way.

THE COURT: I don't want to deny you any possible right, but I would like to impress upon you the necessity of exhausting your topics when you have the witness in the box. You have had two opportunities now. I will allow it, but I do wish you
20 would co-operate with me on that point. I don't want to be arbitrary in the matter, but it seems to me you could very well do this if you would.

WILLIAM YOUNG, recalled:

BY MR. McMURRAY:

Q. I show you a paper writing, Mr. Young, did you ever see that before? A. Yes.

Q. Where did you get that? A. This was addressed to me at the Winnipeg Electric Chambers. I received this in the office of Mr. McMurray. It was addressed to his office from C. P. Riddell of Montreal.

MR. LAIRD: I object to that.

THE COURT: Don't give the contents.

RECORD
In the
King's
Bench

No. 12
Plaintiff's
Evidence
Mary
Bowden
Re-Cross-
examination
(continued)

No. 11
Plaintiff's
Evidence
William
Young
Re-
examination

RECORD
 In the
 King's
 Bench
 No. 11
 Plaintiff's
 Evidence
 William
 Young
 Re-
 examination
 (continued).

BY THE COURT:

Q. You received a letter? A. Yes.

Q. Addressed to you? A. Yes.

BY MR. McMURRAY:

Q. Had you written to Mr. Riddell?

THE COURT: You may answer that.

A. I had written through my lawyer to Mr. Riddell.

Q. In what connection? A. In connection with taking up my grievance.

THE COURT: You can't give the contents. 10

MR. McMURRAY: I am not giving any further particulars. I would ask that this be filed.

THE COURT: This is not covered by the admission.

MR. McMURRAY: No, it is not covered by any admission.

MR. LAIRD: I object, my lord. It is a letter from some Mr. Riddell to the plaintiff. How that can be evidence against the defendant whom I have the honor to represent, I don't know. A thousand people might write the plaintiff. It has to be connected with us. The letter is not proved. He received some papers, some letter. 20

THE COURT: Like so much of this evidence it will have to be connected up before it can be of any value, if Mr. Riddell in any way binds the defendant.

MR. McMURRAY: In this way, that the Railway Association of Canada—

THE COURT: You have got to give me evidence.

MR. McMURRAY: I am quoting out of agreement No. 4.

THE COURT: Is Mr. Riddell mentioned there as the officer?

MR. McMURRAY: No, my lord, but the Railway Association of Canada— Rule 36 of Exhibit No. 3 reads: “Should the highest designated railway official or his duly authorized representative and the corresponding representatives of the employees, fail to agree, the case shall then be jointly submitted in writing to the Railway Association of Canada and to Division No. 4, Railway Employees Department, American Federation of Labor, for adjudication or final disposition.” Now, this Mr. Riddell—

RECORD
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King's
Bench
—
No. 11
Plaintiff's
Evidence
William
Young
Re-
examination
(continued)

THE COURT: There is no evidence as to what connection
10 Mr. Riddell had.

MR. HAFFNER: Nor as to the signature.

BY MR. McMURRAY:

Q. Do you know what Mr. Riddell's occupation was?

A. I know he is one of the signatures to the schedule.

Q. Do you know what his occupation is?

A. No, I don't know what his occupation is.

MR. McMURRAY: I would ask that this be filed as an exhibit for identification.

(Letter dated October 3, 1927, from Riddell to Young referred
20 to, produced and marked **Exhibit "N" for Identification.**)

MR. LAIRD: Another objection is that it is long after the action was started.

THE COURT: There may be something in the letter that will connect it up. In the meantime I am not affected by it, because I don't know what it is.

MARK HARRY DAVY, being first duly sworn, testified as follows:

RECORD
In the
King's
Bench
No. 13
Plaintiff's
Evidence
Mark
Harry Davy
Examination

IN THE KING'S BENCH

Between:

YOUNG

vs.

CANADIAN NATIONAL RAILWAY

Before Mr. Justice Dysart.

MARK HARRY DAVY, being first duly sworn, testified as follows: 10

DIRECT EXAMINATION BY MR. McMURRAY:

MR. LAIRD: I thought it was understood, my lord, that the witnesses were to be excluded. Mr. Davy has been sitting at the right hand elbow of my learned friend for three days.

THE COURT: It wasn't only understood, it was ordered.

MR. McMURRAY: I am just calling him to identify a paper. I had no notion of calling him at all.

Q. What is your occupation, Mr. Davy? A. Machinist.

Q. And in 1923 were you secretary of some association of shop employees on the Canadian Northern Railways? 20

A. Temporary secretary of the committee.

Q. What committee? A. The shop employees committee, Western lines, Canadian National Railways.

Q. What was that committee? A. It was just an acting committee of no particular union, but an acting committee representing the employees in the shops who were not members of division No. 4.

Q. Did you have any correspondence with Mr. A. E. Warren?

A. Yes.

Q. He was the Western Manager of the Canadian Northern Railway Company, the defendant? A. Yes. 30

Q. I show you Exhibit F for Identification, what is that? Did you receive that? Did you receive the original of that?

A. Yes.

THE COURT: What about this document you are dealing with?

MR. McMURRAY: We agreed to use the copy for the original, my learned friend agreed to that. The original was mislaid.

BY MR. McMURRAY:

Q. And you got the original in answer to a communication
10 of yours to Mr. Warren? A. Yes.

Q. Written in your position as secretary to this committee?

A. Yes, as acting secretary of that committee.

MR. McMURRAY: I would ask that this now be made an exhibit, my lord.

MR. LAIRD: Objected to. May I refer one moment to the discussion this morning on the question of the admissibility of this correspondence. My learned friend put it upon what was done actually in the carrying out of the contract.

THE COURT: We are not reopening the discussion of this
20 morning, I hope, because I am not entirely satisfied with the plaintiff's contention in the matter, but some other court may take a different view of it and I think it would be a matter of prudence to have the evidence here. When I come to consider judgment I may exclude this from my consideration, but another court may desire to take them into consideration and for that reason I am admitting them subject to the objection.

MR. LAIRD: And we may have the opportunity of referring to this on the argument?

THE COURT: Yes.

30 MR. LAIRD: There is an important aspect which escaped my mind this morning.

(Letter formerly Exhibit "F" for Identification, now produced and marked EXHIBIT NO. 12.)

RECORD

In the
King's
Bench

No. 13
Plaintiff's
Evidence
Mark
Harry Davy
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 18
 Plaintiff's
 Evidence
 Mark
 Harry Davy
 Examination
 (continued).

BY MR. McMURRAY:

Q. I show you another communication, Mr. Davy, Exhibit "G" for Identification. Did you receive the original of that?

A. Yes.

Q. You received it in your capacity of secretary of this Western Railway Men's shop committee? A. Yes.

Mr. McMURRAY: I would now ask that this be marked as an exhibit.

MR. LAIRD: I object to that. It is entirely irrelevant.

MR. McMURRAY: This is not the letter I intended to put in. 10

THE COURT: You do not tender Exhibit "G" for Identification?

MR. McMURRAY: No, my lord, it is another one I intended to tender. This is the one I intended to have marked.

THE COURT: Then you withdraw Exhibit "G" for Identification?

MR. McMURRAY: I withdraw Exhibit "G" for Identification.

BY MR. McMURRAY:

Q. I show you a paper writing, Mr. Davy, did you ever receive the original of that? A. Yes.

Q. When, and under what circumstances? A. I couldn't tell you the exact date, it would be in February, 1923, and the date on it is February 20th, from Seattle.

Q. In what capacity were you acting when you received that? A. I was acting as secretary of the Shop Employees Committee, Western lines.

Q. You say you received the original? A. Yes.

MR. McMURRAY: This is one of those letters under the agreement, and I would ask that this be marked. 30

MR. LAIRD: Weren't those originals to be produced?

BY THE COURT:

Q. What did you do with the original, witness?

A. That was only a temporary committee. That remained in existence for a few months, and the letter was handed over to someone, I don't know who it was, at the termination of the committee.

MR. McMURRAY: There were two letters lost, Thornton's and Warren's.

10 THE COURT: Is this one covered by Mr. Laird's admission?

MR. McMURRAY: Yes, my lord.

(Letter dated February 20, 1923, produced and marked **Exhibit 13.**)

Q. Was Young in communication with you during this time?

A. I never heard of Young before. I might have seen him, but I can't recollect him at that time, that is not as an individual.

Q. I show you a letter dated April 10, 1923. Did you ever receive that, Exhibit "H" for Identification?

MR. LAIRD: I must object to the relevancy of these on an-
20 other ground. The witness has just sworn that he had never seen and did not know Young at all. How a letter from the Railway company to Mr. Davy, the witness in the box, is going to affect a man he did not know, I don't know.

THE COURT: You have your objection registered, and you will be given every consideration to bring it up.

BY MR. McMURRAY:

Q. Did you receive the original? A. Yes, as acting secretary of the Shop Employees Committee, Western Lines, Canadian National Railway.

30 Q. Were you familiar with what had been written to Mr. Russell by Sir Henry Thornton? A. In a general sense, yes. I cannot recollect every word.

RECORD

In the
King's
Bench

No. 13
Plaintiff's
Evidence
Mark
Harry Davy
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 13
 Plaintiff's
 Evidence
 Mark
 Harry Davy
 Examination
 (continued).

Q. Did you serve any of the notices, Mr. Davy?

A. Which notices?

Q. Of Young's? A. No.

(Letter April 10, 1923, Thornton to Davy, Exhibit H for Identification, now marked EXHIBIT 14).

No. 13
 Plaintiff's
 Evidence
 Mark
 Harry Davy
 Cross-
 examination

CROSS-EXAMINATION BY MR. LAIRD:

Q. You are quite familiar with the One Big Union organization, I believe, Mr. Davy, and have been a member and an official for a good many years? A. I was an official at one time, I am not an official now. 10

Q. You resigned a few weeks ago? A. Oh, no, I resigned in December, 1926.

Q. Prior to that you were an official? A. An official of a local unit, the Fort Rouge.

Q. And a member of the Winnipeg Central Labor Council?

A. No.

Q. Never at all? A. I am at present, but I wasn't then. I wasn't up to the time of my discharge. I may have been probably away back in 1920 or 1921.

Q. And a member of the Winnipeg Central Labor Council? 20

A. About 1920, I think.

Q. And then you dropped out, and were secretary of one of the units? A. Yes.

Q. And you were also secretary of the Railway Employees Department? A. Mr. Young had not a very great knowledge about that. He was examined on that. I was not secretary of the Railroad department. He got confused with this temporary committee.

Q. You had nothing to do with the Railway Employees De-

partment? A. No, nothing to do with the Railway Employees Department. I was just secretary of the Fort Rouge unit.

Q. Of which Mr. Young is now assistant secretary ?

A. Yes.

Q. And this Committee that you wrote for here, as you called it, you apparently used several names, did you not, Mr. Davy? First, to go back in 1922 I believe there was an organization known as the Western Railroad Shopmen's Committee. Do you remember that? A. No, I have no knowledge of that.

10 Q. You never attended any of those meetings Mr. Young told us about? A. Not that I know of in 1922.

Q. Did you know Mr. Mace? A. Yes, I have heard of Mace.

Q. Who was he? A. Well, I don't know what he was at that time, and I don't know what he is at the present, but at some time he has held some office. I think he was business manager in one of the offices.

Q. Were you associated in any way with the Western Railroad Shopmen's Committee? A. Not in 1922.

20 Q. Then in 1923 we come on and you signed yourself acting secretary of the Shopmen's Employment Committee, Western Lines? A. One place it is Shop Employees Committee, Western Lines.

Q. That, you tell us, was a committee of employees in the Fort Rouge Shops in the Canadian National Railways, is that right? A. Not only of the Fort Rouge Shops, of the Canadian National Railway Employees.

Q. In Winnipeg? A. Yes— well, no— still further Canadian National Railways Western Lines.

Q. From the Head of the Lakes to the Pacific Ocean?

30 A. Yes.

Q. And you were acting temporarily? A. On this temporary Committee.

RECORD

In the
King's
Bench

No. 13.
Plaintiff's
Evidence
Mark
Harry Davy
Cross-
examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 13
 Plaintiff's
 Evidence
 Mark
 Harry Davy
 Cross-
 examination
 (continued).

Q. It was an attempt to organize all employees who were not members of affiliated with Division No. 4 into one organization, was it? A. The formation of that Committee— that letter was received from Mr. Thornton—

Q. That is the letter to Mr. Russell? A. To Mr. Russell.

Q. And Mr. Russell was, of course, a One Big Union Official?

A. Yes, he was secretary, I believe.

Q. And then you organized a committee of the One Big Union men and the other men who did not belong to any organization, is that your idea? A. No, the committee was formed in this way, Sir Henry Thornton said the majority of the employees would be recognized and we knew the majority of employees were not in Division 4, so One Big Union men and other union men in the shop, and non-union men, tried to band together to get what Sir Henry Thornton had promised.

Q. A majority in the shop? A. Yes.

Q. All organizations except Division No. 4?

A. All organizations, and those in no organizations.

Q. The great majority were One Big Union men?

A. I wouldn't say whether the great majority were. 20

Q. You tell me you didn't know Young at that time?

A. I might know him as a name on my record book, I didn't know him as an individual.

Q. Do you know whether he was on your record book?

A. Yes, I believe he would be in 1923.

Q. You believe he would be? A. Yes, there were several Youngs on.

Q. There were several Youngs on? A. Yes.

Q. I don't know that that helps us very much. But you had no knowledge of him attending any of the meetings? 30

A. I can't recall Young at all at that period.

Q. You as acting secretary called meetings of the employees? A. Yes.

Q. And those meetings were always held at the One Big Union headquarters? A. Yes, they were held there.

Q. The One Big Union was the moving, controlling spirit in the movement? A. No, not in that sense, they were not controlling it at all, they were absolutely holding away from it, but they donated a hall to hold the meetings in. They were keeping 10 out, so as not to be said to be in.

Q. They did not want their name to appear in it and that is why the Union Committee was formed?

A. Well, in the shop there was a large body of men who were not members of Division 4, and some were not members of the One Big Union, and we wanted to get them all banded together.

Q. We, meaning the One Big Union? A. Well, everybody out of Division No. 4.

Q. And you got together and you wrote these letters as secretary of the Committee? A. Yes.

20 Q. Who composed the Committee? A. You mean the general committee?

Q. Yes, you call yourself secretary of a certain committee. Who were the committee? A. Well, the committee you may say would be every man in the shop, in Winnipeg or any other place on the Canadian National Railway, Western Lines, who cared to attend those meetings. A notice was sent out to the men in a body.

Q. Any man could attend the meeting? A. Yes, or give approval by not registering a protest.

30 Q. That is, you call a meeting and I do not attend I am bound by what you do, is that what you contend?

A. No, you wouldn't be bound, but you wouldn't be registering a protest.

RECORD
In the
King's
Bench
No. 13
Plaintiff's
Evidence
Mark
Harry Davy
Cross-
examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 18
 Plaintiff's
 Evidence
 Mark
 Harry Davy
 Cross-
 examination
 (continued).

Q. They did not pay any fee? A. No.

Q. The One Big Union paid all the costs of this work?

A. No, I don't think they did.

Q. Where did the funds come from? A. I think, as a matter of fact, a little of the funds such as stamps and things had to come out of my own pocket. I do not remember getting reimbursed for small items.

Q. And the secretarial work was all done at the One Big Union headquarters, these letters were all drafted there.

A. No, the only reason I was made secretary was because I had a typewriter to type the letters.

Q. Did you make up these letters yourself? A. The letters I had received from Thornton and Warren or any others were to be discussed with the committee, comments were to be made on them, and I would get a general line up of what I had to say, and I would compose the letter and submit it to the Committee, and then forward it.

Q. And the Committee you have told me were simply men who cared to attend these meetings? A. Certainly.

Q. And Young never attended any of those meetings, as far as you know? A. I wouldn't say he didn't attend, I don't remember seeing him.

Q. You know the Constitution of the One Big Union, I suppose, do you? A. No, I can't say that I know the Constitution.

Q. Would you recognize a copy of it if I showed it to you?

A. I don't know that I would.

Q. When did you enter the service of the Canadian Northern, Mr. Davy? A. August 5, 1908, the first time.

Q. You were there through 1925 until June, 1927?

A. Yes.

30

Q. And you started a suit against the company by reason of

your being let out the same time as Mr. Young? A. Yes.

Q. And you have got a suit pending now against the officers of the company, haven't you? A. Yes.

Q. For an alleged conspiracy? A. Yes.

Q. Look at this booklet I show you, and read certain things on the outside. Can you tell me what it is?

A. Well, only by what it says on the outside.

Q. You never handled or used or referred to this booklet?

A. I wouldn't say I haven't, but I have no recollection of ever
10 handling it.

Q. Do you know who prints and distributes this booklet?

A. I couldn't say.

Q. You couldn't say? A. I could not. My work has been in a local unit, not in the O.B.U. headquarters.

Q. As secretary of the local unit did you receive copies of this booklet for the members? A. I couldn't say.

Q. Did you ever see it before? A. That?

Q. Or a similar one of the same print? A. No, I can't re-
20 collect ever seeing that. It is quite possible you may be in an
organization without reading the constitution.

Q. For how many years, since 1920, you told me?

A. From 1920 to 1926.

MR. LAIRD: On your lordship's ruling, I suppose this should be identified. Personally, I am not particular. It reads "Constitution and Laws of the One Big Union."

(Document called Constitution above referred to, produced and marked Exhibit "O" for identification).

BY MR. LAIRD:

RECORD
In the
King's
Bench
No. 13
Plaintiff's
Evidence
Mark
Harry Davy
Cross-
examination
(continued).

RECORD
 —
 In the
 King's
 Bench
 —
 No. 18
 Plaintiff's
 Evidence
 Mark
 Harry Davy
 Cross-
 examination
 (continued).

Q. The One Big Union through its Winnipeg Central Labor Council publishes the One Big Union Bulletin, Mr. Davy?

A. I believe so.

Q. And you are familiar with that publication?

A. What do you mean by familiar?

Q. I should think it is a pretty simple word. You are familiar with that newspaper. It is published from week to week, is it not? A. I may be familiar with the Tribune and read it today and then not read it for two weeks.

Q. Are you familiar with the One Big Union Bulletin? 10

A. I know there is such a paper published.

Q. You subscribe to it? A. No, I do not subscribe to it.

Q. Don't you get it at all? A. Sometimes, yes.

Q. Just when you buy a copy? A. Sometimes I buy a copy, and sometimes I might get one free.

Q. What do you say about reading it? And being familiar with its contents? A. Sometimes I read it, and sometimes I do not. I may read part of it and I might not read the other half.

Q. Did you ever subscribe to it, Mr. Davy? A. I don't think I ever paid in a subscription. 20

Q. You don't think you ever did?

A. I don't think I ever did send in a subscription.

Q. Can you tell me from your knowledge of the One Big Union what its attitude was to the scheme known as the B. & O. system in the Fort Rouge shop? A. I don't remember that any action was taken by the One Big Union towards the B. & O. plan.

THE COURT: That scheme referred to as the B. & O. has been mentioned several times, and no one has explained it.

BY MR. LAIRD:

Q. Are you familiar with the B. & O. Plan? A. I know nothing whatever about it. I never seen any information in writing about it, or anything of that kind, that is nothing of an official character.

Q. You know it was adopted in the Fort Rouge Shops?

A. I do not. We were never notified anything about it. That is, certain men in the shops might, but generally we were not.

Q. That is, by certain men you mean Division No. 4 men?

A. Yes; we were ignored.

10 Q. That is the non-members of Division 4 were ignored?

A. As regards the B. & O.

Q. What was your personal attitude towards it?

A. My personal attitude was always to help my foreman along if I could. You can call that co-operation if you like. I call it working amicably. I was there sixteen and one-half years, and never had a complaint.

Q. You did not work in the same shop as Young?

A. I worked in the same department. He worked in what we call the general machine shop. I was in the tool room. I was
20 really on a higher grade of work than Young, but it is all classed at the same right of pay, though.

Q. Can you tell us whether the One Big Union is financing this suit for Mr. Young? A. I don't know anything about the financing of it.

Q. You don't know anything about it at all? A. I don't know anything about the financing.

Q. You and he started suits pretty much about the same time? A. Yes, I believe they were started about the same time.

Q. Your suit is being financed by the One Big Union?

30 MR. McMURRAY: Objected to.

RECORD

In the
King's
Bench

No. 13
Plaintiff's
Evidence
Mark
Harry Davy
Cross-
examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 18
 Plaintiff's
 Evidence
 Mark
 Harry Davy
 Cross-
 examination
 (continued).

THE COURT: You need not answer that.

MR. LAIRD: On cross examination, my lord?

THE COURT: I don't think so. We are not dealing with that.

MR. LAIRD: We are not dealing with that as an issue, but it affects the man's credibility.

THE COURT: I don't know what the other suit is. It is not this suit.

MR. BERGMAN: It is not against the C.N.R. anyway, my lord. 10

MR. LAIRD: I can easily overcome that if that was the only objection. It was against the C.N.R. until a few weeks ago when you dropped them.

BY MR. LAIRD:

No. 14
 Plaintiff's
 Evidence
 Sandwell
 Taylor
 Examination

Q. However, you can't tell us at all who is financing the suit for Mr. Young? A. I know nothing whatever about it.

Q. You never attended any meetings where his suit was discussed? A. No, not where the finances were discussed.

MR. LAIRD: That is all.

(Evidence of the witness concluded). 20

SANDWELL TAYLOR, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McMURRAY:

Q. Mr. Taylor, do you know Mr. A. W. Gibson?

A. No.

Q. Do you know Charles E. Shaw? A. I have seen him.

Q. Did you see him in July, 1927? A. Yes.

Q. Did you see Mr. Gibson? A. No, I did not see Mr. Gibson.

Q. On what occasion did you see Mr. Shaw?

A. I took him some letters for to take up the case of Young and myself.

Q. You took some letters to him? A. Yes.

Q. I show you a document. Look at it and tell me that it is? What is that? A. It is a letter.

Q. Is it the letter you took and gave to Mr. Gibson?

10 MR. LAIRD: Don't lead the witness.

Q. It is a letter, what did you do with it?

BY THE COURT:

Q. Did you ever see it before? A. Yes.

Q. When and where? A. Last July.

BY MR. McMURRAY:

Q. Under what circumstances? A. I gave this to Charlie Shaw.

Q. Do you know the signature on it? A. William Young's signature on it.

20 Q. Do you know his signature? A. I wouldn't know it, but I saw him put it on there.

Q. It wasn't nailed on? A. No, and it wasn't put on with jam either.

Q. You saw Young sign this? A. Yes.

Q. Who went with you? A. A fellow by the name of Cribb.

Q. Where was Mr. Shaw? A. At his house when we saw him.

RECORD

In the
King's
Bench

No. 14
Plaintiff's
Evidence
Sandwell
Taylor
Examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 14
 Plaintiff's
 Evidence
 Sandwell
 Taylor
 Examination
 (continued).

Q. Do you know where that was? A. Up on Stella Avenue.

Q. You know it was Shaw, do you? A. I hadn't seen him before until then.

Q. Did you know it was Shaw then? A. I asked him if he was Charlie Shaw, and he said yes.

MR. LAIRD: That is objected to.

MR. McMURRAY: I ask that be filed as an exhibit.

MR. HAFFNER: This witness has been in the Courtroom all during the trial also, my lord.

MR. McMURRAY: I didn't know he was there during the 10 trial.

THE COURT: But you should pay more attention to the arrangements in that respect.

MR. McMURRAY: I had no intention of calling this witness.

THE COURT: That is something that ought to be provided against.

MR. McMURRAY: I was going to call a witness by the name of Cribb; he wasn't subpoenaed, and he wouldn't come.

THE COURT: Are there any other witnesses here in Court?

MR. LAIRD: I am keeping Mr. Eager in here for instruc-20 tions.

MR. McMURRAY: I would ask that this letter be marked as an exhibit?

THE COURT: There is an inconsistency you have not explained there. The witness says he gave this document to somebody else, and here it is.

BY MR. McMURRAY:

Q. How did you get this document? A. I got it over at my lawyer's office—at the lawyer's office.

Q. But when you went to Shaw you gave Shaw the letter and what did he do with it? A. Shaw read it, and then he gave it back to us.

Q. He gave it back to you? A. Yes.

Q. You took it away from him? A. He gave it to me in the hand, he said, "Take it away."

Q. What did you do? A. I put it in my pocket.

Q. What did you do with the letter? A. I brought it back to the lawyer.

10 Q. What lawyer? A. Mr. McMurray.

THE COURT: All right.

MR. LAIRD: Objected to formally.

(Letter dated July 6, 1927, from Young to Gibson and Shaw produced and marked **Exhibit 15.**)

MR. LAIRD: As to the statements of fact in the letter they are not evidence. My learned friend has pleaded he has done certain things, and I expect he is tendering the letter under that plea.

20 THE COURT: If those statements do not comply with the evidence you have here, this is the evidence we are going by. We are going to follow the evidence given here.

RECORD

In the
King's
Bench

No. 14
Plaintiff's
Evidence
Sandwell
Taylor
Examination
(continued).

No. 14
Plaintiff's
Evidence
Sandwell
Taylor
Cross-
examination

CROSS-EXAMINATION BY MR. LAIRD:

Q. Mr. Taylor, it is a fact you were present throughout the whole trial? A. No, I have not been present all the time.

Q. You were present Monday and Tuesday?

A. Part of the time.

Q. You were also one of the men laid off in June, 1927?

A. Yes.

RECORD

In the
King's
BenchNo. 14
Plaintiff's
Evidence
Sandwell
Taylor
Cross-
examination
(continued).

Q. And you also have a claim against the company?

A. Yes.

Q. You are also a member of the One Big Union?

A. Yes.

Q. Are you an official? A. No.

Q. Never have been? A. No.

Q. You heard me ask Mr. Davy about the constitution, can you help us on that at all. A. I wasn't noticing; I can't hear very well over there.

Q. Do you know the constitution of the One Big Union? 10

A. No, I don't know nothing about it.

HARRY POWELL, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McMURRAY:

Q. What is your occupation? A. Machinist.

Q. You are a machinist? A. Yes.

Q. I show you exhibit No. 10, did you ever see that before?

A. Yes.

Q. Where did you see that before? A. I gave that to George Anderson.

Q. When did you do that, do you remember? 20

A. In the C.N.R. Shops.

Q. About what date? A. About the 15th June last.

Q. What did Mr. Anderson do with it?

A. He took a bunch of them and mailed them back to me two days later or the next day.

No. 16
Plaintiff's
Evidence
Harry
Powell
Examination

Q. He mailed it back to you? A. Yes.

Q. I show you an envelope? Did you ever see that before?

A. Yes.

Q. What is that? A. That is the envelope that it came back in.

Q. That is the envelope that Exhibit 10 came back in?

A. Yes.

Q. Where did you get it from? Who did it come back to?

A. It came back to myself.

10 Q. Was it registered? A. Yes, it was registered.

Q. And you signed for it? A. Yes.

MR. McMURRAY: This is an envelope which the witness said was sent back to him containing Exhibit 10. It bears the name of G. B. Anderson, 386 Woodlawn Street, Deer Lodge.

(Envelope addressed to G. B. Anderson, 386 Woodlawn Street, produced and marked **Exhibit 16**).

MR. LAIRD: There is the same objection to these things as not applying to the company.

CROSS-EXAMINATION BY MR. LAIRD:

20 Q. You worked in the shops with Mr. Young?

A. Yes.

Q. And you are not working any more; you are one of the men dropped in June last year? A. Yes.

Q. Are you an officer of the One Big Union?

A. No.

Q. Can you tell us anything about the organization?

RECORD

In the
King's
Bench

No. 15
Plaintiff's
Evidence
Harry
Powell
Examination
(continued).

No. 15
Plaintiff's
Evidence
Harry
Powell
Cross-
examination

RECORD
 In the
 King's
 Bench
 No. 15
 Plaintiff's
 Evidence
 Harry
 Powell
 Cross-
 examination

A. I was a member but I never was an active member.

Q. Do you know its constitution, this little book we have got here?

A. I have seen the book; I don't know that I have read it.

Q. Where did you see it? A. I had one as a member.

Q. As a member of the One Big Union you got it?

A. From my unit.

Q. Or the secretary or the chairman of the unit, which?

A. The secretary.

Q. When did you get this? A. At the time I joined, I guess.

Q. I see this is dated 1923, is that about the time you joined? 10

A. It may have been published since.

Q. Is this the same as that in 1923? A. I couldn't say.

Q. You have not compared them? A. No.

Q. But in your units this is the constitution you go by?

A. As a rule, yes.

Q. You believe that this is the constitution of the One Big Union? A. I couldn't say.

Q. You couldn't say. Do you believe it is, Mr. Powell?

A. I can't say.

Q. You got one and used it, haven't you, in those four or five 20 years? A. I had one, but I don't say I ever used it.

Q. What have you done with it? You used it in your meetings, didn't you? A. No.

Q. You didn't use it in the meeting? A. I didn't use one; I never have used it.

Q. You never have used one? A. I have read through one, but I have never used one.

JAMES WILLIAM HEATON, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McMURRAY:

Q. Were you formerly an employee of the Canadian Northern Railway Company? A. I was.

Q. When did you join that company? A. On the 3rd day of August, 1911.

10 Q. How long did you work for them? Up until what date?

A. Up until somewhere about the 22nd day of December, 1922.

Q. What was your occupation? A. Blacksmith.

Q. Did you help to negotiate agreements between the defendant Company, the Canadian Northern Railway and groups of its men? A. Yes.

Q. When was the first agreement that you negotiated?

A. I couldn't tell you.

Q. Whom did you represent? A. The blacksmiths.

20 Q. What blacksmiths? A. The blacksmiths and helpers.

Q. What Division? A. Of the Canadian Northern Railway shops at Winnipeg.

Q. You represented the blacksmiths and helpers in the Canadian Northern Railway shops? A. In Winnipeg, yes.

Q. What portion of these men did you represent of the blacksmiths? A. On the Western lines.

Q. Men on the Western lines. What percentage of the blacksmiths did you represent on the Western lines?

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A. All.

Q. You represented all of them? A. Yes.

Q. Why do you say you represented them all?

A. Well, because they was all governed by our agreement.

Q. What agreement do you refer to? A. The agreement between the men and the Canadian Northern.

Q. Were you a member at that time of the American Federation of Labor, the blacksmiths affiliated association? A. Yes, the International Order of blacksmiths and helpers.

Q. And you say you made a contract? A. On behalf of all¹⁰ the blacksmiths.

MR. LAIRD: I object to that. Where is the contract in writing, or authority?

BY MR. McMURRAY:

Q. Had you any authority outside of the International Blacksmiths' Organization to make that contract?

A. No.

Q. Do you know what the Federated Metal Trades agreement was made for? I believe you were one of the negotiating parties to that? A. I can't say at the present time. 20

Q. But you remember you were a party to negotiating the Federated Metal Trades agreement, exhibit 5?

A. I was a party, yes.

Q. This is exhibit 5, and it states on the outside to be, "Federated Metal Trades Agreement with Canadian Northern Railway System lines west of Port Arthur, Mechanical and Electrical Departments. Effective May 1, 1916 to April 30, 1917." It is signed by Mr. Eager for the company, and approved by Mr. McLeod, a committee for the blacksmiths, and for the allied metal trades A. Smith, and the committee for the blacksmiths and help-³⁰ers reads: "A. Smith, J. W. Heaton, P. Shearer, and W. McIntyre."

CROSS-EXAMINATION BY MR. HAFFNER:

Q. At that time you were a member of the International Order of Blacksmiths? A. I was.

Q. And it was because you were a member of the order you went to the meeting where this agreement was negotiated?

A. Yes.

Q. There were a number of blacksmiths in the Fort Rouge shops at that time? A. Yes.

Q. And they were all members of the order, were they not?

10 A. No, I wouldn't say that.

Q. Do you know any blacksmiths working for the C.N.R. working in the Fort Rouge shops at that time who were not members of the order? A. No.

Q. You don't know of any. At any rate, it was as representing the International Order that you went to the meetings and negotiated this agreement? A. Yes.

Q. And you had no authority given you by any other than was given by that International Order? A. No.

Q. When did you leave the company's employment?

20 A. In fact, I haven't left it yet, only my circumstances are that I can't work at my trade.

Q. When did you stop working? A. On the 22nd day of December or thereabouts, 1922, just before Christmas.

THEODORE C. GRÉSCHUK, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BERGMAN:

Q. You are a barrister and solicitor? A. I am.

Q. Practicing in the City of Winnipeg? A. I am.

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Q. And connected with the office of the plaintiff's solicitors?

A. Yes, McMurray & McMurray.

Q. And you were in the office of the plaintiff's solicitors in the month of September, 1927? A. I was there since 1926.

Q. I show you, Mr. Greschuk, the documents that have been filed as exhibits "I," "J," "K," "L" and "M" for identification, and ask you if you have ever seen those before? A. Well, I can say I seen those and the ribbon copy of them.

Q. That is, with the original signatures? A. Yes.

Q. What did you have to do with those documents, Mr. Gres-10
 chuk? A. At that time they were signed by Mr. Young and
 Miss Bowden, the stenographer in our office, she told me—

Q. You are not allowed to tell that.

A. They were handed to me to be registered.

BY THE COURT:

Q. What were? A. Those letters.

BY MR. BERGMAN:

Q. These letters or originals of them?

A. The originals of these letters were handed to me with
 instructions to be mailed. 20

BY THE COURT:

Q. They were handed to you?

A. Yes.

BY MR. BERGMAN:

Q. And without stating what the instructions were, were you given instructions as to what you were to do with them?

A. I was told—

THE COURT: You are a solicitor; you know all the rules of evidence. You do not need to be prompted on that.

BY MR. BERGMAN:

Q. Did you get instructions as to what you were to do with the letter? A. I had to register the letters and get the receipts from the post office.

Q. Did you do that? A. I did that, and brought the receipts back.

Q. Did you at the time of registering these letters get registration receipts from the post office?

A. I did, and first of all I filled out the names and respective addresses of each and every one of those envelopes and then presented them for registration.

Q. Did you personally fill in the receipt form and addresses as they were on the envelopes? A. I did.

Q. And then you took the letters to the post office and mailed them and registered them? A. Yes.

Q. Have you the receipts you got from the post office at that time? A. I have. There are three receipts in my own handwriting, the letter to W. R. Rogers, the letter to Grant Hall, and the letter to R. J. Tallon.

Q. You produced three receipts on one sheet, Mr. Greschuk, one for a letter addressed to W. R. Rogers, stamped August 13, 1927?

THE COURT: Better not give the contents until they are in.

BY MR. BERGMAN:

Q. There are three on one sheet. You produce 5 receipts on two sheets of paper. Are they the registration receipts for the five exhibits referred to here? A. They are.

30 MR. BERGMAN: I tender those receipts as an exhibit.

MR. LAIRD: Objected to. It is after the action started.

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MR. BERGMAN: It is the fact of mailing we are proving.

THE COURT: Any other objection?

MR. LAIRD: Yes, on the ground that the original document should be produced and the original letters.

THE COURT: I will allow them in.

(Five registration receipts referred to, produced and marked Exhibit 17).

BY THE COURT:

Q. They cover the five letters in question?

A. Yes.

10

BY MR. BERGMAN:

Q. They cover the five letters, copies of which have been marked here as exhibit "I" to "M"? A. Yes.

Q. And the letters were addressed as shown on the registration receipts? A. They were so addressed.

Q. Were they mailed on the dates as stamped on the registration receipts? A. Yes, they were.

Q. By you personally? A. By me personally.

MR. BERGMAN: I now, my lord, formally tender the letters that have been marked as exhibits "I" to "M" for identification? 20

THE COURT: Don't you think the rule of secondary evidence applies there? What is your submission on that?

MR. BERGMAN: I made my submission from Phipson today, the 6th edition, p. 122.

THE COURT: What about the original? I will assume from this evidence, I think I should infer that these original letters reached the respective addresses, but if you want to use those letters, the originals are the letters to use. You are entitled to use copies only to explain the absence of the originals.

MR. BERGMAN: I think these are the same as any other service. If the Court directs me to serve a man by mail, I do not have to call the man and have him produce the document. I simply have somebody who made the actual service by posting the letter show it was posted. This is merely a matter of proving service.

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THE COURT: So far as that is concerned I think you have proven quite all right that the letters were posted, and in the lack of any other evidence I would be bound to infer that they reached
 10 their destination, but now they are somewhere in the hands of the addressees.

MR. BERGMAN: If you look at the addressees they are all outside of the jurisdiction of the Court.

THE COURT: Well, the rule provides very amply for using secondary evidence.

MR. BERGMAN: There is no way of getting secondary evidence in the ordinary sense because we could not serve notice to produce on my learned friend because I think the people without exception are not in his employ. It is not a case of a document in
 20 the possession of the defendant. We would have to take the evidence on commission.

MR. HAFFNER: My learned friend issued a commission.

THE COURT: Of course, if they have been called upon to make the admission and they would not—

MR. BERGMAN: I make the formal tender, my lord.

MR. LAIRD: The admission of the copy may be very convenient to us, and it often is, but we have got to practice according to the rules of evidence. Here he is trying to prove the contents of a written document by a copy, and the law is rigid and
 30 fixed, and he can't do it.

THE COURT: You really support the view I have expressed.

MR. LAIRD: Yes, surely it is an elementary rule.

THE COURT: I won't accept those letters on the grounds so far put forth; they are not admissible.

BY MR. LAIRD:

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Q. The envelope you posted and got this receipt for, Mr. Greschuk, the letters were in the envelopes, were they not?

A. Yes.

Q. Sealed up? A. Yes.

Q. They were in the envelopes and sealed up when they came into your hands? A. They were sealed up. I can't say they were sealed up, but I believe the girl and myself did the sealing of those letters.

Q. But you have no recollection now of whether those documents are copies or not, or whether the originals were signed by Young at all? A. I remember seeing Young sign them.

Q. Miss Bowden said she had them signed by Young?

A. She was there, and so was I. I was in the general office.

Q. She put the letters in the envelopes, addressed the envelopes and sealed them up? A. As I said before I don't know whether she did seal them up or whether we both sealed them.

Q. You don't know in what shape the envelopes were when you got them from her? A. They were all addressed and stamped, but I don't know whether they were sealed or not, or whether I did the sealing.

Q. You don't know whether you looked at what was in them?

A. No, I don't think I did look at them.

Q. She might have put something else in the envelope to Grant Hall? A. I doubt that.

Q. She might have done it? A. Oh, it is possible.

Q. And she might have put something else in the envelope to Gibson? A. She might have.

Q. You really don't know what was in the envelopes that you mailed under these receipts, exhibit 17, do you, Mr. Greschuk? ³⁰

A. I wouldn't say that I really know what was there.

Q. Mr. Greschuk, how long have you been a member of the Bar, five years? A. No, I have only been a little over a year.

Q. You studied in Manitoba? A. Yes.

Q. Took your course here? A. Yes.

Q. You are a partner of Mr. McMurray now, I believe?

A. Yes.

Q. And have been for several months, since the first of the year? A. The first of the year.

Q. And you have been in the office all the time since this suit
10 was started? A. Yes.

Q. And have had a good deal to do with the suit and the preparation of the action for trial? A. No, I had very little to do. My work in connection with this suit was serving notices and affidavits in connection with various motions.

Q. You have told me you are a partner? A. Well, yes.

Q. You know the business of the firm? A. Some of it, I do.

Q. Mr. Greschuk, I want you to tell his lordship as a solicitor and officer of this Court who is financing this suit for Young?

MR. BERGMAN: I object, the solicitor is not obliged to dis-
20 close his private arrangements with his clients.

MR. LAIRD: That is all very well, but we plead that this suit is being maintained by an outside organization.

THE COURT: When an issue is raised on the pleadings there is no question of privilege.

BY MR. LAIRD:

Q. Mr. Greschuk, as an officer of this Court, tell his lordship who, to your knowledge, is financing and conducting this suit.

MR. BERGMAN: I object to that first part, as an officer of this Court.

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THE COURT: As a witness.

BY MR. LAIRD:

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Q. Please tell his lordship who to your knowledge is financing this suit? A. To my knowledge I would say that I don't know because the matter of this suit is conducted simply with E. J. McMurray, because most of the time we don't know who is there, or why he is there, and furthermore, he told us not to disturb him when he is talking about this matter.

Q. You know your firm has received no money from Mr. Young, don't you? 10

THE COURT: The witness said to his knowledge he doesn't know.

THE WITNESS: The only knowledge I have of receiving by Mr. Young is his conduct money, \$4, that was on the examination for discovery.

Q. That is \$4 paid by the defendant as his conduct money for the examination for discovery?

A. Yes, that is as far as my knowledge goes.

Q. You know that the One Big Union has paid the firm of which you are a partner money for the conduct of this suit, do you not, Mr. Greschuk? A. I might explain it this way. Of course I would be giving a firm's secret away—as far as the money question is concerned I have nothing to do with it, and I am not interested whether the firm is paid or not as long as I get my salary at the end of the month.

Q. I should think you would be very much interested whether the firm is paid or not, as a partner of the firm. You know, as a matter of fact, that the One Big Union has been paying the firm money for this suit?

A. Not to my personal knowledge. 30

Q. How do you know it not of your own personal knowledge? Haven't you seen checks?

A. Well, I have—

Q. Mr. Greschuk, I am disappointed. You are a solicitor of this Court.

MR. McMURRAY: Please don't argue with the witness.

MR. LAIRD: I am warning the witness.

MR. McMURRAY: You have no right to say that to the witness.

MR. LAIRD: I think I have a right to call his attention to this in the box.

BY MR. LAIRD:

10 Q. Mr. Greschuk, tell me whether your firm has received any checks from the One Big Union? A. I must say we have, to my knowledge.

Q. On account of the costs of this action?

A. I cannot say what they were on account of. The only way I know is I had to make a deposit and I saw the check, not from the One Big Union, from this Central Labor Council.

Q. The Winnipeg Central Labor Council? A. Some outfit like that, but what the money was for I don't know.

Q. You have no other work in the office for the One Big
20 Union beyond this suit and the Davy suit?

A. Oh, yes, we have.

Q. And there was no note or memoranda on the check as to what the money was for? A. I couldn't say.

Q. Did you issue receipts for the money? A. I did not in connection with that, Mr. Laird, my only duty is—I don't know whether you would call it duty—the only thing I had to do with the money was to go over to the bank and deposit it.

Q. How many checks do you recall? A. I recall one check. I was just trying to think if there was any more.

30 Q. And the amount of that one check, please?

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A. The amount of that one check was \$50.

Q. When was that? A. It was either the end of the last week of April or from the 1st of May until now. It was recently.

Q. What about the other checks, Mr. Greschuk?

A. I can't recall—oh, yes, I recall another check from the Central Labor Council, which, if I may correct my previous evidence, which was handed to me and I gave a receipt for it, for \$25.

Q. You did give a receipt for it? A. Yes.

Q. That was re the Young litigation? A. No, it was bail put up for some— 10

Q. It had nothing to do with the Young litigation?

A. No, I recall that I receipted for that.

Q. Any other check? A. Not that I recall.

Q. Just those two? A. Just those two.

Q. And the one for \$50, you don't know what it was about?

A. I don't know what it was about, and that check I told you I know what it was about.

Q. Were those checks that you saw in favor of the firm of McMurray & McMurray and Greschuk, or in favor of Mr. E. J. McMurray? 20

MR. BERGMAN: He did not say they were for the Young suit.

BY MR. LAIRD:

Q. The check for \$50 was it in favor of McMurray, McMurray & Greschuk? A. The \$25 check—

BY THE COURT:

Q. They had nothing to do with this? A. No.

BY MR. LAIRD:

Q. But the \$50 check? A. The \$50 check, I couldn't say, but the \$25 check was in favor of McMurray, McMurray & Greschuk.

Q. But the \$50 check you can't recall?

A. I can't recall.

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RE-EXAMINATION BY MR. BERGMAN:

Q. You are not suggesting that that \$50 check that you mentioned related to the Young suit?

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MR. LAIRD: A very leading question.

10 A. I am not suggesting that, but only this much that I saw a check for \$50, or I am not sure whether it was \$50 or not, anyway it was a check for a small amount, but whatever bearing it had I don't know.

Q. You don't know whether it related to the Young suit or not? A. No, but I know I had some other work which I conducted personally, and I got the other check for \$25.

Q. The firm does work for the One Big Union direct, or for the Winnipeg Central Labor Council? A. Yes.

MR. McMURRAY: I think possibly that is the end of our 20 vocal evidence, my lord.

THE COURT: The rest will be instrumental, I take it.

MR. McMURRAY: Yes, and all notes taken down by the stenographer.

(Court adjourned at 5 p.m. May 16, 1928, to 10.30 a.m. May 17, 1928).

10.30 a.m. May 17, 1928.

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MR. BERGMAN: My lord, I wish to read from the examination for discovery of Arthur A. Tisdale, an officer of the defendant company.

(Examination of A. A. Tisdale referred to, produced and marked EXHIBIT 18).

MR. BERGMAN: I will put in the caption, certificate and questions 1 to 17.

"IN THE KING'S BENCH

BETWEEN

10

WILLIAM YOUNG,

Plaintiff

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Defendant.

This is the Examination for Discovery of Arthur A. Tisdale, an officer of the defendant company, had and taken viva voce on oath, before R. D. Guy, Esq., K.C., one of the Special Examiners of this Honorable Court, at the law Chambers of Messrs. McMurray & McMurray, Barristers and Solicitors, 410 Electric Railway 20 Chambers, in the City of Winnipeg, and Province of Manitoba, on the 15th day of September, A.D. 1927, at the hour of 2.30 o'clock in the afternoon, pursuant to appointment.

PRESENT: Hon. E. J. McMurray, for the plaintiff, D. H. Laird, Esq., K.C., for the defendant.

By consent of counsel of all parties the further attendance of the Examiner in this examination is dispensed with, and it is agreed that the Examination as taken down in shorthand, extended and signed by J. J. Dunne, Court Reporter, shall be treated in all respects as if the said Examiner had been present throughout 30 the Examination, and shall be as valid, binding and effectual in every way, and for all purposes, as if the said Examiner had been present throughout.

It is further agreed that the Examination, as taken down by the Reporter, shall be extended by him on the typewriter, and that the reading over and signing of the transcript by the witness be dispensed with.

ARTHUR A. TISDALE, duly sworn, deposed as follows:

1. Q. What is your occupation, Mr. Tisdale?

A. Assistant to the general manager, Western Region, Canadian National Railways.

2. Q. Canadian National Railways? A. Yes.

3. Q. What are the Canadian National Railways?

A. It is the name of the railway owned by the Canadian Government.

4. Q. That is it is a collective and descriptive designation,
10 nothing more?

A. Yes, as far as I know.

5. Q. What is the relationship to the Canadian Northern Railway Company? A. The Canadian Northern line forms part of the Canadian National Railways.

6. Q. Are you an employee of the Canadian Northern Railway Company? A. No, I am an employee of the Canadian National Railways.

7. Q. Are you an officer of the Canadian Northern Railway Company? A. I don't know whether I am or not.

20 8. Q. Well, you should be able to state this, you are an officer? A. Yes.

9. Q. And I suppose you are assistant general manager of the Canadian Northern Railway Company?

A. That part of it on the Western Region.

10. Q. Yes, that part of it on the Western Region.

MR. LAIRD: Assistant to the general manager, there is the word "to."

11. Q. How long have you held that position, Mr. Tisdale?

A. Since September, 1920.

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12. Q. You had worked with the Canadian Northern Railway a much longer period of time than that?

A. I was formerly with the Grand Trunk Pacific?

13. Q. Were you with the Canadian Northern before that?

A. No.

14. Q. So in 1920 you commenced your employment with the Canadian National Railways? A. That is at the time of the merge we formed part.

15. Q. Now these shops at Fort Rouge are the shops of the Canadian Northern Railway Company? A. Yes. 10

16. Q. It is alleged in the statement of Claim William Young was hired as a machinist on the 10th of June, 1920, do you know if that is a fact? A. I believe that to be a fact, yes.

17. Q. How do you know? A. From the record.

20. Q. So your record shows that he entered the service on the 10th of June, 1920? A. Yes.

22. Q. Does the record show in what capacity he was hired?

A. As a machinist.

28. Q. Now I understand that the plaintiff was dismissed from the service on the 9th of June, 1927, and on that date was handed this document which I show you? A. Yes. 20

29. Q. Do you know the signature? A. I believe it is Mr. Wedge's signature.

30. Q. Do you know it is his signature? A. Well, I have seen the signature before; I didn't see him sign it; I believe it is his signature.

31. Q. Now, this was addressed to the plaintiff, dated the 9th of June, 1927, Fort Rouge: "Mr. William Young. Your services will not be required after 5 p.m. June 13, 1927, on account of reduction of staff," and signed, "L. Wedge, superintendent Motive Power Shops." Precisely what is Mr. Wedge there? A. His 30

duties are what his title is there except he is in charge of the shops.

32. He is in charge of the shops? A. Yes.

33. Q. Of the motive power shops? A. Yes.

34. Q. And he would be in charge of the Canadian Northern Railway shops in Fort Rouge? A. Yes.

35. Q. And he is an official of the defendant, The Canadian Northern Railway? A. Yes.

MR. McMURRAY: The exhibit referred to at the top of page 7, exhibit 1, is exhibit 7 on the trial.

THE COURT: You haven't put in any questions involving an exhibit yet.

MR. McMURRAY: Yes, my lord, question 31.

THE COURT: I can't put an exhibit in unless it is embodied in an answer.

48. Q. Do you know what were the terms of hiring the plaintiff by your company, Mr. Tisdale? A. There have been no particular terms, the man applied for a position and we gave him one.

20 49. Q. He came to your company and applied for a position? A. Yes.

50. Q. Can you find out who it would be he applied to?

A. I may find out.

51. Q. Who was it? A. Mr. Hough.

52. Q. Is Mr. Hough still there? A. Yes, he is one of the foremen there.

53. Q. He would have authority to hire the plaintiff?

A. Yes.

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 (continued).

54. Q. Do you know for how long he hired him?

A. He would not hire him for any specific time."

"60. Q. I put that question to you another way. On the 10th of June, 1920, there was in operation a wage agreement, commonly known as Wage Agreement No. 4, which provided for wages of machinists in the Canadian Northern Railway shops, was there? A. Yes."

"MR. LAIRD: I object to the question on the ground that it is irrelevant."

MR. HAFFNER: That question was objected to as irrele-10
 vant, and does not apply to the plaintiff, and it is not shown to be
 connected with him, and I submit it should not be allowed in. We
 had half a dozen different agreements.

THE COURT: No, that is relevant. The question is that
 this agreement provided for wages for machinists in the Can-
 adian Northern shops, and the answer was Yes. He acknowledges
 that.

MR. BERGMAN: Then there is the continued examination
 taken on the 28th day of January, 1928, and I put in the caption
 and all the second page. 20

"IN THE KING'S BENCH

Between

WILLIAM YOUNG,

Plaintiff

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Defendant.

This is the continuation of the Examination of Arthur A. Tisdale, as an officer of the defendant company, viva voce, upon oath, for discovery, had and taken before R. D. Guy, Esq., K.C., 30
 special Examiner in this honorable Court, at the offices of Messrs. McMurray & McMurray, in the Winnipeg Electric Chambers, in the City of Winnipeg, in the Province of Manitoba, on the 28th day of January, A.D. 1928, at the hour of 10.30 o'clock in the forenoon.

PRESENT: Hon. E. J. McMurray appeared for the plaintiff, and Mr. D. H. Laird, K.C., appeared for the defendant company.

It was agreed that the Examination be taken in shorthand by Joseph L. Donovan, court reporter, duly sworn and afterwards by him extended on the typewriter, and that the reading over and signing of the transcript by the witness be dispensed with.

By consent of counsel for all parties the further attendance
10 of the Examiner on this Examination is dispensed with, and it is agreed that the Examination as taken down, extended and signed by the court reporter shall be treated in all respects as if the Examiner had been present throughout the Examination, and shall be as valid, binding and effectual in every way and for all purposes as if the said Examiner had been present throughout.

The above named Arthur A. Tisdale, being first duly sworn, testified as follows:

BY MR. McMURRAY:

1. Q. You are the assistant general manager of the West-
20 ern Region of the Canadian National Railways?

A. I am assistant to the general manager.

2. Q. What are you in relation to the defendant, the Canadian Northern Railway? What is your occupation there?

A. The Canadian Northern Railway, or part of it, is included in the Western Region.

3. Q. So that you would then be the assistant to the General Manager of the Canadian Northern Railway?

A. Yes.

4. Q. And you are the Mr. Tisdale who was examined be-
30 fore here on the 15th day of September, 1927?

A. I am the Mr. Tisdale who was examined; I don't recall the exact date."

18. Q. I show you what alleges to be wage agreement No. 6, marked on Mr. Young's examination. Do you know if that is a true copy of the original? A. I have never had an opportu-

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nity to check it with the original, but I have every reason to believe that it is a true copy.

19. Q. I would ask my learned friend if he would admit that to be a true copy of the original?

MR. LAIRD: I can't answer that at the moment, Mr. McMurray. I would object to it being marked on the ground that it is not proved, it is not an original, and is not proved to be a true copy. You can mark it subject to objection.

(Wage agreement No. 6, referred to, produced and marked **Exhibit 2**, subject to Mr. Laird's objection.)" 10

MR. BERGMAN: That happens to be the same as trial Exhibit 3.

THE COURT: But you must read on until you embody this.

MR. McMURRAY: I would ask that my learned friend admits this is a true copy of the original.

MR. LAIRD: I can't answer that at the present time.

"20. Q. I show you what purports to be wage agreement No. 4. Would you look at that, Mr. Tisdale? Do you know if this is a true copy of wage agreement No. 4? A. My answer²⁰ would be the same as in connection with wage agreement No. 6.

21. Q. Looking at it further you see there is a supplemental A in the back of it. Do you know if supplemental A is a true copy of the original supplemental A signed? A. The same answer.

22. Q. I would ask that be marked as exhibit 3.

MR. LAIRD: I object to that on the same ground.

23. Q. I would ask my learned friend if he would admit wage agreement No. 4 produced as a true copy of the original?

MR. LAIRD: I will consider it. I don't suppose it will³⁰ affect your examination here at all.

(Printed copy of wage agreement No. 4 referred to, produced and marked **Exhibit 3**, subject to objection.)”

MR. McMURRAY: I would ask my learned friend to produce the one which was marked on the examination.

MR. LAIRD: Here is the paper produced on Tisdale's examination.

(Printed copy of wage agreement No. 4, referred to, produced and marked **Exhibit 19**.)

“24. Q. Have you with you the supplementals to wage agreement No. 6? A. I have the reprint of wage agreement No. 6, which brings it up to date, July 15, 1927, including the revisions of any supplements.

25. Q. Are the supplements in here? A. I think they are incorporated, bringing it up to date.”

MR. LAIRD: I object to that, that is after the plaintiff left the service.

THE COURT: “Bringing it up to this date.”

MR. McMURRAY: I don't know whether it was dated July 15th or not.

26 “26. Q. This is the consolidated one? A. Yes, it brings it down to date.

MR. LAIRD: In No. 4 supplement A was incorporated.

MR. McMURRAY: Yes.

MR. LAIRD: Was B incorporated?

MR. McMURRAY: No.

A. We have supplement A and supplement B to wage agreement No. 6.

MR. McMURRAY: I will file supplement A to wage agreement No. 6 as Exhibit 4.

30 MR. LAIRD: Subject to the same objection.

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(Supplement A to wage agreement No. 6, referred to, produced and marked **Exhibit 4**, subject to objection.)”

MR. BERGMAN: I would ask my learned friend for Exhibit 4, on the examination.

MR. LAIRD: We were not asked to bring it and we haven't got it here.

MR. BERGMAN: We want it, my lord, and the next two exhibits 5 and 6 on the examination.

MR. McMURRAY: And supplement B to wage agreement No. 6. 10

MR. LAIRD: Subject to the same objection.

(Supplement B to wage agreement No. 6, referred to, produced and marked **exhibit 5**, subject to objection.)

27. Q. Have you supplement B to wage agreement No. 4, Mr. Tisdale? A. Yes.

MR. LAIRD: Subject to the same objection.

(Supplement B to wage agreement No. 4, referred to, produced and marked **exhibit No. 6**, subject to objection.)”

MR. McMURRAY: I would ask that you reserve Nos. 21, 21, and 22 for these exhibits. 20

MR. LAIRD: I happen to have exhibit 6 here, my lord. I don't know whether my learned friend proposed to put these in. They are marked on the examination subject to objection, not being proved, and they are not proved now, and the objection remains there.

THE COURT: There is nothing so far in this discovery to show these documents were exchanged and acted upon by the parties.

MR. BERGMAN: They are connected up possibly by the following questions. 30

THE COURT: Go on then.

“28. Q. Do you know if these wage agreements and these schedules put in as exhibits were checked over by any official of the defendant company with the originals? A. I do not.

29. Q. And certified as correct? You don't know?

A. No.

30. Q. Will you find out?

MR. LAIRD: I do not think we have to undertake to do that. Even if we do find out they were checked over that would not make them evidence.

10 THE WITNESS: I understand they are printed by the Railway Association of Canada, and checked by the staff of that association, acting for the different railway companies.

31. Q. Acting on behalf of the different railways?

A. Yes.

32. Q. You say you understand that, Mr. Tisdale?

A. Yes.”

MR. BERGMAN: Apparently the witness states these were all issued and printed by the Railway Association of Canada, checked by the staff of that Association for the different
20 railway companies, including this particular railway company.

THE COURT: Yes, and then what? Put them in their vault and carefully conceal them?

MR. BERGMAN: It would show that they had adopted these as their rules.

THE COURT: It showed they prepared these and checked them over; it doesn't show any delivery.

MR. BERGMAN: I would ask that the markings be left, and possibly further on there will be other evidence establishing that.

30 THE COURT: All right.

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"35. Q. How long have you held an official position with the defendant company, Mr. Tisdale? A. Since the co-ordination of the Grand Trunk Pacific and Canadian Northern, August 23, 1920."

"56. Q. The present form of bargaining, as I understand it, is between the railroads of Canada, or those who have a mind to come in under the railroad board, and the employees upon those railroads. That is, the railroads as a whole are represented by the board, and the employees as a whole are represented by Division No. 4, isn't that right? 10

A. That is so far as the mechanical trades are concerned."

"63. Q. That is what I want to know. Here is what I want to get at, Mr. Tisdale. On the 1st of December, 1919, wage agreement No. 4 came into effect, and then there were supplementals to it. Then there was wage agreement No. 6, and supplementals to it. That dealt with the machinists on the various roads as well as with other employees. Had you any other agreement with your machinists than those between the 1st of December, 1919, and the 13th of June, 1927? A. Not that I am aware of. 20

64. Q. You are not aware of any? A. No.

65. Q. If there were any you would know, naturally?

A. Well, if they in any way applied to the shops generally we would know, but there might be some local agreements.

66. Q. Do you know of any? A. No, I am not aware of any."

"71. Q. Did you have anything to do, or did you negotiate any agreements since the 1st of December, 1919, with the machinists in the Fort Rouge shops on your railroad? A. No.

72. Q. If those were negotiated would you be naturally a 30 party to the negotiations? A. No.

73. Q. Who would be in your shops? A. The General Superintendent of Motive Power.

74. Q. That would be? A. Mr. A. H. Eager.

75. Q. Do you know if Mr. Eager negotiated any contracts with the machinists in the Fort Rouge shops since the 1st of December, 1919, other than those filed as exhibits? A. Not that I am aware of."

"78. Q. Was there a special agreement made with the plaintiff? A. No.

79. Q. Did the plaintiff work the same hours as other machinists? A. I assume so."

"81. Q. Was the plaintiff paid the same wages as other machinists in his class were paid? A. He was paid the going wage.

82. Q. What do you mean by the going wage?

A. The wage in effect from time to time.

83. Q. The wage in effect from time to time. In effect with whom? A. In effect with Division No. 4 of the American Federation of Labor.

84. Q. And the defendant company? A. And the defendant company.

85. Q. So that the wages paid to all machinists in your employ according to their standing was the same? A. Yes, there was no contract with the individual as to wages or hours or anything else.

86. Q. No contract was made with any individual?

A. No individual."

"93. Q. Was the plaintiff treated the same as other employees so far as his grievances were concerned?

A. Yes.

94. Q. Was there any bargain between him and the company, or those representing him and those representing the company, that he should be treated the same as other employees?

A. That is just a little involved, Mr. McMurray.

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95. Q. Read the last question. (Last question No. 94 read.)

A. I know of no separate contract or agreement relating to the appointment of the plaintiff.

96. Q. But as a fact he was so treated during the whole term of his employment? A. So far as I know."

"99. Q. There is no doubt that he was so treated.

A. I say so far as I know he wasn't treated any differently."

THE COURT: In case this case goes any I merely wish to remark that the original discovery I am checking by ¹⁰ has been all marked over and inter-lined, and so forth, and I want to make it clear that I have not done this marking.

MR. McMURRAY: That is very regrettable, my clerk got the original mixed up with the other, and I just discovered it on filing the same.

MR. LAIRD: I think it is very highly improper to file with the Court a copy of the examination with parts of it marked. I haven't seen it, and I didn't know about it until your lordship spoke.

THE COURT: It is marked up and emphasized all ²⁰ through, and I suggest that a fresh copy be substituted, and I can then mark it off. It is one of those things that might very well happen.

"106. Q. Is there any provision made for the man outside of Division No. 4, other than set forth in those schedules and wage agreements to be heard by the company? - A. No.

107. Q. There was none at all. So that I take it that the only bargaining so far as non-members of Division No. 4 in your shops as to all matters arising in the course of their employment had to be made as provided for in those agreements and sched-³⁰ ules.

A. I understand your question to be this: Is the agreement that was negotiated between the railway companies and Division 4 applicable to all the men in the shop?

108. Q. Yes. A. The answer is yes."

"141. Q. In wage agreement No. 6, exhibit 2, there was a provision for the posting up of seniority lists. Rule 31—seniority lists will be open to inspection and a copy furnished the committee. Did you keep a seniority list? A. Yes, there is one I believe kept by the shop superintendent.

142. Q. Will you produce that? A. I haven't got it."

"156. Q. That rule 31 apparently applies to a craft?

A. Yes.

10 157. Q. Did you on entering up your seniority lists apply that rule? A. I presume so."

"159. Q. And that rule also says: "And to the date on which they enter classification." Did you in applying that rule grant seniority to the machinist from the date on which he entered the classification of machinist?

A. He would be entered on the seniority list according to the date he entered the service.

160. Q. So that you determine his seniority by the time at which he was employed by the company on your lists? A. Yes.

20 161. Q. So that a man's seniority would be determined by you on the lists from the date on which he entered the employment? A. Yes."

"175. Q. Did you rank Young on your lists as having seniority rights over a number of other men working as machinists in the Fort Rouge shops, do you know?

A. Yes."

"203. Q. But in this particular case do you know if the plaintiff was a member of Division No. 4?

A. I do not.

30 204. Q. Do you know if any inquiry was made at the time of his dismissal as to whether he was a member of Division No.

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4 or not? A. So far as our Superintendent of Shops is concerned there was not.

205. Q. There was no inquiry made by Wedge? A. Yes.

206. Q. How do you know that? A. He told me that he did not know he was a member of the O.B.U.

207. Q. He didn't know that he was a member of the O.B.U.? A. Yes.

208. Q. So that he was not dismissed because he was a member of the O.B.U.? A. I am not saying just why he was let off. 10

209. Q. But Wedge could not have dismissed him as a member of the O.B.U. if he did not know he belonged to the O.B.U.?

A. That is correct.

210. Q. I believe you told me there were employees who were junior to the plaintiff in the shops at the time of his dismissal? A. Yes."

"213. Q. Were those employees who were junior to the plaintiff dismissed at that time or were they continued on while the plaintiff was dismissed?

A. I understand that some men junior to the plaintiff 20 were kept on."

"225. Q. On the 9th of June the defendant was handed exhibit No. 1, which is as follows: "Canadian National Railway. Railway Service Telegram. Fort Rouge, June 9, 1927. Your services will not be required after 5 p.m. June 13, 1927, on account of reduction of staff." I show you that exhibit 1.

A. That was brought up at my first examination.

226. Q. Exhibit No. 1 says that the plaintiff's services would not be required after that date, June 13, 1927, on account of reduction of staff. I take it that statement is true? A. Yes, 30 it was.

227. Q. You were reducing the staff? A. Yes.

228. Q. And he was released on that account?

A. Yes."

"BY MR. McMURRAY:

258. Q. Mr. Tisdale, on the last examination I asked you if there were any other contracts made between the Division No. 4 and the defendant, between the year 1920 or 1919 and the 13th day of June, 1927, that is, any agreements other than those two agreements, wage agreements 4 and 6 and the schedules thereto?

10 A. No.

MR. LAIRD: I believe Mr. Tisdale pointed out there were some supplements not produced or referred to the other day. They may not have any application.

259. Q. Have you any other? A. Supplements to agreement No. 4, A, B, and C.

260. Q. Have you them with you? A. Yes.

MR. LAIRD: Mark them subject to objection.

(Supplement A to Wage Agreement No. 4 produced and marked Exhibit 8, subject to objection.)"

20 MR. LAIRD: I object to that.

"(Supplement B to Wage Agreement No. 4, produced and marked Exhibit 9, subject to objection.)

261. Q. At the last examination we purported to mark Wage Agreement No. 6 as Exhibit No. 2. It now turns out that what was marked as Exhibit No. 2 was the Consolidated and Re-issued agreement No. 6 of the 15th July, 1927. I would ask you if you have Wage Agreement No. 6? A. Here it is.

262. Q. We will have that marked Exhibit 2 in lieu of the consolidated one that was marked as exhibit No. 2.

30 MR. LAIRD: Subject to objection.

263. Q. Read the first question and answer. (Question

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No. 258 and answer read.) Verbally or in writing there were no agreements made between Division No. 4 and the defendant other than these put in as exhibits?

MR. LAIRD: Upon what subjects?

264. Q. In connection with the employment of men in the shops. Were there any other agreements?

A. Not that I know of.

265. Q. You were to look that up and find out?

A. Well, I couldn't find anything.

266. Q. You could find nothing? A. No." 10

MR. BERGMAN: I would ask my learned friend to produce those.

MR. LAIRD: They are not evidence; not proved.

MR. BERGMAN: I would ask your lordship to re-reserve number for them.

THE COURT. Aren't they much like the last group of documents? Where is the evidence that they were delivered and acted on?

MR. BERGMAN: I would ask your lordship to re-reserve those numbers and we will probably connect them up as 20 we go along.

THE COURT: There is no objection to leaving the numbers.

"272. Q. I asked you at the last examination at Question 130 who was the local committee. Do you know the names of the local committee? A. I find that the arrangement was made with the two chairmen, A. B. Page, Chairman of the Boilermakers in the West, and Charles E. Shaw, Chairman of the Machinists in the West, who acted for the local committee. They met Mr. Wedge, the Shop superintendent, and Mr. Hedge, the Works 30 Manager.

273. Q. Do you know if Page and Shaw were members of

the local committee, or did they merely act on behalf of the local committee? A. They acted on behalf of the local committee.”

“278. Q. In Rule 35 it says that the case may be taken to the foreman, general foreman, shop superintendent or master mechanic, each of them in their respective order, by the local committee, and I ask you do you know who constituted that local committee?

A. This is a copy of a notice from G. B. Anderson, recording secretary, dated January 6, 1927, addressed to Mr. L. Wedge, superintendent of the Fort Rouge shops. The following are the names of the Machinist Shop Committee for the ensuing year. Perhaps I will read it.

279. Q. We will put that letter in.

MR. LAIRD: That is as to the shop committee. I don't want you to be misled, or I don't want Mr. Tisdale to. The other day he assumed these men were the shop committee, and it does not appear to me that they were.

(Letter dated January 6, 1927, produced and marked Exhibit 10.)”

20 THE COURT: I think we had better take these exhibits as they come.

MR. BERGMAN: Very well, my lord.

(Letter dated January 6, 1927, formerly exhibit 10 on examination, now produced and marked Exhibit 20.)

“317. Q. I have pleaded here that various officials of Division No. 4 and members thereof, arranged and agreed with the defendant and with certain officials of the said defendant to the dismissal of the plaintiff in breach of Wage Agreement No. 6, and supplements thereto.” On that pleading I am asking you 30 what officials of the company were present when that negotiation was made.

MR. LAIRD: All right, you can answer that.

A. Mr. G. H. Hedge, Works Manager, and Mr. L. Wedge, superintendent of Shops, Fort Rouge.”

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MR. LAIRD: I object to that, my lord.

MR. BERGMAN: My learned friend suggested he could answer.

MR. LAIRD: I did, but I am not bound by what I did on discovery.

THE COURT: We have already ruled once or twice on the general topic of what may be termed conspiracy or arrangement to discharge the plaintiff, and this question falls directly under that line, doesn't it?

MR. LAIRD: Yes, it is purely a question of whether 10 other people came in.

THE COURT: I think it is immaterial and irrelevant.

MR. LAIRD: The same I presume applies then to questions 320, 321, and 322.

MR. BERGMAN: I will read them and my learned friend can do what he likes.

"320. Q. What officials of Division 4 were present?

A. Messrs. Shaw and Page, referred to before.

321. Q. They were the only ones? A. Yes.

322. Q. On what date was that meeting held? 20

A. June 9th."

THE COURT: I exclude Questions 317, 320 and 321, and 322; I think they are irrelevant.

MR. BERGGMAN: I would just ask that it be reported that we tendered Questions 317, 320, 321 and 322.

THE COURT: Yes, and I exclude them.

MR. McMURRAY: I tender the questions 326 to 329 inclusive.

"326. Q. Was there a list prepared at that meeting?

A. I understand that both sides had copies of the seniority lists, and checked over the names, and ticked off those that were to be laid off.

327. Q. But was there a separate list made out, either by hand or by a stenographer on that occasion showing the men to be let out of the Fort Rouge shops?

A. Following the selection of the men I believe there was.

328. Q. Have you that list? A. Yes.

10 329. Q. Would you let me see it?

(Document referred to, produced and marked Exhibit 11.)”

THE COURT: I will make a general ruling that I will not allow any of those questions in. That protects you as to every question you think you ought to have in.

MR. McMURRAY: I will go on then to page 56.

“341. Q. Have you got the seniority list with you, Mr. Tisdale? A. Yes.”

20 “343. Q. You produce a list of Fort Rouge machinists, June 1, 1927, a file held with the metal clasp, file No. 4465-3, Seniority List Fort Rouge Loco. Shops as of June 1, 1927.

(List referred to, produced and marked Exhibit 12.)”

MR. BERGMAN: That is the list, my lord, already marked on the trial as Exhibit “A” for Identification.

(Seniority List of Fort Rouge Locomotive Shops June 1, 1927, formerly Exhibit “A” for Identification, now produced and marked Exhibit 21.)

“344. Q. Is this the original list that is kept?

A. Yes.

30 345. Q. Or is this from the card system? A. No, this is the original list. It is corrected yearly.

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346. Q. I see it is called seniority list?

A. That is the term generally used for it."

"350. Q. This dismissal was made out at a time when your staff was generally being reduced? A. The notice states for what reason this man was laid off."

"383. Q. In your pleadings the defendant pleads that the plaintiff was guilty of wrong and improper conduct. Have you the card that is kept concerning the plaintiff? A. Yes.

(Card S.B.R. 149254, William Young, produced and marked **Exhibit 13.**)" 10

MR. McMURRAY: I would ask my learned friend for that card.

(Card produced.)

MR. McMURRAY: I would ask that that be filed as an exhibit.

(Card formerly exhibit 13 on the examination, now produced and marked **Exhibit 22.**)

"384. Q. Do you know when this card, exhibit 13, was made out? I see the plaintiff entered the service of the company, The Canadian National Railways on June 10, 1920, at Winnipeg.20 Would that card be made out at that date?

A. No, that card is made out in the staff record office.

385. Q. When would it be made out? A. Oh, a short time afterwards.

386. Q. And has been kept ever since in the records of the company? A. Yes.

387. Q. This shows that he was employed on June 10, 1920, at Winnipeg. There is no doubt of that?

A. No.

388. Q. And the rate here is put down at 85 cents per hour.30 That would be correct, would it? A. Yes.

MR. LAIRD: There is some explanation there.

A. It was 72 cents when he was actually engaged but later on the 85 cent rate was established and made retroactive to May 1st, 1920, so it was really the 85 cent rate.

389. Q. And that was the rate that was being paid to all employees at that time? A. To employees of that class in the shop."

"410. Q. Prior to Wage Agreement No. 4 there was another agreement in writing known as Agreement No. 1 and schedules 10 thereto. Will you produce that?

A. Instead of schedules if you would use the word supplements.

MR. LAIRD: I would object to this as irrelevant, and only being copies.

(Wage Agreement No. 1 and supplement A and B September 2, 1918, referred to, produced and marked Exhibit 14, subject to objection.)"

MR. McMURRAY: I would ask that be marked.

THE COURT: Isn't that already in? on your under-
20 taking to connect it up.

MR. McMURRAY: Yes, my lord.

MR. LAIRD: Question 410 should be omitted altogether.

THE COURT: It is in the same category as the exhibits. It is valueless if they do not connect it up.

"411. Q. Prior to 1919 there were in the shops of the defendant uniform scales of wages, that is, all machinists were paid the same rate, and all the crafts were paid the same rates, isn't that so?

30 A. I believe so.

412. Q. And those rates of wages were negotiated by some representatives of those various crafts with the company?

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A. Yes."

"415. Q. Going back to exhibit 13 in July 16, 1921, there was a revision of rates of pay to 77 cents. Do you know did your company enter into any separate bargain with the plaintiff for that? A. No.

416. Q. Were there any negotiations to arrive at that amount with anybody representative of the plaintiff?

A. It will be found in one of those schedules or supplements."

"420. Q. On July 16, 1921, there was a reduction made to 10 77 cents an hour, and I ask you if there were any discussions between representatives of Division 4 and the company in arriving at that 77 cents per hour.

A. Those discussions would be carried on with the railway association at that time."

"423. Q. And on June 14th I see an entry here, of the year 1927, laid off, on reduction of staff, that would be the correct reason? A. Yes."

THE COURT: The answer here refers to nothing that you can be sure of. 20

MR. McMURRAY: That refers to the service card.

THE COURT: If it does it is not connected.

MR. McMURRAY: We will just leave it.

MR. BERGMAN: There is that notation on the service card.

THE COURT: I suspect that, but still it is not proved.

"438. Q. Mr. Young, the plaintiff, is 192 in this list of machinists, and the date of his employment is the 10th of June, 1920. There are 233 on the list. Could you tell me if these men are still in the employ of the company, or were they still in the employ of the company on the 9th day of June, 1927?

A. That list was made up on June 1st."

THE COURT: That is open to the same objection.

MR. McMURRAY: It refers to the list of machinists he was on.

"449. Q. Did you adopt in your shops the B. & O. system?

A. Yes.

450. Q. When was that adopted in the shops?

A. The 1st of January, 1925."

"456. Q. When was it introduced into the shops in Winnipeg, do you remember? A. I couldn't give you the date off-
10 hand.

457. Q. Would you get that? A. Yes."

"472. Q. In what way did your company ever take any steps to negotiate the B. & O. system or scheme with men who did not belong to Division No. 4? A. I am not aware whether they did or not.

473. Q. Do you know of any negotiations with men outside of Division 4? A. No, I do not."

"475. Q. Were there any negotiations in connection with the introduction of the B. & O. System between the defendant and
20 One Big Union? A. Not that I am aware of."

"493. Q. Did it ever come to your knowledge that any action by the One Big Union or members thereof was in opposition to the B. & O. System? A. No, not directly."

"500. Q. Then this goes on and alleges more drastically than ever that they endeavored to defeat and destroy the satisfactory workings thereof. They first opposed its introduction, and then they endeavored to defeat and destroy the satisfactory working thereof. Do you personally know of any attempt to personally defeat and destroy the satisfactory working of the
30 scheme after it was introduced? A. No."

THE COURT: "Then this goes on." What is this?

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MR. McMURRAY: I was reading from the Statement of Defence, my lord.

THE COURT: You lose the effect of several of those answers by not identifying what document you are referring to.

MR. McMURRAY: Yes, I see that, my lord.

"511. Q. And endeavored to have fellow employees of the plaintiff oppose and defeat the operation of the said plan. Who do you mean by the fellow employees of the plaintiff? Do you mean simply the members of the One Big Union, or all the employees working in the different crafts? A. What was the intention, Mr. Laird, you drafted that?"

MR. McMURRAY: And then Mr. Laird compliments himself by saying, "Mr. Laird: I think the language is quite clear, Mr. McMurray."

MR. LAIRD: That is not proper evidence.

"512. Q. Who were the fellow employees, do you know the names of any of them? A. No, I do not."

"515. Q. 'The plaintiff was a party to the said proceedings.' Do you know of personally any opposition by the plaintiff to the introduction of the B. & O. system?"

A. Personally I know nothing about it."

THE COURT: Of course, that is in the same category as Question 500. It refers to no document I have identified before me.

"532. Q. Sir Henry Thornton is the President, I believe, of the Canadian Northern Railway, the defendant?"

A. Yes.

533. Q. And he became such when? In 1921, or early in 1922? A. I think it was the Fall of 1921."

"558. Q. You were to produce, I believe, a list of the men who were junior to the plaintiff in the shops in Fort Rouge in the machinists' craft, and who are still employed there. A. I understood I was to find out how many were junior to him.

MR. LAIRD: The list was produced the other day.
559. Q. How many are there junior to him?

MR. LAIRD: You mean at the present time, Mr. McMurray?

WITNESS: There are thirty men below his number on the list.

560. Q. Will you use the word "junior" in that answer? There are thirty men junior to him, are there?

A. Well, he is not in the service at the present time.

10 561. Q. There are thirty men who were employed at a later date? A. Yes.

562. Q. And men who would be junior to him, if he were still in the service?

MR. LAIRD: Junior in the sense of being hired at a later date.

563. Q. Well, we will take it that way: junior in the sense Mr. Laird has stated? A. Yes."

10 "566. Q. Are there men belonging to the One Big Union who are machinists in the Fort Rouge shops? A. I am unable
20 to answer that.

567. Q. Does the defendant company make inquiries as to what labor organizations the employees belong to?

A. No."

"573. Q. You told me the other day that the man who discharged the plaintiff did not know he was a member of the One Big Union. In your Statement of Defence he is alleged to be dismissed because he is a member of the One Big Union.

MR. LAIRD: No, pardon me. We don't say he was dismissed because of that.

30 574. Q. Well, I will put it this way: Was the plaintiff dismissed because he was a member of the One Big Union?

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Mr. Laird: I think he has already answered that.

575. Q. I don't think so. Did you dismiss him because he was a member of the One Big Union? A. We have had a lot of questions on that same subject, which I have already answered. He was laid off on account of the reduction in forces."

"608. Q. I asked you on the last examination for the date of the introduction of the B. & O. scheme in your shops here in Winnipeg? A. August, 1925."

"620. Q. Were there any negotiations between the Company and the One Big Union, or members thereof, in connection with the B. & O. scheme? A. No.

621. Q. In your Statement of Defence you say that the defendant did not hire the plaintiff. Do you admit that the defendant did hire the plaintiff on the 10th day of June, 1920?

Yes. He was hired on that day.

622. Q. And he continued to work in your services until the 13th day of June, 1927, when he left the services? A. Yes."

"633. Q. Did the plaintiff receive the wages as provided for in said Wage Agreement No. 6, or supplementaries thereto, from the 1st of December, 1922, to the 13th of June, 1927? A. Yes. 20

634. Q. Did the plaintiff receive the same treatment so far as working conditions, hours and rates of pay, as machinists who were members of Division No. 4 working in the shops at Fort Rouge? A. Generally speaking.

635. Q. Do you know of any instances in which he did not receive the same treatment? A. No, I do not."

"645. Q. 'The defendant denies the making of the alleged agreement between the Canadian Railways War Board and Division No. 4 Railway Employees.' Was there an agreement made, known as Wage Agreement No. 4, of which a copy is in as an exhibit in your examination? A. Yes. 30

646. Q. Did the defendant make the Wage Agreement No. 6 and supplements thereto, with Division No. 4?

A. The defendant was a party to it.”

MR. LAIRD: I object to that.

“647. Q. The defendant was represented by? A. The Railway Association of Canada.

648. “And they made the Agreement No. 6? A. Yes.”

MR. LAIRD: Agreement No. 6 has not been put in, and I object to it.

THE COURT: Oh, yes, it is one of the early exhibits.

“651. Q. The defendant, through its proper official, Mr. Wedge, gave notice of the dismissal, as set forth in Exhibit No. 1? A. It gave notice that he was laid off.

652. Q. And I think you told me before that Mr. Wedge had full power to dismiss? A. Yes.”

“685. Q. You say the Local Committee did not refuse to take the case of the plaintiff to any officials of the defendant. Did the Local Committee take the case of the plaintiff to any of your officials? A. No.

686. Q. Do you know if they refused to take the case of the plaintiff to any of the officials of the defendant?

20 A. To the best of my belief, they declined to.

687. Q. Did the Local Committee discuss this matter with any officials of the defendant? A. Not that I am aware of.”

MR. LAIRD: I would ask that the next answer be put in.

THE COURT. You can ask in regard to all these at once at the end.

“745. Q. Rule 36 provides that ‘should the highest designated railway official, or his duly authorized representative . . .?’ Who would be the highest designated railway official? It is most unusual language. Apparently he is not designated at all.

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A. I would say it would be the vice-president of the department under which the shops come."

MR. LAIRD: I object to the question as interpreting some written document.

"746. Q. Who would that be in this particular instance?

A. That would be Mr. Hungerford."

"757. Q. You were to look up, I believe, and let me know in what way the One Big Union actively and vigorously opposed to the introduction and operation of the B. and O. Plan. Have you got any further information on that? 10

A. No.

758. Q. Have you discovered any further information as to any manner in which the One Big Union actively and vigorously opposed the introduction and operation of the B. and O. Plan? A. No.

759. Q. Have you any further evidence as to any way in which the One Big Union endeavored to defeat and destroy the satisfactory working of this Plan? A. No."

"765. Q. You have charged here that the One Big Union endeavored to have the fellow-employees of the plaintiff oppose²⁰ and defeat the operation of the said Plan, and I am asking you for particulars of that. Can you give me any particulars at all as to what way that was done?

A. I have no information about it."

"789. Q. Is it not a fact that individual bargaining, as to hours, rates of wages, working conditions, adjustment of grievances, etc., has ceased to exist in the shops of the defendant for many years? A. I don't know whether it ever existed."

"799. Q. The Railway Association of Canada is an association formed by certain railways in Canada and the defendant³⁰ the Canadian Northern Railway is one of the members of it?

A. It is listed here as the Canadian National Railway. The Canadian Northern is a portion of the Canadian National Railway.

800. Q. Is it an incorporated institution, or is it just an association? A. As far as I know, it is just an association.

801. Q. And for the purpose of making this agreement, this association represented the defendant? A. Yes.

802. Q. Now, will you produce the original agreement?

MR. LAIRD: You have already examined on that. It is not in our possession.

803. Q. It is in the possession of your representative?

A. It is in the possession of the Railway Association
10 at Montreal.

804. Q. Who are your representatives? A. Yes."

"818. Q. Now, Rule 5 of Wage Agreement No. 6 provides that the time for starting for each employee shall be fixed and shall not be changed within 24 hours notice. Did you apply that to the plaintiff,—that is, if this agreement is binding, as the defence suggests it might be?

A. I have already made answers to clear all questions on that same point.

819. Q. And your answer was that it did? A. Yes.

20 820. Q. Rule 6 would also apply in the same way?

A. Yes.

821. Q. Rules 1, 2, 3, 4 and Rule 7 would all apply in the same way? A. Are you trying to lead me into some admission?

822. Q. No, I am taking you along your own line, for the purpose of convenience. All those rules would apply? A. Yes.

823. Q. And rules 8, 9, and so on to rule 19, all would apply? A. Generally speaking, they would all apply, unless there was some local arrangement to the contrary between the Com-
30 pany's officials and the men's representatives."

"839. Q. Rule 37 provides that an employee who has been

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in the service of the railway for thirty days shall not be dismissed for incompetency, or discharged for any cause, without being first given an investigation. Was there an investigation held in this case?

A. This man was laid off on account of reduction of forces.

840. Q. That is, he was not dismissed for incompetency?

A. He was laid off on account of reduction in force.

841. Q. Was that the reason why no investigation was held? A. It would not be necessary to make any in that case." 10

"877. Q. If you will give me the information you have there, it will save me the trouble of asking the questions.

MR. LAIRD: We agreed to look up as to what took place, if anything, between the Local Committee and the Company. We have made inquiries as to that in the offices of the Company.

878. Q. What do you find as to that, Mr. Tisdale?

A. The Local Committee did not officially take the matter up with the Shop Superintendent.

879. Q. That is Mr. Wedge? A. With Mr. Wedge; but 20 Mr. Anderson, when in Mr. Wedge's office, referred to having received that letter from the men and said that he was mailing it back to them. That was all the conversation that passed.

880. Q. Did he state that the Local Committee would not act and did he advise Mr. Wedge to that effect?

A. No. He simply told him he got this letter and was mailing it back."

"886. Q. Have you any information of any personal activity by Young, apart from what you have told me? A. I have interviewed Mr. Wedge, Hough and Bassett, and they have no 30 knowledge, personally, as to Mr. Young's activities in this connection."

MR. LAIRD: I object to that, it is unintelligible.

MR. McMURRAY: It goes back to the questions asked previously.

THE COURT: I don't know that you can object to it, but you might have something to put in to qualify it.

MR. McMURRAY: On the page before my learned friend calls it up, my lord.

THE COURT: As it stands it may mean only one thing.

MR. McMURRAY: We will put in Mr. Laird's statement at the bottom of page 157.

"MR. LAIRD: You asked about the plaintiff's activity in respect of the B. and O. Plan, so far as we were aware of it during this employment."

THE COURT: Leave 886 in, Mr. Laird will deal with that when he comes to it.

"890. Q. I think you said that Mr. Wedge did not know that Young belonged to the One Big Union. Did any other officials of the Company know that Young belonged to the One Big Union, when he was working there? A. What other official do you refer to?"

891. Q. Any of your officials, such as Mr. Kingsland, or yourself, or Mr. Hedge? A. I don't know of anybody who knew it."

"I CERTIFY that the foregoing pages of typewritten matter, numbered 96 to 163, inclusive, is a true transcript of the examination of A. A. Tisdale, taken by me in shorthand at the times and place hereinbefore mentioned.

"J. L. DONOVAN."

"F. HAND,"

Court Reporter.

30

CERTIFIED true transcript of the examination of A. A. Tisdale, had and taken before me at the times and place above written.

"R. D. Guy,"

SPECIAL EXAMINER IN K.B."

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MR. McMURRAY: That is all of the examination, my lord.

MR. LAIRD: There are some questions I would like your lordship to put in under the rule, but I think perhaps it would save your lordship time to do it later. If not, I will do it now.

THE COURT: If it will save time I would welcome that. Any further evidence, Mr. McMurray?

MR. McMURRAY: There may be some de bene esse examination on commission.

THE COURT: If you have it now would be the time to put it in. 10

MR. McMURRAY: There is commission evidence, my lord, in the Prothonotary's office, but possibly we can proceed with the defence evidence?

THE COURT: We will proceed with the de bene esse evidence.

MR. McMURRAY: I will put in the evidence of CHARLES DICKIE.

THE COURT: Is this received by consent?

MR. McMURRAY: Yes, my lord.

MR. LAIRD: It was taken under an order of the Court, as 20 I have no objection.

(Evidence of Chas. Dickie produced and marked **Exhibit No. 23.**)

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WILLIAM YOUNG

Plaintiff

and

THE CANADIAN NORTHERN RAILWAY COMPANY

Defendants

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No. 388 '27

IN THE KING'S BENCH

Between

WILLIAM YOUNG

Plaintiff

and

THE CANADIAN NORTHERN RAILWAY COMPANY

20

Defendants.

These are the depositions of Charles Dickie and Frank McKenna, both duly sworn, and examined on the 20th, 24th and 25th days of April, A.D. 1928, respectively in the offices of Messrs. McMurray, McMurray & Greschuk, 410 Electric Railway Chambers, in the City of Winnipeg, and in the offices of Messrs. Munson, Allan & Co., in Winnipeg, in Manitoba, by virtue of an Order issued out of this honorable Court, dated the 19th day of April, A. D. 1928, by J. W. Morrison, Esquire, the Referee in Chambers, directed to me, H. Ferguson, the special examiner named in the
 30 said Order for the examination viva voce and under oath of the said Charles Dickie and Frank McKenna, touching their knowledge of the matters in question in this action, counsel for the defendants the Canadian Northern Railway company consenting.

It is agreed between counsel present that the examinations shall be taken in shorthand by the said examiner and that after its extension by him on the typewriter it may be used as though the same had been read over and signed by the witnesses.

The Honorable Mr. McMurray appeared for the plaintiff.

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Mr. Laird, K.C., and Mr. G. M. Hair for the defendant railway company.

MR. LAIRD: I ask for the postponement of the examination of Mr. McKenna under the order until Wednesday morning at 10:30 o'clock.

Mr. McMurray consents and it is so ordered.

Friday, the 20th day of April, A.D. 1928, at the hour of 2:30 o'clock in the afternoon:

CHARLES DICKIE, having first been duly sworn, was examined by Mr. McMurray and deposed as follows: 10

1. Q. I believe you are residing in Montreal, Mr. Dickie?

A. Yes, sir.

2. Q. And you are an official of Division No. 4 of the Railway Employees Department of the American Federation of Labor? A. Yes.

3. Q. What is your office? A. Secretary.

4. Q. How long have you been secretary?

A. Ten years.

5. Q. Since its inception? A. Yes.

6. Q. What is Division No. 4? A. It is a voluntary as-20 sociation of various crafts employed on railroads embodied together for the purpose of making wage agreements covering all the members of the different craft organizations.

7. Q. You have just lately held a convention in the city here? A. Yes; the convention is on now.

8. Q. And your delegates are sent from the various crafts? A. Yes.

9. Q. From what railways? A. From the Canadian National Railways, the Canadian Pacific Railway, the Temis-

kaming & Northern Ontario Railway and others; generally we have jurisdiction over all the railroads.

10. Q. Division No. 4 is confined purely to employees in Canada? A. Employees, members, of the crafts affiliated with us in Canada.

11. Q. It does not cover any American territory at all?

A. No.

MR. LAIRD: I take it that this is all in writing in some papers or document. If so, the document should be produced:

10 MR. McMURRAY:

12. Q. Is it in writing? A. Yes, we have a constitution.

13. Q. This is a copy of the constitution? A. Yes.

Constitution & By-laws of Division No. 4, Revised March, 1926, is produced by the witness and marked as Exhibit No. 1."

(Constitution and By-laws of Division No. 4 revised March, 1926, referred to, produced and marked Exhibit 24.)

"14. Q. This Division No. 4 was formed or came into existence about 1918? A. Yes, in 1918.

20 15. Q. It was in existence prior to or subsequent to the McAdoo award in the United States? A. It was prior to it.

16. Q. What was the Canadian Railway War Board, do you know? A. I could not tell you what its composition is at all.

17. Q. Division No. 4 entered into some contracts with that board? A. Yes, it was acting on behalf of the railways.

18. Q. When was that first contract? A. On the first of May, 1918; although I don't remember the exact date.

19. Q. Are you sure of the month? Was it September?

30 A. Yes, it was nearer September. There had been negotiations all that spring.

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20. Q. Commencing early in 1918 negotiations were held between Division No. 4 acting through its proper officers and the Railway War board? A. Yes.

21. Q. Which finally culminated in the contract of September 2, 1918? A. Yes, that is the date it was signed.

22. Q. What was the nature of those negotiations?

MR. LAIRD: If that was put in writing I do not think that the negotiations should be considered.

MR. McMURRAY:

23. Q. It finally culminated in a contract, did it? 10

A. Yes.

MR. LAIRD: I object to the word "contract."

WITNESS: continues: It was a written agreement or understanding.

MR. McMURRAY:

24. Q. I believe Mr. Grant Hall refers to it as a gentleman's agreement? A. That is what it is generally referred to as.

25. Q. What do you mean by that, that it was a gentleman's agreement, Mr. Dickie? What is the difference between a gentleman's agreement and any other agreement? 20

MR. LAIRD: That is a question of law.

MR. McMURRAY: No, Mr. Hall has used that expression.

26. Q. Why do you modify it with the term "gentleman's agreement"? A. There are a whole lot of things which you agree to when it is a gentleman's agreement which you would not agree to if it were legally binding.

27. Q. You apparently meant by using the term "gentleman's" "agreement" that it was a contract which you both agreed to and it was not binding in law? 30

A. It was possibly that but we never considered it from that point of view. All wage agreements are voluntary arrangements made to provide working conditions and rates of pay for employees on a collective basis.

28. Q. Did you understand that is not to be enforced?

MR. LAIRD: He is your witness. Don't put leading questions.

MR. McMURRAY:

29. Q. Did you understand that these contracts are not to be enforced in the courts? A. We never gave it any thought or question. Our understanding is that any wage agreement if there is any difficulty in enforcing the agreements or in getting the conditions complied with, that the laws of the country provide ways and means and has set up the machinery to go into your disputes under this new conciliation act; and it depends on your numerical strength about enforcing your demands.

30. Q. The last weapon being a strike? A. Yes.

31. Q. As to the agreement, or wage agreement No. 1, you were one of the signatories to that? A. Yes.

20 32. Q. Mr. Tallon was another signatory.

A. Yes.

33. Q. And Mr. McKenna? A. Yes.

34. Q. Who signed for the railway board?

A. Mr. Gillen and Mr. W. M. Neal.

35. Q. How many original copies were there of this agreement No. 1? A. Two.

36. Q. The Railway board would have one? A. Yes.

37. Q. And Division No. 4 would have one? A. Yes.

38. Q. Have you it with you? A. No, I have not.

30 39. Q. Will you produce it? A. It is not here.

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40. Q. Will you send it to the reporter?

A. Yes, wage agreement No. 1.

MR. LAIRD: I take the objection that the agreement is not material at all.

MR. McMURRAY:

41. Q. Do you agree to its being produced subject to your objection as to its materiality? It is for the Court to say whether it is material or not. There was a supplement to that? A. Yes.

42. Q. Supplement "A"? A. Yes.

43. Q. And it was signed in a similar manner and by the 10 same parties who signed the wage agreement No. 1?

A. Yes.

44. Q. Have you that in your possession in Montreal?

A. Yes.

44. Q. And will you be good enough to let us have that?

A. Yes, that remains in the possession of the Court?

MR. LAIRD:

45. Q. You have not got a copy with you?

A. Yes, yes; I believe I have got a copy in my bag down in the hotel, a printed copy of wage agreement No. 1, and supplement "A."

MR. McMURRAY:

46. Q. Do you know that to be a true copy? A. Yes.

(The witness agrees to produce a document which will be marked as exhibit No. 2.)

MR. McMURRAY:

47. Q. Will my learned friend agree that I can use that

for all purposes for which I can use the original if it were produced in court?

MR. LAIRD: Subject to its relevancy.

MR. McMURRAY:

48. Q. That is, the copy has to be treated as if it were the original document?

MR. LAIRD: Mr. Dickie is satisfied it is a copy.

MR. McMURRAY:

49. Q. Now, at the time you were negotiating for wage agreement No. 1 you were negotiating on behalf of the employees in the locomotive and car shops, were you?

MR. LAIRD: Objected to.

MR. McMURRAY:

50. Q. That is, at the time of the negotiations?

A. The employees and members of the various organizations affiliated with or members of the crafts affiliated with Division No. 4.

51. Q. Were you negotiating on behalf of all employees in those shops?

20 A. As I said before employees which were members of the various organizations in our division and represented by representatives on these committees. We were simply negotiating for the employees which were members of Division No. 4.

52. Q. Now, you have annual conventions of Division No. 4? A. Bi-annual. They are biennial conventions.

53. Q. You had not had your convention beyond your organizing convention at the time you made the agreement No. 1?

A. No, the organizing convention was the first one.

54. Q. And later on you entered into another contract with the War board, wage agreement No. 4, did you?

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MR. LAIRD: Objected to.

MR. McMURRAY:

55. Q. My learned friend objects to the word "contract"?

MR. LAIRD: Yes, and it is also a leading question.

MR. McMURRAY:

56. Q. Do you remember who signed the wage contract for Division No. 4? A. Yes, R. J. Tallon, F. McKenna and myself. Those are the signatories for Division No. 4.

57. Q. And Grant Hall and W. M. Neal for The Canadian Railway War Board? A. Yes. 10

58. Q. That was signed on November 12, 1919, was it?

A. Yes.

59. Q. And there was supplement "A" to that apparently signed by The Railway Association of Canada? A. Yes.

60. Q. Executed by the same parties? A. Yes.

61. Q. The agreement by the War Board and the supplement by the Railway Association? A. Yes.

62. Q. Now, what authority had you to sign the wage agreement No. 1?

MR. LAIRD: Was that authority in writing? 20

MR. McMURRAY: That is what I am trying to find out.

A. The authority is here in exhibit No. 1, the constitution.

63. Q. And the same would apply, to Mr. Tallon and Mr. McKenna? A. Yes.

64. Q. And the same with wage agreement No. 4?

A. Yes.

65. Q. Have you the original of wage agreement No. 4?

A. Yes.

66. Q. And schedule "A" and "B"? A. Yes.

67. Q. Will you produce them? A. Yes, they are right here.

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MR. LAIRD: I object to them as being immaterial.

10 Wage agreement No. 4 dated Montreal, November 12, 1919, is produced by witness and marked as exhibit No. 3 subject to Mr. Laird's objection. Supplement to Wage agreement No. 4 dated Montreal August 24, 1920, is produced by witness and marked as exhibit No. 4."

MR. BERGMAN: I would ask they be marked on the trial. This is the original of wage agreement No. 4, with the original signatures on it.

(Wage Agreement No. 4 dated Montreal, November 12, 1919, referred to, produced and marked **Exhibit 25.**)
(Supplement to Wage Agreement No. 4 dated at Montreal August 24, 1920, referred to, produced and marked **Exhibit 26.**)

20 MR. BERGMAN: That also has the original signatures on it.

"MR. McMURRAY:

"68. Q. Does my learned friend agree to the production of this printed copy instead of the original for use in court?

MR. LAIRD: I object to its materiality. It is not produced as binding at all upon the defendant railway company.

MR. McMURRAY:

69. Q. That is your signature on exhibit No. 3?

A. Yes.

30 70. Q. And that is the signature of Frank McKenna?

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A. Yes.

71. Q. And R. J. Tallon? A. Yes.

72. Q. And Grant Hall? A. I was not present when he signed it.

73. Q. Is that the signature of Grant Hall?

A. I could not swear to it.

74. Q. Do you know his signature? A. I would not say I did.

75. Q. What about W. M. Neal? A. I would not swear to that. 10

76. Q. And as to wage agreement No. 1: what happened? Did they sign one set of copies and hand it to you and you sign yours and hand it to them? A. Yes.

MR. LAIRD:

77. Q. You are assuming the Railway Board signed it?

A. Yes. Two copies were prepared.

78. Q. Who signed them first?

A. It was first read over and the signatures attached.

BY MR. McMURRAY:

79. Q. Whom was it agreed to by? A. It was agreed it²⁰ was a correct copy we were negotiating on.

80. Q. Who agreed to that? A. The committee representing the Railway association and the committee representing the men.

81. Q. They agreed to what? A. They agreed they had negotiated the agreement and certain decisions were arrived at, put in proper form, read over and agreed to.

82. Q. And they went over it clause by clause?

A. Yes.

83. Q. Board and committee? A. Yes.

84. Q. Were you in that committee? A. I was present.

85. Q. And the committee of the Railway Board and the committee of Division No. 4 agreed upon wage agreement No. 1?

MR. LAIRD: Objected to. This is a legal question. It is leading. You can ask what was done and what was said. I object to that as leading.

MR. McMURRAY:

10 86. Q. Would you tell us what was done?

A. I don't get the information you are trying to get.

87. Q. You have already told me about signing this agreement by the committee?

MR. LAIRD: No, I am not clear as to that.

MR. McMURRAY:

88. Q. Describe the arriving at the agreement from start to finish? The agreement No. 1.

A. In the first place a committee representing the men met in Montreal and we were notified to meet the railway war board.

89. Q. Who was representing the railroads?

MR. LAIRD: Objected to.

90. Q. MR. McMURRAY: That is, a committee you thought were representing the board?

MR. LAIRD: I object. That is not binding on us.

MR. McMURRAY:

91. Q. Well, you had a committee of Division No. 4?

A. Yes.

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92. Q. And you met a committee? A. Yes.

93. Q. Whom did that committee represent?

MR. LAIRD: Objected to.

MR. McMURRAY:

94. Q. Who was that committee? A. I don't know how it was composed; I know we represented the shopmen and were invited to meet these gentlemen.

95. Q. You were invited to meet them for what purpose?

A. Of negotiating questions with regard to working rules and conditions of railway shopmen and members of our 10 organization.

96. Q. So your committee met a committee to negotiate rules and working conditions and so on in the shops of the railroads? A. Yes.

97. Q. Did the committee advise you whom they represented?

MR. LAIRD: I object. What the committee said is not evidence.

MR. McMURRAY:

98. Q. Will you let him answer subject to objection? 20

MR. LAIRD: No. It is not shown that the defendant company had anything to do with the committee. Further, if there were any negotiations with the committee they apparently were put in writing and that is an end to it. You cannot go into the negotiations.

MR. McMURRAY:

99. Q. I am entitled to show how the agreement was signed and for what purpose it was signed.

MR. LAIRD: You cannot prove authority by what somebody said. I may say I represent the railway company and 30 the railway company may say something entirely different.

MR. McMURRAY:

100. Q. There were negotiations between your Division No. 4 and a committee. It may have been a committee from Soviet Russia or from the railways of Canada?

A. It may have been any of them so far as we know.

101. Q. But as a result of those negotiations and so on wage agreement No. 1 was drawn? A. Yes, that's right.

102. Q. And for Division No. 4 Tallon, Dickie and McKenna signed? A. Yes, that's right.

10 103. Q. And the committee you dealt with gave you their agreement signed by Gillan and Neal, is that right?

A. Yes.

104. Q. And this wage agreement No. 1, copy of which you have been kind enough to produce is a true copy of the document which was signed on that occasion when the negotiations were made between these committees to which you have referred: is that right?

A. It is a true copy.

105. Q. And I suppose the transactions in connection with wage agreement No. 4 and the supplements thereto were similar? A. Yes.

106. Q. And after your negotiations between the committee of Division No. 4 and this mysterious one—they purported to act on behalf of the railroads, did they? A. They purported to act, yes.

107. Q. When you finished your negotiations and the agreement had been gone over step by step then they were signed as they are represented to be signed here in exhibits Nos. 3 and 4: is that right? A. Yes.

30 108. Q. There was another agreement executed was there, agreement No. 6? A. Wage agreement No. 6 is a negotiated agreement. It is not executed. Wage agreement No. 6 is just a name to designate it from this wage agreement No. 4. Wage

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agreement No. 6 is composed of wage agreement No. 4 and its two supplements, and it is called "Wage Agreement No. 6."

109. Q. You speak of two supplement to wage agreement No. 4. I have only one supplement here, "A." Have you got supplement "B"?

A. Yes, I have supplement "B."

Supplement B dated Montreal, May 22, 1922, is produced by witness and marked as exhibit No. 5 subject to Mr. Laird's objection on the ground of immateriality." 10

(Supplement "B" dated at Montreal May 22, 1922, referred to, produced and marked Exhibit 27.)

"110. Q. Now, you were giving some explanation as to wage agreement No. 6. You said it was not a formally executed document? A. No, it is just a printed copy of these supplements consolidated to avoid having a lot of supplements and leaflets.

111. Q. Wage agreement No. 6 is wage agreement No. 4 and supplements A and B? A. That's right.

112. Q. Nothing more? A. Nothing more. 20

MR. LAIRD:

113. Q. No such agreement as wage agreement No. 6 was signed at all? A. No.

MR. McMURRAY:

114. Q. So that at present the agreement arrived at between Division No. 4 and the Railway Association of Canada is wage agreement No. 4 and the supplements thereto?

MR. LAIRD: Objected to as being a leading question and as not being a correct statement of the facts?

MR. McMURRAY: 30

115. Q. Is there any other agreement than wage agreement No. 4 and supplements A and B between Division No. 4 and the Railway Association of Canada?

A. There are other statements which go to make up No. 6.

116. Q. What are they? A. We had supplement "C" to wage agreement No. 4 which was consolidated with the others into book form and then called wage agreement No. 6. And then there is Supplement "A" to wage agreement No. 6.

117. Q. Supplement "A" to wage agreement No. 6?

MR. LAIRD: But we have never heard of "C" before.

MR. McMURRAY:

10 118. Q. You say supplement "C"? A. It is not signated that.

119. Q. You produce document of December 8, 1922. That was made between Division No. 4 and whom? With whom did you negotiate? A. The committee representing the Railway Association of Canada.

120. Q. Was that a large committee? A. Yes, there were 6 or 7 gentlemen there present.

121. Q. And this is signed by R. J. Tallon, President, Division No. 4, Frank McKenna, Vice-President and Chas. Dickie,
20 Secretary: is that right? A. Yes.

122. Q. Do you know who signed for the railway association? A. I did not see the signatures attached.

123. Q. It was handed to you by this committee, I presume.

A. Yes.

MR. LAIRD: The marking of that document is objected to on the same grounds.

Document dated December 8, 1922, is produced by the witness and marked as exhibit No. 6, subject to Mr. Laird's objection."

30 (Document dated December 8, 1922, referred to produced and marked Exhibit 28.)

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"MR. McMURRAY:

124. Q. Have you any other documents which constitute a part of wage agreement No. 6? A. Yes.

125. Q. This is supplement "A" signed on November 26, 1923? A. Yes.

126. Q. Who negotiated it? A. The same committees.

127. Q. And it was negotiated in the same way? A. Yes.

128. Q. This constitutes a part of wage agreement No. 6?
A. Yes.

MR. LAIRD: That is objected to on the same grounds. 10

Supplement "A" dated November 26, 1923, produced by witness is marked as exhibit No. 7 subject to Mr. Laird's objection."

(Supplement "A" dated November 26, 1923, referred to produced and marked **Exhibit 29**.)

"MR. McMURRAY:

129. Q. Have you any other document? A. Supplement "B".

130. Q. That was negotiated in a similar way to schedule "A"? 20

MR. LAIRD: I object.

A. Yes.

MR. McMURRAY:

131. Q. By a committee of Division No. 4 and a committee purporting to represent the railways? A. Yes.

132. Q. Did you discuss with this committee the authority they had to negotiate? A. No.

133. Q. You did not discuss that at all? A. No.

134. Q. Do you know what railways they represented?

A. We supposed they were representing the railways which were mentioned in our presentment to them.

135. Q. In your presentment to them did you represent the Canadian railways? A. There was a request made on behalf of all the railroads.

136. Q. You made a presentation on behalf of all the railroads? A. Yes.

10 137. Q. So you made a presentation on behalf of the Canadian railways?

MR. LAIRD: You were not assuming to act for the railway companies. A. No, we were acting on behalf of the railway employees.

MR. McMURRAY:

138. Q. On the Canadian National railways?

A. Yes.

139. Q. On the Canadian Northern Railway?

A. There is no Canadian Northern so far as our agreement is concerned. The men working on the railways for whom we made the representations were those set forth on page 3 of the printed wage agreement No. 4.

MR. LAIRD: Objected to.

Supplement "B" to Wage agreement No. 6 dated Montreal, January 25, 1927, is produced by witness and marked as exhibit No. 8, subject to Mr. Laird's objection that it is immaterial and has not been proved." (Supplement "B" to Wage Agreement No. 6, dated Montreal, January 25, 1927, referred to, produced and marked Exhibit 30.)

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"MR. McMURRAY:

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140. Q. Now, there was no formal agreement for wages numbered 6 signed? A. No.

141. Q. But what was arranged—?

MR. LAIRD: I object.

MR. McMURRAY:

142. Q. I am only summarizing.

MR. LAIRD: I must object to your putting leading questions. I am not going to object each time but I don't want any misunderstanding at the trial. I have objected to a number of questions as being leading and at the trial I will have to take 10 objection to them, and as having drawn your attention to them.

MR. McMURRAY:

143. Q. Will you kindly tell us what constitutes wage agreement No. 6? A. On page 3 of the printed agreement it says what it is in its foot note: this agreement is a consolidation of wage agreement No. 4 and supplements "A" "B" and "C."

144. Q. Were there any other documents signed in connection with wage agreement No. 6 than those you have put in today? A. No others.

145. Q. You say that wage agreements Nos. 1 and 4 and 20 supplements thereto and No. 6 were negotiated by Division No. 4 for the members of Division No. 4 only?

A. Yes.

MR. LAIRD: Is that not misleading, Mr. McMurray, when there is no agreement No. 6? There was no agreement No. 6. It was simply a reprint of the agreement signed.

MR. McMURRAY:

146. Q. All these transactions set forth in the agreements referred to, today, being wage agreement No. 1, and wage agreement No. 4 and these last exhibits you have put in, were nego-30 tiated by Division No. 4 on whose behalf? A. On behalf of employees who were members of the crafts which were affiliated with Division No. 4.

147. Q. You had authority to act for them alone?

MR. LAIRD: I object.

MR. McMURRAY:

148. Q. Had you authority to act for anybody else than the members of Division No. 4?

A. We were representing the members of Division No. 4.

149. Q. Had you authority to act for anybody else?

A. Not so far I know, no.

10 150. Q. You had no authority to cancel any agreement which might be in existence between the railways and other employees of the railways? A. Not for any other employees than those whom we represented.

151. Q. So if there were boilermakers and carpenters on the Canadian National railways who were not members of Division No. 4 and who had contracts with the company you had no authority whatever to interfere with them?

A. We had no authority or assumed any authority for those who were not members.

20 152. Q. But you would have interfered with those existing contracts, if they did exist?

A. We certainly would object to the railways attempting to make agreements with minorities in the shops.

153. Q. You would leave the minority out and would not make contracts for them, is that the position?

A. No; if you have an organization with the men belonging to it bound together with the intention of getting better working conditions and you have a number of the employees banded into something else we would not consider it was good
30 business.

154. Q. Why not? A. Take your own profession, for instance, supposing a few of your profession got together and

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formed themselves into another association and appeared in Court to plead cases would you be satisfied with that?

155. Q. Did you presume to represent all the employees or did you presume to make contracts only on behalf of those who were paid up and anybody not belonging to your association was not permitted to make a contract with the company and you would not make a contract for them?

A. That is not the attitude. If they wanted to partake of our agreements they could; the door was open for them.

156. Q. Then if they would not come into Division No. 4? 10

A. We assume no protection for them.

157. Q. Did you take away any protection from them they had?

MR. LAIRD: Objected to. It is a question of law.

MR. McMURRAY:

158. Q. Did you attempt to take away any protection they had? No answer.

159. Q. You negotiated purely for yourselves?

A. Negotiated for those who were members of the organization. 20

160. Q. And your negotiating did not extend out to them either positively or negatively? Is that right?

A. It did not.

161. Q. Did you hold a position in the American Federation of Labor officially before you went into Division No. 4?

A. No.

162. Q. So you at no time prior to wage agreement No. 1 had been a party to the negotiations of schedules or agreements dealing with working conditions, wages and anything of that nature? A. Yes, I had. 30

163. Q. For whom were you acting at that time?

A. On behalf of the machinists of the Canadian Pacific Railway.

164. Q. How long have you been familiar with railroad matters? A. I have been working for railroads for the last 30 years.

165. Q. There is what is known as seniority of right among machinists? A. Yes.

166. Q. What are those?

10 MR. LAIRD: I object to that."

THE COURT: We will adjourn at this point.

(Court adjourned at 1 p.m. May 17, 1928, to 2:30 same date.)

2:30 p.m. May 17, 1928.

MR. McMURRAY: Before proceeding with the case this afternoon there is a personal matter of my own which will probably come into conflict with the case. I have been summonsed to Ottawa to give evidence before the Commission there investigating matters in connection with immigration, and the summons
20 requires me to be there on Tuesday morning. I spoke to my learned friend, Mr. Laird, about it, and he was very kind and gracious in the matter and suggested that I speak to your lordship in Court before we proceed. I would like very much if it was possible to have got all the evidence in on both sides. It would not be fair to the plaintiff to go on in my absence because my learned friend Mr. Bergman has not had the opportunity of being familiar with the facts as I have myself, and I bring the matter to your lordship's attention with a view of possibly getting a postponement. I would have to leave on Sunday in order
30 to be there in time to give evidence. I wouldn't be back before the end of the week, so I would want a week's postponement. I understand the House is adjourning at the end of next week.

THE COURT: Is there a possibility of getting all of the evidence in?

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MR. McMURRAY: I don't know; my learned friend acting for the defence would be better able to advise.

THE COURT: How much longer will you be with yours?

MR. McMURRAY: We will be through this afternoon.

MR. LAIRD: I do not think the defendants can finish their evidence in one day. I do not wish to oppose my learned friend's suggestion. It is a matter of importance to him. There are several of our witnesses whom I would like very much to call, and we might be able to follow with their evidence tomorrow and adjourn later. I am very anxious to have the case disposed of, and it will depend somewhat on your lordship's engagements.

THE COURT: My engagements are here.

MR. LAIRD: There are the assizes and the out-of-town sittings.

THE COURT: That is further evidence of the undesirability of setting these long cases down at the end of the year. I suppose I could fix it up if I were to remain here during vacation. That, of course, is the implied understanding in connection with these cases. Sufficient unto the day is the evil thereof, and we will go on today and deal with what will happen when we come to it.

MR. BERGMAN: Beginning with question 167, where my learned friend left off at noon.

"MR. McMURRAY:

"167. Q. Take it subject to your objection?

MR. LAIRD: No, if there are rights of that sort they are the subject of some written document. I don't think it is a matter of oral evidence.

At this stage the examination was adjourned until the following Tuesday the 24th day of April, A.D. 1928, at the hour of 2 o'clock in the afternoon, when it was resumed.

BY MR. McMURRAY:

167. Q. As to the organization of Division No. 4; are there local councils? A. Yes.

168. Q. What are the local councils? A. The local councils are composed of delegates from the various crafts, local unions, at the points where they are formed.

169. Q. What territory is that confined to?

A. It is confined to every divisional point.

170. Q. What are your federated systems? How do you distinguish them from the local councils?

10 A. The federated systems are the crafts for the entire system federated together.

171. Q. So far as the machinists, the boilermakers and so on are concerned they constitute part of Division No. 4?

A. Yes.

172. Q. And they have the annual conventions?

A. Some of them have them annually and some of them biennially.

173. Q. And the local councils would have annual or biennial councils? A. No.

20 174. Q. Then there would be the federated system on the Canadian National Railways and the federated system on the other railways in Canada? A. Yes.

175. Q. Now, Division No. 4 is one of the divisions of the Railway Employees Department of the American Federation of Labor, is it? A. Yes.

MR. LAIRD:

176. Q. Is that set forth in writing? A. It is in the printed copy of the present constitution.

MR. LAIRD: Then the writing should be produced?

30 MR. McMURRAY:

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177. Q. That is provided for in the "constitutions and by-laws of the Railway Employees' Department of the American Federation of Labor" which I show you. You recognize this as being a true copy of the constitution and by-laws of the Railway Employees' Department?

A. Yes.

178. Q. I see that Mr. B. M. Jewell is President?

A. Yes.

179. Q. And Mr. J. F. McGrath, Vice-President, and Mr. John Scott, Secretary-Treasurer? A. Scott is not secretary now.

180. Q. Now, these men sit, or the officials of the Railway Employees' Department sit with you in your biennial conventions? A. Not as delegates but they sit in conventions as visitors.

181. Q. They take part in discussions?

A. They have that privilege.

MR. LAIRD: I do not see the relevancy of this at the moment. I formally object on the ground of its irrelevancy.

MR. McMURRAY:

20

182. Q. And the constitution and by-laws of the Railway Employees' Department is binding upon Division No. 4?

MR. LAIRD: I object to that: it is a question of law and interpretation. It is not a question of fact.

MR. McMURRAY:

183. Q. As a matter of fact, you operate in Division No. 4 under the constitution and by-laws of the Railway Employees' Department? A. As a matter of fact, yes.

184. Q. And any agreement which Division No. 4 would make with a railway or an employer on a railway must be ap-30 proved of by the president of the Railway Employees' Department?

MR. LAIRD: I object to that. It is a written document.

MR. McMURRAY:

185. Q. As a fact, in the past—

A. It is not a fact.

186. Q. You don't know what I am going to say. It is a fact that all agreements which you have made such as wage agreements Nos. 1, 4 and 6 have all been passed upon and approved of by the president of the Railway Employees' Department?

A. No, it is not a fact.

MR. LAIRD: I don't think that is material at all.

MR. McMURRAY:

187. Q. In what way, if any, did the Railway Employees' department deal with your agreements?

MR. LAIRD: I object.

MR. McMURRAY:

188. Q. Subject to the objection answer that.

A. They don't interfere with our agreements. If an agreement is negotiated by the men in Canada is acceptable they don't interfere.

189. Q. It is submitted to them for their approval?

A. No.

190. Q. How would they know it is acceptable to them if it were not submitted?

A. It is not submitted to them for their approval. They may be in conference with us.

191. Q. They collaborate with you in these agreements?

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A. In a sense.

192. Q. What do you mean? A. They don't take any part in insisting on certain action or acting along certain lines; that is left to the men themselves.

193. Q. As a matter of fact, the president and the executive officers of the Railway Employees' Department do sit in with you in negotiating these agreements?

A. No.

194. Q. In the preparation of the agreements?

A. No.

10

195. Q. In approval of the agreements before they are signed? A. No.

196. Q. In approval of the agreements after they are signed? A. In a sense, yes.

197. Q. Now, Division No. 4, has among its other aims, the aim to bring within the organization of the Railway Employees' Department all railway employees?

A. Members of affiliated crafts organizations.

198. Q. It is your aim to bring in to Division No. 4 all railway employees? A. Yes.

20

199. Q. And that is constantly before you?

A. Yes.

MR. LAIRD: Is that in the written constitution? If so, the document is there.

MR. McMURRAY:

200. Q. Your aim is "To shorten the hours of labor to "forty-four (44) hours per week"? A. Yes.

201. Q. Is it your aim "To establish a minimum wage scale for all employees in all branches of railway service"?

A. I can say it is our aim to protect those who are members of our crafts organizations, but those who are not enjoying the same privileges under certain restrictions.

202. Q. You operate under the constitution of the Railway Employees' Department? A. Yes.

203. Q. And if the Railway Employees' Department constitution and bylaws provide "To establish a minimum wage scale for all employees in all branches of railway service" then you would say that Division No. 4 has the same object and aim?

10 A. Yes.

204. Q. Is it your aim 'To bring about a uniform agreement, as we believe this will mean a more permanent and stable condition, acceptable to employee, employer, and the general public alike'?

A. Yes.

205. Q. That is the aim of your division?

MR. LAIRD: My learned friend is referring to a written document. I object to the aims and objects of any association when those aims and objects are set forth in a written
20 document.

206. Q. Are the aims of the Railway Employees' Department contained in or set forth in any writing?

A. Well, I don't know. I have not seen a written copy of the constitution of the Railway Employees' Department. Naturally, that will be at their headquarters. It is the printed copy I identify.

MR. McMURRAY:

207. Q. You have never seen the written one?

A. No.

30 (Constitution and By-laws of the Railway Employees' Department' revised April, 1922, is produced by plaintiff's counsel and marked as exhibit No. 9."

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(Constitution and By-laws of the Railway Employees' Department revised April, 1922, referred to, produced and marked **Exhibit 31.**)

"208. Q. Now, this is the constitution and by-laws of the Railway Employees' Department. Just look at the fourth clause?

A. Yes.

209. Q. Have you read it? A. Yes.

210. Q. Clause 4 of the Railway Employees' Department constitution and by-laws apparently provides that the department aims 'To bring about a uniform agreement, as we believe this will mean a more permanent and stable condition, acceptable to employee, employer and the general public alike'. Now, in the light of those first three clauses of Article 1, Platform, does it not mean that your agreements are made for all employees?

MR. LAIRD: I object to that. It is a question of law. It is also a question of interpretation.

MR. McMURRAY:

211. Q. Now, your committee was contracting with the committee of the Railway War Board, and when you were negotiating as a fact you were negotiating for all employees, were you not? A. No.

212. Q. All the machinists, all the boilermakers?

A. No.

213. Q. And you say "No" in the light of the constitution of the Railway Employees' Department which I now hand you?

A. Yes.

214. Q. If I can read English at all—

MR. LAIRD: I object to this, Mr. McMurray. It is not proper examination at all. You are not cross-examining the witness; you cannot put leading questions and you cannot interpret a written document.

MR. McMURRAY:

215. Q. Now, your conventions are held on the second Monday in the month of April, in even numbered years? For Division No. 4? A. There are no dates set.

216. Q. They are held in the even numbered years?

A. Yes.

217. Q. And they were held on the second Monday of April of this year? A. The third Monday of April of this year.

218. Q. Was it the 16th? A. On the 16th.

219. Q. The president of the Railway Employees' Department approves of all laws adopted for your divisions, making sure that the said laws are not in conflict with the Constitution and Laws of the Department?

A. Yes.

220. Q. He may call a special meeting of any of your divisions? A. Yes.

221. Q. 'He shall co-operate with the division Executive Boards in the preparation of the revisions of rates, rules and regulations and of agreements'?

A. Yes.

222. Q. 'He shall assist division officers in arranging and conducting conferences with the General Managers' Association, or other organizations representing the railways wherever it is decided to initiate wage or agreement movements upon a national or divisional basis.' Is that right?

A. Yes. It is right there.

223. Q. 'He shall be empowered to represent any division or divisions participating in a movement of the character described in the previous clause, providing a majority of the Executive Board or Boards of the division or divisions request such representation'?

A. Yes.

MR. LAIRD:

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224. Q. Those are in exhibit No. 9?

A. Yes, he is reading from the constitution.

MR. LAIRD: I think the learned trial judge can read the constitution.

MR. McMURRAY:

225. Q. Now, as a fact, at the negotiations of wage agreement No. 4, Jewell was present? A. No.

226. Q. What officer was present from the Railway Employees' Department? A. There was no officer from the Railway Employees' Department present. 10

227. Q. What part did the Railway Employees' Department perform or what action did they take, or what did they do in connection with the negotiations?

A. I cannot recall any part they played. Possibly we may have written and asked them for advice on certain points.

228. Q. Did you write and ask them if the agreement that they were making, we will say wage agreement No. 4, would apply only to the members of your division?

MR. LAIRD: I object to that.

MR. McMURRAY: 20

229. Q. What is the objection?

BY MR. LAIRD:

A. The objection is that it is contained in a written document. If it was written it is in writing. I object to the question.

230. Q. MR. McMURRAY: Did you write as you said in your last answer? A. I could not recollect.

231. Q. Will you look up your papers and find out for me whether you did or not? A. My files are in Montreal.

232. Q. Will you do that and send me your letters or send them to Mr. Ferguson? 30

MR. LAIRD: I object to that.

MR. McMURRAY:

233. Q. On what ground do you object?

MR. LAIRD:

A. It is irrelevant. You have pleaded the agreement. The negotiations leading up to it are irrelevant.

MR. McMURRAY: We can use those for the interpretation of the agreement.

MR. LAIRD: They are letters to which the defendant
10 company is not a party. Are going to ask for them as binding
on the defendant?

MR. McMURRAY:

234. Q. What did you write, if you did write, while the negotiations were going on? A. I don't know whether we did or did not write. But if we did, it was not in connection with the interpretation of certain rules.

235. Q. In your negotiations and in all your transactions (Division No. 4) you complied strictly with the constitution and by-laws of the Railway Employees' Department? A. I would
20 not like to go to the extent of saying that.

236. Q. You did it so far as you could?

A. Consistent with our division in Canada, and the divisions are a little different to what they are across the line.

237. Q. And your agreements were approved of, were they not, by the Railway Employees' Department?

MR. LAIRD: I object to that.

MR. McMURRAY:

238. Q. Why?

MR. LAIRD: It is entirely irrelevant. What the Rail-
30 way Employees' Department does does not affect us. It may or

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may not have been approved of. It has not been pleaded. If it is necessary to make the agreement binding on Division No. 4 it is something we should have been given notice of.

MR. McMURRAY:

239. Q. Now, does Division No. 4 permit to crafts the right of representation as a craft at your conventions?

A. Yes.

240. Q. That is, the machinists would be entitled to so many? A. Yes.

241. Q. The boilermakers, carmen and so on to so many? 10

A. Yes.

242. Q. As a craft? A. Yes.

243. Q. Have you the minutes of Division No. 4 and are they in your custody? A. Yes.

244. Q. Will you produce them? A. They are not here.

245. Q. Will you send them to the examiner?

MR. LAIRD: I object to that.

A. Yes.

MR. LAIRD: What they may sit down and write in their books? 20

MR. McMURRAY: An agreement was entered into to wrongfully dismiss and they broke this contract for that purpose.

MR. LAIRD: I object to the production of any minutes of Division No. 4 as not affecting the defendant company. Will you admit the railway company's minutes are binding on the plaintiff? It would be just as reasonable?

MR. McMURRAY:

246. Q. I say that the said Division No. 4 and the members thereof arranged and agreed with the defendants and certain

officials to do so. I read clause No. 13 of the statement of claim, and I say for that purpose I am entitled to.

MR. LAIRD: There was no order or notice given or subpoena duces tecum served.

MR. McMURRAY: He is entitled to produce them?

MR. LAIRD: I object very strongly."

THE COURT: You are getting now to the evidence that has been excluded, that is, any agreement to dismiss the plaintiff. Have I any right to rule upon its admissibility?

10 MR. HAFFNER: Yes, my lord, if it was objected to, and it was.

THE COURT: The reason I mention that is that question 246 he says expressly the same point I already ruled upon. What will I do with it?

MR. BERGMAN: The answer makes the whole thing innocuous. He said, "There is only a printed copy of the minutes." And they were not produced. I don't think there is anything at this date—

THE COURT: I merely want to be consistent.

20 MR. BERGMAN: Yes, my lord, and if in reading anything of that kind it is quite unintentional.

A. There is only a printed copy of the minutes.

MR. McMURRAY:

247. Q. This is signed in the regular way by the president and secretary? A. No, it is just a record of the meetings taken there and then it is written up and printed and there is no signing of the minutes. It is a report of the convention. It is not a minute. Only printed copies. It is a copy of the reports.

248. Q. You have no minutes? A. Only printed copies
30 of the reports.

249. Q. Now, you have printed copies you say of your conventions? A. Yes.

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250. Q. I show you a printed copy. What is that?

A. It is a printed copy of the convention proceedings.

MR. LAIRD: I object to that, Mr. Examiner. I don't see how the railway company can be affected by the proceedings which go on at the convention of labor organizations. This action is against the railway company.

251. Q. MR. McMURRAY: What are you objecting to?

MR. LAIRD: I am objecting to any reference to the proceedings of the convention. You have tendered him a document." 10

MR. HAFFNER: That is a proper place to rule upon it, my lord.

MR. BERGMAN: It is not tendered yet.

THE COURT: The minutes are not tendered to me, and it is difficult to pick out of this long record of de bene esse evidence what would be excluded by the ruling we made, so I suppose the best thing to do would be to read it all, and any evidence that has to do with any agreement between the defendant and others against the plaintiff is excluded.

MR. BERGMAN: That is, your lordship will exclude 20 it from your consideration?

THE COURT: Yes, I don't know how we can exclude it from the present reading.

MR. BERGMAN: My learned friend has reserved the right by interposing his objection.

THE COURT: This is along a different point from what—

MR. BERGMAN: These are the proceedings at a convention of Division No. 4.

THE COURT: Yes, but it is all to support that state-30 ment, and show that Division No. 4 and the members thereof arranged and agreed with the defendant and certain officials of the

said defendant to do so and so. I take it that means to dismiss the plaintiff.

MR. BERGMAN: Yes, I think your lordship is right and my learned friend is also right, it goes to more than one point.

THE COURT: I think you may as well go on, but what is the evidence here, is it this exhibit or what you are reading into the record?

MR. BERGMAN: I am not allowed to eliminate any-
10 thing on de bene esse.

THE COURT: That is what I understood.

MR. BERGMAN: We have got to read it all, but your lordship has to rule upon it whether it is admissible if objections are made.

MR. HAFFNER: The party on whose behalf is taken cannot leave any part of it out, but I think your lordship is supreme as to what goes in and as to what is made evidence at the trial.

THE COURT: You had better read on and what Mr.
20 Laird makes an objection to we will deal with it. If you have any present objection to make, Mr. Laird, as we go along, I will rule upon the specific question.

MR. HAFFNER: I think when we get along that everything after question 246 ought to be ruled out.

THE COURT: You had better read it and leave it to Mr. Laird and the defence to object.

"MR. McMURRAY:

252. Q. Whose signature or name is at the bottom?

A. That is my name.

30 253. Q. 'Chas. Dickie, Secretary-Treasurer'?

A. Yes.

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254. Q. That would be yourself? A. Yes.

255. Q. Do you check over the convention proceedings, which are printed? A. I try to, yes, I read the proofs.

256. Q. And this would be a true record of the first convention proceedings? A. I would not say it is a true record. The matter is taken down in longhand; you could not say it is exactly an accurate record.

257. Q. You approved of the proofs of the proceedings before they were printed? A. Naturally.

258. Q. And that is the only record you have of that first 10 convention? A. Yes.

MR. LAIRD: If that is not marked I ask that all reference to it be struck out.

MR. McMURRAY:

259. Q. I show you a printed document. What is that, Mr. Dickie? A. Report of the second convention.

MR. LAIRD: I object to the question and I object to any reference to the document, on the ground that it does not affect the defendant company."

MR. LAIRD: I take the same objection here, my lord. 20

THE COURT: That question 259 doesn't mean much.

"MR. McMURRAY:

260. Q. You will let it go in subject to your objection?

MR. LAIRD: No.

MR. McMURRAY:

261. Q. You read the proofs of that before it was printed?

A. I did.

262. Q. And it is the only record you have of the second convention? A. The only record.

263. Q. Now then, I show you another printed document, what is that?

MR. LAIRD: I object to any question as to that document on the ground of irrelevancy.

MR. McMURRAY:

264. Q. Subject to that you will let him answer?

MR. LAIRD: No.

A. The same answer applies as to the other.

MR. McMURRAY:

10 265. Q. Now, I show you another printed document, what is that? A. It is a printed copy of the proceedings of the Sixth Convention.

266. Q. You read the proofs of it? A. Yes.

267. Q. And that is printed from the proofs you read?

A. Yes.

MR. LAIRD: I object to any question referring to this document.

MR. McMURRAY:

268. Q. And it is the only record you have of that convention?

MR. LAIRD: I object to that.

A. Yes.

MR. McMURRAY:

269. Q. And the names printed at the bottom, 'JOHN W. BRUCE' and 'Chas. Dickie' are the names of the secretary and secretary-treasurer? A. Yes.

MR. LAIRD: I object to that.

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MR. McMURRAY:

270. Q. Now, you were taking down the minutes of the convention yourself? A. Part of the time.

271. Q. Certain resolutions were brought in to this convention by various individuals and various organizations?

A. Yes.

MR. LAIRD: I object to anything which took place at the convention to which the railway company was not a party on the ground that it is entirely irrelevant to this action."

MR. BERGMAN: There is a question somewhat kindred to the one argued yesterday morning, bearing on the interpretation placed by the convention of Division No. 4 as to the scope of the agreement. I will read the question and the objection.

"MR. McMURRAY:

272. Q. Do you remember a resolution being brought in at the sixth annual convention by the Carmen's craft?

MR. LAIRD: I object to the question and I ask that it be ruled out. This is an action against the railway company for a breach of contract and what might be done at conventions to which we were not parties is entirely irrelevant.

MR. McMURRAY: My argument is this that a contract was entered into between the Railway Association of Canada and Division No. 4, and it is my contention that the agreement entered into at that time covered every employee on all the roads, that it was so understood at the time and that that was the interpretation at that time set upon it by both parties to the contract, that the word "employee" in that contract was interpreted by the railroads and by their officials and by the Railway War Board and by Division No. 4 as covering every man, and it is for that reason, a sound and proper one, I submit that I have the right to ask this question.

MR. LAIRD: What was the date of the sixth annual convention?

MR. McMURRAY: March 22nd to March 27th, 1926.

When this contract between the plaintiff and the railroad was in existence.

MR. LAIRD: I object to that. What one party to a contract did in 1926 would have no bearing on a later agreement and in writing and the Court will interpret that. The railway company is not affected by any alleged interpretations placed on the agreement if they were made, to which the railway was not a party, and there is no pleadings in the action making the documents material at all.

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10 MR. McMURRAY: This is the interpretation put on this agreement at the time of the execution of same. I am entitled to show that, and that they used those words in a certain sense in that agreement. Now, I had better ask him a question. Let him answer the question?

MR. LAIRD: No. I object to any question as to proceedings to which the railway company was not a party.

MR. McMURRAY: I submit, Mr. Examiner, I have the right to ask the question before it is objected to. I am going to ask the question.

20 MR. LAIRD: I would ask the witness not to answer until the Examiner has ruled.

MR. McMURRAY:

274. Q. Was it understood by the negotiating committee of Division No. 4 and the signatories to wage agreement No. 6 at the time of their signing and approving of Agreement No. 6 that the word "employees" wherever it appeared in that agreement meant all employees in the different crafts machinists, boilermakers and so on?

30 MR. LAIRD: I object to the question on the ground that no agreement No. 6 has been shown to have been signed. On the contrary, the evidence, is that there was no such agreement signed, and the witness had no right to say what the understanding was when the understanding was put in writing and signed by the parties. The Court will interpret the document irrespective of understandings which might be placed upon it by any witness.

275. Q. MR. McMURRAY: The Court must always inter-

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pret a written document by the meaning placed upon the words or a special word in that document agreed upon by the parties who negotiated it at that time. I ask that the witness should answer my question?

MR. LAIRD: Are we going to sit here and take evidence in answer to improper questions?

MR. EXAMINER: The witness is to answer this subject to Mr. Laird's objection."

MR. LAIRD: I ask that that be ruled out.

THE COURT: That is an interpretation in 1926 of a 10 document which is only a reprint of a document made in 1918. So in 1926 the parties went on record as interpreting a contract which was made in 1918, ten years before.

MR. BERGMAN: It says at the time of their signing and approving it.

THE COURT: I excluded it on the authority mentioned yesterday morning.

MR. HAFFNER: It goes further, it is an interpretation by a party not a party to this action at all.

THE COURT: That is, one party to the contract²⁰ makes an interpretation eight years after the contract was made. That is the situation.

MR. McMURRAY: My lord, my argument is this, that at these conventions there were three or four resolutions brought in by different unions, boilermakers, and so on, and they asked that a limited meaning be put upon the word "employee."

THE COURT: They asked that in 1926?

MR. McMURRAY: Yes, they asked that in 1926.

THE COURT: By one party to a contract made eight years before? 30

MR. McMURRAY: At this convention delegates, we will say from the boilermakers union, come into Division No. 4, and they say to Division No. 4, "We have always interpreted this

to cover all the employees. That is the interpretation we have had on it right from the start. We move a resolution that the word 'employees' be confined to members in our particular division." The purpose of it is to show that that body always had the meaning that the word "employees" covered every employee on the road, and that is the only meaning you could put upon those resolutions, that the boilermakers union delegates had always interpreted that contract in the last eight years as covering every man in the shops. It is the same argument as my learned friend advanced to your lordship yesterday.

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THE COURT: Yes, but it is confined purely to interpretation. The Court is not bound by an interpretation put upon a document by outsiders.

MR. McMURRAY: No, I submit they used it, and I say they operated under it for eight years. They are not asking Division No. 4 to interpret it. My lord, your lordship has not seen the resolutions. They are asking that the agreement be amended and changed. That is a different thing from interpretation.

20 THE COURT: One party to an agreement can't change the agreement.

MR. McMURRAY: No, I think your lordship will see later on where application has been made to the Railway Association in Canada to put that limited meaning upon it.

THE COURT: Have they done so?

MR. McMURRAY: They would not do it for them.

THE COURT: Then they refused to revise the agreement?

30 MR. McMURRAY: Yes, they refused to revise the agreement and put the construction they wanted on it.

THE COURT: Then the agreement stands as originally written?

MR. McMURRAY: Exactly, stands as it was written. What I wanted to show though was that the word 'employee' covered all employees in the shops on all those roads, and they had all operated under that, and that at a certain time Division

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No. 4 came forward, or members of Division 4 came forward, and asked that the agreement should be changed so that the word 'employees' would only cover members of their own division.

THE COURT: In other words, to fix a narrow meaning to the word 'employee' as it appears or is used in contract No. 4?

MR. McMURRAY: Either that or change the agreement in some shape or form.

THE COURT: They wanted a resolution declaring the word 'employee' was restricted to employees of Division 10 No. 4.

MR. McMURRAY: I think I could make this suggestion, just as my learned friend did, that your lordship could possibly go on. It is not going to affect you in your judgment, and you can discharge it from your mind if you rule it out, and see just exactly did happen at the convention, and then rule on it afterwards.

MR. LAIRD: Your lordship ruled on the matter yesterday, and there is a vast difference between your lordship admitting subject to objection yesterday from the Railway Com-20 pany. Here we have writings and resolutions from a party who is not a party to the action at all. How those documents can be brought in as affecting the interpretation of a written document, acts of a party not before the Court, seems to be entirely inadmissible. Supposing they sit down and write, "We believe the contract, and so so, means so and so, or we believe that it is limited to No. 4," would my learned friend accept that interpretation as binding?

THE COURT: It could not possibly bind the other side. 30

MR. LAIRD: It is for the Court to decide the interpretation of a document.

MR. McMURRAY: My learned friend is taking too narrow a ground. It is not interpretation, but it is the way in which Division 4 treated the contract.

THE COURT: Whatever complaint you may have against Division No. 4 is not before me as an issue.

MR. McMURRAY: We have no complaints against Division No. 4. What we do show is the special interpretation that was put upon that word "employee" by both parties and as it was understood by both parties at the very time it was drawn, not six years afterwards, and that is the way both parties treated it.

THE COURT: Suppose the parties did not understand English very well and used the word "employees" as meaning "employers" would the Court be bound by it?

10 MR. McMURRAY: No, my lord, you look at the document. I submit that where there is an ambiguous word the best possible way the Court could receive any interpreting of it would be the way in which the agreement was carried out and acted upon by both parties thereafter. We have here at one of the conventions one of the delegates of Division No. 4, a party to the agreement, there solemnly and seriously discussing the changing of that agreement, and putting in that such word "employee" wherever it shall appear shall mean a member of Division No. 4, clearly showing that they all heretofore believed that "employee"
20 covered the whole thing.

THE COURT: No, rather that they wished thereafter that that word be confined to members of Division 4. And supposing they did want that, and the language is sufficient to extend it to No. 4, the Court is bound to extend it irrespective of the wishes of Division No. 4.

MR. McMURRAY: They could not change their contract without consent. But what I do say is that they from the commencement had treated the expression "employee" in that agreement as all employees, and this is evidence of that. It is
30 evidence to help your lordship where it is ambiguous.

THE COURT: I haven't heard the resolutions but there was evidence that the agreements apply to all men, and they are all treated alike, and so forth, and assuming that evidence to be true then you can show the usage, that is, positive evidence of usage. Now, you offer a resolution designed, I take it, to show that a certain usage existing up to that time was suddenly terminated.

MR. McMURRAY: No, it was never terminated. That usage continued up to this instant. But we have a resolution

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brought in asking Division No. 4, a party to this contract, to change that agreement completely, and confine that agreement to members of Division No. 4. Therefore, I say it is evidence that Division No. 4 before this resolution, had treated that word "employee" as covering all employees on the road. Where the word is ambiguous I submit your lordship should—

THE COURT: Let me see this contract No. 4. This resolution you speak of was one introduced by the other parties to the contract and it may be taken as some admission.

MR. BERGMAN: This is the other party to the con-10 tract.

THE COURT: No, I mean by the employer. You are the employee. That is, it might have the effect of some admission.

MR. McMURRAY: We say that everything that Division No. 4 did was done as the representative of Young.

MR. LAIRD: Young swore that they did not represent him at all.

THE COURT: Even supposing that you get together and say, "We are going to change it" how can you change it with-20 out the other party?

MR. McMURRAY: We can't change it. I am holding it as evidence of the usage that one of the contracting parties of the agreement assumed towards it, and therefore would aid your lordship in interpreting. I think if your lordship before you rule would consider these resolutions—

THE COURT: I don't know what is in the resolutions, but I think I can anticipate them.

MR. McMURRAY: They show the usage.

MR. LAIRD: It is a resolution brought in at a con-30 vention six years after the contract was made to change the contract, and because of that resolution my learned friend wants to argue from it that therefore the whole contract meant something that he would like it to mean. A convention of laboring men, without legal advice or assistance. Are we, the railway company, to be bound by the resolution, introduced in that form or fashion,

as interpreting a contract entered into eight years before, and is what they decided upon, asking for a change of the agreement, to affect the mind of this Court? I press that very strongly.

THE COURT: That is not quite the case, as Mr. McMurray puts it.

MR. LAIRD: He puts it on usage. A resolution asking to change the contract is not on usage. I don't dispute what was done under the contract in the way of acts and deeds, but a written document brought in here to interpret a contract by one
 10 of the parties to it made eight years afterwards? Listen to Beale, p. 138: "I think that subsequent admissions whether in writing or not are not to be taken into account by us in construing the written instrument in which the contract is contained."

THE COURT: Mr. McMurray's point is slightly different. It is this, as I understand it. He is offering this as evidence to show that up to this time a usage existed in which this resolution was aimed to terminate. The fact that they brought this resolution in to terminate a certain usage is evidence that the usage was there to terminate.

MR. LAIRD: They can only prove usage, not by what
 20 third parties say at a gathering or convention years after a contract was made, but they can prove usage by putting witnesses in the witness box to prove what was meant, subject to cross-examination.

THE COURT: There has been some evidence put in along that line.

MR. LAIRD: There is, and I don't think I can object to what the parties did in hiring of men, and the paying of wages as in Mr. Eager's evidence and Mr. Wedge's, but one party eight
 30 years afterwards cannot sit down and solemnly write out a paper that wage agreement No. 4 means so and so.

THE COURT: I think possibly it is on the principle that the man cannot get the benefit of an admission which he makes himself. In this case the employees have in some body made an admission that there was a usage, and you want them to take advantage of their admission.

MR. McMURRAY: No, I don't want them to take advantage of it at all, my lord. My learned friend speaks of Divi-

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sion No. 4 as being a third party. Division No. 4 and the defendant are first parties to this contract. Division No. 4 for eight years acted under this contract in a certain way—

MR. LAIRD: If they did, prove it.

THE COURT: Just there, Mr. McMurray, supposing they did, what you are trying to do is to hold the employer to that usage.

MR. McMURRAY: No, I am not trying to hold him to the usage at all.

THE COURT: You are trying to establish usage as¹⁰ against the employer, the defendant.

MR. McMURRAY: No, I am just putting it in to show the interpretation that was put upon this contract by Division No. 4. It is a matter of weight for your lordship. The employer had treated it in a certain way, and the other party to the contract had treated it in identically the same way, and these resolutions are to that effect, and they show the way in which both the employers, that is, the defendant in this case, and Division No. 4, who are acting together for a period of eight years, interpreted that contract and the usage that was set up by it. To²⁰ use the argument of my learned friend yesterday, it is a constructive interpretation. My learned friend interpreted these resolutions in a certain way, and I interpret them in another way. I would ask your lordship to read the resolutions before you make a ruling on that at all.

THE COURT: Probably I will do that. Where are they?

“276. Q. MR. McMURRAY: What is your answer?

A. My answer is that so far as we are concerned at no time did we ever negotiate an agreement to include other than³⁰ those who are members of the craft organizations whom we represented.

277. Q. What do you mean by that? A. That we simply negotiated for members of the craft organizations.

278. Q. That is, you were negotiating for all the machinists. A. Who were members of the craft organizations.

279. Q. They were members: You mean American Federation of Labor unions? A. Yes, he might be a member of a craft but he might not be a member of a craft organization.

280. Q. Do you remember a resolution, No. 88, submitted by the Carmen's craft dealing with the preamble to wage agreement No. 6?

MR. LAIRD: I object.

MR. McMURRAY:

281. Q. 'Insert in the Note after the figure 4 the words: 10 "Wage Agreement No. 6" and add to the Note these words: "And shall supersede all previous agreements." Add the following new paragraph: "for the purpose of this agreement the word 'employees' wherever it may appear, shall mean a member or members of one of the organizations affiliated with Division No. 4"?'

MR. LAIRD: I object.

MR. McMURRAY:

282. Q. Now, it was proposed at that convention No. 6, to add a clause that the word 'employee' would mean a member of 20 Division No. 4?

MR. LAIRD: I object.

MR. McMURRAY:

283. Q. What action did your council take?

MR. LAIRD: I object.

MR. McMURRAY:

284. Q. Do you know what action it took?

MR. LAIRD: I object.

MR. McMURRAY:

285. Q. Is it not a fact that your committee recommended 30 non-concurrence in the latter portion?

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MR. LAIRD: Objected to.

MR. McMURRAY:

286. Q. Just read that? A. Yes.

287. Q. Is it not a fact that your committee at your sixth convention absolutely refused to have the word 'employees' limited to members of Division No. 4 when it is used throughout the agreement?

MR. LAIRD: I object.

MR. McMURRAY:

288. Q. What do you say?

10

MR. LAIRD: I objected to the question. The question is directed to what happened in 1926. That document was made in 1918 and 1922. What took place years afterwards is entirely irrelevant in the construction and interpretation of this agreement; and further the railway company which is the defendant here, was not a party and could not be bound by any alleged proceedings at a convention of Division No. 4.

MR. McMURRAY: In reply to my learned friend, Mr. Examiner, we have the letters of Sir Henry Thornton and Mr. Warren whereby these gentlemen held that these contracts, wage agreements Nos. 1, 4 and 6 covered all employees. We have the evidence of Grant Hall practically to the same effect so far as all employees on the Canadian Pacific Railway are concerned. I am endeavoring to prove by this witness that that was the only interpretation placed on that agreement at any time by Division No. 4 or its officers. I have got in as an exhibit the constitution and by-laws of the Railway Employees' Department the first 4 clauses of which undoubtedly state that these agreements must be made on behalf of all employees, and now I ask this, witness: that the sixth convention absolutely refused to put any other construction upon the term 'employees' as used in that contract and therefore that must have been their interpretation of it and their agreement at the time of the execution of these documents.

(It is ruled that the answer be taken subject to Mr. Laird's objection, and can be struck out by the learned trial Judge, if he considers it improper.)

A. My answer is that the purpose of that resolution there was to get what we call the closed shop; that nobody but those who are members of a craft organization would be employed. The resolution was not made in the sense you implied, Mr. McMurray.

289. Q. But it is a fact, is it not, Mr. Dickie, that the committee at the convention refused to limit the word 'employees' to 'mean a "member" or "members" of one of the organizations affiliated with Division No. 4'?

10 A. The answer to that is: the convention refused to go on record in favor of a closed shop.

290. Q. But they dealt with that agreement No. 6?

A. I know.

291. Q. Is it not a fact that Allen of Carman stated: 'we should refuse to carry men on our back who would do nothing to help'?

MR. LAIRD: I object to that.

MR. McMURRAY:

292. Q. Meaning that the benefits of your agreement
20 should be in the future only for those employees who were members of Division No. 4?

A. No, the intention of his remarks were to go on record as refusing to allow the company to employ men who did not carry a paid membership in a craft organization.

293. Q. Which is the same thing? A. No, it is not the same.

294. Q. Now, you had discussed repeatedly the question of seniority right, had you not? A. Yes.

295. Q. Do you remember a resolution being brought in at
30 that convention 'by Boilermakers District Lodge No. 30: Resolved that all employees coming under Wage Agreement No. 6, not affiliated with the respective organizations of their craft party to such agreement, shall have no seniority rights'?

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MR. LAIRD: I object.

MR. McMURRAY:

296. Q. 'Further resolved that this be referred to Division No. 4 Executive for consideration and determination as to how best to proceed to secure the desired end.' That, apparently, Mr. Dickie, says that all employees had seniority rights under wage agreement No. 6. I ask you to read it yourself. It would not be fair to examine you on it afterwards, unless you had read it?

(Witness peruses a printed document.)

MR. LAIRD: I object. And I must object to this witness consulting a document which is not part of the evidence. My learned friend is referring to some documents which are not before the Court; it is improper.

297. Q. MR. McMURRAY: I ask that it be admitted now.

MR. LAIRD: I object to its being admitted.

MR. McMURRAY:

298. Q. This says 'Resolved that all employees coming under Wage Agreement No. 6, not affiliated with the respective organizations of their craft party to such agreement, shall have no seniority rights.' Did not Division No. 4 in lieu of this resolution at the time of making the agreement hold that all employees came under wage agreement No. 6?

MR. LAIRD: Objected to. The alleged convention took place in 1926. And it is impossible to understand the question.

MR. McMURRAY:

299. Q. We find the various crafts and members of these crafts coming to this convention and passing resolution endeavoring to bar out employees of these crafts who were not members of Division No. 4 and apparently taking the ground that they have been enjoying all the benefits of No. 4 and that under that agreement they are entitled to them and they are asking that the agreement be amended or changed so that those men should not have those benefits the agreement gives them. Was

it not, in the light of this, understood by Division No. 4, its executive and officers that wage agreements Nos. 4 and 6 covered every man?

A. No, that resolution there was brought in owing to circumstances which arose within the craft and they were trying to protect the craft's interests at the time.

300. Q. What were the circumstances? A. There was a split in the ranks and they were trying to punish some of the men.

10 301. Q. And that these employees not affiliated with the crafts were profiting by wage agreement No. 6?

A. No. My answer is "no," and that at no time was the principle of protecting our membership waived.

302. Q. If your membership was fully protected why would you have that resolution in there barring those members from seniority rights?

A. Because those fellows were a little panicky.

303. Q. They were not thinking correctly?

A. They were not thinking correctly.

20 304. Q. What did the committee on the resolution do when it came in?

MR. LAIRD: Objected to.

A. It was referred to the executive.

MR. McMURRAY:

305. Q. 'Your committee recommends concurrence'?

A. Yes.

306. Q. The committee must have been panicky also?

A. Yes.

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307. Q. And that those non-members were fully protected by No. 6? A. No, they were carried away with themselves and they were not doing clear thinking.

308. Q. Everybody was shocked to find that agreement No. 6 was protecting men who were not members of Division No. 4?

A. No, they had nothing to fear with regard to the wage agreement protecting the other men.

309. Q. Brother Looker says: 'This resolution was from District No. 30 and their first thought was to leave it with the Executive but felt later that it should go into the schedule.' Then 10 you were discussing at this time these schedules to wage agreement No. 6?

A. That resolution had nothing to do with the wage agreement. We were not discussing the wage agreement at that particular time.

310. Q. It says so in the resolution? A. That resolution was not a wage agreement resolution.

311. Q. Supplement "B" was passed about six months afterwards, on January 5, 1927, and the convention was held in March, 1926? A. That's right. 20

312. Q. Brother Looker apparently thought that the request in resolution No. 84 depriving non-members of their seniority rights should go into the schedule which was to be made up in the near future?

MR. LAIRD: It is surely not necessary for me to point out that what an individual thinks at a public convention is not evidence.

MR. McMURRAY:

313. Q. 'President Tallon: The adoption of the resolution would mean that we adopted the principle and it was up to the 30 schedule committee'?

A. You cannot go definitely by that. It is a synopsis of what was said. It was a man taking it down in longhand. I

could not take my oath that that is an accurate statement of what was said at the time.

314. Q. At least, you took that down as it was said?

A. Yes, to the best of my ability.

315. Q. Now, Mr. Jewell was the president of the Employees' Department and he was present? A. Yes.

316. Q. And he spoke upon the subject. A. Yes.

317. Did he say that he 'felt there was room for a difference of opinion?

10 MR. LAIRD: I object.

MR. McMURRAY:

318. Q. '—as some felt that if left to the Executive it would make an investigation difficult with the situation we had to face. If by our own efforts we could negotiate it separately with one of our roads through our Federation, we would probably meet with success. If the Railway association dealt with it, the matter would be closed, but by exercising judgment we might secure the principle on one or another of the roads.' Mr. Jewell said there they might negotiate it separately with our federation?

20 MR. LAIRD: I object.

MR. McMURRAY:

319. Q. The system federation of one of the railroads?

A. Yes.

320. Q. Then Mr. Astin thought apparently that it should go into the schedule?

MR. LAIRD: I object.

MR. McMURRAY:

321. Q. And President Tallon said, 'In the past this matter had been dealt with and you know what happened'?

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MR. LAIRD: I object.

MR. McMURRAY:

322. Q. What happened?

MR. LAIRD: I object.

A. I don't know.

MR. McMURRAY:

323. Q. Is it not the fact that your executive and officials took it up with the Railway association and were turned down flat?

MR. LAIRD: I object.

10

MR. McMURRAY:

324. Q. Is it not the fact that that question came up covering all employees? A. No.

325. Q. And did you not put it up to the railways to confine that agreement to employees who were members of Division No. 4 and the Railway Association refused to do so?

MR. LAIRD: I object.

A. No.

MR. McMURRAY:

326. Q. You say it was never done?

20

MR. LAIRD: I object.

A. Not to my knowledge.

MR. McMURRAY:

327. Q. Would you say it was not done apart from your knowledge? A. I will say it was not.

328. Q. Do you know what Mr. Tallon meant when he said: 'In the past this matter had been dealt with'?

MR. LAIRD: I object. What other men said would be bad enough, and entirely irrelevant, but to ask a witness to interpret another man's words is worse.

MR. McMURRAY:

329. Q. I am now endeavoring to prove that the railroads themselves have placed themselves on record with Division No. 4 and with President Tallon in holding that these contracts apply to every working man in the different crafts, and I want to find out from this witness if that was not told to Mr. Tallon by the
10 Railway Association of Canada and to Division No. 4?

MR. LAIRD: Worse and worse.

MR. McMURRAY:

330. Q. Did the Railway Association of Canada tell Division No. 4 and Mr. Tallon that these contracts, wage agreement No. 6 or wage agreement No. 4, covered every employee on the road?

MR. LAIRD: Objected to.

MR. McMURRAY:

331. Q. Can you give any explanation of that statement of President Tallon's?

20 MR. LAIRD: I object.

MR. McMURRAY:

332. Q. You were starting to give an explanation when my learned friend objected to it?

MR. LAIRD: That does not make the thing any the more sound.

MR. McMURRAY:

333 Q. I ask that the question be answered subject to the objection?

30 MR. LAIRD: No, persist in my objection, I am not representing the Railway Association. They are not a party to this action. Whatever they have said or done does not affect the defendant.

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MR. McMURRAY: I say they bargained for the defendant.

334. Q. Can you give any explanation?

A. The only explanation I can give is the explanation of Mr. Tallon, his statement that the matter has been dealt with in the past.

335. Q. That is not the statement you were referring to before? A. Mr. Tallon said that 'In the past this matter has been dealt with.' The discussion got around the closed shop, but what Tallon had in his mind when he made that statement I am not in a position to know.

336. Q. So you don't know whether Tallon had negotiated with the railways or the Railway Association of Canada endeavoring to bar out men who were not members of Division No. 4?

A. I could not see why he should, because it was a principle of ours that those men had no right.

337. Q. And that, in straight violation of the by-laws and constitution of the Railway Employees' Department?

MR. LAIRD: I object to that.

MR. McMURRAY: The recommendation of the committee was adopted, was it?

MR. LAIRD: I object.

MR. McMURRAY:

338. Q. Now, this resolution was left to the executive for consideration and determination as to how best to proceed to secure the desired end. What did your executive do?

MR. LAIRD: I object. What the executive of a labor organization might do will surely not affect a railway company?

MR. McMURRAY:

339. Q. Supplement "B" Exhibit No. 8: that was about to be executed and a discussion comes up in your own convention

asking the executive to consider and determine as to how best to proceed to secure the desired end, that is, to shut out other employees from seniority rights. Now, I ask you what did the executive do: did they have any negotiations with the Railway Association of Canada?

MR. LAIRD: I object.

MR. McMURRAY:

340. Q. I show you exhibit No. 8 Schedule "B". That was to be negotiated after the sixth convention in January 1927?

10 A. Yes.

341. Q. Do you know if the executive discussed with the Railway Association of Canada the matter raised in the resolution No. 84?

MR. LAIRD: Objected to.

MR. McMURRAY:

342. Q. 'That all Employees coming under Wage Agreement No. 6, not affiliated' shall have no right?

MR. LAIRD: Objected to.

MR. McMURRAY:

20 343. Q. That all employees not affiliated with the respective organization of their craft party to such agreement, shall have no seniority rights. Was that taken up and discussed with the Railway Association of Canada at the time of the signing of this Supplement "B"? A. No.

344. Q. You know that? A. Yes, it was not necessary.

345. Q. That is, your executive despite the suggestion of your president and the recommendation of the committee did not carry same to the Railway Association of Canada?

30 A. We carried it up; after healing the breach which occurred in the organization, that is what we were endeavoring to carry out there.

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346. Q. Did you make any attempt as President Jewell suggested that you might meet with a difficulty and that you would better put it through a Federation of one of your roads?

MR. LAIRD: Objected to.

MR. McMURRAY:

347. Q. Did you make an attempt to have it brought round through your federation on the Canadian National Railways?

MR. LAIRD: I object.

A. If I remember rightly the discussion revolved round the closed shop and that was the answer of President 10 Jewell if you're going after the closed shop. His idea was if you want to meet with some measure of success take one road at a time on the closed shop.

MR. McMURRAY:

348. Q. Was there any curtailment of the word: 'Employee' as you suggested it should be curtailed?

MR. LAIRD: I object to that. The document is in and it speaks for itself.

MR. McMURRAY:

349. Q. There was a Resolution 'No. 41 — Submitted by 20 Blacksmiths delegates:

'Whereas it is the policy of the Railways to promote men that are not always favorable to our organizations, and

Whereas, our rules do not permit us having an opportunity to take this matter up with any degree of satisfaction,

Therefore, be it resolved that this convention instruct the committee to endeavor to place a rule in the Wage Agreement to the effect that the organizations be consulted in the matter of promotions to official positions.'

Did you have complaints that men were being promoted 30 by the railways, men who were not favorable to the organizations, under the seniority rules?

A. I don't know of any complaints.

350. Q. Now, you were handed from time to time, were you not, by your different craft organizations seniority lists.

A. You mean I was handed them?

351. Q. Yes, personally? A. No.

352. Q. Was not this matter discussed by you yourself at this very convention and did you not point out you were not getting these as promptly as you should?

A. I don't know to what you are referring.

353. Q. There is a provision in your constitution that these 10 seniority lists should be sent to you every three months?

A. No.

354. Q. Did you get those seniority lists from time to time?

A. No.

355. Q. Who got them? A. It is left to the general chairman of the crafts in the shop committees.

356. Q. The general chairman of the crafts in the shop committees get these seniority lists?

A. Yes.

357. Q. Did you ever see these seniority lists?

20 A. I may have seen some of them.

358. Q. And in those seniority lists you saw there were men with seniority rights who were not members of Division No. 4?

MR. LAIRD: Objected to.

A. No.

MR. McMURRAY:

359. Q. Do you remember resolution No. 44 submitted: 'Resolved that we request Division No. 4 to take up the question and

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endeavor to secure the closed shop, we think the time has now come when this should be done. We think that some people who do not belong to our organizations or crafts are getting the full benefits from our efforts and not contributing to the upkeep of our organization, and if we cannot secure a closed shop, that at least we have control of the seniority lists, so that in case of a layoff our own men will be given first consideration.' Do you remember that?

MR. LAIRD: Objected to.

A. No, I can't recall that.

10

MR. McMURRAY:

360. Q. 'Resolution No. 88.—For the purpose of this agreement the word 'employee' or 'employees' wherever it may appear, shall mean a 'member' or 'members' of one of the organizations affiliated with Division No. 4.' Do you remember that?

MR. LAIRD: Objected to.

A. Yes.

MR. McMURRAY:

361. Q. Do you remember what the committee did with that? A. No.

20

362. Q. The committee recommended non-occurrence?

A. Yes, that is, for a closed shop.

363. Q. And the recommendation of the committee refusing to change the preamble to agreement No. 6 was that the committee's recommendation be adopted, that is, the whole convention refused to make that change?

A. I think we have already discussed that.

364. Q. Do you remember addressing the convention yourself on March 22, 1926?

MR. LAIRD: Objected to. What Mr. Dickie said to 30 the convention cannot affect the Railway company.

MR. McMURRAY:

365. Q. Did you say this: 'As you are already aware, the Division Constitution and By-laws provide that the Secretary-Treasurer shall, during the months of June and December, in each year, issue a form to each local lodge asking them to supply the number of railroad membership as per seniority list, etc.' You sent that out?

A. I sent out those questionnaires.

366. Q. You got answers?

10 A. Yes, it is a form we send out every 6 months.

367. Q. I ask for that?

A. That does not deal with the seniority lists. It is to find out the number of men employed at each point.

368. Q. 'As per seniority list'? A. That is where they get their information from.

369. Q. 'As per seniority list'? You can't twist it.

A. Surely, I know what I intended to convey. 'Asking them to supply the number of railroad membership.'

370. Q. 'Asking them to supply the number of railroad 20 membership as per seniority list.' What does that 'as per seniority list' mean?

MR. LAIRD: Objected to.

MR. McMURRAY:

371. Q. It is yours and you made that statement to the meeting. Now, I suggest to you that you had been sent from all over these systems in Canada the seniority lists kept by those railroads. What do you say?

30 A. No, I have no seniority lists and that is not intended to seniorities. It is find out the number of men employed in the crafts so that I can have a complete record. As a matter of fact the whole thing has evolved from or the idea is to keep a record as to whether they are paying the per capita tax. That is the whole thing in a nutshell.

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372. Apparently your seniority lists were kept by the railroads? A. Yes.

373. Q. Then there was such a thing as seniority rights?

MR. LAIRD: Objected to.

A. Yes.

374. Q. Are these seniority rights defined in any way?

A. No.

MR. McMURRAY:

375. Q. What are they? A. Seniority are men in the number of years' service who are entitled to preference jobs, possibly of receiving a foreman's position, entitles them at all times to receive lighter or better work.

376. Q. And owing to reduction of staff?

A. And in reduction of staff men with seniority are to be kept on.

377. Q. While the juniors to them are to be laid off?

A. Yes.

378. Q. That is what seniority rights mean?

A. Yes.

379. Q. And the various railway companies have for a long time recognized those seniority rights?

MR. LAIRD: Objected to.

MR. McMURRAY:

380. Q. Is that not in your knowledge?

MR. LAIRD: Objected to. We are dealing with matters in the agreement not with railways in general.

MR. McMURRAY:

381. Q. The Canadian Northern Railway Company have for a long time recognized in their dealings with their men in reduction of staff the rights of seniority?

MR. LAIRD: Objected to.

MR. McMURRAY:

382. Q. You know that to be a fact?

MR. LAIRD: Objected to. What does he know about what the Canadian Northern Railway Company has done? He may be interested in the very highest degree but does not know what the Canadian Northern Railway Company does.

MR. McMURRAY: His knowledge is wider than you are giving him credit for in this regard.

A. The real position I hold is we negotiated the agreement which provided for seniority. Any amplification of it is left to the committees when I am not present.

MR. LAIRD:

383. Q. As I understand your answer to this question is contained in the agreement?

20 A. Yes.

MR. LAIRD: All this evidence is irrelevant and is contained in a written document.

MR. McMURRAY:

384. Q. The companies have always recognized these seniority rights. I do not care how they have been arrived at. The Canadian Pacific Railway has always recognized seniority rights or at least has for many years.

MR. LAIRD: Questions of seniority are defined.

MR. McMURRAY: The company, as composed, has 30 recognized them.

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MR. LAIRD: They cannot affect this company. I object. We have the agreements pleaded and we are limited to them.

MR. McMURRAY: My learned friend has a document in his company's office whereby certain rights are tabulated, and I ask this witness:

385. Q. Has not this company recognized seniority rights?

MR. LAIRD: I object to that. What we have done in other companies is entirely eliminated.

MR. McMURRAY:

10

386. Q. Did the company always recognize seniority?

MR. LAIRD: I object.

MR. McMURRAY:

387. Q. I think he ought to answer that subject to objection?

MR. LAIRD: If this goes in subject to objection I have to cross-examine on it.

MR. McMURRAY:

388. Q. I want to know if this witness knows of the recognition of seniority by the defendant company apart altogether 20 from this agreement?

MR. LAIRD: I object to that. I could not consent to an answer like that.

MR. McMURRAY: This witness is going away and if I am not permitted to get an answer and he cannot come back and the court rules he should answer? The judge can bar it out.

MR. LAIRD: If this is as to some rules and regulations we had in the Fort Rouge shops and the trial takes place in Winnipeg my learned friend can call hundreds as to rules and regulations in the Fort Rouge shops. He is not deprived of any 30 of his rights. But he is not asking as to rules and provisions in the Fort Rouge shops at all.

MR. McMURRAY: I say 'in the defendants' shops.' My learned friend is not suffering anything. I do not see why my learned friend cannot let the evidence come out.

389. Q. Do you know if the Canadian Northern Railway company recognized seniority rights as defined by you for a large number of years prior to this date?

MR. LAIRD: Objected to. There is no question in the action at all about the recognition of seniority rights. We have certain rules and provisions in our shops as to seniority rights. He has pleaded the agreement and other rules and provisions. As to what we did in other cases, at other times, under other circumstances and in other contracts is entirely irrelevant. The alleged rights are defined by Mr. Dickie. If we have broken the agreement before it does not affect this case.

EXAMINER: Answer subject to the objection.

A. I don't know.

MR. McMURRAY:

390. Q. If these contracts were not entered into for the purpose of protecting all employees how could they protect any employees?

MR. LAIRD: The question is objected, as a question of law.

MR. McMURRAY:

391. Q. That question is for the purpose of showing that at the time you negotiated these contracts you must have used the term 'employees' in its usual and ordinary term of significance to cover all employees?

MR. LAIRD: Objected to.

MR. McMURRAY:

30 392. Q. If you were to allow a large number of railway employees to make their own contracts with the company as to wages, grievances and all other things which enter into the relationship of employer and employee how could you protect the members of your own association and therefore was it not a

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fact that at the time of the making of that contract it was understood that the word 'employee' covered all employees?

MR. LAIRD: Objected to.

MR. McMURRAY:

393. Q. Can you explain to me how you could possibly have afforded any protection to members of Division No. 4 if you did not protect the rest of the men?

A. The strength of the organization.

394. Q. How would the strength of your organization help of the company paid the men a difference of 20 cents? 10

A. We would have to teach the men to meet the situation when it arrived.

395. Q. You would have to strike? A. I don't know.

396. Q. You would have to use force? A. I don't know.

397. Q. You could not explain to me how you could protect yourselves if you left a large body of men without protection, could you? A. You would have to teach the men when that arrived.

398. Q. Can you think of any men you could teach if you left a group of men outside unprotected? 20

MR. LAIRD: I object.

A. There are ways and means of getting rid of men. You could use a club. I am not saying you would use it.

MR. McMURRAY:

399. Q. Apart from that? A. Subject to negotiation and violation of agreement.

400. Q. But this would be in violation of agreement. This company could go down and hire a 100 men and pay them a lower wage?

A. Withdraw our men from the service as a protest. 30

401. Q. Would you be prepared, would No. 4 be prepared to go so far as to strike to keep up wages and protect men not belonging to your organization?

A. No. It is a question you cannot answer. You would have to tackle it when you met it.

402. Q. You would force the company into the closed shop?

A. Yes. We have never reached the stage, or rather we have never declared for the closed shop; I won't say we have not reached the stage.

10 403. Q. Were there any letters passed between Division No. 4 and the Railway Association of Canada and the Railway War Board in connection with this agreement.

MR. LAIRD: Objected to.

MR. McMURRAY:

404. Q. Written communications?

A. Naturally there were letters written asking to arrange a date and to discuss proposed changes in each agreement.

405. Q. Have you any of those letters—?

MR. LAIRD: Objected to.

20 MR. McMURRAY:

406. Q. Produce the letters?

MR. LAIRD: I object to them?

MR. McMURRAY:

407. Q. Will you produce letters passing between Division No. 4 and the Railway Association of Canada in connection with these wage agreements?

A. They can be produced all right.

408. Q. Will you produce them to the examiner for the purpose of this trial?

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MR. LAIRD: How can letters asking for an appointment be relevant?

MR. McMURRAY:

409. Q. I want the letter dealing with this wage agreement: will you produce them?

MR. LAIRD: I object to them. Once the matter has culminated in writing any previous communications cannot be looked at.

MR. McMURRAY:

410. Q. Supposing there is a letter where both sides agree to cover all the men?

A. There is no such a letter.

411. Q. If my learned friend would not object so much I would get on fine with the witness. Collective bargaining has been in force between the machinists and boilermakers on the Canadian Northern Railway for many years, has it not?

MR. LAIRD: Objected to.

MR. McMURRAY:

412. Q. I won't follow that. What was the Railway War Board? A. I don't know. 20

413. Q. Do you know what the Railway Association is?

A. No.

414. Q. Now, did Division No. 4 have correspondence with the defendants in connection with the dismissal of Mr. Young, the plaintiff? A. No.

415. Q. There were not letters passed?

MR. LAIRD: Objected to.

A. No.

MR. McMURRAY:

416. Q. In Article 13, Section 1 of your constitution (Exhibit No. 1) it says: 'No individual requests shall be made for change of rules, rates or regulations, and no individual action shall be taken by any craft or system affiliated with this Division without the authority of the Executive Board, and the Executive Council of the Railway Employees' Department of the American Federation of Labor.' That is part of your constitution?

A. Yes.

417. Q. So that these contracts, wage agreements Nos. 1, 104 and 6 cannot be changed without the authority of Executive Council of the Railway Employees' Department of the American Federation of Labor?

MR. LAIRD: Objected to. That is a matter of interpretation of a document. It is there for the Court to read.

MR. McMURRAY:

418. Q. Now, did the executive of Division No. 4 agree with the defendants the Canadian Northern Railway Company in breach of these contracts by dismissing seniority men?

MR. LAIRD: Objected to.

20 419. Q. MR. McMURRAY: I will put it this way: did the executive of Division No. 4 agree with the Canadian Northern Railway in the dismissal of the plaintiff?

MR. LAIRD: Objected to.

MR. McMURRAY:

420. Q. I have alleged that there is a binding contract made on behalf of the plaintiff with Division No. 4 and I say that that has been broken and I furthermore plead that it has been broken with the connivance of Division No. 4?

MR. LAIRD: Pardon me, Mr. McMurray, but that is 30 not a correct statement of your pleadings.

MR. McMURRAY:

421. Q. I have pleaded the contract and I have pleaded the breach of it, and I have pleaded that Division 4, who was a party

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to the contract, see clause 13 of the statement of claim, that various officials of Division No. 4 and members thereof arranged and agreed with the defendants and certain officials of the defendants for the dismissal of the plaintiff in breach of said agreement No. 6 and so on. Now, I ask you, did Division No. 4 its executive or its officers enter into an arrangement with the defendant to secure the dismissal of the plaintiff?

MR. LAIRD: Objected to.

MR. McMURRAY:

422. Q. I am not alleging breach of contract, what I am¹⁰ saying here is: did you enter into an arrangement for the dismissal of the plaintiff?

MR. LAIRD: It is an action for wrongful dismissal against the railway company.

MR. McMURRAY: I am endeavoring to prove it was brought about by coercion and—

MR. LAIRD: You are confusing this action with your other action.

MR. McMURRAY: It was arranged and agreed. And you may have to arrange a thing where you don't like it. Now,²⁰ this is the very core of the whole matter. He was not voluntarily dismissed by the company but he was dismissed by reason of a collusive deal depriving him of his rights. I allege that. I have said that the officials of Division No. 4 arranged for this in breach of said contract.

MR. LAIRD: My position throughout has been that it is an entirely irrelevant plea and it was so held by the Referee. The action is for wrongful dismissal and if the railway company wrongfully dismissed and broke any contract they are responsible in damages and the fact why it was done or how it was done³⁰ is entirely irrelevant. It would not help you one bit to show that the railway company consulted other employees in its service or other railways in Canada.

MR. McMURRAY: I agree it won't help him but I do contend it will not hurt him. If he allows outside forces to cause him to break that contract I am entitled to know what they were and to prove by them that the contract was improperly broken.

I am entitled to know what the circumstances were and the court is entitled to know. My learned friend has set up that the man is inefficient. I say that is not the ground of his dismissal at all. I say that the company was guided by some ulterior motive in improperly dismissing the plaintiff.

MR. LAIRD: The question of motive does not and cannot arise.

MR. McMURRAY: My learned friend says I am debarred but it is in the pleadings and has not been struck from
10 the pleadings and I have full authority to act under it

MR. LAIRD: We refused to give discovery and my learned friend utterly failed on discovery. Under the schedule we are required to give lists of the men dismissed.

MR. McMURRAY: My learned friend knows that it has been testified that two officials of the Division No. 4 sat down with two officials of the company and prepared a list of men to be dismissed. That evidence is in. How far was Division No. 4 a party to this nefarious deal.

MR. LAIRD: My learned friend has another action
20 pending in which he is charging conspiracy against certain officials of Division 4 and certain officials of the railway company. The question he is now asking might be material in that action but it is immaterial in this action and he is improperly making use of this action to get information for his other action. The question is immaterial on the issues in this action, namely: whether there was a wrongful dismissal or breach of contract.

MR. McMURRAY: Here is a man employed by the company giving so far as we know excellent service. A group of men come along and they bring pressure to bear on—

MR. LAIRD: It is highly improper that Mr. Davy
20 should be present. He is the plaintiff in another action and not a party to this action.

(At the Examiner's request Mr. Davy retires.)

MR. McMURRAY:

423. Q. Now, I ask you did Division No. 4, its executive or its officers enter into an arrangement with the defendant to

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secure the dismissal of the plaintiff? (Founded on the statement of claim, briefly clause 13.) Did the officials of Division No. 4 enter into an agreement with the defendant for the dismissal of the plaintiff?

MR. LAIRD: I object."

THE COURT: The answer is excluded.

"425. Q. What do you mean by that: not to your knowledge?"

THE COURT: Excluded.

"426. Q. You know of nothing yourself?" 10

THE COURT: Excluded.

"427. Q. That is, they may or may not have but you don't know anything about it?"

THE COURT: Excluded.

"428. Q. Did you have discussions from time to time with Mr. Tallon?

MR. LAIRD: Objected to.

MR. McMURRAY:

429. Q. In connection with reduction of staff in the Canadian Northern Railway here at Winnipeg? 20

MR. LAIRD: Objected to."

THE COURT: Excluded.

"MR. McMURRAY:

430. Q. Did you help to prepare the president's letter published in the Federated Railwayman of June, 1927? A. Nothing at all to do with it.

431. Q. Did Mr. Tallon address a letter to you known as the president's letter which was published in The Federated Railwayman in June, 1927?

MR. LAIRD: That is objected to. What Mr. Tallon may have said or done surely cannot affect the defendant railway company.

MR. McMURRAY:

432. Q. Did you get that letter from Mr. Tallon?

MR. LAIRD: I object to that.

A. It was sent to the paper for publication.

It being nearly 6 o'clock the examination was adjourned until the evening of the same day at the hour of 7:30 o'clock at 10 the same place, when it was resumed:

BY MR. McMURRAY:

433. Q. What is this? A. It is the monthly publication of Division No. 4.

434. Q. Of what date? A. June 19, 1927.

435. Q. And does that set out the position taken by Division No. 4 in all railway matters?

MR. LAIRD: I object to that.

A. It was written for the papers; it is not an official document.

20 MR. McMURRAY:

437. Q. Does this paper set out the views of Division No. 4 upon the matter of these agreements between the railway companies and Division No. 4?

MR. LAIRD: Objected to.

MR. McMURRAY:

438. Q. I show you this: what is it?

A. The Federated Railwayman of May 19, 1927.

MR. LAIRD: Objected to.

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MR. McMURRAY:

439. Q. And this is published by Division No. 4?

A. Yes.

440. Q. Are you the editor? A. If you call it an editor,
yes.

441. Q. I show you another document: what is that?

A. A copy of the same publication.

442. Q. Of the month of February, 1927?

MR. LAIRD: Objected to.

A. Yes.

10

443. Q. MR. McMURRAY: And I show you another copy.
What is the date of that? A. November, 1927.

444. Q. This is a copy of The Federated Railwayman of
November, 1927?

MR LAIRD: Objected to.

A. Yes.

MR. McMURRAY:

445. Q. Published by? A. Division No. 4.

446. Q. I ask that they be put in?

MR. LAIRD: I object. There is no plea in the plead-20
ings that they are relevant.

MR. McMURRAY:

447. Q. Now, I see the president's letter in the February,
1927, issue. Have you got that letter? A. It was sent for pub-
lication.

448. Q. That would be written by Mr. Tallon?

A. Seemingly so.

449. Q. No doubt about it?

MR. LAIRD: I object to any of these questions on these papers, on the ground that they should not go in as evidence against the defendant company, although there may be some things which may help my case.

MR. McMURRAY: I think you had better let them in.

MR. LAIRD: But I take the position they are not evidence and I object to all questions relating to them.

10 MR. McMURRAY:

450. Q. Now, is this the fact, referring to non-union men in Mr. Tallon's letter addressed to Division No. 4: Your organization got him the extra money he is drawing these days. A portion of it belongs to you and a character who continues to sponge upon his fellow workmen to the extent of participating in the spoils without contributing his share is not fit company for any body of men. Is it a fact that Division No. 4, or is it true what President Tallon says there that Division No. 4 got him the extra money he is drawing?

20 A. It must be the fact that Division No. 4 negotiated the Wage agreements.

451. Q. He was drawing the fruits of other men's labor?

A. No. 4 got him the money he is drawing today?

A. That's right.

452. Q. Do you and President Tallon occupy the same offices in Montreal? A. No: he makes that his headquarters when he is in Montreal but he is on the road all the time.

453. The head offices of Division No. 4 are in Montreal?

A. Yes.

30 454. Q. Where is their office there? A. In the Coronation Building.

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455. Q. In his, the president's letter in May, 1927, he stated that the system—?

MR. LAIRD: I object to that.

MR. McMURRAY:

456. Q. Is this correct, or do you agree with President Tallon—?

MR. LAIRD: I object to that.

457. Q. MR. McMURRAY: I am basing a question on it. I can do that?

MR. LAIRD: No, you cannot. 10

MR. McMURRAY:

458. Q. Do you know if the system federation had agreed to the drastic reductions which have taken place in Winnipeg?

MR. LAIRD: Objected to on the ground that it is entirely irrelevant to any issue in this action.

MR. McMURRAY:

459. Q. Do you know if the system federation was a party to the staff reduction here and to the dismissal of Young?

MR. LAIRD: Objected to."

THE COURT: Excluded. 20

"MR. McMURRAY:

460. Q. Did you discuss these reductions with Tallon?

MR. LAIRD: Objected to."

THE COURT: Excluded.

"MR. McMURRAY:

461. Q. Now, we have charged here a breach of contract and we charge that there was an agreement entered into between officials of the company and officials of Division No. 4. I have

here the mouthpiece of Division No. 4, their newspaper, in which it is stated—

MR. LAIRD: I object to any statement from a newspaper.

MR. McMURRAY:

462. Q. In which the mouthpiece of this division states that this system had agreed to drastic reductions. It is a letter from the president stating that he was here in Winnipeg and stating he had taken part—

10 MR. LAIRD: It protest against my learned friend reading from the newspapers.”

“MR. McMURRAY:

“463. Q. Now, I have asked the witness if the witness knows if the system federation agreed to this reduction and agreed to the dismissal of the plaintiff?

MR. LAIRD: That is objected to.”

THE COURT: Excluded.

“464. Q. Is that a fact that the system federation agreed to this drastic reduction and to the dismissal of the plaintiff?”

20 THE COURT: Excluded, and all the discussion in regard to this question is excluded.

“MR. McMURRAY:

465. Q. You don't know whether the system federation agreed to it or not?”

THE COURT: Excluded.

“466. Q. It was never discussed with you about the dismissal of these men?”

THE COURT: Excluded.

30 “467. Q. Did you ever discuss with the company about firing these men yourself?”

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THE COURT: Excluded.

"MR. McMURRAY:

468. Q. Do you know the signature to this?

A. It looks like the signature. It resembles the signature.

469. Q. Is that the signature of R. J. Tallon?

A. It resembles it.

470. Q. You know his signature, don't you?

A. It is pretty well known.

471. Q. You have seen him sign it a million times?

10

A. Not quite a million.

472. Q. And you have looked at it a million times?

A. Not quite a million.

473. Q. Is that his signature to the best of your knowledge and belief?

A. Yes, to the best of my knowledge.

474. Q. So that is Mr. Tallon's signature?

A. To the best of my knowledge.

475. Q. I ask that that be filed as an exhibit.

MR. LAIRD: It purports to be a letter from Mr. R. J. Tallon to his executive and it is entirely irrelevant and immaterial and it is not evidence against the defendant company.

MR. McMURRAY: The reason I produce that is that it shows—

MR. LAIRD: Never mind what it shows. How can a letter be—

MR. McMURRAY: My learned friend cannot prevent my giving an explanation of what I propose to do. I propose to

prove by this letter and a similar letter that Division No. 4 was formed under the authority of the Railway Employees' department; that it was and is in close touch and under the jurisdiction in a very large measure of and with the Railway Employees' department and the constitution of the Railway Employees' department show that the contracts are made on behalf of all employees and to prove that that was the meaning of the term "employee" used in these agreements; this document shows that relationship.

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10 MR. LAIRD: Surely, what Tallon may say cannot affect the meaning of an agreement between the Railway War Board and Division No. 4 and Mr. McMurray has stated he is going to put it in to prove what was meant by that agreement. The agreement is there.

MR. McMURRAY: No, I am putting it to establish beyond all question that any contract Division No. 4 had power to make would bring it solidly within and it had to be made under the bylaws and rules of the Railway Employees' department, and these letters I am now producing show that that was a fact that
 20 every step was taken under the jurisdiction of this constitution and bylaws. If they are not admissible they can be ruled out by the court. My learned friend is not suffering by it.

MR. LAIRD: I am suffering very much if improper evidence is put in here against the company.

MR. McMURRAY: The purpose of this examination is to prove certain agreements. If my learned friend holds there is nothing in my contention he need not worry about cross-examining on it.

EXAMINER: Answer subject to the objection. The
 30 Court can take them off the files if they are not admissible.

MR. McMURRAY:

476. Q. I show you another one. Is that the signature of Mr. Tallon?

MR. LAIRD: Objected to.

A. Yes.

BY MR. McMURRAY:

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477. Q. Do you know that signature?

A. Yes.

Two letters dated respectively Winnipeg, Man., February 18th and February 24th are produced by plaintiff's counsel and marked as one exhibit, No. 10, subject to Mr. Laird's objection."

MR. LAIRD: I object to those letters from Tallon, apparently president of Division No. 4, to his own executive.

THE COURT: They would be in the same position as these resolutions you were speaking of. 10

MR. LAIRD: They are more objectionable in that they are from an individual, though he occupies the position as president.

THE COURT: But they all tend to show what this Division—

MR. McMURRAY: They would show, my lord, that this Division No. 4 was absolutely under the jurisdiction of the Railway Employees' Department under their constitution.

THE COURT: You have the constitution, that is in, and that is the best evidence. 20

MR. McMURRAY: These letters also show that when wage agreement 1 was contracted Division No. 4 was not actually officiating at that time.

THE COURT: Of course, No. 1 is not connected up yet.

MR. McMURRAY: I had forgotten these letters; I would like to look into the matter.

THE COURT: Very well, it will be left open.

"MR. LAIRD: There is another objection that these letters are apparently prior to the constitution which my learned³⁰ friend has already put in, and leading up to that constitution, and that constitution having been adopted, and put in by my learned friend all negotiations and correspondence leading up to it are

entirely irrelevant. That, is in addition to my former objections.

MR. McMURRAY: Which constitution do you mean?

MR. LAIRD: The Railway Employees' Department's.

MR. McMURRAY:

478. Q. What is this? A. Constitution and bylaws of the Railway Employees' Department.

479. Q. You recognize that as their constitution?

A. Not today

480. Q. That is your constitution of 1918?

10 A. Yes.

Constitution and By-laws of the Railways Employees' Department revised April, 1918, is produced by plaintiff's counsel and marked as exhibit No. 11."
(Constitution and By-laws of the Railway Employees' Department revised April, 1918, referred to, produced and marked **Exhibit No. 32.**)

"481. Q. Do you know this signature? A. I have seen it before.

482. Q. Can you swear to it? A. Yes.

20 483. Q. That is your own signature? A. Yes.

484. Q. And I would ask to have it marked.

MR. LAIRD: Objected to. It is apparently a circular letter of a committee or board of his organization which is no evidence I submit against the defendant company.

MR. McMURRAY:

486. Q. Do you know the railway war board personnel who negotiated Agreement No. 4? A. It is in that letter.

487. Q. Mr. A. J. Hill, C.N.R., Mr. C. R. Temple, C.P.R., Mr. J. C. Good, Grand Trunk, and Mr. George Lodge, C.P.R., Is

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RECORD that right? A. Yes.

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488. Q. Do you know if the agreements made with the railroads of the United States Railroad Administration in September, 1919, by the American Federation of Labor, which works under the same constitution as Division No. 4, were made on behalf of all the employees on railways?

MR. LAIRD: Objected as irrelevant. Agreements between United States railroads and the Administration board are irrelevant.

MR. McMURRAY:

10

489. Q. What divisions are there in the United States?

MR. LAIRD: Objected to.

MR. McMURRAY:

490. Q. Is it not a fact that there are 3 divisions in the United States all operating under the constitution of the American Federation of Labor just as Division No. 4 operates here?

MR. LAIRD: Objected to.

MR. McMURRAY:

491. Q. Do you know what arrangement or bargain was made, so far as employees of the railroads of the United States were concerned?

A. No, I don't know what their arrangement was.

491. Q. Have you wage agreement No. 1?

A. I promised to get you a printed copy.

492. Q. Have you got that? A. Yes.

493. Q. Have you got two of those? A. No, I have not.

493. Q. Now, where is the original, Mr. Dickie?

A. In Montreal.

495. Q. In your office there? A. Yes.

496. Q. This is an exact copy of the original?

A. It is.

497. Q. The original was signed you remember by Mr. Gil-
ien and Mr. Neal for The Canadian Railway War Board and R.
J. Tallon, Frank McKenna and Chas. Dickie for Division No. 4?

A. Yes.

498. Q. Will my learned friend admit that this is a copy
and that it can be used for all the purposes that the original could
10 be used if it were produced and filed today?

MR. LAIRD: My position is that the original is irrele-
vant and immaterial.

MR. McMURRAY:

499. Q. You take the same objection to this?

MR. LAIRD: Yes.

MR. McMURRAY:

500. Q. But subject to your objection might I file a copy
to the same extent as the court would permit me to use
the original?

20 MR. LAIRD: Subject to my being satisfied it is a copy.
Mr. Dickie appears to be satisfied it is a copy.

MR. McMURRAY:

501. Q. Would you take his statement that it is a copy?

MR. LAIRD: I have no doubt of his sincerity but he
may not have compared it.

502. Q. Have you compared it? A. No.

503. Q. A copy was sent to the printer? A. Yes.

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MR. LAIRD: It is subject to my objection and subject to our satisfying ourselves it is a copy by comparison with the original or with the original in the custody of the War Board if such exists.

Wage Agreement No. 1 (printed) dated Montreal, September 2, 1918, is produced by the witness and marked as exhibit No. 12, subject to Mr. Laird's objection."

THE COURT: You have already got that in.

MR. LAIRD: I have had the copy compared as I undertook to do. There are some typographical changes in it, but I do not know that they are material. There is also the objection of its irrelevancy.

THE COURT: It is subject, of course, to the undertaking that it will be connected up. Perhaps this copy that we have checked up would be accepted in place of the other, and then there would be no further question about this being a copy.

MR. LAIRD: Subject to your lordship's ruling.

THE COURT: Yes.

(New copy of Wage Agreement No. 1 dated Montreal September 2, 1918, produced and marked **Exhibit 33.**)²⁰

"504. Q. Can you tell me whether that was printed by your division or by the war board; do you know?

A. I guess it was printed by us.

MR. McMURRAY:

505. Q. Now, at the time of the making of these agreements, agreements Nos. 1, 4 and 6, was there another agreement made between—?

MR. LAIRD: I object to the reference to 6.

MR. McMURRAY:

506. Q. Was there any agreement made between the Railway War Board or the Railway Association of Canada and Divis-

ion No. 4 putting any definite meaning upon the words employees or employee?

A. It was understood, so far as we were concerned the word employees referred to members of the crafts.

507. Q. You have not got it in a written agreement?

A. No. Any time the term employees is used there so far as we are concerned it applied to members of the organization.

508. Q. It does not say so in the agreement?

10 A. It does not say it applied to others.

509. Q. It says "for employees in the Locomotive and Car Departments of the several Railways." When you speak of men in Canada you mean all men in Canada.

A. In that sense, yes.

510. When you speak of the employees in the railway shops don't you mean all employees?

MR. LAIRD: I object to your asking for an interpretation of a written document.

MR. McMURRAY:

20 511. Q. I shall ask if there was any other meaning agreed upon as to the words employee or employees.

MR. LAIRD: I object to that question. The agreement is in writing. And nothing else can be considered.

MR. McMURRAY:

512. Q. I ask that these reports of conventions be filed, four conventions, the first, second, fifth and sixth?

MR. LAIRD: Do you desire to file the entire reports of these 4 conventions as evidence against the railway company or is there some particular passage you wish to file?

30 MR. McMURRAY: I put them all in.

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MR. LAIRD: I must strongly object to the filing of the reports of proceedings of Division No. 4 as evidence against us. There is nothing on the pleadings in any way referring to them. I submit they cannot be looked up to interpret the agreements entered into by Division No. 4 and the boards, and that they are irrelevant in respect to any issue arising in this action. If they are allowed to go in it places them on record as evidence against the company. I don't know why my learned friend contends they are evidence. All the proceedings of Division No. 4 were discussed over a period of several days. 10

MR. McMURRAY:

512. Q. I would ask that the whole of the report of the sixth convention goes in? I have examined on a number of the resolutions here and there are other portions of it which have an intimate connection with this. This was when schedule "B" was being dealt with.

MR. LAIRD: There is no substantial difference between the one and the others.

MR. McMURRAY: A large portion was read in. I am not proposing to use it but I want it in. I simply want what I have now read as a background for the Court to understand what went on. 20

MR. LAIRD: That would be all right if my learned friend were proceeding against Division No. 4, but what was said or done at a convention at which we were not a party would not be evidence against us. I want to be on record. My learned friend can cite that it can be put in."

MR. LAIRD: There is something wrong in that statement. It should be "cite no authority," or text, or precedent. However, nothing turns on it. 30

MR. BERGMAN: I have no doubt that is what you said that he could not cite any authority for it.

"It was long after the agreement was made that my learned friend relies upon.

MR. McMURRAY: No. Six months before the last part of schedule "B" agreement No. 6 was made. Schedule "B"

was made in January. This convention was held in March of the preceding year.

MR. LAIRD: If after that the agreement was made between Division No. 4 and the railways why should it be put in? If it is to affect a subsequent agreement it is all the worse. Division No. 4 met and discussed things and six months later an agreement is made between it and the Railway Association.

MR. McMURRAY: It is simply to show a distinct understanding as to the meaning of that word "employee" and that
10 that agreement covers all employees, and was so understood by that convention, and after coming to that arrangement at that convention then they go down and make a new contract without changing the phraseology at all.

MR. LAIRD: What Division No. 4 may have done in March with those resolutions cannot be used to interpret a document made between Division No. 4 and the Railway Association of Canada months later, and it is entirely irrelevant and that is what my learned friend has tendered it for to interpret a subsequent agreement. If the railway company and Division No. 4
20 had met and agreed on a definition of the word "employees" and set it down in writing it would not be admissible to vary it.

EXAMINER: Take it off the files if it is ruled off. Put it in now subject to your objection.

Report of sixth Convention Division No. 4, March 22nd to March 27th, 1926, is produced by plaintiff's counsel and marked as exhibit No. 13, subject to Mr. Laird's objection."

MR. BERGMAN: I tender this as an exhibit, my lord.

MR. LAIRD: I object to this. As your lordship has
30 followed the examination it turns out that after this convention the agreement was made. My learned friend argued a few minutes ago it was to show the usage. Now he says at the end, a convention was held in March, and an agreement later made, and what took place in March at a convention is to bind this Court or assist this Court in interpreting a supplemental agreement, a subsequent agreement. I object to the admissibility of the document and all these resolutions that have been read by my learned friend on this de bene esse examination. Acts taking place at a convention, a labor organization, and if a man can get up and

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say what they resolved, what they decided is evidence against a railway company on an action for contract, I must give up understanding all the laws of evidence.

THE COURT: This is 1926. You are dealing with years before. I refuse to admit it.

MR. BERGMAN: I formally tender the document referred to as exhibit 13 on Mr. Dickie's examination, and your lordship, has ruled it out.

THE COURT: It falls under question 512.

MR. HAFFNER: There were large parts of resolutions read into the record and they should be excluded also, I should think.

THE COURT: It would be pretty hard to pick out all those things, parts of questions and exclude them.

MR. LAIRD: My learned friend Mr. Bergman read evidence on the understanding that your lordship would hear what the resolutions were.

THE COURT: I don't know yet what they are.

MR. LAIRD: They are quoted in parts.

THE COURT: Yes, quoted in part. 20

MR. BERGMAN: They are in this document, your lordship, just ruled out.

THE COURT: If you are offering resolutions it would simplify matters, but you are offering the whole proceedings, and that surely can't be evidence against the defendant.

MR. McMURRAY: I think, my lord, for the purpose of our position that the resolutions we have put in in the evidence might be sufficient.

THE COURT: If you confine your tender to the resolutions specified it narrows the question down for the ruling, but to offer the entire proceedings I could not possibly allow it. 30

MR. McMURRAY: I will confine myself to those resolutions.

THE COURT: You might do that, mark them, and submit them.

MR. BERGMAN: Then we come to the cross-examination and I take it my learned friend will read that.

MR. HAFFNER: Your lordship has not ruled on the resolutions contained in the questions.

THE COURT: Because I haven't seen them yet. There are going to be pointed out and submitted to me.

MR. HAFFNER: My learned friend read some of 10 them in his questions.

THE COURT: I know, but I am not sure they are entirely read.

MR. HAFFNER: At the bottom of page 62, question 349, for example, my lord. This is not the first of them, it is one of several. That is part of the proceedings of that document read into the record.

THE COURT: That is quite harmless to you, isn't it? That particular resolution? I thought it would be better if the resolutions Mr. McMurray wants to be put in would be pointed 20 out and submitted and then we will know specifically what is before the Court, and then I can rule upon it, instead of getting them piecemeal. As they were read in, they were not read in toto in any particular case.

MR. HAFFNER: They put the part my learned friend wants in. Perhaps we could go over and pick out the ones we object to?

MR. McMURRAY: The difficulty in the convention is that the resolutions are not in order.

THE COURT: Well, perhaps you will have them 30 ready in the morning.

"MR. LAIRD: I wish to have the privilege of cross-examining upon that exhibit without prejudice to my objection and also as to the other exhibits to which I have objected.

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(Close of Examination-in-Chief.)”

(Mr. Haffner reads cross-examination of Charles Dickie.)

“CROSS-EXAMINATION OF CHARLES DICKIE
BY MR. LAIRD, K.C.

512. Q. Mr. Dickie, would it be correct to describe Division No. 4, Railway Employees' Department, American Federation of Labor, as an organization to regulate relations between workmen and masters? A. Yes, sir.

513. Q. That is one of its objects, I suppose? 10

A. Yes.

514. Q. And also to settle and to regulate conditions in the shops and various departments of the railways in Canada?

A. Yes.

515. Q. The American Federation of Labor is chiefly composed of mechanics or workmen of the various crafts who are organized for the purposes of their own crafts?

A. That's correct.

516. Q. The American Federation of Labor comes on the scene and organizes these various trade organizations into one large federation? A. Yes.

517. Q. When was the American Federation of Labor formed? A. I could not tell you.

518. Q. When was the Railway Employees' Department Division No. 4 formed? A. In 1918.

519. Q. Was the Railway Employees' Department of the American Federation of Labor in existence as an organization in Canada prior to 1918?

A. No.

520. Q. The American Federation of Labor was not en-30

gaged in the Canadian field? A. Yes, it was; but there was no Canadian railway labor organization affiliated with it before that.

521. Q. Division No. 4, Railway Employees' Department, of the American Federation of Labor, does, of course, seek to regulate, and does regulate as far as it can, the rules and conditions between the men and the railway companies in Canada?

A. Yes.

522. Q. And has done since 1918? A. Yes.

10 523. Q. By what manner or means does it seek to accomplish its object, Mr. Dickie?

A. I don't understand.

524. Q. Division No. 4 negotiates with certain railways in respect to the conditions existing between those railways as employers of men and the men who are affiliated with Division No. 4; is that right?

A. Yes.

525. Q. And in those negotiations you have told us I think that there is a negotiating committee of Division No. 4?

20 A. Yes.

526. Q. Does Division No. 4 recognize the right of an individual man employed by a railway to make his own bargain with the railway company, as to wages for example?

A. No.

527. Q. Does it recognize the right of the individual man working for a railway company to make a contract as to the number of hours he has to work a day? A. No.

528. Q. Does it recognize the right of the individual to work overtime, beyond the regular hours?

30 A. I don't understand.

529. Q. At this point; as to wages, working conditions and

RECORDED hours of labor who under Division No. 4 of the Railway Employees' Department of the American Federation of Labor negotiates and bargain with the employer?

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A. A committee from Division No. 4.

530. Q. The committee does not leave it to the employee to bargain with his employer at all?

A. No.

531. Q. Has the individual employee any right to bargain with his employer at all?

MR. McMURRAY: What individual employee? 10

MR. LAIRD:

532. Q. The individual employee who is a member of an organization affiliated with your organization?

A. There is no individual permitted to. The organizations meet and they choose a representative from their organization.

532. Q. Craft organizations? A. Yes, each craft makes its own representative on Division No. 4 committee.

533. Q. And that committee negotiates for all Division No. 4? A. Yes. 20

534. Q. Does that committee negotiate for men employed on the railways who are not members of organizations or crafts not in affiliation with Division No. 4?

A. No, we don't consider those men when we are negotiating.

535. Q. Have you any authority, instructions or power from employees of railways who are not members of this division to negotiate for them? A. We have not considered them.

536. Q. Have you ever been asked to represent them?

A. No. 30

537. Q. Do you know of an organization in Canada known as the One Big Union? A. Yes, I have heard of it.

538. Q. You are not a member of it? A. No.

539. Q. Is the One Big Union affiliated with Division No. 4 of the Railway Employees' Department, American Federation of Labor? A. No.

540. Q. Has it ever been? A. No.

541. Q. Has it ever applied for affiliation?

A. No.

10 542. Q. Has the One Big Union ever asked Division No. 4 to represent its members in negotiating with the railway companies or in representations to the railway companies? A. No.

543. Q. What has been the attitude of the One Big Union towards Division No. 4 in respect to negotiating matters of wages, seniority, hours of labor and other matters arising between employer and employee?

A. Antagonistic to Division No. 4.

544. Q. What do you mean by 'antagonistic to Division No. 4'? A. There is a campaign of propaganda among the mem-
20 bers trying to discredit Division No. 4 and the committee when negotiations are going on.

545. Q. Has the One Big Union assisted Division No. 4 of the Railway Employees' Department, American Federation of Labor, in negotiating matters of wages with the railway companies? A. No.

546. Q. Has the One Big Union ever agreed to be bound by the completed negotiations made between Division No. 4 and the railway companies of Canada? A. No.

547. Q. What has it done in respect to such completed ne-
30 gotiations? A. It has written letters to the railway associa-
tion and the railroads saying they would not be—

MR. McMURRAY: I object. The witness must pro-

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duce the documents. He cannot give the contents of a document
by a verbal statement.

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MR. LAIRD: Yes, this would come under cross-examination.

548. Q. Do you know anything of the Winnipeg Central Labor Council of the One Big Union? A. No.

549. Q. Do you know a committee known as the shop employees' committee? A. Of what?

550. Q. Of the One Big Union? A. No.

551. Q. Do you know a committee known as the shop committee of Western Lines of the Canadian National Railways?

A. No.

552. Q. If you, Division No. 4, had received any assistance or help from the Western Shop Employees' Committee of the One Big Union in respect to negotiating terms of wages, hours of labor and matters of that kind you certainly would know of it, would you? A. Yes.

553. Q. And has Division No. 4 received any help?

A. No.

554. Q. Had Division No. 4 received any authority or request from said committee to represent it or its members?

A. No.

555. Q. Can you tell me whether Division No. 4 of the Railway Employees' Department, American Federation of Labor, or the department or the federation is registered under the Trades Union Act of Canada? A. No, it is not registered.

556. Q. Neither one is registered? A. No.

557. Q. There are the three things I have mentioned, first Division No. 4, then the Railway Employees' Department and then the federation? A. Neither one is so registered, no. 30

558. Q. Is any organization of machinists affiliated with or does it form part of Division No. 4?

A. The International Association of Machinists is.

559. Q. Is there any other union or organization of machinists affiliated with Division No. 4? A. No.

560. Q. Has there been since 1918? A. No.

561. Q. Then since 1918 the International Association of Machinists has been affiliated with Division No. 4?

A. Yes.

562. Q. That, I take it from its title, is a union of machinists both in the United States and Canada? A. Yes.

10 563. Q. Are you a member of that organization?

A. Yes.

564. Q. How long have you been a member?

A. Twenty-seven years.

565. Q. You were a machinist before you undertook your executive duties in Division No. 4? A. Yes.

566. Q. Then, all the members of the International Association of Machinists become affiliated members of Division No. 4, do they? A. Yes, all of them; that is, those employed on the railroads.

20 567. Q. No. 4 is a railway organization? A. Yes.

568. Q. There are associations of machinists not employed on the railroads? A. Yes.

569. Q. Does Division No. 4 or the Department of Railway Employees or the American Federation of Labor issue a card or ticket of membership to any machinist, or, who issues it?

A. The International Association of Machinists, or the craft organization, such as the Brotherhood of Boilermakers or the Brotherhood of Railway Carmen. Each craft organization issues tickets to members.

30 570. Q. By 'craft' you mean the particular kind of work they work in? A. As mechanics, yes.

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571. Q. Does Division No. 4 recognize any other association or union than the international ones you have mentioned?

A. No.

572. Q. Why not? A. They only recognize one crafts body.

573. Q. That is, it does not or it would not recognize two unions of machinists, is that it? A. That's it.

574. Q. Does Division No. 4 act for or represent in negotiating matters with any railway company in Canada any employee, who is not a member of an affiliated organization? 10

MR. McMURRAY: I object to that. The contracts must speak for themselves. That is, the position my learned friend took.

MR. LAIRD:

575. Q. In negotiating agreements or schedules with railway companies or with railway companies' representatives does Division No. 4 receive any authority or power from employees who are not members of affiliated organizations? A. No.

576. Q. Has it since your connection with Division No. 4?

A. No. 20

577. Q. And the authority of Division No. 4 to represent employees who are affiliated is found where?

A. In the craft itself. They appoint their representatives.

578. Q. On what? A. On the executive board of Division No. 4 part of which is the negotiating committee.

579. Q. And that is provided for in the Constitution of Division No. 4? A. Yes.

580. Q. In referring to crafts in your evidence many times: what do you mean by 'crafts'? 30

A. When we refer to 'crafts' we refer to the Interna-

tional Association of Machinists, the Brotherhood of Boilermakers, the Brotherhood of Railway Carmen and other organizations which are affiliated: We refer to them as the crafts.

581. Q. That is, organizations affiliated with Division No. 4? A. Yes.

582. Q. I notice in the constitution of the Railway Employees' Department, which is an exhibit here, that next to the inside of the cover it gives a list of affiliated organizations. Look at exhibit No. 9. On page 2 there is a list of affiliated organizations.
10 Are those organizations listed there all affiliated with Division No. 4?

A. There are two there which are not, or three: the United Brotherhood of Maintenance of Waymen, the International Brotherhood of Firemen and Oilers and the Switchmen's Union are not now affiliated.

583. Q. They were affiliated in 1922? A. They are affiliated with the Railway Employees' Department but not with Division No. 4.

584. Q. That is, in the United States they are affiliated?

20 A. Yes.

585. Q. Article 1 of Exhibit No. 1 speaks about machinists. They have a craft organization? A. Yes.

586. Q. Have the boilermakers a craft organization?

A. Yes.

587. Q. Have the blacksmiths a craft organization?

A. Yes.

588. Q. Have the Railway Carmen a craft organization?

A. Yes.

589. Q. Have the sheet metal workers a craft organization? A. Yes.

590. Q. The electrical workers: have they a craft organization? A. Yes.

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591. Q. And they are affiliated with Division No. 4?

A. Yes.

592. Q. And have been since 1918? A. Yes.

593. Q. Can you tell me approximately how many machinists employed by railways in Canada are in Division No. 4?

A. Approximately 4600?

594. Q. And Division No. 4 in negotiating with the railways represents those machinists? A. Yes.

595. Q. Since 1918 has there been much, if any, fluctuation in the numbers? A. More or less. 10

596. Q. In 1918 would it be less than 4600?

A. No, I guess it would be about that. But there have been fluctuations due to the dullness of trade and lay-offs.

597. Q. I have asked you as to the number of machinists in Division No. 4 and you have told me. There are also the carmen, the boilermakers and these various other craft organizations included in it? A. Yes.

598. Q. Can you tell me approximately the number of men who are members or affiliated with or affiliated members of Division No. 4? A. Carmen, between 8000 and 9000. 20

599. Q. Boilermakers? A. Boilermakers, about 1400.

600. Q. Blacksmiths? A. Between 700 and 800 blacksmiths; and then there are some other smaller crafts.

601. Q. Sheet Metal workers and Electrical workers?

A. Yes.

602. Q. They are smaller crafts of several hundred each I suppose? A. Yes.

603. Q. Now, Division No. 4, as I understand it, from your description, has members of affiliated craft organizations

throughout Canada extending from the Atlantic to the Pacific?

A. Yes.

604. Q. Wherever any railway Company is carrying on its work you negotiate for them? A. Yes.

605. Q. The negotiations in respect to wages, hours of labor and other matters take place between this committee of Division No. 4 and executive officers or some officers of the railway companies at Montreal? A. Yes.

606. Q. You have told my learned friend about the negotiations in respect to the agreement No. 4: certain individuals purporting to represent the railway companies met the Division No. 4 committee? A. Yes.

607. Q. And I suppose they talked over the various questions which were brought up? A. Yes.

608. Q. When they reach a unanimity what is done?

A. We adjourn and they will construct it rule by rule and have it typewritten.

609. Q. Who will? A. The Railway Association.

610. Q. The Railway Association will have the results typewritten? A. Yes, a copy of which will be submitted to us for our perusal, check up and correction; once the committee is satisfied that everything is all right they authorize the officers to sign and a copy is returned.

611. Q. Returned where? A. To the Railway Association, and the other signatures are attached.

612. Q. Look at exhibit No. 3 being wage agreement No. 4, from your description I gather you receive this typewritten document from some railway company official and go over it and then you and Mr. Tallon and Mr. McKenna sign it? A. Yes.

613. Q. Was exhibit No. 3 signed by Mr. Hall, and Mr. Neal at the same time it was signed by Mr. Tallon, Mr. McKenna and Mr. Dickie? A. No.

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614. Q. After, you, Division 4, had signed it you returned it to the Railway War Board? A. Yes.

615. Q. For signature? A. Yes.

616. Q. Does that apply to the supplements to Wage agreement No. 4 which have been put in here? A. Yes.

617. Q. The same procedure has been followed throughout that is, with regards to exhibits numbered 4, 5, 6, 7, and 8?

A. Yes.

618. Q. I want to ask you about the steps or the procedure in respect to any dispute between, for example, the machinists¹⁰ and the railway company by which they might be employed which might lead to a strike; for example, if the machinists in the Fort Rouge shops made some demand on the railway company and were prepared to insist on that demand to the point of a strike what would be the procedure? A. They would have to get the consent of Division No. 4 of the Railway Employees' Department before they could make any effort to secure conditions other than those existing under the existing wage agreement.

619. Q. That is, machinists who are affiliated with the craft organization must negotiate solely through Division No. 4? 20

A. Yes.

620. Q. And are they free in respect to quitting work for example without the consent of Division No. 4 in the way of a strike? A. No.

621. Q. Once a strike has taken place, and it would necessitate the approval of Division No. 4, could a machinist go back to work in the shop without the approval of Division No. 4? Do you follow me? A. No.

622. Q. Supposing a strike took place with the approval of Division No. 4 and the machinists were prepared to recede from³⁰ their position and go back to work could they do that without the approval of Division No. 4? A. If Division No. 4 sanctioned the strike they could not go back without its approval.

623. Q. And your evidence is they could not strike without the sanction of Division No. 4? A. Yes, that is my evidence.

624. Q. So a strike could not take place without Division No. 4 sanction and could not be terminated without their sanction? A. No.

625. Q. Have you the constitution of the American Federation of Labor? A. No, I have not.

826. Q. Can you identify this document I show you?

A. That is the constitution of the American Federation of Labor.

827. Q. Are you familiar with the constitution?

10 A. Fairly, yes.

828. Q. You have had it in your possession from time to time? A. Yes.

MR. McMURRAY: Is it a compared document?

MR. LAIRD:

629. Q. They are adopted at a convention?

A. Yes.

630. Q. They are then put in printed form? A. Yes.

631. Q. There is no original signed constitution?

A. No.

20 632. Q. And it is the result of various conventions?

A. Yes.

633. Q. Were you at the convention held at Los Angeles in 1927? A. No.

Constitution of the American Federation of Labor adopted October 1927 is produced by defendants counsel and marked as exhibit No. 14." (Constitution of the American Federation of Labor adopted October, 1927, referred to, produced and marked **Exhibit 34.**)

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“634. Q. Supplement “B” of agreement No. 4 is exhibit No. 5, Mr. Dickie, which as you see bears date May 22, 1922?”

A. Yes.

635. Q. Then the next agreement put in here is the one of December 8, 1922, exhibit No. 6? A. Yes.

636. Q. And exhibit No. 6 in rule 43 provides for a decrease in wages? A. Yes.

637. Q. That decrease in wages was agreed to by a committee representing whom? A. Employees, members of our craft unions.

10

MR. McMURRAY: The document will speak for itself.

MR. LAIRD:

638. Q. What has taken place between the execution of exhibits Nos. 5 and 6? A. There was a long period of negotiation with a conciliation board.

639. Q. Under the statute known as the Lemieux Act?

A. Yes.

640. Q. Was Division No. 4 represented on that board?

A. Yes.

20

641. Q. Were employees of railways who were not members of affiliated organizations represented on that board?

A. No.

642. Q. And I take it that the agreement of December 8, 1922, was confirmed as a result largely of members of that conciliation board appointed by Division No. 4?

A. Yes.

643. Q. Can you tell me, Mr. Dickie, from your experience in this executive office what is the procedure or what is done

when railways reduce their staffs or the number of employees at any point on a railway's system?

A. A meeting takes place between the committee of that point and the management.

644. Q. What committee? A. The shop committee, composed of representatives of each craft who are members of our organization a committee elected in lodge by the various members? The management gives them a list of the men to be laid off and they look it over and check it up and if it is satisfactory 10 they O.K. it, and the men are laid off after proper notice is given.

645. Q. From your knowledge and experience extending over a number of years you say that is the usual practice in the reduction of the staff? A. Yes.

646. Q. If the question arises where one man in the service of the railway company in a particular shop is senior in employment to another man in the same shop and in the same industry and the senior man is not a member of an organization affiliated with Division No. 4 what is the usual practice in respect to such senior employee?

20 MR. McMURRAY: I object to the question. It is true on cross-examination one can go quite far but there is a written agreement or contract here with Division No. 4 and these rules as to the reduction of staff and everything so far as Division No. 4 is concerned are binding on the witness, and provide how it can be done, unless he is giving evidence in breach of his own contract.

(It is ruled that the witness shall answer.)

A. Invariably the committee tries to protect the men who are members of the organization, and the men try to help 30 to retain the junior man who is a member of their organization, and the senior who is not a member they try to have him furloughed.

647. Q. Has that been the practice to your knowledge since you have been with Division No. 4?

A. Yes, so far I know it has. We invariably try to protect our membership.

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648. Q. By your membership you mean the craft organizations affiliated with Division No. 4?

A. Yes.

649. Q. In the case of the Machinists you tell us that that was usual? A. Yes.

650. Q. You have told me that you have been a member of that organization of machinists for 20 odd years?

A. Yes.

651. Q. Look at this and tell me can you identify this as the constitution of the International Association of Machinists? 10

A. That is the constitution.

652. Q. And you hold your card or ticket from this organization at the present time? A. Yes.

653. Q. And have had for several years. A. Yes.

Constitution of the International Association of Machinists is produced by defendant's counsel and marked as Exhibit No. 15."

(Constitution of the International Association of Machinists produced and marked **Exhibit 35**.)

"654. Q. I suppose it takes a good deal of money to run Division No. 4? A. Yes.

655. Q. Tallon gives it all his time? A. Yes.

656. Q. McKenna gives it all his time? A. Part time.

657. Q. You give all your time to it? A. Yes.

658. Q. And you have an office in Montreal? A. Yes.

659. Q. Any other office or employees? A. We pay the expenses of the negotiating committee.

660. Q. When they are in Montreal? A. Yes.

661. Q. From what source does Division No. 4 receive its funds? A. The per capita tax derived from the craft organizations affiliated with the division.

662. Q. That is each member of a craft organization affiliated with Division No. 4 contributes towards the maintenance of Division No. 4? A. Yes.

663. Q. Does Division No. 4 receive any fee from any individual member, as such? A. No.

664. Q. Its funds are collected from the craft organization affiliated with it? A. Yes.

665. Q. A certain percentage of the funds go to Division No. 4? A. That's correct.

666. Q. Does Division No. 4 receive any funds from employees of railway companies in Canada who are not members of affiliated organizations? A. No.

667. Q. None at all? A. No.

668. Q. As to the question of a strike, for example, among the machinists, who has the power, can you tell me, to declare a strike in any shop within the bounds of Division No. 4?

20 A. A vote is taken of the men themselves.

669. Q. A ballot is taken and the majority governs?

A. No, a two-thirds vote of the membership.

670. Q. And that is required to be taken before Division No. 4 will give its approval? A. Yes.

671. Q. As to the members of the International Association of Machinists who do not favor a strike: what happens then?

A. Officers?

672. Q. No, employees? A. There is no stoppage of work.

673. Q. I am speaking of the minority? A. The majority 30 governs.

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674. Q. Two-thirds govern? A. Yes, the minority has to go with them.

675. Q. If they don't drop their tools and go on strike they would lose standing in the organization? A. Yes.

676. Q. And they would lose their benefits as well as their membership? A. Yes.

677. Q. Can you tell me the policy of Division No. 4 with reference to one man doing the work of another employee in, for example, shops or car barns? That, for example, an employee who is qualified to work as a machinist or as a boilermaker, what is the policy of Division No. 4 in respect to his doing such work? ¹⁰

A. I don't understand the question.

678. Q. If a man is capable of doing the work of a machinist and also capable of doing the work of a boilermaker what is your policy in Division No. 4 in respect of his doing both kinds of work?

A. He has either got to be a machinist or a boilermaker. He cannot be both.

679. Q. He has got to join the association of Machinists or the Boilermakers affiliated with your organization?

MR. McMURRAY: He has not got to join. 20

A. He has to join to receive the benefits.

MR. LAIRD:

680. Q. Supposing a machinist, a member of the international association were prepared to work at less than the wages provided in the agreements negotiated by the negotiating committee, what would happen to him?

A. He would be expelled from his organization.

MR. McMURRAY:

681. Q. He could go on and work? A. He may.

MR. LAIRD: 30

682. Q. If the railway company would care to or agree to employ him? A. Naturally the committee would protest.

683. Q. It is the policy of Division No. 4 that all machinists be paid the same wage? A. Yes.

684. Q. Irrespective of their ability, skill or qualifications?

A. Yes.

685. Q. And the same applies to boilermakers?

A. Yes.

686. Q. And that applies throughout the whole of Canada 10 irrespective of the cost of living or other costs? A. Yes.

687. Q. That is the policy of Division No. 4? A. Yes.

688. Q. In the same way, if a machinist work more than 44 hours a week in the Fort Rouge shops he would be expelled from the Machinists? A. An overtime feature comes in there.

689. Q. He could work overtime within certain limits?

A. Yes.

690. Q. In negotiating these wage schedules No. 4 and the supplements does the negotiating committee of Division No. 4 confer with employees who do not belong to affiliated organiza- 20 tions? A. No.

691. Q. They don't get their views on any point at all?

A. No.

692. Q. Each craft has one representative on the negotiating committee? A. One or more.

693. Q. The committee is governed by the views of the members representing the crafts affiliated with the organization?

A. Yes.

694. Q. Have you ever heard or known of any representatives being appointed to the negotiating committee by employees

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who did not belong to affiliated organizations? A. No.

695. Q. You have in your testimony, I think, mentioned that some of these wage schedules, such as exhibits Nos. 3, 4, 5, 6 and 7, have been printed by your divisions, Mr. Dickie? A. Yes.

696. Q. And what do you do with these copies when you have them printed? A. Copies are supplied to the different locals who give the membership each a copy.

697. Q. That is, the local lodges throughout Canada?

A. Yes.

698. Q. You told my learned friend, I think, the particulars of the number of local lodges at each point, as to getting your funds? A. Yes, per capita.

699. Q. Do you furnish copies (printed) of these agreements to employees who are not members of affiliated organizations?

A. No, not knowingly.

700. Q. Have you ever done so? A. Not knowingly.

701. Q. My learned friend asked you about the local councils in the organization of Division No. 4?

A. The local council is a committee of one, two or three representatives from each craft or local union at that point and they meet together occasionally and discuss matters of general interest to the shopmen as a whole, and also discuss matters outside of craft affairs.

702. Q. You spoke of boilermakers and machinists forming part of Division No.: who are they?

A. The International Association of Machinists and the International Brotherhood of Boilermakers.

703. Q. Would they consist of or comprise any machinists or boilermakers not members of either of those organizations? 30

A. No.

704. Q. My learned friend asked you about the minutes of Division No. 4: those are the reports or a summary of the proceedings at the conventions which you as secretary would make?

A. Yes.

705. Q. In your absence who does the work?

A. There is an assistant there.

706. Q. Then these convention proceedings which my learned friend referred to as bearing your signature are not entirely the compilation by you? A. No.

10 707. Q. Do you attempt to write shorthand in taking the speeches? A. No.

708. Q. Does the man, in your absence, take them down in shorthand? A. No.

709. Q. Are they submitted to the members for their approval before they are printed? A. No.

710. Q. That is, if Mr. McKenna, for example, makes a speech at a convention you make some note of it and have it printed? A. Yes.

711. Q. And you don't submit the text of that to Mr. Mc-
20 Kenna for his approval? A. No.

712. Q. Are the resolutions written out? A. Yes.

713. Q. And they are handed to you? A. Yes."

MR. HAFFNER: The next question is 714,—

"Q. I wish to cross-examine on exhibit No. 13 without prejudice to my objection."

MR. BERGMAN: This was ruled out.

MR. LAIRD: You don't want that read.

MR. BERGMAN: No.

"714. Q. I wish to cross-examination on exhibit No. 13 with-

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out prejudice to my objection. Of course, the defendant railway company was not represented at this convention in 1926?"

THE COURT: Excluded.

"715. Q. It was composed of delegates from the various organizations with some visitors from the railway Employees' Department generally?"

THE COURT: Excluded.

"716. Q. I see embodied in this is a resolution on page 31 of the Schedule Committee to 'supersede all previous agreements.' What is your understanding of the position in that respect, Mr. 10 Dickie? When a new agreement has been negotiated what is the position as to earlier agreements?"

THE COURT: Excluded.

"717. Q. I think you told my learned friend that the purpose of that discussion and resolution was to bring about the closed shop?"

THE COURT: Excluded.

"718. Q: Division No. 4 was not prepared to go that far in 1926?"

THE COURT: Excluded.

20

"719. Q. Has Division No. 4 any agreement with the Canadian Northern Railway Company as to the wage it will pay machinists who are not members of affiliated organizations?"

MR. McMURRAY: I object. That is the question at issue.

MR. LAIRD:

720. Q. The Railway Company is free to employ a machinist or a boilermaker on any terms it sees fit to make with him provided he is not a member of the affiliated organizations?

A. We certainly would object.

30

721. Q. Because of the economic result it would have on your members? A. Yes.

722. Q. But there is no agreement which would prevent them doing that so far as your division is concerned?

A. No.

723. Q. Nothing was done as a result of the convention of 1926 in negotiating subsequent agreements? A. No.

724. Q. My learned friend asked you about seniority rights and you mentioned some things which you considered as seniority rights: are those all included in the schedules and exhibits filed here. A. Yes, promotion and so forth.

10 725. Q. They are all covered by agreements? A. Yes.

726. Q. And unless the agreements provide for seniority rights to employees whether they are members of unions affiliated crafts or not do you know of any other way in which seniority rights are provided for or granted to employees?

A. Not outside of our agreements, no.

727. Q. You told my learned friend that the application of seniority rights was left to a committee: What committee?

A. What we call the shop committee elected by the members to represent them.

20 728. Q. The shop committee at that point where the question arises? A. Yes.

729. Q. What company did you work for in Montreal as a machinist? A. The Canadian Pacific Railway Company."

MR. HAFFNER: The next questions 730 to 736 are read subject to our objection and subject to the rulings.

THE COURT: Yes.

30 "730. Q. My learned friend has put in exhibit No. 10, being two letters of Mr. Tallon's to the executive board. I wish to ask some question on them without prejudice to my objection. Where did Mr. McMurray obtain those letters?

A. I don't know. I would like to know.

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731. Q. Do you believe that they are the genuine signatures of Mr. Tallon? A. Yes.

732. Q. And they are letters addressed to your organization? A. Yes.

733. Q. Would exhibit No. 10 be sent to each member of the board? A. Yes.

734. Q. That is the method of doing business?

A. Yes.

735. Q. And your letter of April 17, 1919, to which it refers was to members of the War Board? A. Yes. 10

736. Q. That was sent by you to whom? A. To the executive board.

737. Q. You told my learned friend that Division No. 4 had got the non-member the money he is drawing today. In what way did Division No. 4 get the increased pay or the money for the non-members of the organization, Mr. Dickie?

A. In negotiating with the railways for the men they represent; any man being an employee of the company at the time would receive the increase our men would receive.

738. Q. It is the usual practice of the company to pay the 20 same wage to members and non-members?

A. Yes. There are times and places where we could not supply members, but at all times we tried to induce men to join our organization; we always look to them as prospective members.

739. Q. You generally attempt to supply men to the railway company for work required to be done?

A. They ask the local committee to supply them with men when they are short.

740. Q. The local committee may know of members who are not at work? A. We frequently send them from one point to another. If they are not working at one point they are sent to another. 30

741. Q. That is provided for in the schedules, is it not?

A. Yes."

(The Court adjourned at 5 p.m. May 17, 1928, to 10:30 a.m. May 18, 1928).

10:30 a.m. May 18, 1928.

MR. HAFFNER: Before my learned friend continues with his reading I have a list of the extracts of the convention proceedings that have been incorporated in the questions.

THE COURT: If you will give me the numbers of them I can deal with them when we deal with the resolutions themselves.

MR. HAFFNER: Questions 281, 295, 296, 298, 312, 313, 318, 339, 349, 359, 360 and 365. That may not be exhaustive, but I think they contain practically all these—

THE COURT: They contain parts at least of the resolutions.

MR. HAFFNER: Yes, my lord.

MR. McMURRAY: I will now continue to read the Re-Examination on page 129 at question 742.

"RE-EXAMINED BY MR. McMURRAY:

"742. Q. My learned friend asked you, Mr. Dickie, about the objects, aims and so on of your Division No. 4 and of the Railway Employees' Department. I suppose that is all set out in the constitutions of each?

A. Yes.

743. Q. That would be your answer? A. Yes.

MR. LAIRD: You have already examined on that.

MR. McMURRAY:

744. Q. Now, there is the other question: That is, who can call the men out on strike, when a strike vote would be taken, and taken as to wages, and so on. Now, I take it that your constitution is quite democratic in its organization? A. Yes.

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745. Q. And that your officials are appointed by the rank and file: is that right? A. Yes.

MR. LAIRD: I object. It is in the constitution, Mr. McMurray.

MR. McMURRAY:

746. Q. And the executive is voted for and the railroads are agreeable to work with you, are they? A. Yes.

747. Q. And before there can be a strike there must be an attempt at a conciliation under The Lemieux Act?

A. Yes.

10

748. Q. And some provisions have been made for collective bargaining?

MR. LAIRD: Objected to.

MR. McMURRAY:

749. Q. You stated you had some 4600 machinists. How many machinists are there altogether on the railroads in Canada? A. It is a big question.

750. Q. What percentage of the machinists are in your organization would you think? Twenty-five per cent?

A. In Canada.

20

751. Q. Yes, in Canada? A. Are you speaking of the railroads or Canadian?

752. Q. All the railroads in Canada: What percentage are there in your organization? A. Seventy-five per cent.

753. Q. You think you have got 75 per cent? A. Yes.

754. Q. How many would there be on the railroads if you have 4600? A. In Canada altogether less than 6000.

755. Q. And you have 4600? A. Yes.

756. Q. And I suppose the same proportion would hold among the other crafts to which my learned friend referred? 30

A. No, the carmen are 100 per cent belonging to us.

757 Q. And the boilermakers. A. Approximately 75 per cent.

758 Q. Mr. Lackland said that you only had a skeleton organization in the West? A. He is a Communist so you know the rest.

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MR. LAIRD:

759. Q. He is hostile to your organization?

A. Yes.

10 MR. McMURRAY:

760. Q. He was a member? A. Yes.

761. Q. Now, when the conciliation board met under The Lemieux Act you say representatives of Division No. 4 appeared before the board? A. Yes.

762. Q. And you represented there the rights of all the employees? A. Members of our organization.

763. Q. Who represented the others? A. No one.

764. Q. So there was a conciliation board on which large numbers were not represented at all?

20 A. Some were not represented.

765. Q. Men who had an interest at stake but had no representative before the board? Is that right? A.. Yes.

MR. LAIRD: No.

MR. McMURRAY:

766. Q. Who appeared before them on your behalf?

A. I, Mr. Tallon and Mr. McKenna.

767. Q. Where did this take place? A. In Montreal.

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768. Q. Are there minutes of those proceedings?

A. I guess in the Labor Department at Ottawa.

769. Q. When was that conciliation board held?

A. In 1922.

770. Q. In connection with trouble where?

A. Protesting against reduction in wages.

771. Q. So 25 per cent of the employees had no representation?

MR. LAIRD: He did not say that at all.

MR. McMURRAY: He says so now.

10

772. Q. You say 25 per cent had no representation?

A. No, but some were not represented.

773. Q. All outside of Division No. 4 were not represented?

A. Yes, that's right.

774. Q. Now, do you know what the rule is on the Canadian Pacific Railway as to seniority?

MR. LAIRD: I object to that.

MR. McMURRAY: You brought the fact that a committee interfered with seniority.

775. Q. What is the rule as to seniority on the Canadian²⁰ Pacific Railway? Does seniority on the Canadian Pacific Railway cover the seniority of Division No. 4 and all the other men and treat them all the same?

MR. LAIRD: We are not concerned with the Canadian Pacific Railway and I did not touch on it.

MR. McMURRAY: This contract is a contract made with the Railway Association of Canada and Division No. 4 and

that contract can only be altered and changed by the two negotiating parties and not by a single railway.

776. Q. Do you know how the Canadian Pacific Railway deals with the question of seniority?

A. No, I am a party to the wages negotiations but when it comes to the other agreements there are other committees for them now.

777. Q. Do you know? A. No.

778. Q. You say it is the policy of Division No. 4 that all 10 should be paid the same wages? A. Yes, that is the policy.

779. Q. And I presume it is the policy that all should be treated alike so far as working conditions?

A. We don't agree there. It is something he is not paying for.

780. Q. You say and maintain they should all be paid the same wage? A. Surely.

781. Q. Then you still hold I have no doubt that the working conditions under which men should work should be satisfactory to all? A. He gets all the benefit.

20 782. Q. It is part of your policy to see that he is treated well so far as working conditions are concerned?

A. Well,—

783. Q. You have to have proper ventilation?

A. Yes.

784. Q. Proper heat. A. Yes.

785. Q. And it is your policy to see that he is treated the same as you are as far as possible?

MR. LAIRD: I object.

MR. McMURRAY:

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786. Q. In what way would your policy be that he should be treated differently from you? A. He is enjoying privileges which other men are paying for.

787. Q. Would you take it from him? A. You cannot take ventilation away.

788. Q. It is the policy of Division No. 4 that he should be treated as well as if he were a member of Division No. 4?

A. You are trying to get me to say we legislate for those people.

789. Q. You say it is your policy to get the same wages? 10

A. Yes.

790. Q. Can you show me anything in your policy where they should not? A. Our policy is one for all and all for one. But those outlaws don't co-operate in that policy.

791. Q. Is it not a question of which is the tail of the animal? A. I think they are the tail.

792. Q. Let me get that again. We are talking about the policies of Division No. 4. Not legislating or contracting. Is not your policy (Division No. 4's) the same as the policy of The Railway Employees' Department as laid down in that constitution? 20

A. Yes.

793. Q. Identically the same? A. Yes.

794. Q. And that policy is for the welfare of the working-man? A. Broadly speaking, yes.

795. Q. And your policy would be that they should be paid the same wages? The same as you get?

A. Yes.

796. Q. That the conditions under which they work should be the same as yours? A. Yes.

797. Q. And you have here in your wage agreement No. 4 30

a provision as to apprentices, the number which may work with the men? A. Yes.

798. Q. The number of apprentices which may come in?

A. Yes.

799. Q. Whether they are members of your organization or not? A. Yes.

800. Q. And you have provisions there as to—?

MR. LAIRD: I object to this. It is not re-examination and it relates to a written document.

10 MR. McMURRAY:

801. Q. And you have a provision under the seniority rule that the oldest employees in point of service will be given preference in new jobs? A. Yes.

802. Q. And as to seniority rights whatever the provisions are for seniority rights so far as Division No. 4 is concerned it is set forth in wage agreement No. 6?

A. Yes.

803. Q. And they are bound by the provisions set forth in Wage Agreement No. 6?

20 MR. LAIRD: That is objected to as a question of law.

MR. McMURRAY:

804. Q. So far as Division No. 4 is concerned all your people are bound by your agreements?

MR. LAIRD: Objected to.

MR. McMURRAY:

805. Q. You don't repudiate your agreements?

A. You want me to say who has repudiated the committee which had made the agreement?

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806. Q. I am saying that so far as dealing with seniority rights are concerned or in the case of reduction of staffs the attitude which any Division No. 4 man or any committee of Division No. 4 men may take is governed by Wage Agreement No. 6?

A. So far as a non-member covered by that agreement is concerned the committee as a rule would not handle that for a man who is not a member of the organization.

807. Q. What I say is, so far as their attitude is concerned it must be governed by the contract which Division No. 4 has made?

10

MR. LAIRD: Objected to.

A. For its members.

MR. McMURRAY:

808. Q. For anybody. They are bound by the agreement No. 6, are they not?

MR. LAIRD: Objected to.

MR. McMURRAY:

809. Q. I don't care what you say?

MR. LAIRD: You have already gone into it. You cannot go into it again on re-examination.

20

MR. McMURRAY:

810. Q. Do you know if this wage agreement No. 6 and these other wage agreements were posted up throughout the shops for the benefit of all employees?

MR. LAIRD: Objected to as not being re-examination.

MR. McMURRAY: You asked about the printing and distributing of these wage agreements.

811. Q. Do you know if the railway company printed and posted up these contracts in the shops?

MR. LAIRD: I object to that. I did not ask about any 30

railway company. I object to it. It is not re-examination at all.

MR. McMURRAY:

812. Q. I am going on with the distribution?

MR. LAIRD: Objected to. Not re-examination.

813. Q. MR. McMURRAY: Was it posted up? (No answer).

813^{1/2}. Q. MR. McMURRAY: One more question in connection with the resolution set forth in the sixth convention.

MR. LAIRD: You have gone into those and that's the
10 end of it.

MR. McMURRAY: I am helping you.

MR. LAIRD: I would rather not have your help.

814. Q. MR. McMURRAY: Those resolutions were written. A. Yes.

815. Q. So that there is no question but that they are correct and as submitted to the convention?

MR. LAIRD: Objected to.

MR. McMURRAY:

816 Q. Those are the written resolutions handed to you?

20 A. Yes, the written resolutions.

MR. LAIRD: It is understood that this is de bene esse examination and that the evidence shall be used at the trial of the case, subject of course to my learned friend's objections and my own."

MR. LAIRD: The last three questions are objected to at the trial, Questions 814 to 816.

THE COURT: Still, I suppose, the resolutions are really printed and they are before us in some other way for considera-

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Evidence
Charles
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Evidence
De Bene
Esse

Re-
examination
(continued)

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 (continued).

tion. Of course, this answer does not identify anything. It is harmless. There is not much object in trying to eliminate it.

MR. LAIRD: I don't know if your lordship's ruling on the questions objected to showed those were answered subject to objection. I take your lordship's ruling to be that the objection stands and the answer is taken subject to objection.

THE COURT: I haven't decided on all the objections you made.

MR. LAIRD: There are a great many I confess, on reading this over. 10

THE COURT: I have reserved two or three specific questions which we will deal with before we dispose of it.

MR. McMURRAY: I think my learned friend has qualified as a conscientious objector at this trial. I now, my lord, tender the resolutions as shown in the Sixth Convention.

THE COURT: I will reserve that. I will deal with the resolutions in the book. I have excluded the book as a whole, but I will deal with the questions Mr. Haffner referred to. I will deal with them altogether. If you will state the pages on which they appear you might then put the record in for identification just so that I will have it. 20

MR. McMURRAY: I have here the one put in on the examination subject to Mr. Laird's objection, but I have an identical copy, and I have compared it without any marking on at all, and that possibly will be the better for your lordship.

THE COURT: Give me the pages, first the name.

MR. McMURRAY: "Division No. 4 Railway Employees' Department A. F. of L. Sixth Convention, held in Mount Royal Hotel and Public Assistance Hall, City of Montreal, P.Q., March 22nd to March 27th, 1926." 30

The first is resolution No. 88, set out at page 31.

The next resolution is resolution No. 84 set out at pages 33 and 34.

THE COURT: I see nothing on page 34.

MR. McMURRAY: I will go on with the discussion; I am putting that in too.

THE COURT: I am going to deal only with resolutions.

MR. McMURRAY: Well, the resolution is 84. The next one is resolution 44 on page 42. The next resolution is 107 on page 44. The next one is resolution 41 on page 58. Then there is a statement by Mr. Holly—

THE COURT: No, only the resolutions.

MR. McMURRAY: Those are all the resolutions.

10 (Resolution 88 on page 31, resolution 84 on page 33, resolution 44 on page 42, resolution 107 on page 44 and resolution 41 on page 58 referred to, produced and marked **Exhibit "P" for Identification**).

MR. McMURRAY: I will put in the commission evidence of Mr. Grant Hall.

(Commission Evidence of Grant Hall referred to produced and marked **Exhibit 36**).

"IN THE KING'S BENCH

WILLIAM YOUNG,

20

Plaintiff

and

CANADIAN NORTHERN RAILWAY COMPANY

Defendant.

APPEARANCES: Mr. Isidore Ballon, K.C., Commissioner; Mr. Lionel Sperber, for Plaintiff; Mr. E. F. Haffner, K.C., and Mr. G. M. Hair—representing Mr. R. H. M. Temple and The Canadian Northern Railway Company.

DEPOSITION OF GRANT HALL, A WITNESS PRODUCED ON BEHALF OF THE PLAINTIFF, ON THE COMMISSION.

30

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On this eleventh day of April, in the year of Our Lord One thousand nine hundred and twenty-eight, personally came and appeared,

GRANT HALL

of the City of Montreal, Vice-President of the Canadian Pacific Railway, a witness produced on behalf of the plaintiff, who being duly sworn by the Commissioner, doth depose and say as follows:

EXAMINED BY MR. LIONEL SPERBER, OF COUNSEL FOR PLAINTIFF:

Q. Mr. Hall, were you a member of the Canadian War Board? 10

A. Yes.

Q. During what period? A. I have just forgotten when the War Board ceased to exist as a war board and went into the Association. It was called the Association, but in November, 1919, I was chairman of the administrative committee of the War Board.

Q. Was it the intention of this War Board to make agreements between the various Canadian Railways and the employees of these railways? A. On request, yes.

Q. As a matter of fact, were agreements made? 20

A. Yes.

Q. What agreements were made? A. The only one that I have any familiarity with, is known as Wage Agreement No. 4, and also Wage Agreement No. 6 that I recall at the moment.

Q. Between whom was the Wage Agreement No. 4 made?

MR. HAFFNER: That will be a matter for the document to show. If Mr. Hall has a document he can produce it.

MR. SPERBER:

Q. Have you the original of this Wage Agreement No. 4 which you mention? A. I think so. 30

Q. Will you produce a copy of this original Wage Agreement No. 4 between the Canadian Railway Board and Division

No. 4, Railway Employees' Department, American Federation of Labor, in respect of rates of pay, work hours, and conditions of the service for employees, in the Locomotive and Car Departments of the following railways:

- Canadian National Railways.
- Canadian Pacific Railway.
- Dominion and Atlantic Railway.
- Esquimault & Nanaimo Railway.
- Grand Trunk Railway.
- 10 Halifax & South Western Railway.
- Kettle Valley Railway.
- Quebec Central Railway.
- Temiscamingue and Northern Ontario Ry.
- Winnipeg Joint Terminals, and
- Conditional as to application of increased rates of pay from August 1st, 1919.
- Toronto, Hamilton & Buffalo Railway.

MR. HAFFNER: I object to this question as irrelevant.

BY MR. SPERBER:

20 Q. Will you produce this as exhibit No. 1?

A. Yes.

Q. You are filing this, is that right? A. Yes.

Q. This is your signature, is it not? A. Yes.

Q. Did you see Mr. R. J. Tallon, President of the Railway Employees' Department, Division No. 4, American Federation of Labor, sign this? A. No, I would not say that I did.

Q. When did you sign this? A. In November, 1919.

Q. On what particular occasion? A. At the close of the understanding arrived at.

30 Q. Was that at a conference between yourself, Messrs. Tallon, McKenna, Dickie and Neal? A. No, the conference was held by special Committee, held by the railways.

Q. Were you on that committee? A. No.

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Q. Did you see Mr. Neal sign this? A. I think I did. I probably did.

Q. Did you see Mr. McKenna sign it? A. I would not say that definitely, I probably did.

Q. You saw Mr. Dickie sign it? A. I can only give the same answer to that.

Q. Were you all together in the same room when this was signed? A. To the best of my recollection, yes.

Q. In virtue of what authority did you sign this Wage Agreement No. 4? A. As Chairman of the Administrative Com-10 mittee of the War Board, authorized by the different railways.

Q. In virtue of what authority in writing did you sign that?

A. I do not think we had any.

Q. How was that position created for you?

A. It was created by the War Board. I cannot answer that question as to how the War Board was created.

Q. You were Chairman of the Board? A. I succeeded to the Chairmanship of the Board, but my answer would be that it was created by authority of the Government under the circumstances existing at that time. 20

Q. Did you receive notification from the government appointing you? A. No, I was elected by the then existing War Board.

Q. You were elected by the War Board? A. The existing War Board, yes, or appointed.

Q. You say you were elected? A. Either elected or appointed, I was appointed.

Q. Who were the members of the Canadian Railway War Board? A. At the moment I do not remember.

Q. Did you receive a letter notifying you of your appoint-30 ment as president of that Board? A. No, I do not think so.

Q. How did you know? A. At a meeting.

Q. A meeting of what? A. Of the representatives of the different railways forming this War Board.

Q. Who was secretary of that Board? A. At that time Mr. William Neal.

Q. Were you appointed as a result of that election, president? A. No, the former president retired. Our former chairman retired.

Q. And a vacancy being open a place had to be filled how?

10 A. By the election of the members.

Q. So that you were elected by the members?

A. Yes, I was selected by the members.

Q. In virtue of a resolution? A. I would think so,—a minute of the meeting, anyway.

Q. Do you know if Mr. Neal, the General Secretary of the War Board at the time you signed this agreement, has the minutes of the meeting at which you were elected?

A. I don't know, I could not answer that question.

20 Q. As a matter of fact, did the Canadian Pacific Railway appoint you as their representative to the War Board? A. The War Board, yes.

Q. In virtue of what authority? A. I do not quite understand the question.

Q. Was a meeting of directors held? A. Oh, no, I think by virtue of the position I occupied, I went on that Board.

Q. But there must be something in the minutes of the Directors Meeting of the C.P.R.? A. I do not think so.

30 Q. Showing the authority which the C.P.R. vested in you to represent them on that Board? A. Well, I am Vice-President of the Company. As such, I think I probably had a right to sit on the Board.

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Q. Do you mean to say that without any notice of the Directors at a meeting of the C.P.R. you automatically stepped into this Railway Board? A. I would probably receive my instructions from the President of the Company.

Q. Was a resolution of the Directors of the C.P.R. passed in order to place you in this position of representative of the C.P.R.?

A. I could not answer that.

Q. You were not at any meeting where your appointment for election as representative for the C.P.R. was made?

A. I have no recollection of it. 10

Q. The minutes of the Directors Meeting would disclose any such election if it did occur, would it not?

A. Yes.

Q. Just about when, Mr. Hall, was this appointment or election made? A. Some time in October, 1918—October or November, 1918, I think.

Q. What was the general nature of this Wage Agreement No. 4? Why was it entered into?

MR. HAFFNER: The document speaks for itself. The document is in evidence. 20

BY MR. SPERBER:

Q. Did this Wage Agreement No. 4, as far as your company is concerned, cover all the employees in the shops of your company?

MR. HAFFNER: I object. What is covered with regard to the Canadian Pacific Railway is not at all relevant with regard to the defendant in this action. My objection is that what he may testify to in regard to his own company is entirely irrelevant.

THE COMMISSIONER RESERVES THE OBJECTION FOR ADJUDICATION BY THE TRIAL JUDGE. 30

A. Well, I think I have a right to decline to answer that question. I have no particular objection to answering it, excepting I

am not giving interpretations of this clause affecting this particular case. If there is any case affecting the Canadian Pacific Railway, I will give you an interpretation, my interpretation at once. I do not wish to overstep my rights, but I am not interpreting this agreement generally.

Q. As President of this particular Board, how would you interpret this question: Did this wage agreement No. 4, as far as your company is concerned, cover all the employees in the shops of your company?"

10 MR. LAIRD: That question is objected to and the last one is too.

THE COURT: It is irrelevant as to how Mr. Hall interprets it.

MR. McMURRAY: I would argue in this way, that this is a contract.

THE COURT: Your question is, "How do you interpret it?" That is clearly a matter for the Court. Interpretation is for the Court, and that is certainly immaterial.

MR. McMURRAY: It is perfectly true, but I take the pre-
20 ceding question to mean how they did act upon it, "Q. Did this wage agreement No. 4, as far as your company is concerned, cover all the employees in the shops of your company?"

THE COURT: Now we have to interpret your question. You want us to put a different interpretation upon this. I will exclude that as immaterial.

"Q. That is, of the American Federation of Labor?"

A. Yes, when I say a gentleman's agreement, you understand what I mean.

Q. What do you mean by a gentleman's agreement?

30 A. What is commonly interpreted as such.

Q. Do you mean it can be broken at will?

A. No, there is a law governing that, the Lemieux Act. None of us can supersede that.

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Q. Do you mean that because the agreement was made with Division No. 4 of the Railway Employees' Department, American Federation of Labor, that all employees not belonging to this division No. 4 were to be treated differently?

A. No. I said for purposes of management we treated them all alike. We had no particular arrangement, but we did it.

Q. How would you describe purposes of management?

A. It might cause confusion in the shops if we treated one different from another. It probably would.

Q. Would management include the hiring and dismissal of 10 men? A. Oh, yes.

Q. Would management include the question of seniority rights of the employees? A. That would depend on the interpretation of the agreement. It is entirely set forth in the agreement how all grievances are to be adjusted. I would not go beyond that.

Q. Was it the intention of this Wage Agreement No. 4 to confer seniority rights on all employees of the various railways represented?

MR. HAFFNER: I object to this question as asking the 20 witness to interpret the document."

MR. LAIRD: I object to that.

THE COURT: Yes, I exclude that.

"BY MR. HAFFNER:

Q. Mr. Hall, had you read the agreement before you signed it? A. No.

BY MR. SPERBER:

Q. And do you say that you knew nothing whatsoever about this agreement? A. Oh yes, I knew something about it, but I did not know anything about the interpretation, or what was in 30 the mind of the two different parties, and for that purpose I take it that this was clearly set forth here how these grievances could

be handled, which would naturally include the one you referred to.

Q. In your capacity as Vice-President of the C.P.R., Mr. Hall, have you had charge, or have you been concerned with labor conditions in your railway? A. All my life.

Q. So that you are fully conversant with the question of seniority rights? A. Yes.

Q. Then you would be in a position to know fully what this question of seniority rights was, and what it deals with, as regards its inclusion in this Wage Agreement No. 4? A. In so far as the Canadian Pacific Railway is concerned.

Q. And you were not concerned with the other railways, and with the Railway Board as a Board? A. No.

Q. Even although you were President of that Board?

A. I was not concerned? How do you mean?

Q. You were only interested in so far as the Canadian Pacific Railway was concerned? A. In regard to the interpretation of the contract, or the agreement, whatever it is called.

Q. And you were not bothered at all about the question of seniority rights as regards the other railways?

A. Interpretation, no. I would like to keep that before you all the time. I am talking of the interpretation of this.

Q. So even though President of this Railway Board, you did not pay any attention at all to the question of the seniority rights as affecting any other railway but your own? A. No.

Q. What was the function of the President of this Board? What was he supposed to do?

A. He was supposed to preside at the meetings of the Board and give voice to their wishes on any matters.

Q. Take part in the deliberations? A. Yes.

Q. You are really an expert on labor matters, as far as Rail-

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ways are concerned? A. My natural modesty would prevent me from saying so.

Q. You said that your only interest in so far as seniority rights concerned the railway Board was in regard to the C.P.R.?

A. In the interpretation.

Q. On the application as well? A. Well yes, which means the interpretation.

Q. Will you tell us how the C.P.R. applied this question of seniority rights in virtue of this agreement?

MR. HAFFNER: That is the same question in another form.

MR. SPERBER: It may be in another form. It is asked for this reason, that Mr. Hall has told us that he only knew about this question of seniority rights as far as his railway is concerned."

MR. HAFFNER: I repeat that objection. What the C.P.R. did can have no application on what other railways should have done.

MR. McMURRAY: That is the point, my lord. That is the practical interpretation of this by an outstanding authority upon the subject.

THE COURT: Supposing he misinterpreted it, would that bind the other parties?

MR. McMURRAY: No.

THE COURT: I will exclude the second question on page 14 and the answer.

"BY MR. HAFFNER:

Q. That decides who has to interpret them?

A. Yes.

Q. Which clause do you refer to? A. I refer to our new clause 36, which is really the end of the series of clauses:

'Should the highest designated railroad official or his duly authorized representative, and corresponding representatives of the employees fail to agree, the case shall then be jointly submitted in writing to the Canadian Railway War Board and to Division No. 4, Railway Employees Department, American Federation of Labor for adjudication or official disposition.' That is the interpretation. It must have been in the minds then that there might be some disagreement. It is specially covered.

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BY MR. SPERBER:

10 Q. That does not quite answer my question, for the simple reason that if there was a disagreement, the highest designated railroad official would have had an opinion, or would have adopted a stand as regards such interpretation. Now, let us assume in regard to this question I have asked, that you were the highest designated railway official? A. On the Canadian Pacific Railway?

Q. Yes, how would you interpret that? A. For the Canadian Pacific?

Q. Yes. A. Well, I won't answer that question.

20 MR. SPERBER: I think that should be taken under reserve.

MR. HAFFNER: I object to it for the same reason.

OBJECTION RESERVED.

A. I am not giving evidence here for the Canadian Pacific Railway.

BY MR. SPERBER:

Q. If you were examined as a member of that Board and you represented that particular company, I think it is within our scope to ask you how your company, through your representation, treated this particular question?

30 MR. HAFFNER: I object, and I have another objection. Mr. Hall is not called here to interpret documents. He was called here to produce certain documents.

MR. SPERBER: And to be examined on these documents."

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MR. HAFFNER: The same objection here, my lord.

THE COURT: The answer takes care of it. "A. I don't know that I understand this question. I was not called upon to treat it at all.

BY MR. HAFFNER: That is you were never called upon to treat this particular question? A. No.

BY MR. SPERBER:

Q. Was not this question of seniority rights dealt with in this Wage Agreement No. 4? A. Yes,—well, I think so.

MR. HAFFNER: If it was, the document speaks for itself. 10

WITNESS: It is right here.

BY MR. SPERBER:

Q. When you came there as a representative of the C.P.R. to deal with all these questions, and as regards seniority rights, was it the intention of your company to include all the employees of your railway, and more particularly all the employees in the shops, in so far as this wage agreement No. 4 was concerned, under the privileges conferred by seniority rights?

SAME OBJECTION."

MR. HAFFNER: And the next question is also objected to. 20

THE COURT: The form of the question may be objectionable but the answer is quite relevant. That is the difficulty here. He limits his answer as to the practice.

MR. HAFFNER: Yes, but your lordship already ruled out what the C.P.R. did.

THE COURT: What about the second question and answer? That is involved in the first answer.

MR. HAFFNER: Yes.

THE COURT: All right, both go out. "Q. Would this answer refer as well to the adjustment of grievances? A. Oh, 30 yes."

MR. HAFFNER: That applies also.

MR. BERGMAN: That is not objected to on the examination.

MR. HAFFNER: Without the other answer it does not mean anything.

THE COURT: At the bottom of page 17 you ask a question based upon the answer given previously. That is only explaining the answer. We will have to exclude the answer at the top of page 18.

10 "Q. From your knowledge of the circumstances surrounding this wage agreement No. 4, and of the other members of this Railway Board, was it the intention of yourself, and all other members of this Railway Board, to have the seniority rights and the question of adjustment of grievances apply to all employees of the railroads in question? A. I cannot answer for any others but mine.

Q. Were you absent from the negotiations and conferences preceding the signing of this Wage Agreement No. 4, whenever the question of seniority rights and the adjustment of grievances
20 was discussed between the members of this Board? A. I was not present.

Q. At either one of the conferences? A. I was not present.

Q. There were minutes kept, of course, of all the meetings and conferences of the Railway Board preceding this Wage Agreement No. 4? A. I would think so, yes.

Q. Are you a member of the Railway Association of Canada? A. Yes.

Q. What position do you occupy? A. Chairman of the Operating Committee.

30 Q. Were you also Chairman of the Administrative Committee? A. The Administrative Committee on the War Board, yes, which was afterwards changed to the Railway Association of Canada. I am Chairman of the Operating Committee, split up into different committees.

Q. There was a Wage Agreement No. 6, entered into between

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the Railway Association of Canada, and Division No. 4, Railway Employees' Department, American Federation of Labor, governing rates of pay and rules of service for Locomotive and Car Departments, which you signed as Chairman of the Administrative Committee of the Railway Association of Canada?

MR. HAFFNER: If there was such an agreement signed by Mr. Hall it should be produced.

BY MR. SPERBER:

Q. Have you the original of this wage agreement No. 6?

A. No.

10

Q. Do you know of its existence?

A. I know there is such an agreement in existence, yes.

Q. Was there such a wage agreement No. 6, as I mentioned?

MR. HAFFNER? Do you mean a written agreement?

MR. SPERBER: A written agreement, yes.

WITNESS: I do not think so.

Q. Did you ever sign such an agreement?

A. I have no recollection of signing it.

Q. Did you ever sign any other wage agreements subsequently to this wage agreement No. 4 referred to above? 20

A. I cannot recall that. I cannot answer that. I don't remember. I don't think so.

Q. Did the Railway Association of Canada make any employer and employee agreements during the course of its existence? A. Oh, yes.

Q. When were such agreements made? A. Without reference to the books or records I could not say.

Q. Were there many of them? A. I could not say that.

Q. You do not recall whether there was one or two, or a dozen such agreements? A. No.

Q. Would the minutes of the Railway Association of Canada disclose any such agreements?

A. They might.

Q. Who is the secretary of the Railway Association of Canada now? A. Mr. Riddell.

Q. Has he been general secretary since the creation of the Railway Association of Canada? A. Well, no, not quite, but he succeeded the former one.

Q. Who was the former one? A. Mr. Wm. Neal.

Q. Pardon me for interrupting you, will you complete your answer? A. It was in 1920.

Q. Have you ever heard of this wage agreement No. 6?

A. I have a copy of it in front of me.

Q. Is this agreement effective on the Canadian Pacific Railway?

SAME OBJECTION.

Q. Would Mr. C. P. Riddell have full knowledge of all wage agreements entered into by the Railway Association of Canada?

A. The records should show that.

Q. He himself? A. No, not necessarily.

Q. Even though he has been secretary?

A. Even though he was secretary.

Q. Are there any other secretaries who would have knowledge of any agreements outside the scope of Mr. Riddell's work?

A. No.

Q. He is the only one who would have knowledge?

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A. He and his office assistants. Of course, there would be a Conference Committee, in any wage agreement or understanding.

Q. At which Mr. Riddell would be present?

A. He might or might not. It depends on the Chairman of that committee if he required his services.

Q. Have you attended most of the meetings of the Railway Association Board? A. I have attended a good many of them, yes. I would like to correct that and say the Operating Committee. 10

Q. Are you not chairman of the Administration Committee?

A. No, the operating committee of the Railway Association.

Q. Who is Chairman of the Administrative Committee?

A. We have not any Administrative Committee.

Q. Was there ever a chairman of the Administrative Committee? A. Yes, when it was the War Board.

Q. And that was yourself? A. Myself, latterly in 1918.

Q. So that there has never been a committee styled the Administrative Committee of the Railway Association of Canada?

A. No, I think it is known as the Executive Committee. 20

Q. Do you know who printed this wage agreement No. 4?

A. No.

Q. Who would have had charge of the printing of this wage agreement No. 4? A. Each Company represented I think would print its own.

Q. Did not the Canadian Railway War Board print these copies of the wage agreement No. 4? A. Well, as a matter of fact they did, but usually it is done by the railways themselves.

Q. Were they all supposed to be uniform? A. Yes.

Q. Mr. Hall, as one who knows railway labor conditions thoroughly, are you aware of the existence of the wage agreement No. 6 in your company, and in any other railway companies?

A. I am aware of the agreement with the C.P.R. that you have in your hand there.

Q. This is wage agreement No. 6? A. That document.

BY MR. HAFFNER:

Q. The printed document Mr. Sperber holds in his hand?

A. Well, that printed document.

10 BY MR. SPERBER:

Q. Will you produce this copy of wage agreement No. 6, as exhibit No. 2?

MR. HAFFNER: I object. Mr. Hall has said there is no such agreement signed.

MR. SPERBER: Mr. Hall has referred to this document I have in my hand, and I asked him to produce it.

MR. HAFFNER: And I also object to it on this ground, because any such agreement has no relevancy to this action.

OBJECTION RESERVED.

20 UNDER RESERVE OF OBJECTION WITNESS PRODUCES THIS DOCUMENT AS EXHIBIT NO. 2."

MR. HAFFNER: They have a rather peculiar system down there. They could not understand our system here. He is a Quebec practitioner, and asked the witness that he produce a document and make it exhibit 1. I did not imagine a witness could make a document an exhibit, but they seemed to think he did.

MR. McMURRAY: Was it filed at the time?

MR. HAFFNER: No, I think it was filed later on.

THE COURT: This document referred to as exhibit No. 2
30 was put in at that time?

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MR. McMURRAY: The record apparently shows it, but I think they were produced altogether later on. Possibly we had better leave it until later.

“BY MR. SPERBER:

Q. This exhibit No. 2 is a copy of the printed document in circulation in your railroad, is it not?

A. I think so.

BY MR. HAFFNER:

Q. You have not compared it? A. No, I have not compared it. 10

BY MR. SPERBER:

Q. Have you ever applied any of the provisions of this printed document exhibit No. 2, to any matters affecting the employees of the C.P.R.?

MR. HAFFNER: I object to this question as irrelevant, the C.P.R. not being a party to this action.

THE COMMISSION RESERVED THE OBJECTION.”

MR. HAFFNER: I object to that, my lord.

THE COURT: On page 25 the first question and its answer, and the second question and its answer are excluded, and the 20 third question down to the last line are excluded.

MR. BERGMAN: Mr. Haffner objected that we could not ask those questions, and then it asks it himself.

MR. HAFFNER: I asked it on the basis of the others being in.

MR. BERGMAN: I ask that be struck out.

THE COURT: We will take it out.

“BY MR. SPERBER:

Q. Now, Mr. Hall, as president of the Operating Committee

of the Railway Association of Canada, will you tell us what the position of railway employees in all the railways forming the Railway Association of Canada is, as regards seniority rights, and the adjustment of grievances? A. Only as set forth in the agreement.

Q. Which agreement? A. No. 4.

SAME OBJECTION.

BY MR. HAFFNER:

Q. If there is any such position, it is in a written document, 10 is it, Mr. Hall? A. Yes.

BY MR. SPERBER:

Q. What written document contains such dispositions?

A. No. 4 would be the one.

Q. Do you say that that is the only agreement which the Railway Association of Canada would take cognizance of in the event of any dispute between a railway and its employees, with regard to the seniority rights and the adjustment of grievances?

MR. HAFFNER: I object to this question as irrelevant.

OBJECTION RESERVED."

20 THE COURT: I exclude that question at the bottom of page 26 and the answer at the top of page 27.

MR. McMURRAY: And I suppose the same applies to the next question?

THE COURT: Yes, the second question and answer on page 27 are excluded.

"Q. Who would have authority to carry out any of the provisions? A. Each individual railroad.

Q. You say each individual railroad would be the only party who would carry out the provisions of this wage agreement No. 30 6 with regard to seniority rights and adjustment of grievances,

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referred to more particularly as rules 31 and 35 on this exhibit No. 2 and following?

A. Yes.

Q. And each railway composing the Railway Association of Canada would be bound to carry out any such provisions in accordance with their membership in the Railway Association of Canada, and the obligations resulting therefrom?

MR. HAFFNER: I object to this question as irrelevant.

OBJECTION RESERVED."

MR. McMURRAY: There is no objection to the prior question.

THE COURT: What position are we to take on questions put and answered without objection on the examination? Is counsel free to raise new objections here?

MR. McMURRAY: I wouldn't think so.

THE COURT: What reserve was made at the beginning?

MR. McMURRAY: No general reserve.

MR. HAFFNER: You will notice in each case there is a note of objection reserved, but there was a long discussion in each case. 20

THE COURT: But there is no objection here although it is a question of interpretation. I will exclude the first question on page 28.

"Q. Are not the individual railways composing the Railway Association of Canada, bound to do certain things, as regards agreements between employer and employee?

A. No, not by virtue of their membership.

Q. By what are they bound? A. Any special instructions—any special agreement they might give upon the handling of such matters. 30

Q. Who are they? A. The Railways themselves, the individual railroads.

Q. To come back to wage agreement No. 4, would you say then that each railway could, or would not at its own option carry out the provisions of that wage agreement No. 4?

A. If they were a party to the agreement they would carry it out.

SAME OBJECTION.

SAME RESERVE."

MR. McMURRAY: This comes before your lordship as an exhibit like any other exhibit.

10 MR. HAFFNER: What the people do down there cannot make certain things evidence that are not evidence. All the objections were not noted.

MR. BERGMAN: I have always understood on commission evidence you had to raise your objections unless there is a general reserve.

THE COURT: I suppose I have got to rule that way. Any thing may go in that is not objected to, and on the record here wherever the objection is raised I can deal with the question. If it is not raised I won't.

20 MR. HAFFNER: It is all summed up in the last question "to come back to wage agreement No. 4 . . ." I object to the question.

THE COURT: I haven't reached that.

MR. HAFFNER: That includes the previous one.

THE COURT: Then if it relates back we might go back. That last question on page 28 is irrelevant, and objection was made, and reserved, and I will strike it out.

"Q. They would be obliged to carry it out?

A. Oh, no, they have to agree to it.

30 Q. But in the case of wage agreement No. 4, they did agree, did they not? A. I could not say, I think so.

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Q. You think they did? A. Yes.

Q. And if they did agree, they had no other option but to carry out their agreement?

SAME OBJECTION.

SAME RESERVE."

THE COURT: That goes out.

"Q. Has it ever come to the attention of the Railway Association of Canada that any of the members of this Association have failed to carry out their agreement entered into in wage agreement No. 4? 10

MR. HAFFNER: I object to this question as irrelevant.

SAME RESERVE."

THE COURT: That question and answer will go out.

"Q. Were there any supplementary agreements to wage agreement No. 4 entered into between the Railway Association of Canada or the Canadian Railway War Board and Division No. 4, Railway Employees' Department of the American Federation of Labor?

A. I do not recall any at the moment.

BY MR. HAFFNER: 20

Q. Was there not a Supplement "A"? A. Yes.

Q. Supplement "B" and Supplement "C"?

A. That is right, "A," "B" and "C," and they were sort of consolidated. That is quite right.

BY MR. SPERBER:

Q. Have you those supplements? A. They are in the possession of the Association.

Q. I see here, Supplement "A" to Wage Agreement No. 4, which supplement is a supplementary agreement to wage agreement No. 4 entered into between the Railway Association of 30

Canada and Division No. 4, Railway Employees' Department, American Federation of Labor, signed by yourself, Messrs. R. T. Tallon, Frank McKenna, Charles Dickie and C. P. Riddell. Is this your signature to this agreement?

A. Yes.

Q. Did you sign this agreement of August 24th, 1920?

A. To the best of my belief I did.

Q. Did you sign this in the presence of the other gentlemen referred to in the last preceding question?

10 A. I do not recall that they were there.

Q. Did you sign this at a meeting of all the parties comprised in this agreement? A. I could not say that. I do not recall that.

Q. Did you actually preside as Chairman at a meeting where-in this agreement was entered into? A. No.

Q. How was this agreement entered into? A. With a sub-committee, Conference Committee appointed by the railroad.

Q. But you had full knowledge of all the matters in this agreement, had you not? A. I was told by the Chairman of the Conference Committee.

20 Q. Who was Chairman of the Conference Committee?

A. I think at that time Mr. R. A. Pyne, of Winnipeg.

Q. He is not mentioned here? A. Is he not? Apparently he was, if you will read those initials, I happen to know the initials.

Q. Did you see Mr. Riddell sign this agreement?

A. I don't recall that I did so, no.

Q. Did you see Mr. Tallon sign? A. I do not recall.

Q. Was not this agreement signed at a meeting where all of you were present? A. I could not answer whether they were
30 all there or not. It might be that each individual signed it. I could not tell. I have no recollection.

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Q. Who was in charge of this document when it required the signatures? A. Either Mr. Pyne or Mr. Coleman.

Q. Would Mr. Riddell be in charge of this as General Secretary. Would he not have had the custody of this agreement, and possibly have gone around getting the signatures? A. He might. After it was signed he would have the full custody.

Q. During the signatures, I refer to? A. Well, possibly he might, but the Chairman of the Conference Committee could also do it.

Q. What I want to get at is, who had possession of this document, and whose business was it to get the signatures to this document? A. It would be in charge of the two representatives until it was signed.

Q. Who were? A. For the Railways.

Q. Mr. Riddell? A. The Conference Committee of the Railway's Chairman at that particular time was either Mr. R. A. Pyne or Mr. James Coleman, I cannot tell you which.

Q. Where can these gentlemen be reached? A. R. A. Pyne is in Winnipeg, Mr. James Coleman is retired. I think he is in California. 20

Q. Has this Supplement "A," wage agreement No. 4, always been in force since the signing thereof? A. Yes.

Q. It has never been abrogated? A. To the best of my knowledge, yes.

BY MR. HAFFNER:

Q. Do you know of your own knowledge, whether it has been? A. No.

BY MR. SPERBER:

Q. Will you produce this supplement "A" to wage agreement No. 4 as exhibit 3? 30

MR. HAFFNER: I object to the production of this as an exhibit as irrelevant.

OBJECTION RESERVED.

A. Yes.

Q. Will you produce as exhibit No. 4, document described as supplement "B" to wage agreement No. 4, an agreement entered into at Montreal on May 22nd, 1922, between the Railway Association of Canada and Division No. 4, Railway Employees' Department, American Federation of Labor, which appears on its face to be signed by Messrs. Grant Hall, C. P. Riddell, R. J. Tallon, Frank McKenna, and Charles Dickie:

10 SAME OBJECTION AS IRRELEVANT.

OBJECTION RESERVED.

A. I will.

Q. Is this your signature in this exhibit No. 4?

A. Yes.

Q. Do you recall where you signed this? A. No.

Q. Was it signed at your office? A. Quite possibly.

Q. Or was it not signed at a meeting wherein all the signatories to this agreement were present? A. I do not recall that.

Q. Did Mr. Riddell sign this in your presence?

20 A. I cannot say, I don't know. I cannot recall it.

Q. Did Mr. Tallon sign it or Mr. McKenna?

A. The same answer.

Q. Did Mr. Dickie sign it? A. The same answer.

Q. Has this agreement No. 4 always been in force since its signing? A. There may have been some other changes that I am not aware of. As far as I know, yes.

Q. Has the Canadian Pacific Railway always applied the provisions of this exhibit No. 4, to all its employees?

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SAME OBJECTION AS IRRELEVANT.

SAME RESERVE."

THE COURT: That will be struck out.

"Q. You are in charge of labor matters in the Canadian Pacific Railway, are you not? A. Indirectly.

Q. What do you mean by indirectly? A. Well, I have several under me.

Q. But all matters of administration and interpretation of wage agreements would come under your direct supervision, would they not? A. Probably, as a final court, yes. 10

Q. Will you produce as exhibit No. 5, an agreement entered into at Montreal, December 8th, 1922, between the Railway Association of Canada and the Railway Employees' Department, Division No. 4, American Federation of Labor, styled as supplement "C" to wage agreement No. 4?

MR. HAFFNER: I object to this being filed as an exhibit.

OBJECTION RESERVED.

A. Yes.

BY MR. SPERBER:

Q. Is this your signature to this agreement, exhibit No. 5? 20

A. Yes.

Q. Did you see any of the other parties sign this agreement?

A. I do not recall that.

Q. Do you know who drafted this agreement?

A. No. It was agreed to between the Conference Committee and the representatives of the men.

Q. Did you take part in any of the conferences?

A. No.

Q. You understood, of course, that your signature to this agreement exhibit No. 5, and to exhibits 3 and 4, would have the effect of making them law, between all the parties to these last three agreements, is not that so?

SAME OBJECTION.

OBJECTION RESERVED."

THE COURT: That will be struck out.

"Q. They had given you the authority, had they not, to bind them by such an agreement?

10 SAME OBJECTION."

THE COURT: That will go out, and also the following question and answer by Mr. Haffner.

"BY MR. SPERBER:

Q. In virtue of what authority did you sign these last three exhibits 3, 4 and 5? A. The Conference Committee told me they had arrived at that agreement.

Q. How did they tell you? A. Verbally.

Q. And it was understood, once they told you that . . .

A. And presented the agreement, of course.

20 Q. And they presented the agreement, that you had the authority to bind all the members of the Railway Association of Canada to such an agreement?

SAME OBJECTION.

SAME RESERVE."

THE COURT: The last question on page 37 is involved in the question on page 38, and goes out with it.

MR. McMURRAY: My lord, the point seems to be here whether Grant Hall has been given authority by the Committee to bind the Railway Association of Canada.

30 MR. HAFFNER: And the question is, "And it was understood . . ."

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THE COURT: "Q. And they presented the agreement that you had the authority to bind all the members of the Railway Association of Canada to such an agreement." Then there is no such an agreement to such an authority. If agreement No. 4 is referred to, that is a matter of interpretation.

MR. McMURRAY: What that question really is at the bottom of the page was as to the agreement they made between them, not of a matter of his thinking. It was what was understood between you, not what you understood by it. I may say what was understood between the two of you. I am not asking 10 what he thought.

THE COURT: A question or two before that: "Q. In virtue of what authority did you sign these three exhibits? 3-4 and 5? A. The Conference Committee told me they had arrived at that agreement. Q. How did they tell you? A. Verbally. Q. And it was understood, once they told you that . . . A. And presented the agreement, of course. Q. And they presented the agreement, that you had the authority to bind all the mem- 20 bers of the Railway Association of Canada to such an agree- ment?" The agreement that you had the authority to bind—20 where was that? They presented the agreement, but the only agreement was this one they were dealing with, the document which will speak for itself. I exclude down to that. Then you say: "Q. Then, your answer is yes as regards all the parties to the agreement." What he is really stating to the witness is that this agreement binds all the railway companies, and that is a matter for interpretation.

MR. McMURRAY: I take it, my lord, with respect, that the question was, Had he authority in signing to bind all those who were members of the Association? However, I think very little 30 turns on the matter.

"Q. Who were the parties to this agreement?"

MR. HAFFNER: I object to this question as this appears from the agreement.

OBJECTION RESERVED."

THE COURT: That will go out.

"BY MR. SPERBER:

Q. I have reference to the description of the term, Railway Association of Canada. Who was the Railway Association of Canada? Who were the members of the Railway Association of Canada who are referred to directly or indirectly in exhibits 3, 4, and 5?

A. I do not recall that.

Q. But you know who the railways were that were members of the Railway Association? A. I don't know. I could not tell who the railways were who were parties to that agreement.

10 Q. Have any of the members of the Canadian Railway Board who entered into wage agreement No. 4 ever dropped out of membership either of the Canadian Railway War Board of the Railway Association of Canada?

A. I have no recollection of any of them.

Q. You say, therefore, that all the members composing the Canadian Railway War Board were also members of the Railway Association of Canada, and have always been the same, with no exception?

A. I could not answer that question. It is a matter of record.

20 BY MR. HAFFNER.

Q. You have not the records? A. I have not the records.

BY MR. SPERBER:

Q. I want an answer to that question. As a matter of fact, have any of the members of the Canadian Railway War Board or of the Railway Association of Canada ever dropped out of membership?

MR. HAFFNER: Mr. Hall has answered that by saying he does not know.

BY MR. SPERBER:

30 Q. Have you any means of supplying that information?

A. Yes, the records would show that.

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Q. Can you produce the record showing that?

A. Yes, I can produce records of the membership for each year.

Q. As a matter of fact, has the Canadian Northern Railway ever ceased to be a member, either of the Canadian Railway War Board or of the Railway Association of Canada since the signing of wage agreement No. 4, referred to above?

A. The record will have to show that. I do not think so.

Q. Do you know whether the Canadian Northern Railway has, or has not, ceased to be a member of either of those two 10 Boards? A. The Canadian National is a member now.

AND AT THIS POINT IT NOW BEING 12:45 p.m. THE FURTHER EXAMINATION OF THE WITNESS WAS ADJOURNED UNTIL 2.30 p.m."

THE COURT: Just there, this reads as if the War Board existed. I understood the War Board was superseded by the Association?

MR. McMURRAY: Yes, my lord, I think Mr. Hall suggests that.

"AND AT 2:30 p.m. PURSUANT TO ADJOURNMENT THE 20 PARTIES RECONVENED, AND THE EXAMINATION OF MR. HALL WAS CONTINUED AS FOLLOWS:

BY MR. SPERBER:

Q. Mr. Hall, these three exhibits supplements 3, 4, and 5, were they consolidated together with wage agreement No. 4, exhibit No. 1, into one wage agreement known as wage agreement No. 6? A. That document there is known as wage agreement 6, and those were, I think, consolidated, whatever you like to call it.

Q. As a matter of fact, do you, as president of the Railway 30 Association of Canada, know whether any definite step was taken by the Association to consolidate them into this wage agreement No. 6? A. No.

Q. How did this wage agreement known as wage agreement No. 6 come into existence? A. The only way I can understand it, it does not exist as an official document really, but this wage agreement No. 4 made, what you might call, that agreement No. 6. These supplements and wage agreement No. 4 were consolidated, or any expression you may like to use. That is as I understand it.

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Q. Will you explain why this booklet referred to as exhibit No. 6 and described as wage agreement No. 6, bears your name
10 as chairman of the Administrative Committee of the Railway Association of Canada?

A. I think that that must be a copy of the original agreement. That is the only way I can explain it. This is a copy of wage agreement No. 4.

BY MR. HAFFNER:

Q. That is what you think? A. Yes.

BY MR. SPERBER:

Q. Have you ever seen any similar copies to the one you have in your hands? A. Yes, I think so.

20 Q. Are they not used in your company?

MR. HAFFNER: I object to this question as not relevant to this action.

OBJECTION RESERVED.

A. I have not compared it with what I have handed you there. I would think so.

Q. Will you produce this document to which you have just referred as exhibit No. 6?

SAME OBJECTION.

SAME RESERVE.

30 A. I produce it as exhibit No. 6.

MR. HAFFNER: I also object to it on the ground that it

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has no relevancy to this action, and it was not produced by Mr. Hall.

OBJECTION RESERVED.

Q. Was there ever a wage agreement No. 5?

A. I do not recall it.

Q. Mr. Hall, will you produce the minutes of the directors meeting of the Canadian Pacific Railway Company whereby you were either elected or appointed to represent your company on the Canadian Railway War Board?

A. I have already said that I do not think there is such a 10 minute.

Q. You said there might be one? A. No, I did not.

MR. HAFFNER: I object to producing it, if there is such a minute.

I admit that Mr. Hall properly represented the Canadian Pacific Railway on the Canadian Railway War Board, and on the Railway Association of Canada, in virtue of power vested in him by his company, without admitting the question, has any relevancy to this action.

BY MR. SPERBER:

20

Q. Are you prepared to say that all the other members of the Canadian Railway War Board, and of the Railway Association of Canada were all properly legally authorized to represent their individual companies on these respective Boards? A. I do not know anything about the legal effect of it.

MR. HAFFNER: I object. This is plainly not a matter of Mr. Hall's knowledge.

OBJECTION RESERVED.

WITNESS (Continuing): I was only going to tell you my assumption. Whether they had any legal right or not, I don't know.

Q. Was there ever any question raised on either one of these

Boards as to the proper authority of any one of the representatives of the individual member companies of these Boards to so act?

A. I never heard of any.

Q. How was the Railway Association of Canada created?

A. I don't know that I can answer that question fully. I can give you an opinion, if that is worth something. Under the conditions existing, of course, during the war, it was deemed advisable that the railways should be brought together as closely as possible.

At the time that the War Board was formed, it was considered advisable during the time the war was existing, that the operation and management of the railroads should be brought together as much as possible. This is my presumption, and this creature technically known as the War Board was formed, composed of the different officials of the different railways, and sub-committees of each of the several departments. It was found fairly successful, and it was reincarnated or rejuvenated when the war was over in the form of the Railway Association.

20 Q. Do you recall the first meeting of the Railway Association of Canada? A. No.

Q. You were not present at the first meeting of the Railway Association? A. I was not. I think that probably I was there, but could not say definitely.

Q. Was it an incorporated association? A. No, not as I understand incorporation.

Q. You say it was a voluntary association of the various railways? A. Entirely so.

Q. Did it have a constitution? A. I do not think so.

30 Q. No by-laws at all? A. I never saw any.

Q. Do you think Mr. Riddell would know whether there is a constitution in the by-laws covering the Railway Association of Canada? A. I should think he would.

AND AT THIS POINT THE FURTHER EXAMINATION OF THE WITNESS WAS ADJOURNED UNTIL FRIDAY

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NEXT THE 13th DAY OF APRIL INSTANT AT 4 p.m.
 AND FURTHER FOR THE PRESENT DEPONENT
 SAITH NOT.

AND ON THIS THIRTEENTH DAY OF APRIL, in the year
 of Our Lord One thousand nine hundred and twenty-eight at 4
 p.m. pursuant to adjournment the parties reconvened and Mr.
 Grant Hall was recalled under the same oath, and continued his
 deposition as follows:

BY MR. L. PHILLIPS (Counsel for the Plaintiff):

Q. Mr. Hall, you filed on the first day of your examination¹⁰
 an exhibit known as wage agreement No. 4, as exhibit No. 1.
 Have you any objection to the filing of this agreement as part
 of the record of this commission, and as to our sending it back
 with the Commission to Winnipeg: that is what we would like
 you to do?

A. I would prefer to make a copy.

MR. PHILLIPS: The Commission calls for the filing of this
 agreement.

MR. HAFFNER: Pardon me, I do not think there is any-
 thing in the Commission showing the original has to be filed. 20

BY MR. PHILLIPS:

Q. We desire to file this agreement, Mr. Hall, as part of
 your deposition. Will you be good enough to do so?

A. Well, I can only answer and say, if I have to, I will,
 but I prefer to file a copy.

Q. The Commission states that you have to do so.

MR. HAFFNER: There is nothing in the Commission show-
 ing it has to be returned.

MR. PHILLIPS: We are examining the witness, and have
 asked him to produce all books, documents, letters, papers and³⁰
 writings that have to do with the matters at issue. Mr. Hall has
 exhibited this agreement Exhibit No. 1 and I now call upon him
 as a witness before this Commission to produce the agreement
 which he has exhibited, as part of the Commission in this case.

MR. HAFFNER: That is not my objection. My statement is that there is nothing in the Commission showing that the original has to be returned.

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MR. PHILLIPS: The Commission calls for the examination of the witness under oath in connection with the matters at issue, and as such, it would include the filing of whatever documents or exhibits that are incidental thereto.

BY MR. HAFFNER:

Q. If you have any good reason for stating why it cannot
10 be sent forward, just say so. A. I do not like to lose the record. That is the only reason I have. I would not like the Association to lose that record, which is the only one we have got.

MR. PHILLIPS: It is part of the Court records, and as such they are always available. I would suggest to the Commissioner that the statement of the witness that he does not desire to part with the document, is not a good cause within the meaning of the terms of the Commission, and I would ask that the original be filed.

MR. HAFFNER: I do not care whether the original goes
20 forward or not, but it is good cause with us, what Mr. Hall has stated. It is a document affecting many railways, not a party to these proceedings at all. I am quite willing that a copy should be taken instead of the original.

MR. PHILLIPS: I have already stated my ground, Mr. Commissioner.

THE COMMISSIONER: It seems to me the cause stated by the witness is not a good one. I do not think any serious prejudice would be caused by sending the original.

MR. HAFFNER: This case may go to the Privy Council,
30 and that would mean the Company would be deprived of this original, and the Association would be deprived of it for that time.

BY MR. HAFFNER:

Q. Is this document the company's document?

A. No.

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Q. It is not properly in your custody. It is in the custody of the Secretary, I suppose, and you got it for his action?

A. Yes.

MR. PHILLIPS: It is filed by the witness in virtue of the subpoena served on him, to produce all documents, and it is properly before the court. I don't care how the witness got it.

THE COMMISSIONER: I will have to ask you to file it, Mr. Hall.

(Agreement No. 4 is now filed as exhibit No. 1.)"

MR. McMURRAY: My learned friend calls my attention to 10 page 50 where agreement No. 4 is filed as exhibit 1. We should either file it here or have some note on the record that it is a duplicate of the document already filed. It is a duplicate of exhibit 19 on the trial.

THE COURT: There wouldn't be much question, it is so closely identified throughout.

"BY MR. PHILLIPS:

Q. I ask you to produce the original of the agreement between the Railway Association of Canada, which is termed a supplement to Wage agreement No. 4, as exhibit No. 2? I also ask 20 you to produce the originals of exhibits 3, 4, and 5?

MR. HAFFNER: They are already produced.

MR. PHILLIPS: I presume the originals are now properly part of the record for the reasons covered by exhibit No. 1?

MR. HAFFNER: Any objection made to the original production stands today.

BY MR. McPHILLIPS:

Q. Mr. Hall, are you familiar with the agreement that was entered into on the second day of September, 1918, between the Canadian Railway War Board and the Railway Employees' Department, Division No. 4, American Federation of Labor?

A. Yes.

Q. I presume that that was the agreement that was in force between the railways affecting all employees previous to the wage agreement No. 4 having come into force? A. I think so.

Q. I suppose that the agreement presently in force, which as I understand it, is the original wage agreement No. 4, modified by the supplements referred to and filed, are the agreements that bind and determine the relationship between the railways covered by the agreement and all its employees?

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MR. HAFFNER: I object to this as leading.

10 OBJECTION RESERVED.

A. No.

MR. HAFFNER: I submit, Mr. Commissioner, that is a question that is most leading and should not be permitted, and I also object to it on another ground, that it is a question of law.

OBJECTION RESERVED.

A. I said no. The preamble indicates who this agreement is with.

BY MR. PHILLIPS:

Q. I understand that the agreement in question, would, of course, be binding merely on those railways referred to in the preamble: A. And also the men.

Q. Will you be good enough to refer to the agreement in question, and indicate to me where reference to the men who are bound by this agreement? A. Right in the first paragraph, the first or second paragraph.

MR. HAFFNER: What document are you referring to now?

MR. PHILLIPS: Exhibit No. 1.

BY MR. PHILLIPS:

Q. Do you state that the agreement as such is only binding on the railways indicated therein, and the employees of the American Federation of Labor?

SAME OBJECTION.

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SAME RESERVE."

MR. HAFFNER: I think that is very objectionable.

THE COURT: That is excluded.

"Q. As a matter of fact, is there any other agreement between the railways referred to in this agreement and its employees, determining terms and conditions of labor?

A. With that special class of employees, not that I am aware of.

Q. And by special class of employees, do you mean the employees in the locomotive and car department of the railways? 10

A. It is specified there.

Q. By "specified" you mean the employees in the locomotive and car department of the railway?

A. Division No. 4, Railway Department.

Q. You do not answer my question. I want to know whether there is any other agreement between the railways, covered by exhibit No. 1 and the employees in the Locomotive & Car Department? A. I do not recall.

Q. Other than the exhibits already filed?

A. I do not recall it.

20

Q. You do not recall it? A. No.

Q. Do you actually know, Mr. Hall, if there are any other agreements? A. I have no knowledge of any other.

Q. In practice therefore, I presume that all the employees of the railways covered by those agreements, are dealt with in accordance with the provisions of the said agreement?

MR. HAFFNER: I object to this question as leading and as not clear.

OBJECTION RESERVED.

A. I cannot answer for any railway. Who do you refer to particularly?

BY MR. PHILLIPS:

Q. If you cannot answer for any railway in particular, we will deal with the railway of which you are Vice-President?

A. I will answer for that railway particularly.

Q. Will you be good enough to answer for your own railway, Mr. Hall?

MR. HAFFNER: I object to any answer as to what the
10 C.P.R. does. It is Mr. Hall's own railway, and it has no relevancy in this action.

OBJECTION RESERVED."

THE COURT: The first two questions and answers on page 55 are excluded, and also the last question on page 55 and the discussion on page 56, and the last question and answer on page 56 are excluded.

"Q. I am not asking you for an interpretation. I am merely asking you a question. I am asking you whether there is any agreement other than agreement No. 4, which covers the relationship between the Canadian Pacific Railway and all your employees in the Locomotive and Car Department?
20

SAME OBJECTION.

OBJECTION RESERVED."

THE COURT: The question and answer goes out.

"Q. That is to say, the supplements already filed, together with the originals, would determine the relationship?"

MR. HAFFNER: Objected to.

THE COURT: Yes, the second question on page 57 will go out.

30 MR. McMURRAY: That is not objected to.

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THE COURT: It means nothing if it is not attached to the other. I will strike it out.

“Q. The original agreement as I gather, was wage agreement No. 4? A. That was away back with the supplement wage agreement No. 6 and amendment.

Q. Wage agreement No. 4 with the supplements in effect constitute wage agreement No. 6? A. Not altogether.

Q. With amendments? A. With amendments.

Q. The amendments, therefore, are the amendments covered by the supplements filed? A. I could not answer that, I don't know.

Q. Were there any other agreements entered into other than the supplements which you have filed? A. Not that I remember of. I do not recall it now.

Q. Now, Mr. Hall, you signed wage agreement No. 4 on behalf of the different railways covered in paragraph 2 of the agreement. Amongst the said railways, we find the Canadian National Railways. I presume that the Canadian National Railways were represented on the Board which appointed you as the duly authorized person to sign this agreement? 20

MR. HAFFNER: I object to this question on the ground that it is a misstatement of facts. Mr. Hall does not purport to sign the agreement in question that is filed, on behalf of any railway. He signs it on behalf of the Railway Association of Canada and on behalf of the Railway War Board.

BY MR. PHILLIPS:

Q. The Railway Association of Canada or the War Board on behalf of which you signed these agreements, had within its membership the Canadian National Railways?

A. Yes, I think so. 30

Q. You know so, do you not? A. Well, yes. They can retire?

Q. You know that they were a member of the Association or of the War Board? A. Yes.

Q. You speak of amendments other than those covered by the exhibits filed. Have you access to these amendments?

A. Through the Association, yes.

Q. Who is in possession of this data?

A. Mr. Riddell, the secretary has any record that might exist."

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"CROSS EXAMINED BY MR. E. F. HAFFNER, K.C., OF
COUNSEL FOR DEFENDANT:

Q. Mr. Hall, speaking of this wage agreement No. 4, exhibit
10 1, you were asked if the Canadian Pacific Railway applied it to
all its employees, and you said as a matter of shop management
you did."

MR. HAFFNER: Those first questions were asked on the basis of the answers which your lordship has struck out being in so I don't think they are of much importance.

MR. BERGMAN: I think they should be read.

MR. McMURRAY: There was no objection taken to them.

THE COURT: The tail goes with the hide. If they were based upon questions struck out they must follow.

20 MR. HAFFNER: I think all on page 60 should be excluded.

THE COURT: Yes.

MR. HAFFNER: And the first question on the next page.
"Q. Have you any knowledge as to what agreements the Canadian Northern Railway had with regard to its shop employees? A. No.

Q. You know the Railway Association entered into this agreement with employees Division No. 4?

A. That is all I know about it.

Q. And you do not know but what the Canadian Northern
30 Railway may have entered into other agreements?

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(continued).

A. No.

Q. And you do not know but every individual employee may have been susceptible to that? A. They may have been.

Q. It is not within your knowledge what agreement the Canadian Northern Railway entered into?

A. Absolutely not.

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RE-EXAMINED BY MR. L. PHILLIPS, OF COUNSEL FOR PLAINTIFF:

Q. Was not the purpose and intent of these agreements to establish uniform conditions between the railways concerned and the employees?

MR. HAFFNER: I object to this as this question has already been asked, and it is not a matter of re-examination. It is a matter of interpreting the agreement, asking the witness what his intention was.

OBJECTION RESERVED."

MR. HAFFNER: I renew my objection to the first question.

THE COURT: That goes out, and all on page 62 goes out.

"MR. PHILLIPS: I was under the impression that the agreement, dated 2nd September, 1918, which I exhibited to the witness, had already been filed as part of the record. I find that it has not been filed, and I now ask that this agreement which I exhibited to the witness be filed as exhibit No. 7.

MR. HAFFNER: It is not a document. It does not purport to be signed.

MR. PHILLIPS: It has the value that the document has.

BY MR. PHILLIPS:

Q. The question, Mr. Hall, is whether you are familiar with that agreement that was entered into on September 2nd, 1918, representing the railways covered by the agreement, and Divi-30

sion No. 4 of the American Federation of Labor, Railway Employees' Department. Your answer to that question, as I gathered, was, yes?

Q. I think it was the other one.

MR. HAFFNER: I object. The examination is closed. I closed my cross-examination, and the re-examination was closed.

WITNESS: Mr. Commissioner, the other has my signature, of course, and I recognize the original that he has got, and I would recognize only copies, but that I never saw.

10 MR. PHILLIPS: There was a misunderstanding, Mr. Commissioner, and that is why I ask that this point be cleared up. I was under the impression that this agreement had already been filed, and I ask for authority from the Commissioner to ask the witness a few questions on this point, not traversing the territory already covered.

Mr. HAFFNER: I object. The examination is closed.

THE COMMISSIONER: I will allow it under reserve.

BY MR. PHILLIPS:

20 Q. Mr. Hall, did you not as chairman of the Administrative Committee of the Canadian Railway Board sign an agreement on the 23rd day of October, 1918?

MR. HAFFNER: I object. If Mr. Hall is asked the question the document should be shown to him.

MR. PHILLIPS: My answer to Mr. Haffner is, that the document is in the possession of the witness, and I want to get it.

WITNESS: I have already filed it.

MR. HAFFNER: The witness has not said any such document is in his possession.

BY MR. PHILLIPS:

30 Q. You have in your possession wage agreement No. 1, supplement "A," signed on October 25th, 1918?

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A. I do not recall.

Q. You have not that in your possession?

A. No, it is not in my possession.

Q. You have not got that agreement to which I refer, in your possession? A. No.

Q. Do you know where wage agreement No. 1 is, or in whose possession it might be? A. No, not unless it is in the possession of the Railway Association, known then as the Railway War Board.

Q. And the Secretary of the Railway War Board was Mr. 10 Neal? A. Mr. William Neal.

Q. And the successor to Mr. Neal is Mr. Riddell?

A. Yes.

AND FURTHER DEPONENT SAITH NOT.

Grant Hall,

Witness.

Isidore Ballon,

Commissioner.

E. W. Bush,

Clerk and Official Court Reporter." 20

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MR. HAFFNER: He shows on page 65 he has not the original agreement. It is only a copy.

THE COURT: Agreement No. 1 is already in.

MR. HAFFNER: So there was really nothing filed, my lord.

MR. McMURRAY: There is exhibit 2 on the evidence of Grant Hall, wage agreement No. 6. I think it is different from any of the other wage agreements No. 6 that we have had in, as it is the consolidated wage agreement No. 6 dated July 15, 1927.

MR. LAIRD: That is the one that was objected to in Mr. Tisdale's examination.

MR. HAFFNER: On Mr. Hall's examination he said there was never any such an agreement he signed.

THE COURT: Where do you find authority for putting that in?

MR. McMURRAY: Page 24.

THE COURT: That is only a copy.

MR. McMURRAY: We have an admission by my learned 10 friend. We have a letter from Mr. Laird reading as follows, which I am going to file as exhibit, to the plaintiff's solicitors.

THE COURT: Haven't we got all those documents in now?

MR. McMURRAY: There is only this difference, this is a consolidated re-issue of July 15. The other wage agreement No. 6 was an earlier date, 1922.

"9th February, 1928.

Young v. Canadian Northern Railway Company.

Dear Sirs:

Your letter of the 6th inst. with reference to Wage Schedules 20 4 and 6 received. We have considered your request, and for the purpose of the trial of this action only, we are prepared to admit that the printed copies of Wage Schedule No. 4 and Supplements A, B and C thereto, and Wage Schedule No. 6 and Supplements A and B thereto produced and marked upon the examination of Mr. Tisdale are true copies of the original documents of which they purport to be copies, and that the said original documents were signed by the persons by whom they purport to be signed and that such persons were respectively the officers of the Board or Associations which they purported to be. We contend 30 that the original documents, produced and proved, would not be admissible in evidence, and this letter and any admission in respect of these copies save and reserve all just exceptions to the admissibility of the originals or said copies as evidence in this action.

Yours truly

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK
per D.H.L."

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MR. LAIRD: I object to the filing of my letter. That letter was not satisfactory to my learned friend, and they moved and obtained a commission, they got the commission, and the letter was at an end.

MR. BERGMAN: There is no such reservation. I am filing the letter with the documents which have gone in for a certain evidential value.

MR. LAIRD: This admission was made when my learned friend was contemplating the trial, and asking for admissions to obviate the taking of this evidence under the commission in 10 Montreal, and that letter was not satisfactory to him, and then he moved and took the order of the Court, and got the commission.

MR. McMURRAY: Oh, no, there was no reservation.

MR. BERGMAN: I want this letter put in.

THE COURT: I do not like to file admissions if they are withdrawn.

MR. BERGMAN: They speak for themselves.

MR. McMURRAY: I never agreed with my learned friend that his admissions were withdrawn. 20

THE COURT: I suppose we might just apply it if necessary.

MR. BERGMAN: I want that on the files of the Court, that is all.

(Letter 9th February, 1928, from Munson Allan Company to McMurray & McMurray referred to, produced and marked Exhibit 37.)

MR. BERGMAN: Then I tender a further letter from the defendant's solicitors to the plaintiff's solicitors.

MR. LAIRD: You have my letter of February 11, 1928.

THE COURT: That goes in as part of Exhibit 37. 30

(Letter dated February 11, 1928, from Munson, Allan & Com-

pany to McMurray & McMurray, referred to, produced and marked as **part of Exhibit 37.**)

MR. McMURRAY: Then there are letters that I wrote to my learned friend that would be explanatory of that.

THE COURT: That will be pinned to the letter of February 9th.

MR. BERGMAN: There is a letter of March 19th that should be pinned to it, all related to the same matter.

THE COURT: All right, make them all one Exhibit, the 10 three letters.

(Letter dated March 19, 1928, from Munson Allan & Company to McMurray & McMurray, produced and marked as **part of Exhibit 37.**)

MR. BERGMAN: Then there is the letter that was read to your lordship in connection with the Thornton and Warren letter.

(Letter dated March 19, 1928, from Munson Allan & Company to McMurray & McMurray, referred to, produced and marked **Exhibit 38.**)

20 MR. BERGMAN: Then, my lord, we have filed as Exhibit "N" for Identification what purports to be a letter from Mr. C. P. Riddell, Secretary of the Railway Association of Canada to Mr. Young. Mr. Young said it came to him in reply to a letter addressed to the Association. It was objected to on the ground that Mr. Riddell's signature was not sufficiently proven. We now have in before your lordship some of these original wage agreements having the same signature, and I would ask your lordship by comparison of the signatures, and in the light of the evidence given—

30 THE COURT: Can you give some evidence on that point?

MR. BERGMAN: Oh, yes, your lordship has in evidence a document containing his admitted signature, and by comparison you can tell and that is all any of the witnesses here could do.

THE COURT: I could examine the documents and signa-

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tures, and so on, to decide when the evidence is once given to me.

MR. BERGMAN: But you have this, that Mr. Young wrote a letter to the Association and got this back, and this proves to be Mr. Riddell's signature. I formally tender it, if your lordship does not think it is sufficient.

MR. LAIRD: I will admit the signature. The question of its relevancy under the agreement is not admitted.

(Letter dated October 3, 1927, formerly exhibit "N" for Identification now produced and marked **Exhibit 39.**)

THE COURT: I will say, signature admitted by the defence.¹⁰

MR. LAIRD: It is long after the action was started, and not relevant.

MR. McMURRAY: Now there are those resolutions referred to, are they in as exhibits, my lord?

THE COURT: No, I reserved those. If I rule in your favor I will reserve to you the right to file them later.

MR. McMURRAY: That is the case for the plaintiff, my lord.

THE COURT: There was a mass of evidence that was reserved to be connected up, which I have no hesitation in saying²⁰ was not connected up, and was rather expressly excluded by the testimony of some of the witnesses, that is, wage agreement No. 1. That is, that and all that depends upon that is excluded.

MR. McMURRAY: I would like to present these observations to your lordship upon that point.

THE COURT: You are not offering further evidence.

MR. McMURRAY: No, my lord, but before your lordship rules I am going to argue that they are properly in and should not be excluded.

MR. LAIRD: You put them in distinctly on the undertaking³⁰ to connect them up.

THE COURT: They are there, and you have not connected them.

MR. McMURRAY: I am going to argue that we have connected them by our form of pleading.

THE COURT: But you have to connect them up by evidence. I would not have allowed them in if you had not said they would be connected up.

MR. McMURRAY: You are not striking them out of the record I understand.

10 THE COURT: They will be in the same position as though you had tendered them, and I refused to accept them. If I am wrong in that, and the higher court decides I am wrong, you will have the benefit of the evidence. You have put them in as exhibits, but I rule so far as this trial is concerned they have not been connected up, and the effect of that is that they here as a tender.

I exclude wage agreement No. 1, exhibit 4, and any evidence that is linked immediately with it. For instance, there was some evidence tending to prove signatures and posting. Agreement
20 No. 1 is exhibit No. 4, and schedule "A" is attached to it, so that agreement No. 1 and schedule "A" are together exhibit 4, and they are excluded.

Exhibit 5 is the Federated Metal Trades Agreement.

MR. LAIRD: That was on the same footing. That preceded No. 1.

THE COURT: Yes, that is excluded.

MR. LAIRD: Exhibit 6 was one of 1917 between Eager and Smith. May 30, 1917.

THE COURT: Exhibit 6 and extension agreement, that falls
30 too.

Then I have under reservation these resolutions and three or four letters from officials to Davy and Russell. The appointment of Russell was not put in.

MR. LAIRD: It was never put in as an exhibit or never proven.

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MR. McMURRAY: It is for identification.

THE COURT: You have made no attempt to prove that.

MR. McMURRAY: Not yet.

MR. LAIRD: Your lordship leaves the documents on the records of the Court, exhibits 4, 5, and 6, and under the rules exhibits marked as evidence have a certain effect, and when you go to appeal they will be in the evidence and the exhibits. I do not like them to be left marked even if they are excluded. I think they ought to be excluded and removed from the records of the Court. 10

THE COURT: That is what they are: Exhibits 4, 5, and 6 are excluded.

MR. LAIRD: Will they be handed back to me, those that were taken from my possession?

MR. BERGMAN: I don't think they should be handed out at this stage.

THE COURT: They are in the same position as though they were tendered as evidence and refused. I only allowed them in on the undertaking that I insisted on the logical proof being made before being allowed in. 20

MR. BERGMAN: But on the argument these questions are going to arise as to whether Nos. 4 and 6 apply to all the men or only to a number of men. If they apply to all the men we have no quarrel. I think they should be left here until the conclusion of the argument.

THE COURT: I think that might be easily arranged.

MR. LAIRD: They are out now and I am not going to argue on them. Supposing there is an appeal, and we have to use the evidence and exhibits, these are not in in this case, and they go to the Court of Appeal as exhibits. 30

THE COURT: I ruled they are to be stricken out so far as they are exhibits.

MR. LAIRD: I think the exhibit marks should be cancelled.

THE COURT: Yes. I do that at this stage because I think it will save some useless labor on the part of the defence in attempting to meet these documents.

MR. LAIRD: Is that all, Mr. McMurray?

MR. McMURRY: Yes.

MR. LAIRD: My lord, I ask your indulgence to consider the examination of Mr. Tisdale. There are some further questions I ask you to put in under rule 420.

The first question I ask your lordship to put in under rule 420
10 is question 87. The first two parts of the examination are numbered the same from 1 on, but in the part commencing on the 28th January, 1928, my learned friend put in questions 85 and 86, and I think 87 should go in. My learned friend had not completed his question in 86.

MR. BERGMAN: I do not think that is explanatory, my lord.

THE COURT: As a matter of fact, the answer in 87 is not an answer to the question 87 at all.

MR. LAIRD: I think it is an answer to 86 and 87 combined.

20 THE COURT: That is a voluntary statement by the witness. It is not an answer.

MR. LAIRD: It is what he said in answer to the question.

THE COURT: I will allow it in if it is not objected to.

MR. BERGMAN: It is objected to.

MR. LAIRD: In that connection before your lordship rules, would you turn over to question 822, where the same thing came up, and Mr. Tisdale really referred back. If your lordship looks at page 144, at the foot, he says: "A. Are you trying to lead me into some admission? 822. Q. No, I am taking you along
30 your own line for the purpose of convenience. All those rules would apply? A: Yes." So Mr. Tisdale really referred back there. My learned friend has put that in.

MR. BERGMAN: This is referring to rules.

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THE COURT: We will deal with that when we come to it, but this is not an answer. The witness has no right to do more than answer a question.

MR. LAIRD: It is not fair to the witness to exclude part of what he said.

THE COURT: I think it is immaterial because the plaintiff was allowed the going wage.

MR. LAIRD: Then look at question 108. My learned friend put in a group of questions ending 107.

MR. BERGMAN: We put in 108. 10

MR. LAIRD: I ask that 109 go in.

THE COURT: He gives the answer. Is that intelligible to the Court without anything more? I would say it is.

MR. BERGMAN: He puts the question in his own words at the end of 107.

MR. LAIRD: Nothing could be more explanatory, because counsel asks, "Why do you say yes?" Surely that answer to that question should go in.

THE COURT: But that has not been put in by the other side, "Why do you say yes?" 20

MR. LAIRD: Question 228 was put in, and 229 was not. I ask that 229 go in.

THE COURT: I do not need 229 to explain the answer of 226, 227 or 228.

MR. LAIRD: Very well, my lord, it seems to me it is not fair to the witness' testimony to admit one without the other.

THE COURT: As I understand it, it is not a question of being fair to the witness, it is a question of whether or not the answers are complete or intelligible, whether it is the only answer. When a whole answer is given, there is nothing more to add. If³⁰ you wish to bring out evidence, that is for you to do.

MR. LAIRD: As I understand the rule, the other side may

put in as explanatory any other part of the examination which is so connected with the part to be used that the last mentioned part ought not to be used without such explanatory part. That is the part I am asking your lordship to put in, which was so connected with the part my learned friend asked to be put in that in the words of the rule it ought not to be used without these additional answers. What is the test? The only test I think is is it a fair reading of the witness's testimony, of the whole meaning of his whole testimony? To pick out one question, when counsel can
10 come in and cut off his answer, and only put in part of his answer, seems to me unfair. The test is what is the witness's testimony and is it so connected with the part to be used that the last mentioned part ought not to be used without it. Those are the words "ought not to be used." What is the application here? What principle is the Court to go on? It ought not to be used if it does not fairly represent what the witness said on oath.

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THE COURT: You have the right to put in all the other portions. You don't want to do that.

MR. LAIRD: That is a matter for the defence. Not now,
20 if I put it now—

THE COURT: You don't want that, I take it?

MR. LAIRD: Just on that point, my lord, I don't recall your lordship ever ruling before me on that, but as I recall the practice of the Court it is that when the defendant puts in the balance of the examination he does it as part of his defence, not as part of the plaintiff's case.

THE COURT: Yes, he puts it in as his own evidence.

MR. LAIRD: So what I am doing now, I do not wish to be understood as undertaking or agreeing in any way not to put
30 it in.

THE COURT: It goes in now as part of the plaintiff's case.

MR. LAIRD: Under the rule, and I appreciate the difficulty of the application of the rule very fully, but the test that I see is that ought not to be used. Why? Because it does not fairly represent what the witness said, and I ask your lordship to look at the other questions.

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THE COURT: There is a difference between 229 and the previous one. There is a qualification to the answer to 228.

MR. LAIRD: That is what occurred to me.

THE COURT: Yes, I think probably I will admit that. I will admit 229.

"229. Q. And so far as you know on that ground alone, is that right? A. No, I wouldn't say on that ground alone."

MR. LAIRD: I refer to page 43 where my learned friend put in questions 272 and 273. I think that subject came up a few questions later on at questions 288, 289, 290 and 291. Would 10 your lordship look at those?

(The Court adjourned at 1 p.m. May 18, 1928, to 2.30 p.m. May 18, 1928.)

2.30 May 18, 1928.

MR. LAIRD: I was referring to the examination of Mr. Tisdale. I was asking your lordship to look at questions 288 to 291. I wish to put that in.

THE COURT: I thought that was on a point that we had ruled out. That is a consultation between the defendant and some other parties regarding the proposed dismissal of the plain-20 tiff is not evidence.

MR. LAIRD: Very well, my lord. A group was put in at questions 383 to 389, page 64 and 65. Would you please look at questions 390 to 392 as to the rates of wages, and how they were arrived at.

MR. BERGMAN: We simply asked as to the official rate.

THE COURT: What turns on that, Mr. Laird?

MR. LAIRD: I thought it followed there the other question, my lord. Then turn to question 493 on page 86, and I would like to put in the next question, 494. 30

MR. BERGMAN: That would not be evidence against us.

THE COURT: There is an implication that he had heard of it. Where is the explanation of it.

MR. LAIRD: 494.

THE COURT: That answer, "No, not directly," means I might know indirectly.

MR. McMURRAY: But the answer is no explanation of anything; that is common talk.

THE COURT: You propose 494?

MR. LAIRD: Yes, my lord, and 495.

10 THE COURT: Very well.

MR. BERGMAN: Should not 496 go in with the others?

THE COURT: Yes, perhaps so.

"494. Q. Were you ever informed by any official of the company of opposition to the B. & O. System, by the One Big Union, or the members thereof?

A. It was common talk they were opposed to it.

495. Q. Common talk. Who talked to you?

A. Oh, from time to time, various officials have mentioned it.

20 496. Q. Can you remember the name of one of them?

A. I don't know that I can at the moment."

MR. LAIRD: The top part of page 100 has gone in as question 575; I would like to put in 576. I think I have already tendered an earlier question on that, my lord.

THE COURT: You offer 576?

MR. LAIRD: Yes.

THE COURT: What about 577?

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MR. LAIRD: Yes, as a matter of fact my notes are 576, 577, 578 and 579.

THE COURT: Yes, they are altogether. Very well, admitted.

"576. Q. And that was the only reason why he was laid off; am I right? A. I have explained some other things about the plaintiff which contributed to the decision to lay him off.

577. Q. Then why was he laid off? I will let you answer it anyway you like? A. He was laid off primarily on account of reduction in force, and was selected because of his general character and the general character of his work.

578. Q. Those were the reasons why he was laid off?

A. Yes.

579. Q. And the only reasons? A. The only ones that I know of."

MR. LAIRD: Then turn to question 687 on page 118. He said to the best of his belief, and then I asked on what he based his belief. I think the answer to my question which is numbered under 687 should be put in in view of 686.

THE COURT: Very well.

20

"MR. LAIRD: You said to the best of your belief they declined. Have you any information that they declined?

WITNESS: No, I haven't any information."

MR. LAIRD: Then please turn to question 745. I would ask that questions 747 and 748 go in.

THE COURT: Yes, I think we will admit those.

"BY MR. LAIRD:

747. Q. That is, he is the highest official in that department? A. Yes.

748. Q. But he is not mentioned in the schedule at all? 30

A. No.”

MR. LAIRD: Then at question 878 on page 156 there are a group of questions put in, running over on page 157 and going down to 880. Then the answer to 881 is really an interpretation of the expression “officially” as used in 878.

THE COURT: 881 goes in then.

“881. Q. You used the expression “officially” a moment ago. What do you mean by that? A. I mean that neither the Committee, nor any member of it, went to Mr. Wedge to discuss this 10 matter.”

MR. LAIRD: Then referring to question 886, which is in. I am asking your lordship to please look at question 885. Question 886 reads, “Q. Have you any information of any personal activity by Young, apart from what you have told me?” And that part of the question “apart from what you told me” involves looking back to what he has already said in 885.

THE COURT: You will have to go back beyond that because 885 begins, “What is your answer to that?”

MR. LAIRD: Beginning at my question at page 157. This 20 was in connection with a number of matters Mr. Tisdale was asked to look up, and we had made a memorandum about it, and my learned friend had not, and I said, “You asked about the plaintiff’s activity in respect of the B & O Plan, so far as we were aware of it during his employment.” And I have that marked as having gone in. I didn’t put that in. Do you recall whether you put my statement in, Mr. Bergman?

MR. BERGMAN: Yes, the last three lines of 157.

THE COURT: Then I will put it in. And that is one of the parts you have to look up.

30 MR. LAIRD: Mr. McMurray puts the question, “What is your answer to that?” And then he says, “Have you any information apart from what you have told me?” So 886 necessarily involves 885.

THE COURT: Which in turn is based on your statement.

MR. LAIRD: The statement of matters we were to look up.

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That is, if 886 remains in I submit 885 should go in.

MR. BERGMAN: 885 does not relate to his personal activity at all. It is not responsive to the question. The examination was adjourned and certain information given to us, and then the answer is not responsive to the question.

THE COURT: Apart from what you have told me. That means in addition to 885, does it not?

MR. McMURRAY: 885 does not deal with his personal activity.

THE COURT: You say "apart from what you have told 10 me." 885 or some other question?

MR. McMURRAY: I presume it must be 885.

THE COURT: If it is that, I will allow 885 to go in.

"885. Q. What is your answer to that? A. I have already referred to the fact that we gained some knowledge of the attitude of the One Big Union towards the cooperative plan, through their printed bulletin; and it has since come to our knowledge that Mr. Young is a member of the One Big Union."

MR. LAIRD: Then there is a matter of punctuation. The reporter who took this is Mr. Hand of Minnedosa. Sometimes²⁰ a good deal depends upon punctuation. Question 821 on page 144 reads: "Q. Rules 1, 2, 3 and 4 and rule 7 would all apply in the same way? A. Are you trying to lead me into some admission?" "822. Q. No, I am taking you along your own line." Now, my lord, as I give you the question after the quotation "along your own line" there should be a stop, and then "For the purpose of convenience all those rules would apply? A. Yes." Because that was Mr. Tisdale's testimony as already pointed out to your lordship. "I am taking you along your own line." That was Mr. McMurray's statement. Then the question is, "For the purpose³⁰ of convenience all those rules would apply?"

THE COURT: What can I do. The reporters are supposed to be infallible, unless there is some other question or answer which would explain.

MR. LAIRD: I would ask your lordship to look at question 86 for that purpose at page 15. "86. Q. No contract was made

with any individual? A. No individual. 87. In these shops? A. But for convenience anybody who was employed in the shops would be allowed the going rate of pay." That is what Mr. Tisdale answered there, and Mr. McMurray used the words, "For the sake of convenience all those rules would apply." I would ask your lordship to put in question 87 and answer.

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THE COURT: As helping to explain 822?

MR. LAIRD: Yes, because I am satisfied there is a mistake in the punctuation. The words are probably down, but the first
10 punctuation makes it entirely different.

THE COURT: Referring to question 821, rules 1, 2, 3, 4 and 7 deal with wages, do they?

MR. LAIRD: No, those were general rules he picked out.

MR. McMURRAY: General rules that covered all men.

THE COURT: 87 deals only with wages or hours. He says in 87 for convenience anybody who was employed in the shops would be allowed the going rate of pay, and in 821 he refers to these rules and they do not apply to wages. There would be no connection.

20 MR. LAIRD: But the answer is, "But for convenience anybody who was employed in the shops would be allowed the going rate of pay." For convenience every man was allowed the going wage.

THE COURT: What has that got to do with 821, which does not deal with wages at all?

MR. LAIRD: But Mr. McMurray uses the same expression, "I am taking you along your own line." He is keeping away from the schedules religiously, and said, "For the purpose of convenience all those rules would apply." Mr. Tisdale said that the rules
30 would apply for the sake of convenience.

THE COURT: Yes, but the rule as to wages applies for convenience, and in 821 and 822 he is not referring to wage rules at all.

MR. HAFFNER: I have just spoken to Mr. Donovan, the court reporter, and he tells me that the reporter does not punc-

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tuates when he takes it down, but that is done afterwards as it is written out.

THE COURT: Yes, but how can I correct it?

MR. LAIRD: But that is a fact, that your lordship probably realizes from the nature of the observation?

THE COURT: I grant you, but the same suggestion might be made to any Court. I have no power here to correct it.

MR. LAIRD: You can't remove it, but you might consider it in reading it.

THE COURT: I can't cure it on the record. 10

MR. LAIRD: I tender question 87.

THE COURT: I don't think it applies.

MR. LAIRD: That is all, my lord.

THE COURT: Then the plaintiff's case is closed.

MR. McMURRAY: Yes, my lord.

D E F E N C E

MR. LAIRD: For the defendant I beg to move for a non-suit. I do not think that the plaintiff has made out a case. He has sued upon wage agreement 4 and wage agreement 6. As your lordship recalls the evidence wage agreement 4 was the only agreement signed, with several supplements made from time to time, which were reprinted for convenience in the pamphlet which was called agreement No. 6. That agreement was made between the Railway War Board and Division 4. There is complete unanimity of testimony that Division No. 4 did not represent the plaintiff. He says so himself, that he never gave them any authority, and never instructed them, and never authorized them. Not only does the plaintiff so testify, but the members of Division 4, namely, the vice-president who signed the agreement, and Mr. Dickie, the secretary, who signed the agreement, both of whom 20 not only signed it but negotiated it, and their evidence is unqualified that they had no authority from any body except their own men. Pardon me, I should not have referred to Mr. McKenna's 30

evidence. It was Mr. Dickie's evidence I should have referred to. Mr. McKenna's evidence is not before your lordship. That evidence is uncontradicted, and part of the plaintiff's case, and certainly Division No. 4 had no authority to contract for him in making the original agreement or in making the supplements.

At the time of the making of wage agreement No. 4 he was not in the company's service, and could not possibly be a party to that agreement. So that so far as any action based upon the agreement is concerned I submit it must fall.

10 There is no doubt the plaintiff worked for the defendant. Your lordship has heard the evidence of a verbal hiring at the going rate, namely, 72 cents an hour. So it was purely a verbal hiring in 1920 at the going rate, namely, an hourly rate, and not one word said about term or duration of employment, and not one word said about reduction of staff, and what is going to happen then, and not one word said about all these matters that the plaintiff now magnifies.

So that the question really comes down to the effect of the evidence that the plaintiff was hired at an hourly wage, could
20 leave at any time without any notice, and the converse applied; that he was really hired at an hourly rate at will. The employment was terminated by reason of economic conditions on a four days' notice, which is more than ample for an employee of that kind.

The plaintiff himself puts it on the basis that he was hired and nothing was said. He said himself not one word was said. He asked for a job and when a job was offered him he asked when he could go to work. He could go to work tomorrow at so much an hour.

30 My learned friend, Mr. Haffner, points out that during the course of his employment he was laid off from time to time on account of conditions of work; laid off at Christmas time for ten days or so; laid off at other times, and laid off on Saturdays. As the company had work to do he came and did it, and was paid an hourly wage, but there was no contract for any fixed period, and no contract for preference to him over anybody else.

THE COURT: Wouldn't there be some implied terms as to hiring price, for instance?

MR. LAIRD: No, I don't think so.

40 THE COURT: Nor as to the general conditions under which he was to work.

MR. LAIRD: No, I don't think so. He came at certain hours.

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If he did not like the hours he was free to go, or we were free to dismiss him. And he stayed on at an hourly wage.

THE COURT: Was there an implied term that he would work there on the same conditions as other men in the same line of work in the same shop?

MR. LAIRD: I don't see how we can imply that term.

THE COURT: Of course, a railroad is a big institution, and most people know there is a good deal of regularity about the work for convenience.

MR. LAIRD: As my learned friend put it, that is all a matter¹⁰ of rules and regulation, a matter for the employer. The employer has certain hours, and if that is satisfactory to the men, and they are prepared to work, they are paid the wage. There was nothing suggested that he was hired to work for any fixed period of time. We had no control over him for the next day's work or the next hour's work. He could come and go as he pleased, but providing he did the work he was entitled to the going wage. Then the going wage was changed from time to time, and he simply stayed on and took the going wage, took the increases, took the decreases in his pay in effect from time to time. 20

THE COURT: Why did he do that, for instance? He took the going rate.

MR. LAIRD: That is what he was hired for.

THE COURT: The going rate at the moment he was hired or as long as he was in the employ?

MR. LAIRD: When he was hired.

THE COURT: If they decreased it and he accepted that, wouldn't that suggest an understanding that he would take the wage that prevailed from time to time in the shop?

MR. LAIRD: There was no contract to that effect. He stayed³⁰ on and took it, and he has been paid for all that. He said himself, when he was asked, "you weren't consulted about reductions or increases?" and he said, "No." He submitted to them, and he submitted in the same way as to his wages as to his dismissal.

THE COURT: Of course, he has not submitted to the dismissal.

MR. LAIRD: I mean it was a matter of the company's rules and regulations.

THE COURT: But where wages were reduced uniformly over the shops he accepted it.

MR. LAIRD: We could not compel him to stay on another hour if he was not prepared to accept the wages we were prepared to pay. He could withdraw, and we had absolutely no claim on him, if he wasn't prepared to accept the wages that we were prepared to pay he could withdraw and we had absolutely
10 no claim on him. If he wasn't prepared to accept the increase in wages he could withdraw, but he accepted them.

THE COURT: You say there are no implied terms to this hiring.

MR. LAIRD: Not as to the period of employment.

THE COURT: Well, as to anything.

MR. LAIRD: On the going wage.

THE COURT: Were there any implied terms?

MR. LAIRD: Yes.

THE COURT: What?

20 MR. LAIRD: The implied terms that he was a machinist and qualified to work as machinist. The implied term in any contract of hiring between master and servant is that he will obey the orders of the master and carry out his employment, carry out the duties assigned to him, the duties assigned to a machinist. For example, he was hired at Winnipeg, and could we have ordered him to Vancouver to work there, would it be implied that we could do that?

THE COURT: I wouldn't think so.

MR. LAIRD: He was hired as a machinist in the Fort Rouge
30 shops.

There is another ground. I can't find any case in the Court where it has been raised. That is, that this plaintiff comes into Court with this action maintained and supported not by himself.

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THE COURT: He is not really the plaintiff, you think?

MR. LAIRD: He is not the real plaintiff.

My lord, at this hour, while the plaintiff is sitting here, since Monday afternoon, he is in the pay, drawing remuneration from an outside institution. I have never, and I submit your lordship has never known a plaintiff in the conduct of his case to be paid for his time in attending at the trial by some other party. His time is paid for and maintained and financed by the One Big Union. That is the only inference from his evidence.

THE COURT: What has that to do with the case other than ¹⁰ you might have called upon him to put up security for costs?

MR. LAIRD: No, I submit more, maintenance and champerty are illegal contracts.

THE COURT: But you do not plead that.

MR. LAIRD: Yes, and this Court, His Majesty's Court of King's Bench, and you as one of His Majesty's Judges, I submit, are not going to sit and try actions based on maintenance and champerty. Champerty is proved already. He said in the box that the money would be repaid out of this case; if he is not successful it is his. So it is maintenance and champerty. ²⁰

THE COURT: The evidence was not very clear on that point of the support that the One Big Union is giving to him. The witness has kept rather shy of that.

MR. LAIRD: I know he kept shy of it, but they paid him from the 13th of June, 1927, to the 19th of April, 1928, and they are paying him today, on his own testimony, I am asking you to infer this against my learned friend. I think there is an obligation on the part of the plaintiff's counsel. The plaintiff is maintained in this action today by the One Big Union, and has been maintained since Monday afternoon, and he wasn't present ³⁰ Monday morning but he put in a claim for Monday afternoon. I am asking your lordship to infer that if the plaintiff is maintained by the One Big Union much more so are the plaintiff's learned counsel, Mr. Bergman, K.C., and the Honorable Mr. McMurray, maintained by the One Big Union in prosecuting this action.

THE COURT: What do you suggest that I do to them?

MR. LAIRD: I am not suggesting anything but it is an argument. It is a fact that I am entitled to ask your lordship to infer that the action is maintained by the One Big Union. Your lordship has listened for a day and a half while we have been reading evidence taken on commission at Montreal and Winnipeg, de bene esse evidence and commission evidence. The plaintiff says he has not paid a cent for it, and has no agreement to pay for it. He himself is supported and maintained at this hour in this Courtroom by the One Big Union. There is no other possible
 10 inference for your lordship sitting as a jury to draw as to whom is maintaining the action. As I said to your lordship I don't know of any case on the subject in Canada reported. I believe the question arose in the Alberta courts before the late Mr. Justice, later Chief Justice Scott, and when it was shown that was the case he simply dismissed the claim. He said, "This is not your action. Somebody else is supporting and maintaining it; somebody else expects to receive the awards. You can't go on with that action in this Court."

I submit these matters to your lordship. I know these documents are voluminous. We have well nigh about fifty exhibits
 20 in now, but I do not think I should let the opportunity pass without asking for a non-suit and drawing these points to your lordship's attention.

THE COURT: Well, it seems to me there is some evidence which I would be bound to submit to a jury if a jury were sitting on this case, and therefore I feel that I must consider it myself sitting as a jury. On the subsequent point of champerty, and so forth, I will reserve that and deal with it when I come to deal with the entire case. It may be, if you support that, if it can
 30 be supported, and if it is a good ground, it will have to be given effect to, but at the present time I think it would be a risky matter, and too uncertain a matter to use as a means of disposing of this action. I think it would be safer for me to reserve that motion. I will reserve the motion until all the evidence is in. That will give me a better opportunity to consider it.

JOHN ROBERTS, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

Q. You are in the employment of the Canadian National Railways and have your headquarters at Montreal, I believe, Mr.
 40 Roberts? A. Yes.

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Q. What office do you hold at the present time?

A. General Supervisor of shop methods.

Q. How long have you held that office?

A. Since June 1925.

Q. You have been in the service of the Canadian National Railway or some of the constituent companies I suppose all your working life? A. I have been twenty-one years with the National Railways.

Q. And formerly you were with the Grand Trunk?

A. Yes, before it was consolidated.

10

Q. Do you know a system that is known here popularly as the B & O System? A. You refer to the Cooperative Plan?

Q. Yes. A. Yes, sir.

Q. Have you anything to do with that plan or system?

A. It was placed under my jurisdiction to organize the plan, when the policy was adopted.

Q. Placed under your jurisdiction to take care of it?

A. Yes, sir.

Q. Have you had to do with the installation of it in the Fort Rouge shops of the Canadian Northern Railway in Winnipeg? 20

A. I personally installed the plan at Fort Rouge in August, 1925.

MR. McMURRAY: The witness is speaking of a plan, is this plan in writing?

THE COURT: He had better explain what the plan is first.

BY MR. LAIRD:

Q. You personally installed it in August, 1925?

A. Yes, sir.

Q. What is the plan, will you answer his lordship's question?

A. The plan is simply a plan that might be referred to as an employee representation plan. In other words, when the policy was adopted, we believed that through a system of cooperation between our employees and the officers of the company that the system could be improved, and also the shop methods and system of employment could be improved through a cooperative plan, consisting of the employees of the federated crafts, in conjunction
10 with the officers of the company.

Q. Prior to the installation of the plan or system what were the conditions insofar as cooperation between the officials of the company and the employees, for example, in the machine shop or car shop?

A. We had no organized plan of cooperation.

Q. The superintendent had under him certain officials, had he? A. He had his foreman.

Q. And beneath him I suppose there were some other subordinates? A. Assistant foremen, formerly known as charge
20 hands.

Q. Is there any means existing for cooperation or consultation between the employees and the officials of the company in the shop?

MR. McMURRAY: My lord, if this is in writing why is the witness giving the contents of the plan out of his own head?

THE COURT: No, prior to the installation.

A. There was no means of reaching the employee apart from simply through the foreman in the ordinary way, similar to any other industry.

30 Q. Was there any opportunity or means by which the employee was asked to cooperate with the foreman or the higher official in respect to the general work of the shop?

A. No, not that I am aware of.

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Q. Then the plan was introduced in 1925?

BY THE COURT:

Q. What does B & O mean?

A. It simply means that the present system of cooperation between employees and management originated on the Baltimore and Ohio Plan.

Q. It is the Baltimore and Ohio Railway plan, that is what it referred to? A. Yes, the B & O Plan.

BY MR. LAIRD:

Q. When did the Baltimore and Ohio Railway adopt it? Can you tell his lordship? A. In 1923.

Q. It, I believe, is one of the large railways in the United States? A. It is, yes.

Q. And it was adopted by them as the first American railway, and is popularly known among railway men as the B & O Plan or System, is that correct? A. That is correct.

Q. And after it was adopted here in Fort Rouge you came here yourself to install it, you have told us already?

A. Yes.

Q. Have you installed it at other points?

20

A. It has been installed in all of our main shops and perhaps seventy-five per cent of the smaller shops.

Q. Was it part of the policy of the Canadian Northern Railway Company as decided by the authorities, do you know?

A. The policy was adopted by the officers of the Canadian National Railway.

Q. Later, I believe, a constitution was drawn up?

A. There was a constitution drawn up for the guidance and procedure of the plan in 1927?

Q. Have you that with you? A. Yes, sir.

BY THE COURT:

Q. What month in 1927? A. July.

BY MR. LAIRD:

Q. No. A. It was effective January 1, 1927.

BY THE COURT:

Q. What did you say July for?

MR. LAIRD: I have given notice to my learned friend for the use of a copy of that. He has examined on it.

10 MR. McMURRAY: If this book was only published in 1927 it can't be any evidence.

BY MR. LAIRD:

Q. How do you explain then the statement that it became effective January, 1927? A. When the plan was adopted by the company it was put on more for a trial or test, and after it had proved a success in order to develop the plan to other places, which meant a very large number of places, it was felt a constitution for the guidance and procedure of these committees operating at the various shops should be drawn up, and so that con-
20 stitution became effective from January 1, 1927.

Q. Prior to this had you any written constitution?

A. No, there was not.

Q. When was this constitution prepared?

A. Late in 1926.

BY THE COURT:

Q. Why did you say July, 1927? A. January 1, 1927.

Q. But you have stated it was drawn up in July, 1927?

A. That was a mistake; it was January 1, 1927.

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Q. I have it here that this constitution was drawn up in July, 1927, to become effective in January, 1927.

A. It became effective in January, 1927. It was my mistake in saying July, 1927.

Q. Then you qualify that? A. Yes.

BY MR. LAIRD:

Q. You now say it was drawn up late in 1926 and issued in January, 1927? A. Yes.

MR. McMURRAY: There is no evidence that that is a document at all. It is something he is carrying around in his head. 10

BY MR. LAIRD:

Q. Is it what is known as the Canadian National Railways joint co-operative plan? A. Yes.

Q. Is this what you were acting on as General Chairman?

A. Yes.

MR. McMURRAY: He may be wrongly acting on it, my lord.

BY THE COURT:

Q. Is there any original about that? Who signed that?

A. It was signed by Mr. S. J. Hungerford, vice-president of 20 the operating department, and also by Mr. Rogers, Chairman of the—

MR. McMURRAY: That is hearsay evidence of the witness of a document.

MR. LAIRD: I have given my learned friend notice.

MR. McMURRAY: That won't make it evidence.

MR. LAIRD: Yes, I have given notice under the evidence act that we were going to use this as a true copy of the original.

My learned friend did not take any objection. Your lordship is familiar with the Evidence Act in that respect.

THE COURT: What section is that under?

MR. LAIRD: Section 27: "In any action, suit or proceeding, in the cases of telegraphic messages, letters, shipping bills, bills of lading, delivery orders, receipts, accounts and other written instruments used in business and other transactions, where, according to the existing rules of law, exclusive of the provisions contained in this Act it would be necessary to produce and prove
10 the original document, the party intending to establish in proof the contents of such original document may give notice to the opposite party, ten days at least before the trial or other proceedings in which the said proof is intended to be adduced, that he intends at the said trial or other proceeding to give evidence as proof of such contents an instrument purporting to be a copy of such document." And Section 28.

THE COURT: Would you read your notice?

MR. LAIRD: "Take notice that the defendant has in its possession or power, in addition to the documents set forth in
20 the first and second parts of the first schedule of its affidavit on production herein, the further papers and documents relating to the matters in question in this action set forth herein:

And Further Take Notice that the defendant intends at the trial of this action to produce and give in evidence as proof of the contents of the documents and letters set forth herein, instruments purporting to be copies of such documents and letters;

And Further Take Notice that such copies may be inspected by the plaintiff at the office of the solicitors for the defendant on
30 the 28th of April, 1928, between the hours of ten o'clock in the forenoon and one o'clock in the afternoon, and on the 30th of April, 1928, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon.

DATED the 27th of April, 1928."

That was served according to the plaintiff's admission on the 27th day of April, 1928.

THE COURT: You had better file that document.

(Notice re production of copies, referred to, produced and marked **Exhibit 40.**)

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THE COURT: I suppose you will admit you did not give any notice disputing it?

MR. McMURRAY: No, I did not dispute it.

THE COURT: This constitution you refer to has not been identified, has it, with the B. & O. Plan?

MR. LAIRD: You have heard what the witness said.

THE COURT: He said it is the constitution of the B. & O. Plan, but you referred to something else.

BY THE COURT:

Q. What is the correct official name of what is popularly known as the B. & O. Plan?

MR. BERGMAN: Don't read from the document.

A. It is the Canadian National Railways Joint Co-operative Plan.

THE COURT: Canadian National Railways Joint Co-operative Plan.

MR. LAIRD: It is described in the notice as it is on the title page of the book. I tender the document, the constitution governing action and procedure of Canadian National Railways Joint Co-operative Plan 1st of January, 1927. 20

MR. McMURRAY: I object, my lord, to proving the constitution of this organization by producing a mere copy under a notice of that kind. Section 27 of the Act was apparently intended for a different purpose altogether. It deals with telegraphic messages, shipping bills, bills of lading, delivery orders, receipts and accounts used in business and other transactions. This is a different thing altogether, a much more solemn thing. There are provisions in the Act for proving deeds to land, and surely it wouldn't intend so important a document as a constitution of the organization could be proved merely by producing a copy. My learned friend would come up against a proposition that he would have to show that the original could not be produced before he could go into a copy and he is going away beyond the scope of what section 27 is intended for. If your lordship would consider that I would like the privilege of cross-examining

the witness at this stage as to any knowledge he may have of the original.

THE COURT: This document it seems to me is one of the collateral issues. It is not really the contract, that is, the primary contract in the case, and it strikes me that the Evidence Act, sections 27 and 28, as read would permit proof of this original by the copy after the notice. I admit it.

MR. McMURRAY: Would your lordship allow me to examine the witness as to whether he can identify it at all?

10 THE COURT: No, you can take it up later. I admit it.

(Constitution governing action and procedure of the Canadian National Railways Joint Co-operative Plan, January 1, 1927, referred to, produced and marked **Exhibit 41**.)

BY MR. LAIRD:

Q. You told me you came here in the summer of 1925 and installed the Plan? A. Yes.

Q. And you met employees and officers of the company in the Fort Rouge shops, did you? A. I met the officers of the federated crafts in conjunction with the officers of the Company.

20 Q. By the officers of the federated crafts you mean Division No. 4 of the American Federation of Labor?

A. Yes, those with whom we have agreements.

Q. Those with whom you have agreements? A. Yes.

Q. You met officers of their organization.

A. Yes, we met officers of their organization, and later I met a committee appointed by them through their organization.

Q. And what did you do? A. I explained to them the action and procedure of the Plan, and what was expected of them, and how it should operate.

30 Q. Was the Plan put into operation at any place before that?

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 (continued).

A. It had been put in in Monckton in February of 1925 of the same year, and also in Stratford in June.

Q. Monckton is in New Brunswick, and Stratford is in Ontario? A. Yes. At London, Ontario, and at the St. Malo shops at Quebec.

Q. Then you had how many meetings approximately with the officers of Division No. 4 and the men here dealing with the thing, do you remember how long you were here? A. I was here for two weeks.

Q. What was done about it? A. The Plan was instituted and the regular committees established, and I attended the first meeting of such committee.

Q. Will you explain briefly to his lordship about the operation of the Plan? A. The technique of the Plan is simply that each federated craft—

Q. What do you mean by that? A. The federated craft with whom we have an agreement, and who are affiliated with the American Federation of Labor, consisting of the machinists—

Q. The machinists would be one federated craft?

A. Yes, the boilermakers.

20

Q. Name a third? A. Electricians.

Q. Name a fourth? A. Blacksmiths.

Q. Any others? A. Car men.

Q. That is, the men who repair cars? A. Yes.

Q. And each one of these federated crafts would do what?

A. It was agreed that they would appoint through their organization a member to act on the committee in conjunction with an equal number of officers of our company. The local superintendent to be chairman of the committee at all meetings.

Q. That is, the local superintendent of the shops of the Rail-30 ways? A. Of the shops. It was agreed to meet once every two weeks.

Q. These men are chosen from each craft, and who chooses the company's representative?

A. The company appoint their own representation.

Q. How are they appointed? A. Chiefly foremen of the shops.

Q. Foremen of what departments? A. It might be the foreman of the erecting shop, or machine shop, or boiler shop.

Q. An equal number of representatives of crafts and an equal number of the company's officials in the shops?

10 A. That is correct.

Q. And those committees were appointed while you were here, and those committees met while you were here?

A. That is correct.

Q. Were you present yourself? A. Yes.

Q. Would you explain what has been done with it since that time? A. It has been operating according to the constitution from that time to this.

Q. How often do these joint committees representing the crafts and representing the company meet?

20 A. Once every two weeks.

Q. What did they do? A. They discuss subjects appertaining to shop operation, methods of work or conditions that may exist in the shop. There is no limitation to the subjects that might be brought in; anything in connection with the shop operation.

Q. No limitation at all? A. With one provision, that no subjects appertaining to wages or working conditions as had formerly been agreed to with Division 4 were to be discussed.

Q. That is, wages and the subject of these schedules or wage agreements? A. Yes.

MR. McMURRAY: He went further, he said anything.

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 (continued).

A. Appertaining to shop operation.

Q. Do you visit the Fort Rouge shops in connection with your duties as General Supervisor? A. General Supervisor of Shop Methods.

Q. Have you visited the Fort Rouge Shops as General Supervisor with respect to this plan since you installed it? A. Yes.

Q. How many times? A. Perhaps six times.

Q. Since then you have installed it on other parts of the System, I believe? A. Yes, sir.

Q. Can you tell us briefly what results have flowed from the 10 adoption of the system?

MR. McMURRAY: I object. This is going very far afield as to the dismissal of the plaintiff. It makes no difference whether this was a golden success or a dismal failure.

THE COURT: The Plan is raised in the pleadings and you have a right to put that in.

BY MR. LAIRD:

Q. You have told me they met every two weeks and discussed anything of interest to the shops, subject to what you said?

A. Yes. 20

Q. Illustrate very briefly to his lordship the subjects discussed.

MR. McMURRAY: I object.

A. We frequently have subjects brought in such as the conservation of material, the elimination of waste, and shop analyses.

Q. That is, the division of work, or what do you mean by that? A. Analyzing the condition of doing the work, or the method of doing the work. We often have subjects brought in as to conditions affecting the employees, sanitary conditions, ventilation, and so on. 30

Q. What is done when the committee meets to discuss a subject and decide on any particular policy? Is there any action taken? A. There are minutes kept of all these meetings which

are sent to the officers of the company, and also to the officers of the federated crafts.

Q. That is, of Division No. 4? A. Yes.

Q. The minutes are kept and sent to the officers of the company and the officers of Division No. 4, and then what is done as a result of any decision.

MR. McMURRAY: I object.

Q. Or is anything done?

MR. McMURRAY: I object. This is very very interesting,
10 but it has nothing to do with the case.

THE COURT: No; minutes are kept of the proceedings.

BY MR. LAIRD:

Q. Was there anything done as the result of the adoption of the B. & O. Plan? A. After it is in the jurisdiction of the local officer, they are acted upon and carried out if it is agreeable to the committee. If it is not within the jurisdiction it is passed on to the officers at headquarters.

Q. Has it been adopted by any other railway than the Baltimore and Ohio?

20 MR. McMURRAY: I object.

A. Yes, it has been adopted—

THE COURT: Just a minute. I don't suppose it matters.

MR. McMURRAY: It doesn't show any reason for dismissing our man.

MR. LAIRD: It shows whether the Plan is considered a Plan of modern railway methods, a Plan that employees on other systems are co-operating and supporting, and other industries. I intended to ask him first about other railways, and then about other industries.

30 THE COURT: Yes, you might properly ask how wide the scope is.

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BY MR. LAIRD:

Q. You heard his lordship? How far has the plan been adopted? A. The Plan, or similar plans, have been adopted by the Chicago North Western Railway as well as the Baltimore and Ohio, and by a large number of industrials in the United States, such as the Westinghouse Company.

Q. A large electrical company? A. The American Harvester Company.

Q. That manufactures harvesting machinery? A. Yes. Swift's Packing House in Chicago, and a great many others. 10

Q. And that has been since when? A. The Chicago North Western has been put in since the Canadian National Railways, and these other industrials previous to them.

Q. Do you know an organization known as the One Big Union? A. Yes, I have heard of it.

Q. What has been the attitude of the One Big Union to the B. & O. Plan?

MR. McMURRAY: Now, he says he has only heard of it.

A. I will answer that in another way. I would say I know it exists. 20

MR. McMURRAY: He knows it exists. I suppose he knows the same about the moon.

BY MR. LAIRD:

Q. Can you tell me what the attitude of the One Big Union has been towards this Plan? A. Well, according to the Bulletin they are opposed—

MR. McMURRAY: I object.

A. —to the Plan.

MR. McMURRAY: I object. You can't give the contents of a written document. 30

BY MR. LAIRD:

Q. Have you received any assistance from the One Big

Union in putting the Plan into effect in Winnipeg in the Fort Rouge shops of the Canadian Northern Railway?

A. No, we have not.

Q. Have you met with opposition from the One Big Union in putting the Plan into operation in the Canadian National shops in Winnipeg? A. You mean personally?

Q. No, the company.

MR. McMURRAY: I object. What the One Big Union may have done does not bind the plaintiff. He may be a member of
10 some institution, and a separate lodge miles away may do something.

THE COURT: The pleadings indicate that the plaintiff is a member of the One Big Union, and the One Big Union's policy is opposed. If it is raised as an issue I can't exclude it. If the pleadings were embarrassing it should have been stricken out before it came to this Court.

MR. McMURRAY: But the evidence that may be brought in against the One Big Union is not evidence unless the plaintiff is connected with the activities of the One Big Union. What my
20 learned friend would have to show is that the plaintiff was connected with its activities.

MR. LAIRD: You have put in the evidence about the B. & O. Plan today as part of your case.

BY MR. LAIRD:

Q. Will you answer the question? A. Would you please repeat the question?

Q. Would the Court Reporter read the last question?

(Last question read: "Q. Have you met with any opposition from the One Big Union in putting the Plan into operation in
30 the Canadian National shops in Winnipeg?")

A. We have.

THE COURT: If the witness has met with it he may say so.

MR. LAIRD: Yes, he has answered that.

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CROSS-EXAMINATION BY MR. McMURRAY:

Q. I notice in the list of railroads and so on you have given as using this B. and O. Plan that you did not refer to any particular Canadian roads. The C.P.R. have not used it, have they?

A. Not that I am aware of.

Q. They refused to have it? A. I don't know it.

Q. They had a better system of their own altogether?

A. Quite possible.

Q. This is not anything new, is it, this B. and O. scheme?

A. Yes, sir, absolutely new.

10

Q. Would you be surprised that I have had in my law office for twenty years a plan co-operating with my employees, advising them? A. That is not the plan at all, sir.

Q. Would you be surprised to know that it is not on the Baltimore and Ohio Railway today? A. I know for an absolute fact it is.

Q. You know it is? A. Yes, it is.

Q. And they rolled you fellows out bag and baggage when he got the thing working? A. He did not, it is still in operation.

20

Q. It is still in operation? A. Yes, sir.

Q. You say this was worked out between whom up here in Winnipeg? Who are the parties to this?

A. The federated crafts of Division No. 4 and the officers of the Canadian National Railways.

Q. Are you sure of that? A. Positively sure.

Q. Are you? Supposing I tell you there was a C.N.R. federation apart altogether from Division No. 4, what would you say? A. I would say you are quite correct.

Q. An absolute separate institution altogether from Division No. 4? A. No, the Canadian National section of Division No. 4.

Q. The System federation is a section of Division No. 4?

A. It is.

Q. How do you know that? A. How do I know?

Q. You are not in the labor department are you?

A. I have been.

Q. You are an employer. You are on the other end of it.

10 A. It may be so.

Q. You never went near the other unions at all, did you?

A. What other unions do you refer to?

Q. The Canadian Brotherhood of Railway Employees, for instance. A. We have no agreement with any other union.

Q. Why don't you have it? A. We can only deal with one responsible body.

Q. Why? I would imagine if you were trying to get this scheme in you would want them all in?

A. This company's policy is to deal with one responsible
20 body.

Q. The company's policy. You are wanting all the men to work under this system, aren't you, this B. and O. system? Why didn't you consult with all your employees?

A. We can only deal with one responsible body. We are not operating this Plan with every individual employee, we are operating the Plan in conjunction with the organizations affiliated with the American Federation of Labor.

Q. This American scheme, with the American Federation of Labor? A. That is the body with whom we have our agree-
30 ments.

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Q. You are putting the American scheme in with the American Federation of Labor? A. This is not an American scheme; it is a Canadian scheme.

Q. Name a single place in Canada which has this in force except on this road? A. The American Harvester, the Westinghouse Company.

Q. All American concerns, aren't they?

(No answer.)

Q. So you say this was worked out with Division No. 4?

A. Yes.

10

Q. Did you come up here with Byers? A. No.

Q. Who came up with you to put the scheme in force?

A. Mr. Tallon.

Q. Mr. R. J. Tallon? A. Yes.

Q. He is not connected with this federation?

A. He is president of Division No. 4.

Q. But not of the C.N.R. federation. Did you meet Byers here? A. When?

Q. Any time? A. Yes.

Q. Did you meet him at the time you were introducing this? 20

A. No.

Q. Now, wasn't this whole thing on the last analysis a doubtful scheme of driving all other organizations and unions in this Canadian railroad into an American association? A. That was not intended.

Q. Isn't that the honest-to-God object you fellows were at?

A. Absolutely no.

Q. You never asked the O.B.U. for any help?

A. We have no relationships with the O.B.U. whatever.

Q. You never asked them for any help? A. No.

Q. Did you ever ask the C.P.R.? A. No, we did not.

Q. You never asked the large body of men who never belonged to any union to help you in this co-operative scheme between the employees and employer, did you?

A. I would like to inform you that there are 16,000 employees of this company. I can't deal with every employee as an individual.

Q. Did you do it? A. We only operate through one responsible body.

Q. Even when you wanted the co-operation of them all you dealt with a limited number. That will do.

RE-EXAMINATION BY MR. LAIRD:

Q. My learned friend has asked about the Canadian places. The Westinghouse is at Hamilton and the American Harvester is at Hamilton? A. I think they are at Hamilton. I am not sure about the location of the factories.

20 Q. Is the Plan being extended in the Canadian National Railway System? A. It has been extended at the present time over the whole system at all round-houses and car repair points.

Q. Any other departments? A. We have an application from the Maintenance of Way Department to extend it to them, and arrangements are being made at the present time.

Q. An application from the employees themselves?

A. From the organization.

Q. To apply it to them? A. Yes.

JOHN CHARLES GORDON MURTON, being first duly
30 sworn, testified as follows:

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DIRECT EXAMINATION BY MR. LAIRD:

Q. Where do you live? A. 568 Arlington Street.

Q. Where? A. In the City of Winnipeg.

Q. You have lived here how long? A. Since September, 1919, in Winnipeg.

Q. Prior to that where did you live? A. In England.

Q. Since 1919 you have worked for the Canadian National Railway System in Winnipeg? A. No, sir, since September, 1921.

Q. You have worked with the Canadian National Railway 10 System in Winnipeg? A. Yes.

Q. Where? A. In the Fort Rouge shops.

Q. What has been your work there? A. For the first two years I was a helper, and then for three years and three months I was a machinist's helper apprentice, and after that as a machinist, except for one spell in the round-house of about three or four months, and one spell in Saskatoon of about two months and a half.

Q. That is, you served part of your apprenticeship in the Fort Rouge shops? A. The whole of it. 20

Q. And then you moved to Saskatoon in the company's shops there? A. No, sir, I came out of my time in the Fort Rouge shops and continued to work there as a machinist. I was merely transferred out on the road during the wheat rush last fall.

Q. Do you know the plaintiff, Mr. William Young?

A. Yes, sir.

Q. You worked with him in the same shop? A. Yes, sir.

Q. What was his position as compared with your own?

A. He was a machinist.

Q. What were you at that time? A. When I first went 30

with Mr. Young I was a machinist's apprentice.

Q. What position would you be in in regard to him then?

A. Virtually speaking he would be almost my instructor I would say.

Q. Wouldn't he be? Why do you say "almost"? You would be working under him, wouldn't you?

A. Yes.

Q. On the same machine or on different machines?

A. We worked what is virtually two machines together.

10 Q. And he instructed you, and you do the best you can with the machines? A. Yes.

Q. How long did you work as an apprentice under Mr. Young? A. Three months.

Q. And then you would go to some other machine, is that the system? A. No, sir, I came out of my time.

Q. That is, you graduated as a machinist? A. Yes.

A. But before that you had been working under other men at other machines? A. Yes, all around the shops.

Q. Then what period of time did you work as an apprentice 20 under Mr. Young? A. Three months.

Q. What year was that? A. In 1926.

Q. Do you remember what months, Mr. Murton?

A. Yes, from about the end of September or the middle of September to the middle of December.

Q. Three months? A. Yes, sir.

Q. You know the Plan or the scheme that is called the B. and O. Plan in the Fort Rouge shops? A. I have some knowledge of it.

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Q. Have you heard Mr. Young express himself as to the B. and O. Plan in force in the Fort Rouge shops, Mr. Murton?

A. Well, sir, I do not wish to answer that question.

Q. You have been subpoenaed to come here as a witness?

A. Yes, sir.

Q. And you attend here in response to a subpoena?

A. Yes, sir.

MR. LAIRD: I ask for your lordship's ruling on the question.

THE COURT: I am afraid you will have to answer it, Witness.

A. Yes, sir. Yes, sir, I have heard Mr. Young speak of the B. and O. Plan.

Q. Can you recall more than one occasion?

A. Yes, sir, we had many and bitter arguments.

Q. You had many and bitter arguments about the B. and O. Plan? A. The way it come up was this—

Q. We don't want to go into them all. Can you recall the first one or the first one you have in mind? Tell me briefly what took place or what Mr. Young said about the B. and O. Plan? 20

A. Well, sir—

MR. McMURRAY: What date was that?

Q. Can you tell us what time that was, Mr. Murton?

A. My best recollection is sometime prior to June, 1927, about that time.

Q. Prior to June, 1927? A. Yes.

Q. Do you know when he left the company's service?

A. Yes.

Q. It was while he was in the company's service, was it?

A. Yes.

Q. Where did the conversation that you have in mind take place? A. At the machine.

Q. That is, while you were working as an apprentice under him? A. The conversation I have in mind would take place whilst I was working as a machinist with him.

Q. After you were graduated as a machinist?

10 A. Yes.

Q. And that was sometime prior to June, 1927?

A. Yes.

Q. What did he say about the B. and O. Plan which was in force in the Fort Rouge shops? A. Well, sir, he was in the habit of crucifying—he knew I was an international apprentice and machinist.

Q. That is, you belonged to the international order of machinists? A. The international association of machinists.

Q. And he knew that? A. Yes, sir, and he was in the
20 habit—

MR. McMURRAY: Now, not in the habit. He has got to tell what he did, not to interpret his conduct.

THE COURT: Put your question. The witness was going outside of your question anyway.

BY MR. LAIRD:

Q. What did Mr. Young say as to the B. and O. Plan which the company had put into force in the Fort Rouge shops?

A. He said several things, but only three of them are clear in my mind.

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Q. Well, the first occasion that is clear in your mind, what did he say then?

MR. McMURRAY: When was that.

A. He said that the men were getting nothing out of it in the way of dollars and cents. He said it was a speeding-up system pure and simple, and he said it was a scheme whereby the company was not only trying to take it out of our hides, but they were endeavoring to suck our brains.

Q. And he told you this during working hours in the Company's shops? A. Yes, sir. 10

Q. Sometime prior to June, 1927? A. Yes.

Q. So you recall anything else he said as to the B. and O. Plan? A. No, sir, nothing else stands out very clearly in my mind.

Q. Did you hear him refer to the B. and O. Plan or discuss it with any other men in the shops, Mr. Murton?

A. I myself did not hear him, but—

Q. Were there other people present when you heard him say or refer to the B. and O. Plan? A. No, sir, not that I remember. We were isolated. 20

Q. Just the two of you together? A. Yes, on the machine.

Q. And out of earshot of the other men working in the shop?

A. It is a noisy shop.

Q. Then have you heard him refer to the B. and O. Plan when you were present and when others were present?

MR. McMURRAY: That is leading altogether.

THE COURT: Wait until we hear the question. Put your question.

BY MR. LAIRD:

Q. Have you heard Mr. Young speak of the B. and O. Plan 30

in the presence of others in addition to yourself?

MR. McMURRAY: I object to that question. It suggests to the witness other people being present, and I submit that the question should be, on what occasion, if any, did you ever hear him discuss the B. and O. Plan.

THE COURT: It is a very trifling point. Put your question.

BY MR. LAIRD:

Q. I would ask that the last question be read. ("Have you heard Mr. Young speak of the B. and O. Plan in the presence of
10 others in addition to yourself?")

A. No, sir, because we were enemies.

Q. I beg your pardon? A. We were at loggerheads at that time.

Q. That is, you haven't heard Mr. Young discuss the Plan with other people than yourself? A. No, sir.

Q. Up to what time in June, 1927, did you hear Mr. Young refer to the B. and O. Plan? A. Oh, he was always harping on about it.

Q. During what hours? A. During working hours while
20 the cut was going over the machines.

Q. What was he saying about them, Mr. Murton?

A. Well, he was endeavoring to crucify the international association.

MR. McMURRAY: Crucify? What are the words.

THE COURT: That is a form of expression; you can't quarrel with that. You may ask him to explain his meaning of that.

A. He was continually crucifying the international association and its methods, and he used to ring in the B. and O. as a sideline to get a dig at the international, because the interna-
30 tional sponsored the B. and O. Plan.

Q. Over what period of time was that attitude kept up, Mr.

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Murton? A. Well, sir, I should say six months, that is to say, from the time I came out of my time to the time of lay-off.

Q. Have you been present at meetings in front of the Fort Rouge shops outside of the company's property where the B. and O. Plan has been discussed? A. I have passed by several meetings there, but I never used to stop and listen to them, because I thought it was just a lot of bunk.

Q. Have you seen Mr. Young, the plaintiff, at those meetings outside the shops? A. Yes, sir.

Q. You have? A. Yes, sir. 10

Q. Can you tell his lordship approximately how often?

MR. McMURRAY: What meetings, my lord?

MR. LAIRD: Where the B. and O. Plan was being discussed.

MR. McMURRAY: He didn't say it was. He didn't know anything about it. He never stopped at the meetings.

BY MR. LAIRD:

Q. Do you know what was being discussed? Did you hear anything being discussed? A. Well, you would hear a lot of shop talk, but you never paid any attention to it, because you said it was the same old line anyway. 20

Q. But at these meetings outside of the company's premises did you hear any reference to the B. and O. Plan there when Mr. Young was present? A. In the few words that you might get passing by you might get an inkling of what it was about, but it was general stuff.

Q. On what subject? A. On all subjects from C.B. of R.E. to B. and O., and capitalism, and the general line of stuff that the O.B.U. men hand out.

Q. Do you know any of the speakers whom you have seen at these meetings? Do you know who they are or who they were? 30

A. Yes, I knew one of them anyway.

Q. Could you tell me who he was? A. Clancy.

Q. Do you know his first name? A. No, sir, I do not. I have heard Bob Russell speak at the gate too.

Q. You have heard Bob Russell speak at these meetings too?

A. Yes.

Q. Do you know what his affiliations are in the labor world?

A. Well, he is supposed to be a great O.B.U. man.

Q. How often have you heard him speak at those meetings?

A. Oh, I have heard Russell two or three times, more especially at the time of elections.

10 Q. That is, municipal elections? A. No, sometimes Provincial, and I have heard him—

Q. We are not concerned about those. Have you ever heard Mr. Robert Russell refer to the B. and O. Plan?

A. I can't say I have actually heard him refer to it.

Q. At the time that you have referred to when Mr. Young referred to the B. and O. Plan, was the B. and O. Plan in force, in operation in the C.N.R. shops as part of the system?

A. Yes, to the best of my knowledge it was.

Q. Have you ever served on any of the committees of the 20 federated crafts of that Plan? A. No, sir, I have never been a member of any B. and O. Committee.

Q. As a machinist you vote for a certain representative of your craft to go on that committee? A. Yes.

Q. You have voted, have you, in that way?

A. I have voted.

MR. LAIRD: That is all.

CROSS-EXAMINATION BY MR. McMURRAY:

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Q. So you are an enemy of Young's, are you?

A. Well, sir, we were at loggerheads.

Q. Then you were an enemy of his? A. Not now, because the matter was finished with when he left the shops.

Q. When Young was driven out of the shops you considered your quarrel ended? A. When Young was what, sir?

Q. Driven out of the shops you considered your quarrel ended?

MR. LAIRD: I object to that.

Q. When he was dismissed out of the shops you considered¹⁰ your quarrel ended? Is that right? Was it a fact that you yourself was on the list to be laid off, do you know?

A. On what list?

Q. Do you know if there was a list prepared in which your name was on that you were to go off in place of Young?

A. No, sir.

Q. You never heard of that? A. I did hear that there were rumors—

BY MR. LAIRD:

Q. Where did you hear it?

20

BY MR. McMURRAY:

Q. Where did you hear that you were going?

A. Oh, the shop is full of rumors all the time. I did not hear actually that I was to go off.

Q. What was this you were stating about from September, 1926, to December, 1926. You were under Young then?

A. Yes.

Q. As an apprentice, were you? A. Yes.

Q. You were under him as an apprentice? A. Yes.

Q. You are sure of that? A. Why, certainly, I was an apprentice at the time.

Q. Are you sure of those dates? A. Yes, the end of September to December 15, 1926.

Q. And you were not on the seniority list until you were a fully fledged machinist and through with your apprenticeship?

A. No, sir, but you get two years' seniority when you are put on; you date back two years to 1924.

10 Q. So that your time would go back then to December what?

A. 1924.

Q. So that you and Young used to have a little rub about your different unions? A. Yes, and also about the job.

Q. You were an A.F. of L. man and he belonged to another union? A. He said he belonged to another union.

Q. You deny that he did? A. No, I do not. I didn't know where he stood.

Q. Do you know anything about the scheme of the A.F. of L. to drive all the others out of the shops? A. No, sir.

20 Q. You never heard of that? A. No, sir.

Q. Do you know McCutcheon? A. I know Bob McCutcheon by sight.

Q. Did Bob McCutcheon ever come to you about Young?

A. No, sir.

Q. So that all you know about this was that Young made the remark to you that he did not approve of this B. and O. scheme because it meant no money to the men who worked, and it meant he would do more work, that is about all he said?

A. Oh, no, it wasn't.

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Q. Didn't you say what he said was that the company would make more money out of it? A. No, sir, I did not say that.

Q. What did you say? A. I said that Young said that the men were not getting anything out of it in dollars and cents, that is what I said.

Q. Anything else? A. I said that Young said that it was a speeding-up system pure and simple.

BY THE COURT:

Q. A speeding-up system? A. Yes.

BY MR. McMURRAY:

10

Q. It didn't seem to be very simple, did it?

A. It is in the experimental stage.

Q. And what else? A. It is producing good results today.

Q. What else did he say? A. He said it was a scheme not only to take it out of the workers' hide but also an attempt to suck their brains.

Q. You got all this down at the time? A. No.

Q. How do you remember over seven years the actual words, did you make any notation? A. No, sir.

Q. And that thing has been put away down in the front of²⁰ your mind for all these months to keep? A. No.

Q. And it comes out just as fresh as the day it went in?

A. No, sir, it does not.

Q. You have seen men ever since you were an apprentice holding meetings in front of the shops? A. Well, for eighteen months I was on night shift, and you don't see much on the night shift.

Q. No, they don't very much, but ever since you were knee high to a grasshopper you have seen orators down at the gates raking over everything from the price of beer to women suf-30 frage, haven't you? A. I have seen many different individuals.

RE-EXAMINATION BY MR. LAIRD:

Q. You told my learned friend that the B. and O. System was producing good results? A. Yes, sir.

Q. What are those results? A. Improved working conditions.

Q. Where? A. In the shops.

Q. Can you explain briefly what you mean by that?

A. Yes, sir, there was a time when the shops used to be untidy, that is to say, scrap and stuff lying around, and it was hard 10 to get around to your work, and there was a time when it was kind of hard to get replacements of tools, or to get tools that you actually needed, or to get your machine fixed up, or anything like that, but all that has been facilitated now. There is not the same—you don't feel you are bucking the job to the same extent.

Q. That is, your position is more comfortable?

A. When you go to the shop to work now the job can be got out, and we have the tools to do the job with, and also the material.

Q. Any other results that you observed from the B. and O. 20 Plan? A. Well, any improvements that you feel you would like you can bring them up, and there are improvements being put in from day to day, if it is only a matter of safety guards for machines, and stuff of that nature.

Q. Where did these suggestions come from in many cases?

A. They come from the men.

Q. That is, the employees who are working in the shops?

A. Yes, sir.

Q. In what way are they brought to the company's attention?

30 A. Well, the proper procedure, if you have an idea, is to bring the matter up in your lodge room where it is noted, and give it to your co-operative plan representative, and he takes it

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with him into the co-operative committee.

Q. That is, the representative of your craft?

A. Yes, sir.

Q. He is expected to receive your ideas and submit them to the committee? A. Yes, sir.

Q. That has had what result? A. To my way of thinking it is a big improvement in the morale.

Q. That is, among whom? A. Amongst the men themselves.

Q. While you were an apprentice under Mr. Young what was his attitude towards you as an instructor?

A. He did not give me a show at all.

Q. As compared with other machinists under whom you had worked, what was his attitude?

MR. McMURRAY: I did not touch on this in my cross-examination, and it is not a matter involved.

MR. LAIRD: My learned friend has craved your lordship's indulgence and I think I will have to do the same.

THE COURT: I will treat you both on the same scale with the right of cross-examination. 20

BY MR. LAIRD:

Q. You say he did not give you a show at all?

A. No, sir.

Q. Explain to his lordship, what you mean?

A. Well, although there is an apprentice instructor in the shops going around all the time, in serving your time in a shop like that you are practically at the mercy of the man with whom you are working, that is the machinists to whom you go on the particular jobs. These men are well versed in the job, and they can teach you the tricks of the trade, and give you a good insight 30

in a very quick time, if they do what we call give you a show, but if they do not give you a show, you are far better to be taken away from the job altogether.

Q. What do you say as to the plaintiff, Mr. Young, giving you a show while you were under him?

A. I would say that he did not give me a show at all.

Q. As compared with other machinists with whom you have worked on other machines, what do you say?

A. I will say he was the worst I ever worked with.

10 Q. Over what period of time did this continue, Mr. Murton?

A. It continued for the last three months of my apprenticeship, and it kept up during six months we worked together as fellow machinists.

Q. That is, after you graduated you continued on the same machine with him? A. Yes, sir.

Q. At least beside him? A. Yes, sir.

Q. What have you to say as to Young's work in the shop from what you observed as to his attending to his duties, or non-attending to his duties? A. I would say if he had worked for
20 me I would have fired him long ago.

Q. What do you mean by that, Mr. Murton? Was he attentive to his duties or otherwise?

A. Otherwise.

Q. You were working within a few feet of him, were you, or within two or three feet of him? A. Yes, we did the same work.

Q. That extended over a period of nine months, I think you have told me? A. Yes.

Q. Can you tell me whether or not he was idle part of the
30 time and not attending to the work he had on his machine to do?

MR. McMURRAY: Don't lead.

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THE COURT: Perhaps that is objectionable.

MR. McMURRAY: There is no perhaps at all, my lord, it is.

BY MR. LAIRD:

Q. Explain very briefly to his lordship Mr. Young's attention to his work and duties. A. Do I have to do that?

THE COURT: Yes.

A. Well, he had a habit of going to the lavatory regularly every morning and afternoon for a period up to half an hour. He seemed to have a system of doing that. He used to have a habit of cutting wind, that is, when the job was finished instead of throwing out the machine he just let the tool run backward and forward, and anybody watching from a distance would think the machine was running, whereas he was bumming.

Q. What do you mean by cutting wind? A. When you are facing off a job with the tool your tool should be cutting the job.

Q. Your tool should be at work on the job? A. Yes.

Q. Or the material that is in the machine? A. Yes. But when you are cutting wind you can raise the tool about one sixteenth of an inch above the job to clear it, and then to anybody from a distance it would look as if the tool you are working was working on the job.

BY THE COURT:

Q. Whereas it was running idle? A. Yes.

BY MR. LAIRD:

Q. What do you say as to Mr. Young's practice in respect to that, Mr. Murton? A. Well, it wasn't very much that practice as I objected to.

Q. Did he do that? A. Sure, he did it.

Q. During the period of nine months you were working beside him? A. At different times, yes. We have in the gang what we call a "hurry list," where there are possibly four engines on the list, where work is required in the back shop for the next

week, and it must be hurried along in our particular gang. Now, working on this machine, doing the same kind of work, it wouldn't be too much for us to take two engines apiece on the "hurry list," so as to know which ones we were working on, and clean them up, to get them out of the gang. But the motion work coming up would be thrown down in a heap, and there might be five engines in it, and possibly one engine not on the "hurry list" at all, and no particular hurry for it. But Young—

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Q. The "hurry list" means work that had to be hurried
10 through, rushed? A. Yes, But Young had the habit of going to the pile and picking out the work for the engine that wasn't on the hurry list, and leaving me to try and hold down the work for the other four, and when I remonstrated with him about it, he said, "I know what I am doing. There is your end of the machine. Get back over there to it."

Q. That is, he took the slow job and left you the rush jobs?

A. He left me four of them.

Q. He left you four of the rush jobs?

A. Yes. Also we have instructions that different work from
20 the back shop, such as eccentric keys, has to take precedence over other work, because the back shop are running the engine over, and they have to go in ahead, and they have to wait for the keys. These fellows would come over in a bit of a hurry, and speak to Young about it, and then if he knew I was up against it with work on a big engine, he used to wag his thumb in a derisive way to the fellows, as much as to say, "Give it to him; he likes lots of work."

Q. That is, meaning give it to you? A. Yes.

RE-EXAMINATION BY MR. McMURRAY:

30 Q. You seem to have been very badly treated?

A. Yes, sir, he treated me pretty dirty.

Q. Unless you are a man of very deep grained forgiveness you carry a very strong resentment?

A. No, at the moment I do not carry any resentment.

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Q. How did you come here to testify against Mr. Young so readily? A. I did not come here to testify readily.

Q. It has been very difficult to get all these things away from you? A. This is the first time that it has been repeated to anybody.

Q. And every word scalds your mouth as you say it against him now? A. No, sir.

Q. You would have fired him long ago?

A. I said if he had been working for me I would have fired him. 10

Q. Did you ever tell Mr. Wedge about him?

A. Yes, sir, I did complain to Mr. Wedge once but—

Q. What?

MR. LAIRD: Let him finish his sentence.

A. But I didn't do it in the complaining sense; I went to Wedge and asked him for a shift off the machines.

Q. For what? A. For a shift from the machine.

Q. Did you get it? A. No, I did not.

Q. Wedge wouldn't pay any attention to you?

A. Yes, he did. 20

Q. Did you ever complain to Mr. Bassett?

A. Mr. Bassett was quite familiar with the situation.

Q. Answer the question, did you ever complain to Mr. Bassett? A. Yes, I did.

Q. Why didn't you say that then. Often?

A. Not very often because—

Q. Not very often? A. Well, why don't you let me fin-

ish? Not very often because Mr. Bassett was familiar with the situation, and he did not want the machines in an uproar all the time.

Q. He did not want the machine in an uproar?

A. Well, the work has got to be put through quietly and efficiently.

Q. But you could handle your business?

A. I didn't say that.

Q. Didn't you say you had to look after the four engines that were needed and Young the one that was not?

A. No.

Q. You are not much of a machinist, they never taught you properly? A. Who said that?

Q. Didn't you tell us today you weren't properly taught?

A. I did not. I said that Young did not give me any instructions.

Q. How did you learn? A. How did I learn? I went to the bench hands for assistance.

Q. Was Young doing private work on his machine?

20 A. Not when I was with him.

Q. I ask you do you know? A. Do I know what?

Q. If Young was doing private work on the machine?

A. I have seen jobs he had done.

Q. Who was he doing them for? A. I have seen jobs which he has done for himself.

Q. Who else was he doing them for that you have seen?

A. I didn't say that I saw Young doing jobs, I said—

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Q. Please answer my question. Who else did you see him doing private work for? A. I didn't say I saw him doing private work.

Q. Well, I ask you, did you see him doing private work?

A. No, sir, I did not.

Q. Do you know if Bassett instructed Young to go on with his work, and not mind about teaching apprentices?

A. No, sir, I did not.

Q. You don't know anything about that? A. No, sir.

Q. Have you any demerit marks yourself? A. No, sir. 10

Q. And a man that does not attend to his business often gets them? A. He does not always get them.

Q. Often gets them, that is what they there are for?

A. You say that; I don't say it.

Q. You don't say it. Do you say that he doesn't?

A. Do I say he doesn't get demerit marks?

Q. Yes, for bad conduct? A. I say that there are times when a boss takes a humane viewpoint and gives the man a talking-to when he might very well give him demerit marks.

Q. But that is what demerit marks are for, bad conduct? 20

A. Not necessarily.

Q. What are they for? A. For not punching the clock.

Q. Isn't that bad conduct? A. No, you might punch the clock and it does not ring.

Q. But the beautiful B. and O. scheme will finish all that. The clock will always ring when punched under that system. That will do.

MR. LAIRD: There is one question that I think in fairness to the witness in view of what my learned friend suggested might be asked.

THE COURT: Yes.

BY MR. LAIRD:

Q. Is it or is it not a fact that you refused to tell me what Mr. Young had said about the B. and O. Plan until you went into the witness stand? A. Yes, sir, I not only told—

MR. McMURRAY: Surely that can't be evidence against my 10 client.

MR. LAIRD: Yes, you made such suggestions here.

THE WITNESS: I have consistently refused to give information to anyone, and I told you Mr. Laird that I would not say anything about the B. and O. Plan unless the Court compelled me to do so.

SAMUEL PREECE, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

Q. Mr. Preece, what is your occupation?

20 A. Boilermaker.

Q. You work for the Canadian National Railways in the Fort Rouge shops? A. Yes.

Q. How long have you worked there? A. Since 1913.

Q. Do you know the plaintiff Young? A. Yes.

Q. How long have you known him? A. I have seen him around there for several years, but just how long I couldn't say.

Q. What are you in shop affiliation? You are affiliated with the international association?

A. Yes, I am.

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Q. Were you affiliated with any other?

A. For awhile I was in the O.B.U. when the split came in 1919. The whole of the local went over, and I went over with them.

Q. Went over to the O.B.U.? A. Yes.

Q. You were there how long? A. Just a few months, and then I dropped out and did not pay in anything into.

Q. You saved your money for awhile? A. Well, I did not pay anything anyway.

Q. And you later joined the international association? 10

A. I joined the international again in 1923.

Q. You know the co-operative plan that is in force in the Fort Rouge shops, that has been referred to as the B. and O. Plan? A. Well, yes I know it, I should do, I have been the representative of the boilermakers. This is my third year.

Q. You represent the boilermakers on the committee in connection with that plan? A. Yes.

Q. When did it go into force in the Fort Rouge shops?

A. Sometime at the latter end of 1925. That is as far as I can recollect. It may have been in before that, but that is as far as my recollection will take me back. 20

Q. What do you say as to whether or not it was generally known amongst the employees of the shop it was being put in force? A. At the time it was being put into force it was looked upon with suspicion. It was looked upon with a suspicion on account of the propaganda, I might say, or the stories being put about that it was an efficiency scheme.

Q. It was discussed in the shops generally?

A. No, sir, it wasn't posted up in the shop when it was put in.

Q. Was it discussed among the men? A. It was discussed among the men, yes. 30

Q. Were there any particular meetings held in connection with it that you saw? A. Yes, that is with the members of the international, we were invited to the Labor Temple to meet Mr. Byers, and hear the co-operative plan discussed.

Q. But out here near the shops, were there meetings?

A. There were meetings called outside of the shops, but not by the international people.

Q. There were meetings at which this plan was discussed?

A. A plan was discussed, yes.

10 Q. Did you see the plaintiff Young at any of those meetings?

A. Yes, I have seen him at the meetings in 1927, I have seen him there. I can't say I know Mr. Young personally in the shops.

Q. You saw him at the meetings where the B. and O. Plan was discussed just outside the shops? A. Yes.

BY THE COURT:

Q. When was that? A. In the latter part of 1927.

BY MR. LAIRD:

Q. Was it while Young was working at the shops?

A. While Young was working at the shops.

20 Q. Do you know when Young left the shops?

A. The talk was that he was let out with the other men about a year ago now.

Q. You say you saw him in the latter part of 1927?

A. Well, I mean the latter part of 1926, and the early part of 1927; that is a mistake.

Q. Where did the meetings take place? A. Outside the shop gates on Glasgow Avenue.

Q. Were they held winter and summer alike?

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A. No, in the summertime, but not when the cold weather came along. The men would not go outside in cold weather to stand around and discuss anything.

Q. It was at the noon hour? A. Yes.

Q. The speeches were made about the B. and O. Plan?

A. Yes.

Q. Have you seen Young there at the meetings?

A. Yes, I have seen him repeatedly.

Q. Was he in a position to hear what was said at them.

A. Decidedly.

10

Q. Who were those who made the speeches?

A. I have heard Robert Russell, Bob Russell, as we call him, and Clancy.

BY THE COURT:

Q. Who? A. Jack Clancy.

BY MR. LAIRD:

Q. What other speaker? A. I can't say I have heard any other speaker; I have heard those two, and it was all about the same thing, and I did not bother.

Q. The speeches did not vary much from one meeting to another? A. No, all along the same theme.

Q. What did the speaker say about the B. and O. Plan?

A. They advised the men not to adopt the B. and O. Plan.

MR. McMURRAY: I object to that; there is no evidence that this was a meeting of the O.B.U. in any shape or form.

MR. LAIRD: The plaintiff was at the meeting, my lord.

MR. McMURRAY: There were certain men that were speaking there.

THE WITNESS: I don't quite get you.

MR. McMURRAY: You are not expected to.

MR. LAIRD: Just wait until his lordship rules.

BY THE COURT: Who is Clancy? A. He is an organizer for the O.B.U.

MR. McMURRAY: He is giving the general remarks without giving the particular men.

BY THE COURT:

Q: Who were the speakers at the meeting you refer to?

10 A. Robert Russell and Jack Clancy.

Q. You may tell us what they say? A. They advised the men not to adopt the B. and O. Plan as it was called at that time; that it was an efficiency scheme, and they also termed it as the slave pact.

Q. Yes, what else? A. And they said it was a scheme whereby the bosses could get us into their hands just where they wanted us, and they could do what they liked with us after they got us there if we adopted the B. and O. Plan. That is about the sum and substance of the meeting.

20 BY MR. LAIRD:

Q. Who is Bob Russell to whom you refer?

A. He is an organizer for the O.B.U. as far as I know.

Q. Was he when you were in the O.B.U.?

A. Yes, he was connected with the O.B.U. at that time.

MR. LAIRD: That is all.

CROSS-EXAMINATION BY MR. McMURRAY:

Q. You work for the defendant company, Mr. Preece?

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A. I am still working for them.

Q. Who subpoenaed you to come here? A. I have my subpoena in my pocket.

Q. Who asked you what you knew about this, some foreman of your company? A. No.

Q. How did they know you knew? A. I must say I don't know how they knew other than I may have been seen out there, and I was asked questions.

Q. You were subpoenaed to come? A. I was subpoenaed to come. 10

Q. And you were standing listening at the meeting?

A. Yes.

Q. Just the same as Young was? A. Just the same as a lot of others.

Q. You weren't dismissed because you were at the meeting, were you? A. No, I wasn't dismissed because I was at the meeting.

Q. Young was at the meeting the same as you were?

A. I wouldn't say that he was.

Q. Well, you saw him at the meeting? A. I saw him at the 20 meeting.

Q. You saw a good many other men at the meeting who are still working in the shops? A. Yes.

Q. Did you ever set up the pension plan? A. No, I never set up the pension plan.

Q. You don't know anything about that? A. No.

Q. So that about all you know is there was a meeting outside of the gate? A. Yes.

Q. A Scotchman by the name of Russell, and an Irishman by the name of Clancy were addressing it? A. Yes. 30

Q. It might have been a celtic meeting? Do you know what celtic is? A. No, I can't quite get you.

Q. It might have been a national Scotch meeting?

A. Decidedly not, or else I wouldn't have been able to have understood them. I am not a Scotchman, and I wouldn't have been able to understand them.

Q. Do you know McCutcheon? A. Sure, I know McCutcheon, he is connected with our boilermakers.

Q. He is the boy that chases all the other men out of the 10 shop? A. I never saw him chase anybody out of the shops.

Q. Did McCutcheon get you to come? A. No, McCutcheon did not get me come.

Q. When were you last talking to McCutcheon?

A. I speak to McCutcheon every day, because I am assistant secretary of the boilermakers in the Fort Rouge shop, and it is my business to talk with McCutcheon.

Q. How did they come to know what you were going to say about it? Who came and asked you what you knew about it to get you to come to the trial. A. I was sent for in the office.

20 Q. You saw whom? A. Mr. Hair.

Q. Mr. Hair here in Court sent for you to come to his office?

A. No, sir, I was sent for to the office in Fort Rouge.

Q. And you saw him there? A. Yes, he asked me questions.

Q. You said also that Young was not at the meeting the same as you were? A. No, because I should not consider that he was, because I was an international and he was more directly interested in the meeting, being an O.B.U. man, at least we considered that he was O.B.U.

30 Q. What do you know as to whether or not these were O.B.U. meetings? A. Well, the organizers drove up in the O.B.U. car, with red letters on the O.B.U. car, and we knew for a fact that

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they are organizers of the O.B.U., and there is no other conclusion to come to.

Q. These two men Clancy and Russell came in a car with O.B.U. red letters on it? A. Yes, they have done that lately.

Q. And have held meetings there? A. Yes.

Q. If they drove me up to the Court House this afternoon, would that make me an O.B.U. man? A. I should consider you were in sympathy with them if you were riding around with them, or if I knew that you were in their company continually, decidedly. 10

(The Court adjourned at 5 p.m. May 18, 1928, to 10.30 a.m. May 28, 1928.)

10.30 a.m. May 28, 1928.

CECIL ALLAN BAILEY, being first duly sworn, testified as follows:

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Bailey
Examination

DIRECT EXAMINATION BY MR. HAFFNER:

Q. You are in the employment of the C.N.R. shops in Winnipeg? A. Yes.

Q. How long have you been employed there?

A. Since January 1921. 20

Q. What is your occupation there? A. Boilermaker.

Q. Do you know the cooperative plan that is in force over there? A. Yes.

Q. Do you remember when it went into force? A. Yes.

BY THE COURT:

Q. The C.N.R. shops in Fort Rouge? A. Yes. It went into force in August, 1925.

BY MR. HAFFNER:

Q. Was it known before that time it was going into force?

A. Yes.

Q. How do you know? A. By talking around the shop, and by meetings outside of the gate.

Q. It was discussed around the shop, that is amongst the men working there? A. Yes.

Q. And at meetings outside of the gate? A. Yes.

Q. By outside of the gate, you mean at the entrance to the shops where the employees go in and come out?

10 A. Yes.

Q. When were those meetings held? A. From 1924 onwards, I should say.

Q. At what season of the year? A. In the summertime.

Q. What hour of the day? A. Around dinner, 12 and one, the dinner hour.

Q. You say this cooperative plan, commonly called the B and O Plan, was discussed at these meetings?

A. Yes.

Q. Who were the speakers at the meetings?

20 A. Russell, Clancy and Sykes.

Q. That is R. B. Russell? A. Yes.

Q. And Clancy, what are his initials? A. J. Clancy.

Q. Do you remember Sykes' initials? A. I think it is T. Sykes.

Q. Who were these men? A. O.B.U. men.

Q. They were O.B.U. men, and what position do you know they held in the O.B.U.? A. I couldn't tell you.

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In the
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No. 24
Defendant's
Evidence
Cecil Allan
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Examination
(Continued)

RECORD

In the
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BenchNo. 24
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Evidence
Cecil Allan
Bailey
Examination
(Continued)

Q. What was the nature of the talk and discussion which they gave at these meetings? A. Well, generally speaking it was rapping the co-operative scheme.

Q. Rapping? A. Yes.

Q. That is, in opposition to it? A. In opposition to it.

Q. And they were speaking then to the employees in the C.N.R. shops? A. Yes.

Q. What did they say to these employees should be done in regard to that cooperative scheme?

A. They regarded it as a speeding-up system, a bosses' 10 scheme.

Q. Anything else? A. That is all I recollect.

Q. Do you know the plaintiff in this case, Young?

A. I know him by going around the shop, but I don't know him personally.

Q. What do you say as to whether or not he was at any of these meetings? A. I don't remember; I have seen him there——

Q. You saw him at the meetings? A. I saw him at the meetings but never—— 20

Q. Whereabouts at the meetings? Was he in position to hear what was said? A. Yes.

Q. How often were these meetings held? A. Once a week generally.

Q. What was the advice of the speakers to the men in regard to what they should do in connection with this cooperative scheme.

A. Join the O.B.U. and oppose the scheme.

Q. Through what time did these meetings continue?

A. You mean the month of the year? 30

Q. Yes, about? A. Well, I should say in the summer months.

Q. Of what years? A. From about the present day to the latter end of September.

Q. In what years? A. From 1924 onwards until just lately.

Q. That is, during the summer months from May to September in 1924, 1925, 1926 and 1927 have they been held?

A. Yes, quite a few, but not just at the latter end of 1927.

Q. Some in 1927? A. Yes, but not at the latter end.

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(Continued)

10 CROSS-EXAMINATION BY MR. McMURRAY:

Q. What do you say your occupation was?

A. Boilermaker.

Q. You are employed where? A. In the Canadian National shop in Fort Rouge.

Q. When did your apprenticeship end? A. April 24, 1925.

Q. Men senior to you have been let out of those shops?

A. As far as I know, yes.

Q. You are a member of the American Federation of Labor, are you? A. Yes.

20 Q. When did you join that? A. In 1919 — pardon me, in 1923.

Q. That is when your apprenticeship was done?

A. No.

Q. Were you a member of the union while you were an apprentice? A. Yes.

Q. Isn't that contrary to law? A. No, not as far as I know.

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(Continued)

- Q. Do you know Young personally? A. No.
- Q. You don't know Young personally, at all? A. No.
- Q. You wouldn't care to say at how many meetings you saw him? A. No.
- Q. You attended all these meetings apparently?
- A. Practically all of them.
- Q. Why did you do that? A. Just more for the fun of the thing.
- Q. For the fun of the thing? A. Sure.
- Q. Or perhaps to get a few ideas on the subject? 10
- A. Yes.
- Q. The rest of the men did the same? A. I presume so.
- Q. Free speech is very prevalent at the gates of these work shops? A. Generally speaking.
- Q. There are orators down there all the time?
- A. I wouldn't say that, no.
- Q. Well, a good part of the time. They talk municipal politics? A. No, I never heard any.
- Q. You never heard a municipal man down there?
- A. Only at election time. 20
- Q. At election time? A. Yes.
- Q. And the A. F. of L. are moving around preaching their ideas there all the time? A. No.
- Q. Did you ever meet McCutcheon? A. Yes, I know McCutcheon.
- Q. What is he doing around the shops? A. He is entitled to go around the shops; he is business agent.

Q. He is business agent entitled to roam all through those shops anywhere he likes. A. Yes.

Q. And he does? A. Yes, he does.

Q. And he tells the O.B.U. men if they do not join the A.F. of L. they will be dismissed; have you heard that?

A. No, I never heard that.

BY THE COURT:

Q. Who is Mr. McCutcheon?

BY MR. McMURRAY:

10 Q. He is an A. F. of L. man? A. Yes.

Q. Business agent of the A. F. and L.? A. Yes.

Q. So what you really did hear down there were a number of speakers discussing upon the nature of the B. and O. scheme?

A. Yes.

Q. They came down there and they said this is what the scheme really is. Now as a matter of fact, what did you have to do with the scheme yourself in the shops?

A. I had nothing to do with it.

20 Q. Absolutely nothing? A. Just my vote was concerned in the lodge.

Q. All you know is in your lodge the scheme was voted on?

A. It was discussed and voted upon.

Q. It was discussed and voted upon? A. Yes.

Q. But outside of that you had absolutely nothing to do with it? A. No.

Q. And ordinary men would never know that the scheme was in operation in the shops at all? A. Yes.

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In the
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 (Continued)

Q. I believe they moved a water tap up a little closer to where the men work, and that is about the only thing you noticed, wasn't it? A. Oh, no, there has been quite a lot of improvements around the shops since that time.

Q. There have been? A. Yes.

Q. This talk did not affect you at all that you heard out there; you worked just the same as ever? A. Yes.

Q. Apparently Young was doing what you were doing?

A. Apparently yes.

Q. And you don't know who called those meetings yourself? 10

A. No.

Q. You don't know how Russell or these other men came there? A. No.

Q. Do you know anything of the pension rules of the Canadian Northern Railway that bars a man from receiving a pension if he gives evidence against the company? A. No.

MR. HAFFNER: Are the pension rules in evidence? I object to that.

BY MR. McMURRAY:

Q. You don't know anything about it? A. No. 20

Q. Who brought you here?

THE COURT: Do you intend to establish there is such a rule?

MR. McMURRAY: I understand there is such a rule.

THE COURT: Do you intend to establish it?

MR. McMURRAY: Yes, my lord.

BY MR. McMURRAY:

Q. Who brought you here? A. Well, I happen to be on the

shop committee of the boilermakers, and that is how I was brought here.

Q. You are on the shop committee? A. On the grievance committee.

Q. Of the boilermakers? A. Yes.

Q. That is part of Division No. 4? A. Yes.

Q. Do you know anything of the application of this man, of the plaintiff to be heard by that committee?

A. Just what do you mean by the application?

10 Q. Well, what do you know about any application made by the plaintiff to have his case taken up by Division No. 4?

A. I just know that they wrote a letter——

MR. LAIRD: Did you see the letter?

A. No, I didn't.

BY MR. McMURRAY:

Q. But you know they wrote it. How do you know that?

A. I am not allowed to say I was told.

Q. Who told you that? A. I think that.

Q. You are a convenient witness, aren't you?

20 BY THE COURT:

Q. Did you see it? A. No.

BY MR. McMURRAY:

Q. You discussed the matter? A. Yes.

Q. What was your discussion as to the plaintiff's case being taken up by Division No. 4?

MR. HAFFNER: How is what this man may have said evidence against us?

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MR. McMURRAY: You claim we have not made the right steps to be heard by Division No. 4, and I think I can prove by this witness what they did to prevent us.

MR. HAFFNER: I object to what discussion took place, and what decision was arrived at.

THE COURT: Does he know of any notice coming to him, to the committee?

MR. McMURRAY: He was a member of the committee and took part in it.

THE COURT: Let us have the evidence if he knows. 10

BY MR. McMURRAY:

Q. What occurred in your committee about this application of Young's?

THE COURT: First of all, was there an application?

BY MR. HAFFNER:

Q. Was there an application by a machinist made to a boilermakers' committee?

A. I don't know what it was, it was just an application made, I don't know who it was handed to or by whom.

Q. Do you know if it was Young's application? 20

A. I don't know.

BY MR. McMURRAY:

Q. Why did you say that Young's application had been put before your committee? A. I do not admit that.

Q. You have sworn to it already. You swore that Young's application was put to the grievance committee of which you were a member? A. I didn't say that.

Q. I asked you if this was an organization of Division No. 4, what was your answer? A. Yes.

Q. So this grievance committee was an organization of Division No. 4? Is that right?

A. Indirectly, yes.

Q. That you belong to? A. Yes.

Q. What application had you in mind when you told me that an application was made? A. There was a letter to the grievance committee.

BY THE COURT:

Q. Did you see it? A. No, I didn't see it.

10 Q. How do you know? A. Just what I was told.

THE COURT: Hearsay.

BY MR. McMURRAY:

Q. Now then, witness, you say that the matter was discussed in that committee? A. Yes.

Q. What matter was discussed in your committee?

A. The letter regarding us taking it up to the superintendent.

Q. Taking what up to the superintendent?

A. Their notice of being laid-off.

Q. Of who being laid off? A. I couldn't tell you.

20 Q. Are you serious in that? A. Yes.

Q. You are really serious? A. Yes.

Q. You, a member of Division No. 4, and an application was made, and a discussion was held upon it, and you don't know whose application it was? A. Yes.

Q. A very useful member of the committee, aren't you?

A. It is generally taken up by the chairman of the committee.

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 (Continued)

Q. Who was the chairman of that committee?

A. A man by the name of Adolph.

Q. Was the matter taken up to the superintendent?

A. I don't know.

Q. What did you decide upon doing? A. Nothing.

Q. You decided to do nothing? A. Yes.

Q. That is, you did nothing, or you decided to do nothing, which was it? A. I decided to do nothing.

BY THE COURT:

Q. You decided? A. Well, the committee decided. 10

MR. HAFFNER: It is not shown that this has any reference to the plaintiff. Surely this is not relevant.

BY MR. McMURRAY:

Q. At any rate, nothing was done with the plaintiff?

A. Yes.

Q. Do you know what time of the year this was?

A. No, I don't recollect.

Q. Memory failing? A. Yes.

Q. Memory is failing. Was it last summer?

A. I couldn't tell you. 20

Q. Was it two years ago? A. Not as I know of.

Q. When was it? A. I couldn't tell you. I don't recollect.

Q. You can't tell. About the only thing that you are sure of is that you saw Young down at a meeting one day? A. Two or three times, yes.

Q. That is all you know?

RE-EXAMINATION BY MR. HAFFNER:

Q. You were asked who brought you here or what brought you here. Were you served with a subpoena?

A. Yes.

Q. And that is the reason you came? A. Yes.

Q. You were asked what you know about this scheme in the shops. Since the scheme has gone into effect do you know what has taken place in regard to it? A. Yes.

Q. Do you know what has taken place in regard to the
10 scheme in the shops since it went into effect? A. Yes.

Q. What do you know that has been done there in connection with the cooperative plan?

A. Better improvements have been put into the shop, generally speaking it is better working there than it was before.

Q. It has been shown here that the men elect representatives to what is known as a shop committee? A. Yes.

Q. You have had something to do with that? A. Yes.

Q. What did you do in connection with that?

A. I take up the grievance of the men.

20 Q. And you are also on that shop committee? A. Yes.

Q. And you have been elected by the men to that shop committee? A. Yes.

Q. And the men also suggest to you changes or improvements that they think might be made around the shop?

A. No, that is taken up through the cooperative committee.

Q. I am asking you about the cooperative committee?

A. I am not a representative on that.

Q. What have you to do with the cooperative scheme in the

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shop? There are representatives elected?

A. Yes.

Q. Have you had anything to do with electing them?

A. No.

Q. How are they elected? A. They are generally elected by the lodge, only it happened at that time when these men were elected I was not at the lodge.

Q. You weren't there when the men were elected. But as a man working in the shops have you had anything to do with making suggestions to this representative of the co-operative 10 committee?

A. Yes.

Q. And the other men in the shops too?

A. Yes.

Q. Can you tell us any actual improvements that have taken place in the shops as a result of this cooperative committee?

A. Yes, there has been wash basins put into the lavatory. There has been a pump-house taken away, a welding room put into the shop, so as to create more room.

Q. Are there other things? A. There are quite a few 20 that I cannot bring to mind.

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 Evidence
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 Bailey
 Re-Cross-
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MR. McMURRAY: There is one question I overlooked, my lord.

THE COURT: Yes.

BY MR. McMURRAY:

Q. You said you took up the grievances of the men?

A. Yes.

Q. Of what men? A. Of the boilermakers working in the shop.

Q. The majority of those men are of the Canadian Brotherhood of Railway Employees? A. No.

Q. Would you take up their grievances? A. No.

Q. Then you wouldn't take up the grievances of the men?

A. Of the men belonging to the international organizations.

Q. That is, you would only intervene on behalf of the men of Division No. 4? A. Yes.

Q. The other men's grievances could go anyway at all, no odds what their conditions were? A. Yes.

10 MR. McMURRAY: That is all.

JOHN AIRD, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

Q. You are a machinist, I believe, working in the Fort Rouge shops of the Canadian National Railway in Winnipeg?

A. Yes.

Q. And you have been working there for a number of years?

A. Since 1918.

Q. As a machinist all that time? A. As a machinist.

Q. You know the plaintiff, Mr. William Young, present in
20 Court? A. Yes.

Q. And you have known him while he worked there, I suppose? A. A matter of five or six years, something like that.

Q. You are, I believe, secretary of the Fort Rouge unit of the One Big Union? A. Yes.

Q. That is a part or a unit of the One Big Union, and that includes the members working in those shops?

A. In the Fort Rouge shops.

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Q. And you have been secretary of that organization for how long? A. For three years, I guess.

Q. Mr. Young is assistant secretary, I believe?

A. He is not assistant now. He is working in St. Boniface.

Q. Since sometime in April he is working with another company? A. Yes.

Q. But up until he got a position with the Western Steel organization he was in that office? A. Yes.

BY THE COURT:

Q. Up until what time he was in what office? 10

BY MR. LAIRD:

Q. Assistant secretary of the Fort Rouge unit?

A. Yes.

Q. He being assistant secretary and you being secretary?

A. Yes.

Q. Have you a treasurer as well as secretary? A. No.

Q. So it was part of your duties to collect the dues of members? A. Yes.

Q. And part of your duties to keep records of meetings, I suppose? A. Yes. 20

Q. And when you are otherwise engaged or can't perform the work Mr. Young does it? or did it?

A. He used to do it, yes.

Q. He has not been in the office since sometime in April when he got another position? A. Yes.

Q. Do you know of payments that were made to Mr. Young since June, 1927? A. Yes, not exactly payments, it is a loan.

Q. Well, money was paid to him since June, 1927?

A. Yes, as a loan.

Q. Have you got the agreement between Mr. Young and the One Big Union? A. And the Fort Rouge unit of the One Big Union?

Q. Is that agreement in writing? A. Yes.

Q. Have you got it with you? A. Yes.

Q. Will you let me see it? You hand me two papers. This relates to a minute? A. That is a copy of the resolution.

10 Q. Well, I will deal with that later. (Handing back to witness.) You know Mr. Young's signature; you have known him for six or eight years. A. Yes.

Q. There is no doubt that the words "William Young" are his signature in his own handwriting? A. Yes.

Q. You know the other signatures to this document?

A. Yes.

Q. Are they all signatures of the men they purport to be signed by? A. Yes.

Q. This document bears dated the 15th July, 1927. Was it
20 prepared and executed about that time?

A. Just about that time.

Q. And it has been in your possession and custody ever since? A. Ever since.

(Agreement between Fort Rouge Railway Workers of the One Big Union and William Young et al dated 15th July, 1927, produced and marked **Exhibit 42.**)

Q. Mr. McMurray, counsel for the plaintiff, has seen this document, of course, before? A. I think so.

Q. You showed it to him? A. Yes.

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Q. And you refused to show it to me before you went into the witness box? A. Yes.

Q. And you know that neither I nor any of the counsel for the defence in this case saw this document before this minute?

A. Yes.

Q. It is headed "Fort Rouge Railway Workers Unit of the One Big Union." That is the correct name, is it, The Fort Rouge Railway Workers Unit of the One Big Union?

A. Yes.

Q. But that is the organization of which you are secretary 10 and Mr. Young was assistant secretary?

A. Yes.

Q. And is part of the One Big Union embracing members in the Fort Rouge Shops? A. Yes.

Q. At that time action against the Railway Company by Mr. Young was in contemplation? A. Yes, I believe so.

Q. And you know Mr. Young has no funds or money to conduct or finance such an action? A. No, I don't know. He may have for all I know. I don't know his financial circumstances at all. 20

Q. You have known him for six years, and he has been your assistant for two years, and you don't know his financial circumstances? You know as a matter of fact—

THE COURT: How much money was paid under this agreement, may I ask?

BY MR. LAIRD:

Q. Do you know how much money was paid under this agreement? A. No, I don't know.

Q. Mr. Young told us the other day about \$1300?

A. It would be approximately that. 30

Q. Now, on that point, Mr. Aird, please tell me how the

moneys were paid. As I understood from him some order was signed by you. Could you tell us about that?

A. I sanctioned the secretary of the Central Labor Council to pay it out.

Q. You sanctioned it? A. Yes.

Q. That is, every two weeks? A. Yes, sometimes by phone call.

Q. Who would you phone, Mr. Russell? A. Mr. Russell.

Q. You would phone Mr. Russell to pay Mr. Young his 10 wages? A. Yes.

Q. The same as if he were working in the shops?

A. Yes.

Q. And that has been done since the agreement was made until he got a job with the Western Steel Products?

A. Yes.

Q. And then when he got that job with the Western Steel Products—

MR. McMURRAY: I object to that.

Q. Did you pay him any moneys after he got a job?

20 A. No.

Q. Has Mr. Young seen you about the payments personally, or you do this portion here, phoning, simply as a matter of course without any request? A. Simply as a matter of course, according to my instructions.

Q. According to your instructions from whom?

A. From the Fort Rouge unit.

Q. There was some question arose when the shops went to work Saturday mornings. In June, 1927, they were not working Saturday forenoons at all? A. No.

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Q. And they started working Saturday forenoon last winter or fall? A. Yes, sometime last winter.

Q. And then Mr. Young took it up with the Fort Rouge unit, the question of getting payment for the Saturday morning hours, did he not? A. I don't think it came from him.

Q. It came from some of the other signatures on this agreement? A. No, as far as I remember it came from the membership themselves of the Fort Rouge unit.

Q. The membership themselves of the Fort Rouge unit took the initiative themselves? A. Yes. 10

Q. And instead of paying five days a week, you paid for six days a week? A. Five and one half.

Q. Yes, five and one half. The Fort Rouge unit itself did not have funds to pay Young these moneys?

A. No.

Q. With whom did you make this arrangement?

A. The Central Labor Council of the O B U.

Q. With the Winnipeg Central Labor Council? A. Yes.

Q. That is really the governing body of the One Big Union?

A. Yes. 20

Q. Had you personally to do with the making of that arrangement, Mr. Aird? A. Yes, more or less.

Q. Did you meet the full Council? A. No, I did not.

Q. You met a committee of them? A. No, the request went from the Fort Rouge unit, and then it was discussed at a meeting of the Council and agreed.

Q. Were you present? A. No, I was not present.

Q. Are you a member of the Winnipeg Central Labor Council? A. No, I am not.

Q. And then after it had been discussed by the Winnipeg Central Labor Council you met some of the members as representing the Fort Rouge Railway Workers Unit, or did you?

A. I don't exactly remember.

MR. McMURRAY: I would object. This witness has filed a document showing whatever financing is being done is between Mr. Young and the Fort Rouge unit. Where the Fort Rouge unit borrowed the money is surely immaterial.

THE COURT: It is made an issue that the O B U are financing it. I suppose they are entitled to substantiate that? That is an issue raised on the pleadings and therefore I can't very well exclude evidence to support it.

BY MR. LAIRD:

Q. Whom did you see, Mr. Aird, about this before any moneys were advanced, whom of the Winnipeg Central Labor Council? A. The secretary.

Q. That is Mr. R. B. Russell, is it? A. Yes, Mr. Russell.

Q. And the arrangement between the Fort Rouge Railway Workers Unit and the Winnipeg Central Labor Council, so far as you were concerned, were made with Mr. R. B. Russell?

A. Yes.

Q. That was in July of 1927, was it? or June?

A. Sometime around there.

Q. Sometime in June or July? There is no writing between the Fort Rouge Railway Workers unit of the One Big Union and the Winnipeg Central Labor Council?

A. No, there is no writing.

Q. That is purely a verbal agreement?

A. Absolutely.

30 Q. And you have already told me that the Fort Rouge unit had no funds to pay Mr. Young, is that right?

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A. Yes, they had no funds.

Q. And you got that money advanced through the Central Labor Council? A. Advanced to us as a loan, yes.

Q. Advanced to the unit as a loan. A. Yes.

Q. When is it to be repaid by the unit?

A. As soon as we can.

Q. As a matter of fact you have no funds at all, have you?

A. We have some.

Q. The members fees. How much is in the treasury at the present time, \$20? A. A little more than that. 10

Q. \$40; it would be under \$50? A. Yes, it would be under \$50.

Q. And that would be the largest sum you would have?

A. I don't know, I cannot foresee the future.

Q. But I mean ordinarily that is about the amount you have on hand from members fees, and you would use it for expenses of running the unit? A. Yes.

Q. And the Fort Rouge unit never had such a sum on hand as \$1000? A. Oh, my goodness, yes.

Q. Did it? When was that? A. 1920, 1921. 20

Q. Then there is no date at all fixed when the Fort Rouge unit is to repay the money to the Winipeg Central Labor Council?

A. No date.

Q. Nothing at all as to interest or anything of that sort?

A. No.

Q. No agreement as to interest? A. No.

Q. Purely verbal between you and Mr. Russell?

A. Yes.

MR. McMURRAY: A gentleman's agreement.

BY MR. LAIRD:

Q. That is what it is, it is a gentleman's agreement between you and Mr. Russell? A. Yes.

Q. When you handed me this exhibit 42 there was also attached to it some resolution which you said related to it?

A. A copy of the resolution.

Q. Mr. McMurray has seen this, has he?

10 A. I think so.

MR. McMURRAY: I don't know that I have.

MR. LAIRD: I take it this is not the original minute from the book. If Mr. McMurray objects we may have to bring the original book, that is all.

BY MR. LAIRD:

Q. You were asked to bring the original books. I suppose you considered that you writing it out, it is the same as the original, do you? (No answer.)

Q. Can you tell me whether Mr. Young was present at the 20 meeting of the 13th July? A. I don't remember.

MR. LAIRD: I don't know that it is evidence. It is simply a resolution of the unit authorizing the agreement.

MR. McMURRAY: I object to it not because it is a copy, but because of the immateriality.

MR. LAIRD: Well, there is an aspect that has just struck me.

BY MR. LAIRD:

Q. This agreement, exhibit 42, Mr. Aird, is not signed by or on behalf of the Fort Rouge Railway Workers unit, is it?

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A. No.

Q. It is simply addressed to the chairman and secretary?

A. Yes.

Q. Who is the chairman? A. Mr. George Browning.

Q. He was in 1927 and still is? A. Yes.

Q. Then tell me this, did the Fort Rouge Railways Workers unit of the One Big Union approve of the agreement exhibit 42?

A. Approve of it, yes.

Q. By a resolution of a meeting duly called?

A. I don't know if there was any resolution covering that 10 point at all.

Q. But there was a resolution authorizing it to be made?

A. Yes.

Q. And what you produce is the copy. A. Yes.

MR. LAIRD: Do you object to the copy?

MR. McMURRAY: I don't object to the copy, but I do object to the filing of the document. There are only two things, there is the written agreement—

MR. LAIRD: The document is not signed by the One Big Union. This resolution of the unit is authorizing it. 20

THE COURT: Really to show that the agreement went into effect.

MR. LAIRD: Yes, that the agreement was authorized.

MR. BERGMAN: The witness has stated that.

THE COURT: Yes, but he has stated it verbally, and if it is in writing—unless you consent?

BY MR. LAIRD:

Q. It was authorized at a meeting of the Fort Rouge Railway Workes unit? A. Yes.

Q. By a resolution duly passed? A. It was by that resolution there, yes.

Q. The resolution you produce? A. Yes, that is a copy of it.

Q. Have you got the original minute book here?

A. Not here.

MR. LAIRD: I don't know, my lord, whether a resolution
10 moved by the meeting, seconded and carried, is in the same position as the agreement.

THE COURT: If he can give it by memory it is just as good.

BY MR. LAIRD:

Q. Can you tell me whether exhibit 42 was authorized by the Fort Rouge Railway Workers unit of the One Big Union?

A. Yes, it certainly was.

BY THE COURT:

Q. Before or after the agreement was made?

A. Both before and after.

20 BY MR. LAIRD:

Q. That is, it was authorized to be made before it was made, and then it was subsequently approved, is that right? A. Yes.

Q. Do you object on the ground it is a copy?

MR. McMURRAY: No.

MR. LAIRD: Then I tender it.

THE COURT: By consent I will let it in, but the contents are already in.

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BY MR. LAIRD:

Q. "Com." refers to comrade does it, Mr. Aird?

A. Yes.

(Resolution referred to of the Fort Rouge Railways Workers Unit, produced and marked **Exhibit 43.**)

Q. That is, a true copy of the resolution in your minutes?

A. Yes.

Q. Mr. H. Davy is the Mr. H. Davy who is sitting here in the Court room? A. Yes.

Q. And you told me I think you don't know whether 10 Mr. Young was present at the meeting or not?

A. I can't remember that far back.

Q. You have been a member of the One Big Union for several years, I take it, Mr. Aird? A. Yes.

Q. You know the constitution I suppose?

A. No, not very well.

Q. Well, do you know this little book I show you, whether it is the constitution or not? A. It looks like one.

Q. Well look at it please. Did the subpoena ask you to produce the constitution? A. Yes, but I haven't got one. 20

Q. Is that the constitution of the One Big Union?

A. I don't know.

Q. You don't know? A. No.

Q. And you have been secretary for— A. For 3 years.

MR. LAIRD: I think there is one that is filed already for identification.

Q. Looking at the paper marked "O" for identification, can

you tell me whether that is the constitution and laws of the One Big Union? A. I can't tell you, I would have to—

Q. You would have to what? A. Compare it with the original manuscript, and so forth.

Q. Well, these are distributed to your unit, aren't they by the headquarters? A. No, we have never had any.

Q. How do you carry on your position as secretary?

A. Well, there are no instructions in there for a secretary, as far as I know.

10 Q. As far as you know? A. No.

Q. But you have never used it or referred to it?

A. I have seen the inside of one sometime.

Q. Can you tell us about who is conducting this litigation, Mr. Aird? A. Who is conducting it?

THE COURT: Mr. McMurray.

A. Mr. McMurray.

BY MR. LAIRD:

Q. Do you know who is instructing Mr. Bergman and Mr. McMURRAY? A. I don't know.

20 Q. Do you know who is financing the litigation?

A. Yes, I think it is the Central Labor Council.

Q. You know that? A. But that is purely as a loan too.

Q. You know that the Winnipeg Central Labor Council is financing the litigation? A. Yes, but as a loan to the Fort Rouge unit.

Q. Is that in writing, do you know? A. No, it is not in writing.

MR. McMURRAY: I think the witness said more than went

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down there. I think my learned friend did not repeat all the witness has said.

THE COURT: The Reporter will have it down.

BY MR. LAIRD:

Q. You say the Winnipeg Central Labor Council is financing the litigation? A. As far as I know.

Q. And then you said something about that is a loan too?

A. Yes.

Q. That is, if the suit is successful and the Railway Company is ordered to pay the costs, the money will be repaid in that way, 10 Mr. Aird? A. Yes.

Q. But, of course, if the suit should happen to be a failure in that case the Winnipeg Central Labor Council would not get the money back? A. The Fort Rouge unit would be under an obligation to pay it.

Q. The Fort Rouge unit? A. Yes.

Q. Oh? When did the Fort Rouge unit undertake to finance the litigation. This is something new.

MR. McMURRAY: He said something about that before.

Q. Do you now mean to say that exhibit 42 covers money paid 20 not only to Mr. Young personally as the equivalent of his wages but it covers all moneys paid on behalf of Mr. Young or paid on behalf of the conduct of this suit?

A. No, it does not.

Q. That is what I understood. Exhibit 42 only relates to the moneys advanced every two weeks or paid every two weeks to Mr. Young? A. Yes.

Q. Was there another agreement between the Fort Rouge unit and Mr. Young as to the financing of this suit?

A. No, there is no agreement at all.

Q. That agreement as to the financing of the suit is made between Mr. Young, the plaintiff, and the Winnipeg Central Labor Council itself?

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MR. McMURRAY: Now, surely that is very leading.

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Q. Well, is that the case? Between whom is the agreement made as to the financing of the suit?

A. There was no agreement necessary in this case.

BY THE COURT:

Q. Was any made? A. No.

10 BY MR. LAIRD:

Q. The fact is, the Winnipeg Central Labor Council you have already told me is financing the suit? A. Yes.

Q. Paying out money from time to time, I take it?

A. Yes.

Q. Do you know how much they have paid? A. No, I do not.

Q. Approximately? A. I have no idea.

Q. You never heard from Mr. Young? A. No.

Q. Well then, is there any agreement between the Winnipeg
20 Central Labor Council and the Fort Rouge unit?

A. No agreement.

Q. With reference to that money? A. No agreement.

Q. No agreement at all? A. No.

Q. Now, from what I gather from my learned friend you have stated a moment ago there was? A. I did not.

Q. And you did not mean to give any such understanding that there was any agreement between the Winnipeg Central La-

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bor Council and the Fort Rouge unit as to the financing of this suit? A. No.

Q. Anything relating to the financing of this suit is purely between the plaintiff and the Winnipeg Central Labor Council?

A. Well, in any labor organization I presume that the headquarters would—

Q. Never mind, what is the position here, Mr. Aird?

A. It is just a case of headquarters being behind each member.

Q. That means that the Winnipeg Central Labor Council are 10 behind Mr. Young? A. Or behind the Fort Rouge unit.

Q. And Mr. Young? A. The Fort Rouge unit is behind Mr. Young.

Q. What is the position now when Mr. Young ceases to be a member of the Fort Rouge unit? A. I don't know exactly.

Q. Is Mr. Young still a member of the One Big Union?

A. Yes.

Q. Then I take it there is no agreement at all between the Winnipeg Central Labor Council and the Fort Rouge unit of the One Big Union by which the Fort Rouge unit is under any²⁰ obligation to repay any moneys that the Winnipeg Central Labor Council may have advanced in the conduct of this litigation?

A. No agreement.

Q. No agreement? A. No agreement.

Q. And there never has been any agreement?

A. No.

Q. Was any money paid to Mr. Young's solicitors in respect of the prosecuting of this suit under exhibit 43, the resolution?

A. No.

MR. LAIRD: That is all.

CROSS-EXAMINATION BY MR. McMURRAY:

Q. I believe you are not a member of the Winnipeg Central Labor Council of the One Big Union? A. No.

Q. As a matter of fact, you don't know what arrangements Young has made for the financing of this action?

A. No, I do not.

Q. You don't know? A. No.

Q. He might have borrowed the money from the President of the United States for all you know? A. Possibly.

10 Q. Not likely. That is all.

BY THE COURT:

Q. Well, if you are so innocent of this why did you give all this evidence about the Winnipeg Central Labor Council financing it? A. Well, this is only what I understand, your lordship.

Q. What you understand? A. Yes, there is no agreement of any kind.

Q. Who is your informant? A. I could not really say.

Q. What you were telling about the financing of the action by the O.B.U. of the Winnipeg Labor Council, is what you have 20 heard? A. Yes, what I have heard.

Q. And you don't know from whom you heard it?

A. No, I could not really say who it was.

MR. LAIRD: May I ask a question or two?

THE COURT: Yes.

BY MR. LAIRD:

Q. Mr. Young has attended meetings of your unit since June, 1927? A. Yes.

Q. Attended them pretty regularly? A. Yes.

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Q. And the question of his suit against the Railway Company has been discussed at those meetings?

A. No, it has never been discussed.

Q. Never been discussed? A. Not officially. It has not been discussed in open meeting.

Q. Has it been discussed in some closed meeting?

A. It might be discussed after the meeting was adjourned or before it started, or something like that.

Q. It was discussed before or after? A. It possibly was.

Q. You believe it was? A. Yes. 10

Q. And Mr. Young was present at those discussions?

A. I would think so, sometimes.

Q. And was anything said at those discussions as to the Winnipeg Central Labor Council financing the suit?

A. I can't recall.

BY THE COURT: Mr. Laird, the witness said possibly there was a discussion. You said to the witness there was a discussion and he said he believed there was.

BY THE COURT:

Q. Was there such a discussion? 20

A. There possibly was, but I can't remember every discussion that took place.

Q. Possibly does not mean much? Can you say from your memory whether there was? A. No, I can't say definitely whether or not there was.

BY MR. LAIRD:

Q. I asked you to bring your minute book here, Mr. Aird, containing any minute relating to this litigation. Did you look at your minute book? A. Yes.

Q. Is there any minute in it relating to this litigation?

A. Not about the case itself, there is not a word in it.

Q. Not a word in it about the case itself?

A. No.

Q. Nothing beyond the agreement as to the payment of the money to Mr. Young? A. That is all.

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MR. McMURRAY: Just one question, my lord, to clear up ambiguity that may possibly exist in my learned friend's mind.

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BY MR. McMURRAY:

10 Q. Is Mr. Young a member of the Fort Rouge unit of the One Big Union at the present time? A. Yes.

MR. LAIRD: I thought he dropped out when he went to work for the Western Steel Company?

THE COURT: I understood the witness to say that the plaintiff discontinued when he got this new appointment?

MR. BERGMAN: No, discontinued as assistant secretary.

THE WITNESS: As assistant secretary.

BY MR. LAIRD:

Q. There is no doubt, then, that the position is that he 20 dropped out of being assistant secretary, but he is still a member of the Fort Rouge unit? A. Yes.

Q. Although he is not employed in any Railway shops?

A. No.

THE COURT: That is a part of our dispute, as to whether he is employed in the shops or not.

BY MR. LAIRD:

Q. Well, he is not at work there? A. No.

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JOHN GLENDENNING, being first duly sworn, testified as follows on behalf of the defendant:

MR. LAIRD: I am putting in under the notice that was filed the other day in regard to the use of copies instead of the originals, this telegram. My learned friend has seen this. A Telegram from Mr. Mace, of the 14/15 July, 1922. I am putting that in under the notice and under The Evidence Act.

MR. McMURRAY: I object to that. It is utterly irrelevant.

MR. LAIRD: We have pleaded, my lord, that the plaintiff did not authorize Division No. 4, and, on the contrary that he¹⁰ repudiated the authority of Division No. 4. When he was in the witness box I examined him as to meetings held and procedure taken in 1922. These are communications from the organization, of which we claim the plaintiff was a member, to the secretary of the Railway Association of Canada, on that point of repudiation.

MR. McMURRAY: There is no evidence that Young was a member of this particular thing. There is no evidence that he has any official position.

THE COURT: I don't know what the document is. What do you propose to do with this document? 20

MR. LAIRD: I am putting it in as evidence under exhibit 40, and the Evidence Act. My learned friend says it is not material; I submit it is material on the ground of repudiation.

THE COURT: By whom of what?

MR. LAIRD: By the plaintiff of the authority of Division No. 4 to in any way act for him or represent him. We have pleaded they were not authorized, and, on the contrary, that the plaintiff repudiated them.

MR. McMURRAY: In reply to that I say there is no evidence that Young was a member of this Western Shopmen's Com-30 mittee. There is no evidence of Mace's—

THE COURT: What do you do in the pleadings? If this issue is raised and you allow it to stand, and meet it, that makes it an issue. Why wasn't the pleading removed as embarrassing?

MR. McMURRAY: That may be, but this is some little committee.

THE COURT: I don't know what the document is, but it is on the point of repudiation.

MR. McMURRAY: I think it would make it much plainer if my learned friend would show you the document. My learned friend is producing a copy of a telegram sent by one Mace, who signs himself as secretary of the Shopmen's Western Committee.

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THE COURT: Of Division 4.

MR. McMURRAY: No, it was a little committee, my lord, that was formed over in the shops to protest against Division 4 being the sole representatives for the men. It is the secretary of the Western Shopmen's Committee.

THE COURT: That would be shopmen who were not members of Division No. 4.

MR. McMURRAY: Not members of Division 4.

THE COURT: Was Young a member of it?

MR. McMURRAY: No evidence that he was.

MR. LAIRD: Yes, Mr. Davy testified that Young attended several of these meetings.

MR. McMURRAY: He may have attended the meetings, but he wasn't a member in any shape or form. There is no evidence that Mace is the secretary of it.

THE COURT: Perhaps you had better make that clearer before going any further.

MR. LAIRD: I will proceed with the witness, and perhaps I can clear that up.

BY MR. LAIRD:

Q. You live in Winnipeg, Mr. Glendenning. A. Yes.

Q. And have lived here for a good many years.

A. Yes, since 1911.

30 Q. You work for whom? What is your occupation?

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A. Pattern-maker.

Q. Where do you work? A. Canadian National.

Q. Where? A. Transcona.

Q. So you are a pattern-maker working in the Transcona shops of the Canadian National Railway. A. Yes

Q. Have you worked there since 1911? A. No, since 1915.

Q. Did you have anything to do with a committee or an organization in 1922 known as the Western Railroad Shopmen's Committee? A. Yes.

Q. What did you have to do? A. I was chairman of that committee for a period of time.

Q. Who was the secretary of it, do you know?

A. T. Mace.

Q. Do you know what "T" means? A. Tom.

Q. Can you tell me how that committee was organized or came into existence, Mr. Glendenning? A. It was organized in Plebs Hall.

Q. What is Plebs hall? A. The O.B.U. hall.

Q. It is the O.B.U. hall. A. Yes

Q. What does the O.B.U. do there? A. They carry on the activities of their organization.

Q. It is the headquarters of the O.B.U. in Winnipeg?

A. Yes.

Q. That is on Adelaide street. A. Yes.

Q. Do you know the number? A. No, I don't know the number.

Q. It was organized in Plebs Hall. By whom was it organized? Well, it was organized by Russell, Clancy, Foster, Mace,

myself, Sanders, McGregor—oh, quite a number. They were all O.B.U. men.

Q. Were you an O.B.U. man? A. Yes.

Q. You stated you were one of the organizers yourself?

A. Sure.

Q. Were all these men you have mentioned officers or officials of the O.B.U., or One Big Union? A. No. Clancy at that time was chairman of the Central Labor Council. Russell was secretary of the Central Labor Council. Mace was secretary of the
10 Railroad District Board, I think they call it. I didn't hold any office, except chairman of that—

Q. You were a member of the One Big Union.

A. I was chairman of this unit, that is, the Transcona unit. That is the only office I had.

Q. Transcona unit of Railway workers. A. Yes.

Q. And these other names you have mentioned they were members. A. Some of them were members, and others again were in an official capacity in the organization.

Q. Who called the meetings of the employees?

20 A. The body that called the meetings was the Western Shopmen's Committee, on instructions issued from the O.B.U.

Q. Under instructions issued from the O.B.U.

A. Yes.

Q. And the meetings were held where? A. There was one meeting held in the Strand.

Q. That is a theatre. A. Yes. There were meetings held in the Adelaide street hall, that is, Plebs Hall.

Q. The Strand is a theatre in the city. A. Yes.

Q. And these meetings were called under instructions of the
30 One Big Union. A. Surely.

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Q. Were you present at the meeting at the Strand theatre?

A. I was chairman of it.

Q. What took place? A. Well—

MR. McMURRAY: I object.

THE COURT: You are going into a great deal of matter that may possibly not be connected with the plaintiff.

MR. LAIRD: The evidence in, my lord, is that this man, the plaintiff, attended the meetings. In addition to attending the meetings he was a member and an official of the organization.

THE COURT: It has not so far been given by this witness.¹⁰ It has not been mentioned that the plaintiff was a member of this body. We are not concerned with meetings unless the plaintiff is identified with them.

MR. LAIRD: I will try and prove by other witnesses that the plaintiff is identified with it.

Q. Do you know the plaintiff Young?

A. Oh, I have seen him, but that is about all. I don't recollect having met him in the O.B.U. hall. I can't remember any dates, but I have seen him around there, but I don't remember any dates or having conversation with him at any time; I don't re-20 member.

Q. You have seen him at the O.B.U.? A. Yes.

MR. McMURRAY: Around there.

Q. Have you seen him in the hall, in Plebs Hall?

A. Well, it would be in the Hall, in one of the rooms.

Q. In the office. A. Either in the office or one of the rooms.

Q. Do you know whether the plaintiff Young attended meetings of the Western Shopmen's Committee? A. No.

Q. You can't tell whether he did or not. Do you know³⁰

whether at that time Young was a member of the One Big Union?

A. Well, any other than seeing he was around the hall I assumed he was.

Q. What action, if any, did the Committee take in respect of Division 4?

MR. McMURRAY: I object.

THE COURT: No, you haven't identified the plaintiff with it.

10 MR. LAIRD: My lord, the plaintiff was a member of the organization.

THE COURT: There are some other organizations, sub-organizations in this matter.

MR. LAIRD: He was a member of the One Big Union, and the evidence is that the One Big Union organized this committee, called the meetings of the Committee, instructed that they be called, and then took action, and my submission is that the action they took is binding upon the plaintiff.

THE COURT: Well, was it? Where is the evidence of it?

20 MR. LAIRD: There is the evidence already in that Young did attend meetings.

THE COURT: Of this particular Committee. I don't recall any. You must remember there are a great number of committees, but this particular one—?

MR. LAIRD: There is evidence that he attended two or three of those meetings in July, 1922, and even if he did not, even if there were no evidence, under the plea that he has repudiated the agreement the evidence is admissible.

BY THE COURT:

30 Q. Who comprised this Western Shopmen's Committee? Do you know? Are you in a position to state?

A. Well, there was Russell—

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Q. But are you in a position to know who made up the Committee? A. The entire committee? I can't give you the entire committee. There was a committee appointed in the O.B.U. to carry on the work in connection with the Shopmen's Committee, and that committee was Foster, Clancy, myself, Saunders, Weir—I think there would be about fifteen, but as regards naming them all offhand I can't recollect them all. That committee was formed for the purpose of repudiating the agreement between Division 4 and the management as regards wages, hours and conditions at that particular time. It was done with the intention of arousing the men in the shops from their apathy, and organizing them in that manner for that purpose.

BY MR. LAIRD:

Q. That is, a committee of the One Big Union of about fifteen was first formed. A. Was organized in the Plebs Hall.

Q. For the purpose you have already told us. Then that committee proceeded to do what? A. Conducted meetings.

Q. Did it call the meetings under the name of the One Big Union? A. No, it called the meetings under the name of the Western Shopmen's Committee. 20

Q. Can you tell me why it didn't use the One Big Union?

A. Well, they were afraid—I took it at that time they were afraid that the O.B.U. might stink in the nostrils of quite a number of railroad shopmen who were hostile to that form of organization; and they wanted to take advantage of the sentiment of the prejudice against the International. They said they could organize all the elements into one by calling it the Western Shopmen's Committee.

Q. Do you remember who attended meetings? You were chairman of several of them. A. Well, the meetings at the Plebs Hall were all attended by O.B.U. men. I don't recollect any International men being present.

Q. By "International men" you mean Division No. 4 men.

A. Yes. As regards the meeting in the Strand, well, there may have been men outside of the O.B.U. organization that attended that particular meeting.

Q. The meetings in Plebs Hall were attended exclusively by O.B.U. men. A. By O.B.U. men.

Q. Did the meetings take any action? A. They took action at the one meeting in the Strand, where the resolution was passed requiring a board of arbitration, and also at the same time signing of the papers necessary to get the Board of Arbitration. That was the meeting which took place and discussed the resolution applying for a board of arbitration, and in applying for the board of arbitration it was necessary to sign papers that in the event
10 of an arbitration board not being granted that a strike would take place. We signed the papers—

Q. Who signed the papers? A. Mr. Garry and myself.

Q. Were you authorized to sign the papers?

A. Well, that meeting went on record, in the Strand theatre, of endorsing the action, and the decision to sign those papers was decided in Plebs Hall.

Q. You have told me Mr. Thomas Mace was secretary. Do you know whether he did anything as secretary of that committee? A. He handled all the correspondence.

20 Q. What correspondence did he have?

BY THE COURT:

Q. BEFORE you get to that. This committee you speak of, of about fifteen, was organized for the purpose of unifying in some way opposition to the B. and O. plan in the shops?

A. No. There was a reduction contemplated in that year, and they were uniting really the forces claiming that the Division movement did not represent the men, and that they had no right to agree to any wage reduction between them and the management, and they wanted to step in the shoes of those making the
30 agreement, and the attempt was made to get control by the O.B.U., so that they would make the agreement instead of Division 4 had they got their own way.

Q. The purpose of this was to supplant Division No. 4 by the O.B.U. A. Yes.

Q. To get the bargaining power on behalf of the men.

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A. Yes.

THE COURT: What has that to do with the present issue?

MR. LAIRD: It is on repudiation.

THE COURT: On a different point.

MR. LAIRD: I am not touching the B. and O. plan at all. It wasn't until 1925. We are now in 1922. My learned friend has put in and relies upon this wage agreement made by Division No. 4. We say first, they were not authorized by the plaintiff, and we say further that the plaintiff has repudiated them.

THE COURT: I misunderstood you. I thought you were directing your evidence to the point of the complaints that he should have made and did not make, and so forth, after the dismissal or reduction of staff, whatever it was.

BY THE COURT:

Q. Can you say, witness, what proportion of the men outside of Division No. 4 members were represented by this committee that you speak of? A. Nobody outside of the O.B.U. had any representation at the meeting.

Q. No, but having reference to the workmen in the shops, how many men were represented on your committee, that is, out-20 side of Division No. 4 men?

A. That would be a hard thing to ascertain. The only way you could figure out just how many were in sympathy with the action they were taking would be by remarks passed, but numerically, giving the numbers, I could not give that, but I would think there would be probably twenty per cent. prepared to go with them in Winnipeg.

Q. That is, with your committee. A. Yes.

Q. Twenty-five per cent. of— A. Of the whole shopmen. But that is a difficult thing to get to know, because judging from the meeting in the Strand you would not say there was any more than five per cent., but judging from remarks passed in the shop you might say there was twenty per cent. That would be giving them a good figure.

Q. Then say twenty or twenty-five per cent. were represented by your committee, and Division No. 4 represented a portion of the men. What about the remaining men? A. I would take it, if they were not protesting against the agreement in any organized way, and would assume they were in favor of any conditions agreed upon between the management and the Division. The only organized opposition was on the part of the O.B.U.

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Q. And they represented, you think, about twenty or twenty-five per cent. of the men. A. That would be giving them, I think, a fairly good figure.

Q. What would you say as to the O.B.U. members, were there twenty or twenty-five per cent. all O.B.U.?

A. No, at that time in the shops they did not comprise any more than about—well, there was 2,000 men in the shops.

BY MR. LAIRD:

Q. In Western Canada. A. No Transcona. That is the only shop of which I can give you the numerical strength of the different organizations. At that particular time the O.B.U. did not have more than 150 members, to my recollection.

20 Q. And you were a member of the organization.

A. At that time there was close on 2,000 men employed in the shops.

Q. As I understand your evidence, in view of a remark his lordship made, first a committee was formed of O.B.U. members and officers, of which you were one?

A. Yes.

Q. And that committee called meetings of the shop employees, and those meetings were called the Western Railroad Shopmen's Committee meetings. A. Yes.

30 Q. These meetings included far more than the original committee of O.B.U. men, is that right? A. Instead of going out and arranging those meetings under the O.B.U. head, we assumed the name of the Western Shopmen's Committee to carry the impression with it—that is, to the men in the shops—that it wasn't only an O.B.U. project; that the idea was that the railway em-

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ployees affiliated with the International movement or O.B.U. movement were going to work under this Western Shopmen's Committee.

Q. I think his lordship asked you whether this Western Railroad Shopmen's Committee contained or included all the One Big Union men. A. Sure.

Q. It did. A. Sure.

Q. And Mr. Mace, you have told me, was secretary of that committee. A. Yes.

Q. Was Mr. Mace instructed to do anything at the meetings of that organization? A. Yes.

Q. What was he instructed to do? A. He was instructed to carry on the correspondence, and the telegrams, pay expenses, and carry on all the necessary clerical work in connection with that body.

Q. Do you know the date when the meeting was held in the Strand theatre? A. It was during the summer of 1922.

Q. You don't know the day of the week, or the day of the month? A. No, I haven't got that. It may have been July or August.

20

MR. LAIRD: I tender as material these telegrams and letters from Mr. Mace as secretary of this committee or organization to the Railway Association of Canada on the ground of repudiation. We have pleaded in paragraph 31: "In the further alternative, if the alleged wage agreement No. 1, 4 or 6, or any supplemental or addition to any of them, was entered into as alleged, the plaintiff was not a party thereto and did not adopt or ratify the same. On the contrary, the plaintiff has repudiated the alleged wage agreements Nos. 1, 4 and 6 and supplementals thereto, and has repudiated the right, power or authority of the said Division 4 to represent or to enter into any agreement on his behalf."

I tender this on that plea, on the ground that the organization of which he was a member formed themselves into another organization, or adopted another name, gave themselves another name, as he puts it, to avoid the use of "One Big Union," and carried on their opposition and repudiation in that respect.

MR. McMURRAY: I object to this. What we have here is simply the action, so this witness says, of certain officials of the One Big Union, who go out and form another association altogether. It may have had ideas agreeable to these leaders in doing that, but they never brought Young into it, and they never brought the rank and file of the One Big Union into it.

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MR. LAIRD: Are you giving evidence? The witness has just said that.

THE COURT: The witness said that this committee represented all the O.B.U. members and others.

MR. McMURRAY: I would like to cross-examine on that. It was a purely voluntary statement, and I would like to examine him on that point. It is going very far that an outside institution—

THE COURT: There is some evidence. It is not usual to stop counsel in the middle of his examination. If he has any evidence to support the document, the document is allowed in, and dealt with later. There is some evidence, and the question is raised by paragraph 31 of the statement of defence, and by paragraph 16 of the Reply. That makes it an issue, and I allow the evidence. You have your objection, and any benefit arising out of it.

(Telegram dated July 14/15, 1922, from Thomas Mace to C. P. Riddell, Secretary, Railway Association of Canada, referred to, produced and marked **exhibit 44.**)

MR. BERGMAN: Is this a copy?

MR. LAIRD: We gave notice, and no objection was taken, and it proves itself under the Evidence Act.

THE COURT: Is the original available?

30 MR. LAIRD: We don't need to produce the original under the Evidence Act. I thought that was disposed of the other day.

MR. BERGMAN: That he could use copies, that was disposed of.

THE COURT: Yes, but you haven't in any way indicated this as a copy.

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MR. LAIRD: Under the Act we gave notice that we were going to use documents purporting to be copies.

THE COURT: Is this one of those?

MR. LAIRD: Yes. Will I need to call a witness to prove that? (Reads section 27 of the Evidence Act.)

THE COURT: Is this one of the documents?

MR. LAIRD: Yes, this is one of the documents. Mr. McMurray admitted it the other day.

MR. McMURRAY: But you must prove it is a bona fide telegram. 10

THE COURT: Let us have no more discussion about it; it is in.

BY MR. LAIRD:

Q. This was sent from 56 Adelaide Street, Winnipeg. Can you tell me what that is? A. That is the O.B.U. hall.

Q. I see it refers to Division 4, Railroad Department, A.F. of L. Do you know what A.F. of L. means?

A. American Federation of Labor.

MR. LAIRD: Then I put in, my lord, as No. 8 in the notice, a letter dated July 15, 1922, headed "Western Railroad Shopmen's 20 Committee."

(Letter dated July 15, 1922, referred to, produced and marked exhibit 45.)

BY MR. LAIRD:

Q. Where did Mr. Mace get the authority, if any, to send exhibits 44 and 45?

MR. McMURRAY: I object to that.

THE COURT: You have already covered that. It is leading.

Q. Then what followed this telegram and this letter?

A. Well, there was a document drawn up, and we signed the papers necessary to get a board of arbitration.

Q. You referred to those already. You signed them yourself. A. Yes.

Q. Exhibit 45 refers to notices being posted up about a reduction in wages. Had that been done at that time?

A. Yes, that was done by the management.

Q. That the wages were to be reduced. A. Yes.

10 Q. Then this exhibit 45 refers to: "Failure to grant us same will cause us to take the matter up with the Department of Labour and request a board of arbitration to act immediately."

A. Yes, through those papers signed by Garry and myself.

MR. LAIRD: I put in, my lord, a certified copy of the application. This is under a different section. Section 16 says: "Copies of any records, documents, plans, books or papers belonging to or deposited in any of the departments of the Government of Canada, or of this province, attested under the signature of the head or of the deputy head or of the chief clerk of any
20 such department, and of any records, documents, plans, books or papers in any Dominion lands—" and so on— "shall be competent evidence in all cases in which the original records, documents plans, books or papers could be evidence."

I tender a certified copy, certified under the seal of the department and the signature of the Minister, of the application for a board under the Industrial Disputes and Investigations Act.

MR. McMURRAY: I object to that, my lord.

THE COURT: Do you identify that in any way with what the witness stated?

30 MR. LAIRD: He said he made an application.

BY MR. LAIRD:

Q. Do you know about the date you made the application?

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A. It would be about July.

Q. You have already told me you and Mr. Garry signed the application? A. Yes, we signed it in the Street Railway Chambers.

Q. Where did you get the authority to make the application?

A. We got the authority from the Strand meeting.

MR. LAIRD: This bears the signature of the witness. This is a certified copy, and refers to these meetings.

BY THE COURT:

Q. You say you signed a document. Did you ever sign an-10 other? A. No, that is the only one I recollect signing.

Q. What did you do with it? A. That was forwarded by Mace to the Department of Labor.

BY MR. LAIRD:

Q. What did you do with it after you signed it?

A. Well, the lawyer had it from us to do business with after we had signed it.

Q. That is, you went to a lawyer's office. A. Yes, sure.

Q. Whose office? A. I don't recollect the name of the lawyer. I understand Mr. Trueman was doing their business at that time. It was in the Street Railway building.

Q. Was it Mr. Trueman's office? A. I can't recollect about that; it is so long ago.

Q. You went to a lawyer's office and signed the papers.

A. Yes.

Q. Who was with you? A. There was Garry, Mace and Clancy. I think it was just the four.

Q. Who was the lawyer acting for? A. Acting for the O.B.U.

Q. How did you happen to go to his office? A. Because that was the O.B.U. lawyer. That was the only office we could go to.

Q. Who prepared the paper that you signed?

A. The lawyer prepared the paper.

Q. Do you know who he was? A. No, I can't recollect who he was.

Q. At any rate, you signed the paper, and after you and Mr. Garry had signed the paper, what did you do?

10 A. We left them there.

Q. You left them in the lawyer's office? A. Yes.

Q. And this was in July, 1922? A. Yes, it would be around that time. That was the year, and it was in the summer.

MR. LAIRD: I tender the document. It is evidence under the Evidence Act, a certified copy. And if my learned friend wishes to argue that it wasn't the document I just want to get the identification. All right.

(Document referred to as Application for Board of arbitration, produced and marked **exhibit 46.**)

20 Q. In July, 1922, who negotiated the agreements with the Railway Association of Canada? A. Division 4.

Q. What was the purpose of this organization, and these meetings called under the name of Western Shopmen's Committee, or Western Railroad Shopmen's Committee—I see both names are used? A. To displace Division 4, and take their place.

Q. Were any meetings held after the 25th of July, after that application was made? A. I don't recollect any.

30 Q. You don't recollect any meetings of that committee dealing with that subject? A. No.

Q. I believe the wage reduction was put into force in the shops? A. Yes.

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Q. In answering his lordship some question arose as to employees outside of Division 4 belonging to the O.B.U. Do you recall that point? What was your evidence on that, do you know? Do you recall?

A. They held their membership cards in the O.B.U., that was men outside of the International movement, and then there was other men who did not hold any cards in any organization.

Q. There were some in the International affiliated with Division 4; there were some in the O.B.U. A. Yes.

Q. And there were some who did not belong to any organization? A. Yes.

Q. Do you know the plan or scheme that is referred to as the co-operative or B. and O. plan, Mr. Glendenning?

A. Yes.

Q. That has, I believe, been introduced in to the Transcona shops as well as in the Fort Rouge Shops?

A. Yes.

Q. When was it adopted in Transcona? A. About 1925.

Q. Are you familiar with it yourself? A. I know a little about it. 20

Q. Are you a representative of the men on the committees under that plan? A. Not at the present time.

Q. Have you ever been? A. Yes, the first year of its operation.

Q. The first year it was organized you were a representative of the pattern-makers, I suppose? A. Yes.

Q. Then can you tell us briefly what is the attitude of the One Big Union to that co-operative plan put into effect in the Fort Rouge shops? A. I don't know about Fort Rouge. I can speak of Transcona. It is one of hostility on the part of the O.B.U. to the operation of that plan.

Q. One of hostility. When did that hostility start?

A. Immediately the plan was put into operation in the East, that is, somewhere around six or seven months before it was put into operation in the West.

Q. Has that opposition of the O.B.U. continued?

A. There is no evidence of it now as there was at that particular time.

Q. How long did it continue? A. Oh, about a year and a half.

10 Q. What was the nature of that opposition?

A. Well, they conducted shop meetings, distributed literature, issued their Bulletin with articles condemning the scheme.

Q. Conducted shop meetings where? A. Transcona.

Q. Were you present? A. Yes.

Q. Who addressed the meetings? A. There was Mace, Russell, Clancy, Foster.

Q. What organization did those men belong to?

A. O.B.U.

Q. I notice Mace was secretary of that so-called Western
20 Shopmen's Committee in 1922. Did he continue with the One
Big Union? A. Yes.

Q. For how long? A. I don't know just when he quit.

Q. Was he with them in 1925? and 1926? A. Yes, in 1925 he was anyway.

Q. Then you have heard all these men you have referred to addressing meetings at Transcona, opposing the B. and O. Plan?

A. Well, I should think so, because I happened to be one of the individuals criticised for my actions at that particular time.

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Q. That is, you were one of the committee putting the B. and O. plan into operation. A. Yes.

Q. You were criticised by whom? A. By Russell, Clancy, Foster, and Moore in his articles in the O.B.U. Bulletin.

Q. What did he say? A. He said they were spotters, skunks, moral perverts; and all the other things in the language they could get hold of.

Q. Skunks, spotters—? A. Yes, especially the men on the committee the first year were spotters.

Q. Can you tell me why they called you such names as that? 10

A. No, any more than they could not grasp the situation. Having received their training in the movement along class lines, the idea of sitting across the table with the management and discussing questions affecting the material welfare of the worker, as well as the interests of the management and increased production, and making conditions better in the shops—they could not conceive of such a thing being brought about through discussing those things across the table by the officials of the company and the representatives of the men.

Q. You spoke about them calling you these names. I want 20 to know why they called you personally these names.

A. Well any more than being at one time connected with the O.B.U. I expect they thought I should never take any action along the lines of the cooperative plan. In other words, they figured it was detrimental to their interests as a class, as workers, to discuss these questions across the table with any management, yet at the same time they were prepared as an organization to discuss wages, hours, and conditions across the very same table, with the very same management. That showed to me the inconsistency of these individuals. 30

Q. You have told me what names they called you for taking part in the B. and O. plan. What did they say as to the plan itself, apart from individuals like yourself?

A. Well, they said it was a slave pact, and it would increase exploitation, and the condition of the worker would become much worse as the result of the introduction of that plan.

BY THE COURT:

Q. What do you say on that point as to how the plan has worked out, as to whether or not it has made conditions worse or better? A. From the observation and experience I have had I would say that the condition of the worker in those shops has much improved, both from a health point of view—

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BY MR. LAIRD:

Q. (Interrupting) By reason of what?

A. By reason of the application of the plan. That is, these
 10 conditions are discussed across the table, and there is a committee set to work to remedy things apertaining to the condition of things inside the shop. That is, take for example, the improvement in drinking water, improvement in lavatory conditions, cleanliness of the shops, and also the carrying out of certain suggestions as regards performing work in the shops, which instead of being carried on in a hazardous sort of manner, they simplify the process of doing that class of work, and the man will have it easier than he formerly had. And although it will be a benefit to the management as well, there is a benefit to the worker as
 20 well in the process.

Q. That is, removing danger, the risk of accidents, and things of that sort. A. Yes.

Q. Can you tell us how long these meetings were, and how many there were, if you recall, at the Transcona shops?

A. Well, in 1925 and 1926 these meetings were held sometimes once a week and sometimes once a fortnight, according to the impression, as they thought, was being created on the minds of the workers out there. They gradually eased up until finally they did not hold any meetings at all.

30 Q. Do you know what the attitude of the One Big Union is to the plan now?

A. It is pretty hard to tell because you can't see anything outside of the paper.

Q. What paper? A. Nothing shewn in the shops. In fact, as far as I can see at the present time, most of those in the shops that were active in any way in the running of those meetings,

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that is, the ordinary member of the organization, instead of being hostile to the plan are supporting it at the present time, as far as I can judge.

Q. That is, most of the men in the shops.

A. Yes, formerly O.B.U., and the reason why I say that is this. Instead of remaining in the O.B.U. as some of them were at that particular time, or remaining on the fence, that is, not belonging to any organization, they have joined up and support the policy.

Q. I gather from your evidence you were an active O.B.U. man in 1922, at any rate. A. Yes.

Q. Are you still an O.B.U. man? A. No.

Q. When did you cease? A. In the fall of 1922 I left them; that same summer as we conducted the meetings.

Q. Do you know a paper known as the One Big Union Bulletin. A. Yes.

Q. Do you know who publishes it? A. The O.B.U.

Q. Do you think you could identify copies of it, Mr. Glendenning? A. Yes.

MR. LAIRD: Will you admit this, Mr. McMurray, and save time?

MR. McMURRAY: I don't know how in the name of heaven you can identify them.

MR. LAIRD: I have given notice in exhibit 4 of those copies of the One Big Union Bulletin, but at the same time, although I have done that, I must frankly admit I have doubts whether a newspaper comes under the Evidence Act, and I am not going to rely upon that notice. You refuse to admit them.

MR. McMURRAY: I can't understand how on earth this witness can say. 30

MR. LAIRD: I am not asking the witness. Do you wish me to take the time to prove them, or do you admit them?

MR. McMURRAY: Prove them, if you can.

BY MR. LAIRD:

Q. I show you a printed paper, Mr. Glendenning, can you tell me what that is? A. That is a One Big Union Bulletin.

Q. That is a One Big Union Bulletin. A. Yes.

Q. The one I show you bears what date? A. Winnipeg, January 24, 1924.

MR. LAIRD: I put in the heading, my lord, and the date, and I put in an article on page 4.

10 MR. McMURRAY: I object to the paper being made an exhibit.

MR. LAIRD: The article is headed "The Johnson Cooperative Scheme."

THE COURT: But before you get that far, is the paper admissible on the evidence you have produced so far?

MR. LAIRD: Yes, I think so. It is published by the One Big Union.

THE COURT: How do you know that?

20 MR. LAIRD: The plaintiff himself says he took copies of it from time to time and read them. And we are proving the attitude of the organization. We have pleaded the organization opposed the plan, and this is the official publication of the organization published by the Winnipeg Central Labor Council of the O.B.U. Evidence has gone in from several witnesses that the Winnipeg Central Labor Council was the governing or controlling body of the One Big Union.

THE COURT: Has anybody said that this particular newspaper is published by this organization? I have no doubt it appears there, but then that may not be conclusive. The witness 30 has not been very definite upon it.

BY MR. LAIRD:

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Q. Can you tell me who published this issue of the paper I showed you, dated the 24th of January, 1924?

A. The One Big Union.

BY THE COURT:

Q. How do you know that? A. Well, it was issued by the One Big Union. I have had copies of these papers sent out by the One Big Union.

Q. You have had copies? A. Yes.

BY MR. LAIRD:

Q. How long were you a member of the One Big Union? 10

A. Up to 1922, and then I had copies sent for a year.

Q. How long before 1922? A. For two years, from 1919 to 1922.

Q. Were you ever on the Winnipeg Central Labor Council?

A. I was a delegate there for a short time.

MR. McMURRAY: There is no evidence that this witness ever had a copy of anything that is here, or ever saw a copy.

MR. LAIRD: He said this is the One Big Union Bulletin. My learned friend can cross-examine on the point.

BY MR. LAIRD: 20

Q. You have told me you saw copies after you ceased to be a member. A. Yes.

Q. That is, you continued to take the Bulletin?

A. I bought it in the shop, and had it sent for a year in the shops. I bought it periodically after that, and I have had copies given to me after that.

MR. LAIRD: I think any witness who knows the paper can prove it. That is what the books lay down, at any rate.

MR. McMURRAY: No, they don't lay that down.

BY THE COURT:

Q. Do you know if the O.B.U. published any other paper than the Bulletin? A. No, there is no other paper that I know of that they publish except the One Big Union Bulletin.

Q. Do you know if they are still publishing the One Big Union Bulletin? A. Yes.

Q. When have you bought a copy of it? A. I don't have to buy a copy, I get a copy for nothing.

10 Q. When did you get one? A. I read one last week.

THE COURT: I think I will allow that in.

MR. LAIRD: There are a group of them, my lord. Will we put them in and give them all separate numbers?

THE COURT: Put them in in one group and date them.

MR. LAIRD: I will file this copy anyway as exhibit 47.

THE COURT: If you want to put the group in well and good.

MR. LAIRD: Of this one of the 24th of January, 1924, I don't want to put in all the paper. My learned friend may want 20 some day or another to print an appeal book. I put in the article on page 4 headed "The Johnston Cooperative Scheme 'Progresses'."

BY MR. LAIRD:

Q. What is page 4 known as, Mr. Glendenning, in the newspaper world in the One Big Union Bulletin?

A. That is the editorial page.

Q. What is this article "The Johnston Cooperative Scheme Progresses"? A. Well, I take it he has got that title as the result of president Johnston of the Machinist's Union being in- 30 strumental in bringing it about.

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Q. But what is it so far as the newspaper is concerned?

MR. McMURRAY: It must speak for itself.

THE COURT: I think we have a knowledge of it.

BY MR. LAIRD:

Q. Then I ask you to look at a paper dated the 7th of February, 1924, and tell me what that is, the printed document I show you? A. One Big Union Bulletin.

Q. Of what date? A. February 7, 1924.

MR. LAIRD: I put in the editorial on page 4 headed "The Master's Voice." Your lordship doesn't want me to read these 10 now. They are on this plea of opposition.

THE COURT: Apart from the heading the only thing you are putting in is the editorial mentioned in each case.

MR. LAIRD: I am putting in the heading, the date, the heading of the editorial page, and the editorial itself—that is, the article.

THE COURT: You put in the editorial. What do you mean by the heading of the paper?

MR. LAIRD: Of the front page, the first two lines and the date line, and the heading on the editorial page, and the editorial. 20 As your lordship knows under the Newspaper Act a notice has got to appear. I will put that in also of the one of the 24th of January.

THE COURT: These papers you put in will be exhibit 47, the first one being that of the 24th of January.

MR. LAIRD: Yes, and then the one of the 7th of February.

BY MR. LAIRD:

Q. I show you a paper of the 6th of March, what is the paper I show you? A. One Big Union Bulletin.

MR. LAIRD: I put in, my lord, the paper of the 6th of March,³⁰ that is, the heading, or the first three lines, and the heading on

page 4, and an editorial under the heading of "The Baltimore & Ohio Plan," commencing in column 2 and running into column 3, and also page 6, under the heading "Railroaders' Section, Conducted by the Railroad department of the One Big Union," the article headed "Transcona."

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THE COURT: What heading do you put in from that paper, the same as the other?

MR. LAIRD: Yes, my lord. And also the article under the "Railroaders' Section," headed "Fort Rouge, Winnipeg."

10 Q. There was, I believe, a railroad section or department of the One Big Union? A. Yes.

Q. How was that formed? A. From two or three delegates from different units.

Q. In each of the shops. A. Units covering railroad workers, that would be, C. P. R., Transcona and Fort Rouge of the C. N. R. Delegates from those different units would form the Railroad district board.

Q. And they had a department in the One Big Union Bulletin? A. Yes, they had a department.

20 Q. What is this I show you of the 27th of March, 1924, Mr. Glendenning? A. One Big Union Bulletin.

MR. LAIRD: I put in, my lord, of the One Big Union Bulletin of March 27, 1924, the heading, the second line, and the date line, and the heading on page 4, and the article commencing and entitled "The Slave Scheme," running into a column and a half.

(Court adjourned at 1 p.m. May 28, 1928, to 3 p.m. same date.)

3 p.m. May 28, 1928.

BY MR. LAIRD:

Q. I also show you a paper dated the 24th of April, 1924.
 30 What is that paper? A. A One Big Union Bulletin.

MR. LAIRD: I put in from that issue the heading, second line, and date line, the heading on the editorial page, and the editorial article reading "A revolutionary scheme," covering two columns.

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MR. McMURRAY: I have made objection to the admission of this evidence, and the objection I made will cover all.

THE COURT: It covers all in connection with the O.B.U. Bulletin.

MR. LAIRD: That is, that it is immaterial.

MR. McMURRAY: Yes, and not proved.

BY MR. LAIRD:

Q. I show you a paper of the 8th of May, 1924, what is that paper? A. One Big Union Bulletin.

Q. Of that date. A. Yes. 10

MR. LAIRD: I put in the heading, second line, and date line, and an article on the front page entitled "Will They Put the Slave Scheme Over"? and then there are some subheadings which I need not read. Then also from that issue, on page 6, under the heading of "Railroaders' Section, Conducted by the Railroad Department of the One Big Union," the article or paragraph headed "Transcona Workers take definite action to resist the co-operative plan."

Q. Then I show you a paper of the 5th of June, 1924, what is that? A. One Big Union Bulletin. 20

Q. Of that date, is it? A. Yes.

MR. LAIRD: From that, my lord, I put in the heading, the second line, and date line, and the article on page 1, "The Johnston B. & O. Plan." That runs from page 1 over to page 7; it is continued on page 7.

Q. I show you a paper of the 14th of August, 1924, what is that? A. The One Big Union Bulletin of that date.

MR. LAIRD: Of that issue I put in, my lord, the heading, second line, and date line, and on page 4, the editorial heading on that page, and the article "Manufacturing the B. and O. Sentiment," running into two columns.

Q. Then I show you a paper of the 9th October, 1924, can you

tell me what that is? A. The One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, the second line, and the date line, and the heading on the editorial page, which is page 4, and the article "Machinists' Convention Endorses B. and O. Plan," running into nearly three columns.

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Q. I show you one of the 20th of November, 1924, what is that, please? A. The One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, second line, and date line, 10 and on page 4, the heading, and the editorial article, which is the second article on that page, "The B. and O. Plan."

Q. Then I show you a paper of the 4th of December, 1924, what is that? A. One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, second line, and date line, and the heading on page 4, and the second editorial on that page, headed "The B. and O.," running into a column and more.

Q. Then I show you a paper of the 25th December, 1924, what is that? A. The One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, second line, and third line, 20 and page 4, the heading of that page and the editorial headed "Doing Their Master's Work," about half a column.

Q. I show you a paper of the 1st of October, what is that?

A. One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, second line and date line, and the article on the first page, "Drive in C. N. Shops," with the subheading, "B. and O. Advocates Forced Out in the Open." That commences on page 1 and continues on page 5 in the 4th column.

Q. Then I show you a paper of the 7th January, 1926, what 30 is that? A. One Big Union Bulletin of that date.

MR. LAIRD: I put in, my lord, the heading, the second line, and the date line, and an article on page 1, "The Fruits of the B. and O.," and that is continued from page 1 over on page 5, in the

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second column. I also put in on page 1 a cartoon headed "The 'Unholy Trinity'," the words "Unholy Trinity" being in quotation marks.

Q. Then I show you another paper of the 21st of January, 1926; what is that? A. One Big Union Bulletin, of that date.

MR. LAIRD: I put in the heading, the second, and third lines, and the article on the front page headed "Another B. and O. Promise Falls Down," and also the cartoon on that page "Old Mother Hubbard and the Double-Doored Cupboard," which is just below the article. 10

Q. I show you a paper of the 18th of February, 1926. Will you tell me what that is? A. One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, second line, and the date line, and an article on the front page "Interesting Side-lights on the B. and O. Plan," which commences on page 1 and is continued and completed on page 6, in the fourth column of page 6.

Q. I show you a paper of the 15th of April, 1926, what is that? A. One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, the second line and date 20 line, and an article on the first page "The Object of B. and O. Slave Schemes," which all appears on page 1.

Q. I show you a paper of the 17th June, 1926, what is that?

A. The One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, second line and date line, also the heading on page 4, including date line, and an editorial reading "The B. and O. in the Limelight."

Q. I show you a paper of the 29th of July, 1926, can you tell me what that is? A. The One Big Union Bulletin of that date.

MR. LAIRD: I put in the heading, second line, and date line, 30 and also the heading on page 4 "One Big Union Bulletin," second line and date line, and the article "Schemes to Defeat the R. R. Shopmen."

THE COURT: All those O.B.U. Bulletins that you have re-

ferred to, nineteen altogether, go in as one exhibit.

(Nineteen One Big Union Bulletins, referred to, produced and marked **Exhibit 47.**)

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Q. You dropped out of the O.B.U. or One Big Union on what date? A. November, 1922.

Q. Did they have a written constitution when you were with them? A. Yes.

Q. Have you got a copy of that, or got that? A. No.

Q. Do you know about the subsequent constitution after 10 1922? A. I know it was somewhat changed a little. I had read one, but I don't know exactly the contents of it now.

Q. Where did you get it from? A. I got it from one of the fellows in the shops.

Q. From one of the men in the shop? A. Yes.

Q. When you were a member of the One Big Union were you furnished with the constitution? A. Yes.

Q. Where did you get it? A. I got them at the Roblin hall, that is the first hall, when I joined.

Q. And then later at the Plebs Hall.

20 A. Yes.

Q. Did the men who belonged to the O.B.U. in the shops generally have a copy of the constitution? A. Not that I know of.

Q. Do you know the constitution that was adopted in 1923 at all? A. I am not familiar with the constitution adopted in 1923.

Q. I think you told me that the One Big Union distributed leaflets in respect to the B. and O. plan, is that correct?

A. Yes.

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Q. When was that done, do you know? A. That was done in the summer of 1925.

BY THE COURT:

Q. Distributed them where? A. At the Transcona shop gates.

BY MR. LAIRD:

Q. That is, to whom did they distribute them?

A. To those workers who were attending the meetings.

Q. That is, meetings where the B. and O. plan was being discussed? A. Yes, outside the shop gates. 10

Q. Did you see any of those leaflets? A. Yes.

MR. LAIRD: These leaflets were included in the notice. I tender this under the notice given, exhibit 4, and the Evidence Act.

MR. McMURRAY: I object to that. I say the Act does not apply to what my learned friend is trying to prove.

MR. LAIRD: I propose to put in the leaflets.

THE COURT: What is the authority in the Act?

MR. LAIRD: Section 27 reads: "In any action, suit or proceeding in the cases of telegraphic messages, letters, shipping bills, bills of lading, delivery orders, receipts, accounts and other written instruments used in business and other transactions where according to the existing rules of law exclusive of provisions contained in this Act it would be necessary to produce and prove original documents, the party intending to establish and prove contents of such original documents may give notice to the opposite party ten days at least before the trial or other proceeding in which said proof is intended to be adduced that he intends at the said trial or other proceeding to give in evidence as proof of such contents an instrument purporting to be a copy of such document." 20 30

This document which I have and which I tender is No. 5 in our notice.

THE COURT: Your contention is that those letters are used in business.

MR. LAIRD: They are used in the business of this organization very clearly, although somewhat different from a newspaper. I don't know that a newspaper comes under it, but this purports to be signed or issued by the Publicity Committee, Transcona Unit of the O.B.U.

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THE COURT: But the point now is whether that document falls under this section.

MR. LAIRD: Yes.

THE COURT: If it is objected to I must rule it out.

10 MR. LAIRD: The others mentioned in No. 5 of the same document I also tender, and your lordship rules them out.

THE COURT: I don't say they are not admissible in some way, but they are not admissible under that section, that is, copies of them.

MR. LAIRD: I bow to your lordship's ruling in that respect.

BY MR. LAIRD:

Q. I show you a printed paper. Will you please look at that and if you can tell the court what it is.

A. It is a leaflet criticizing the operation of the B. and O. 20 plan.

MR. McMURRAY: Objected to.

Q. Can you tell me who issued or distributed that?

THE COURT: Does he know?

THE WITNESS: Yes, I know.

Q. Where does that come from? A. These were distributed in Transcona at the meetings, similar leaflets.

Q. That is copies of the same typing and appearance as that were distributed in the Transcona shops, were they?

A. Not inside the shops; outside the shops.

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Q. To whom? A. To the workers who were attending the meetings.

Q. Can you identify that as a leaflet so distributed?

A. Yes, that is one of the leaflets that were distributed.

Q. You were in the O.B.U. for sometime. Had the O.B.U. any distinctive way of marking its literature in some cases?

A. No, not that I know of, except the heading, which has the O.B.U. stamp on it.

Q. Does that paper you have bear that stamp? A. Most of the literature was stamped with the O.B.U. 10

MR. LAIRD: I think that is proved in that way.

THE COURT: He says it was. Is the leaflet dated?

THE WITNESS: No, there was none of those dated.

MR. LAIRD: It is headed "To our fellow workers in the Transcona railroad shops," and supposed to be signed by "Publicity Committee, Transcona Unit of the O.B.U."

MR. BERGMAN: Surely we have no connection with that. Transcona unit?

MR. LAIRD: Yes, we say that the One Big Union of which he was a member and officer vigorously opposed the B. and O.20 plan.

THE COURT: Could the unit take independent action? Nothing to show that the Transcona unit proposed it to the Fort Rouge unit or put it in action.

MR. LAIRD: We have pleaded that the One Big Union opposed the plan.

BY MR. LAIRD:

Q. Was there such a committee of the One Big Union known as the Publicity Committee of the Transcona unit?

A. Yes.

Q. You had been a member yourself of the Transcona unit?

A. Yes.

Q. What would you say as to the policy of the Transcona unit as compared with the policy of the Fort Rouge unit of the One Big Union in respect of the B and O. plan?

A. The same policy.

MR. LAIRD: I tender that, my lord.

MR. McMURRAY: I object to that.

THE COURT: All right.

10 (Leaflet referred to produced and marked Exhibit No. 48.)

BY THE COURT:

Q. When did you say they were distributed?

A. These were distributed in 1924, 1925 and 1926. I couldn't give you the specific date.

Q. It was one of those years? A. Yes.

BY MR. LAIRD:

Q. I show you another leaflet, witness. Will you please look at this and examine it and tell me what it is.

A. Well, it is a similar kind of leaflet. That leaflet was also 20 distributed at the shop gates.

Q. By whom? A. By the O.B.U.

Q. MR. LAIRD: I tender this, my lord, a leaflet headed, "What the B. and O. has brought. An Increase that reduces."

THE COURT: When was this distributed?

MR. McMURRAY: Without looking at it, please. I object, my lord. This witness seems to be reading it.

A. If I don't look at it how am I going to know?

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Q. The year 1926 is on this, not as a date.

A. That would be issued in the beginning of 1927, I should think.

Q. You think this one was issued in the beginning of 1927?

A. Yes.

Q. This also bears what at the foot of the page. A. The O.B.U. stamp.

MR. LAIRD: I tender this.

MR. McMURRAY: Objected to.

(Leaflet referred to produced and marked **Exhibit 49.**) 10

Q. Was there a railroad department of the One Big Union? You have already told me that. A. There was when I was in the organization. I don't know anything about what happened after that.

MR. LAIRD: Your lordship will notice I tender three of them under notice No. 5.

THE COURT: Two are now in and you are offering another one.

MR. LAIRD: Yes, all I am wanting to do now is to tender it under the notice. 20

THE COURT: As one of the documents referred to in No. 5 of your notice?

MR. LAIRD: Yes.

THE COURT: You may tender it, and I will not receive it.

MR. LAIRD: Will your lordship mark it for identification, "An appeal to the eastern workers on the Canadian Northern Railway."

THE COURT: I can't do that, the witness has not identified it.

BY MR. LAIRD:

Q. I show you another leaflet. Can you tell me what that is?

A. Well, that is dealing with the co-operative plan, criticizing it, but I never saw that leaflet before.

THE COURT: That will be enough to mark it for identification. He has answered the question about some document.

(Leaflet referred to produced and marked **Exhibit "Q"** for identification.)

CROSS-EXAMINED BY MR. McMURRAY:

10 Q. Are you a member of Division No. 4? A. I am.

Q. What office do you hold? A. I do not hold any office.

Q. You do not hold any office at all. Do you hold an office under this B. and O. system? A. No.

Q. How long have you worked at Transcona? A. I guess about thirteen years.

Q. When did you cease to belong to the One Big Union?

A. In November or December, 1922.

Q. Did you make a statement to the unit at the time you left it that you had to do so to hold your job?

20 A. No.

Q. What statement did you make to them? A. I made the statement that on account of the policy of the O.B.U. in trying to organize men of different political opinions, and different theological opinions into an economic organization, such as the O.B.U. was, that it was impossible to function as an economic organization. As a result of my experience and observation I had realized in two years it could not be done, and it was also borne out by the fact that when I joined the organization there were 1,300 of a membership, and when I quit there was only 125 mem-
30 bers in that unit.

Q. Now, you left because they had men of political and

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theological ideas in your unit? A. No, I didn't say that. What I did say was you can't harmonize men with different political ideas and different theological ideas into one organization, and function in the economic field, that is, with that organization of a revolutionary nature.

Q. You were an officer in this Western Railway Shopmen's Committee. A. What do you mean by an officer?

Q. You know what I mean. A. No. You define it.

Q. You were chairman of the meeting in the Strand theatre, weren't you? A. Yes, that wasn't being an officer, holding a 10 chair in a particular meeting.

Q. Were you an officer in it at all? A. I held an office as chairman of the unit.

Q. And as such you presided at this particular meeting in the Strand. A. Being chairman of the Transcona unit I presided at that meeting? No. I presided at that meeting because the other fellow didn't want it.

Q. How did you come to be chairman at the Strand theatre meeting? A. Our friend Clancy didn't want to take it, so somebody had to take it, so I took it. I wasn't slated for the job. 20

Q. You prepared this application to the Department of Labour, copy of which is marked exhibit 46. A. You mean I presented it?

Q. It was prepared as the result of that. A. I did not present it.

Q. It was prepared as the result of that meeting, was it?

A. As the result of what meeting?

Q. What meeting were we talking about? The Strand meeting. Just be honest, witness, and we will get along better. As a result of the Strand meeting an application was made to the 30 Minister of Labour for a board of arbitration?

A. That is correct.

Q. You signed the application? A. Sure.

Q. And swore to the contents of it, did you? A. Yes.

Q. And the contents of that were true. A. As far as I knew at the time.

Q. Didn't you read it? A. Surely.

Q. You read it over. We will see what you swore to on that occasion. Did Division No. 4, as you stated today, constitute 75 per cent. of the employees? A. Yes, as far as I knew.

Q. How do you account for this then? "In compliance with clause 4 of Section 16, quoted below, meetings of the employees 10 were called by the joint committee of shopmen for the purpose of discussing the difficulties hereinbefore mentioned, and were held on the 11, 27, and 30 of June, and on the 14, 19 and 23 of July, where it was decided what action should be taken in connection therewith, and it was unanimously decided to strike rather than to accept the reduction or continue under the present conditions, where, as already set out, the overwhelming majority of the shopmen are refused the right to representation on grievance and negotiating committees." What did you mean when you wrote to the Minister of Labor at Ottawa in this document 20 sworn to by you yourself, that the overwhelming number of them were not represented? How do you justify that?

A. Because we felt at that time, as far as the western end of the road was concerned, that situation pretty much existed, but seventy-five per cent. applies to the whole system, and we were negotiating as a system.

Q. Then were the overwhelming number of men in the shops in 1922, when you signed this, outside of Division No. 4?

A. What?

Q. Were the overwhelming number of men in the shops in 30 Winnipeg outside of Division No. 4 at the time you made that statement? A. We only assumed it.

Q. "My enemy would write a book." You only assumed it.

A. Yes.

Q. Why did you swear to it? A. Oh, yes, swore to it; it was necessary to enlarge on it.

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Q. You see your signature. A. Yes.

Q. And the seal "N.T. McMillan." Was that correct?

A. I thought it was correct.

Q. But you found out since when you came here today that it wasn't. A. I found it before I came here it was different.

Q. "Meetings of the employees were called by the joint committee of shopmen." A. Three organizations forming one joint organization.

Q. What three organizations? A. C.P.R., Fort Rouge, and Transcona. 10

Q. Was there only one C.P.R.? A. Yes, at Weston.

Q. Now, there was no doubt at this time that the great majority in the west were outside of Division No. 4, was there?

A. Show me this.

Q. There is your own statement. A. That doesn't convey anything.

Q. It does to me. A. Well, that is all right if it does to you.

Q. Because you had a ballot taken of all the men.

A. Yes, but did I count the ballot? 20

Q. You swore to the result. A. I had to take the word of those individuals in the movement that counted the ballot.

Q. You were only the chairman. A. Well, of that particular shop committee, but I wasn't chairman of the Central Labor Council who handled all these things.

Q. And this ballot was taken over all the western lines. What men were taken on that ballot? A. Was I here in Winnipeg and at the Coast too? How do I know?

Q. Will you swear that every man on the line, A.F. of L., C.B. of R.E., men who belonged to no union, and O.B.U. men³⁰ were all balloted? A. That is what I couldn't tell.

Q. Don't you know that? Don't you really know that was the case? A. Was it?

Q. Do you know that? A. No, I wasn't at the Coast. I wasn't anywhere between here and the Coast, I don't know.

Q. You don't stay in any place, even just now.

A. Yes, I stay here sometimes.

Q. And the object of this, as stated in here, was the question of wages, wasn't it, and the wrongful act of the employer, in the face of the Lemieux Act, in changing rates of pay and changing
10 schedules.

MR. LAIRD: Are you referring to the document?

Q. Isn't that a fact? A. When you are dealing with these negotiations, and preparing for negotiations, you often assume a lot.

Q. And when you are giving evidence do you assume a lot too?

A. No, I am only telling you what I know. But you are trying to get me to say I don't know, and I am not doing it.

Q. Wasn't it the condition at that time that the railroads
20 acted without conferring with the employees at all. The Canadian National Railway put up a notice in the shop that after a certain date wages would be so-and-so.

A. Yes, that is right.

Q. And wasn't this movement a protest against the railroads breaking their schedules. A. I didn't know there was any law in it.

Q. You didn't know there was law about it. A. No.

Q. Isn't it a fact that Division No. 4 got an arbitration board upon that very thing, do you know that? A. Yes.

30 Q. Right at that date, did they? A. Well, all right.

Q. Did they? Do you know if they did? You are a man who

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can identify anything with one eye closed. Do you know if they did that? A. I am not swearing to anything I don't know. They may have done, I don't know. I can't carry everything that has happened in the past in this little noddle. It is limited.

Q. Isn't it a matter of fact that Division No. 4, to use a very common expression, beat your organization, the Western Railwaymen's Association, in the race to the Minister?

A. They had the agreement. They were in first of all anyway. Of course, they must have beat them. If they hadn't beat them the O.B.U. would be in there now. 10

Q. Hasn't any body of men a right to apply for an arbitration board under the Act? A. Well, according to the Act.

THE COURT: Probably a matter of law.

Q. "The employer refuses to allow the employees the right to representation on committees for the purpose of adjusting grievances and negotiating rates and conditions," that was one of your grounds, that you hadn't proper representation. The other ground was that the employer insists upon cutting wages 5 to 9 cents an hour. Those are the two grounds upon which you applied for the Board. 20

A. Yes, but that was misunderstood to this extent, that we had the representation there if we knew how to go about it, through the logical channels, but we didn't know the organization was there at the time.

Q. At that time you felt it was wrong that an organization should speak for all the men in which they were not represented in any way, didn't you? It didn't appeal to your sense of justice and fair play. A. Changes make different ideas.

Q. When you get over to where you are safe your ideas change. A. To suit certain conditions which develop. 30

Q. So that today you have the idea that the ground you took at that time was wrong. A. Absolutely.

Q. At that time you thought that men outside of Division No. 4 should have something to say about the conditions under which they worked? A. Yes.

Q. And about the wages which they should be paid.

A. Yes.

Q. You don't believe that now. A. No man outside of Division 4, no.

Q. If there were 60,000 men outside of Division 4 you would leave them without representation? A. Surely.

Q. You have no prejudice in the matter at all.

A. No, no prejudice.

THE COURT: He has some convictions.

10 Q. But you are thoroughly satisfied that none but the righteous should be safe. A. I am thoroughly satisfied that the man who pays the piper should call the tune.

Q. Isn't he doing that? A. Is he?

Q. Isn't he? A. Where?

Q. In Transcona? A. The men pay to the organization.

Q. You said the man who pays the piper should call the tune.

A. Yes.

Q. Who is paying the piper? A. Today?

Q. Yes. A. Division 4, or the members of Division 4.

20 Q. And you are objecting because the other people are getting the advantage of what Division 4 does. A. Yes.

Q. You don't think that is right. A. Today I do not.

Q. But if those people would all come in and be good boys and do what you allow them to do it would be all right?

A. Yes.

Q. You wouldn't allow them to think for themselves.

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A. They can think what they like.

Q. If they said "Let Division No. 4 come in with us," would you agree to that? A. It doesn't happen that way.

Q. Would you agree to it? A. It doesn't happen that way. Tell me something that is concrete, and you will understand it. You are talking about my assuming things, and now you are starting out to assume things yourself.

Q. Now, witness, there was a reduction in the staff over in Transcona sometime ago. A. Yes.

Q. Do you know anything about that? A. It depends on¹⁰ when the reduction took place.

Q. In the Spring of 1927. A. Yes.

Q. What do you know about that? A. There were some men laid off in our department around that time.

Q. That was a general reduction, wasn't it?

A. You can call it a general reduction, if you like.

Q. And they laid off your Division 4 men the same as they laid off O.B.U. men and independent men, didn't they?

A. Yes.

Q. And you have never known of any case in all your ex-²⁰perience in the shops until this very case when the seniority rule was set aside? A. I don't know of any case, you say?

Q. I ask you if you know of any case prior to this Young matter where the seniority rule was set aside in a general reduction of staff?

MR. LAIRD: Objected to.

A. I know of one particular case in the wood-mill where they were discharged if they didn't take a certain job outside of their seniority rights, long before, I think that was in 1921 or 1922. 30

Q. Were you ever a delegate down to the conventions at Ottawa? A. No.

Q. They didn't let you down there. A. I guess I wasn't smart enough.

BY THE COURT:

Q. When you said in the wood-mill, is that part of the shops?

A. Yes; they got the opportunity of being transferred to the freight car shops.

Q. Is that in connection with the Transcona shops?

A. Yes, in the Transcona shops.

BY MR. McMURRAY:

10 Q. They had their seniority rights, had they? A. No, they got the offer of being transferred to the freight car shop or dismissal.

Q. But that wasn't a general reduction of staff. That was for cause, that is, the men were not efficient, and they said, "Here, you have to go to the freight car shops or leave the service." A. No, there was a reduction in force in that shop, in the car shop.

Q. And the senior men were given the right to take on other work. A. No, they were laid off independent of their seniority, 20 and they got the opportunity of being transferred to the car shop or getting out.

Q. Who got the opportunity? A. The men in the wood-mill.

Q. Irrespective of seniority? A. Yes.

Q. Did you say this was in 1922? A. I am not exactly sure about the year it was, in 1922 or 1921.

Q. That is, they were laying off those senior men who belonged to Division No. 4 in spite of the schedule, is that right.

MR. LAIRD: He didn't say that.

30 MR. McMURRAY: Don't coach him.

RECORD

In the
King's
Bench

No. 26
Defendant's
Evidence
John
Glendenning
Cross-
examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 26
 Defendant's
 Evidence
 John
 Glendenning
 Cross-
 examination
 (continued)

A. I won't answer you until I am sure what I am going to say.

MR. McMURRAY: You don't need to worry about your witness, Mr. Laird.

Q. I just want to get that a little more clearly. They laid off, you told me, all men irrespective of seniority?

A. I didn't say all men. I said those men in the wood-mill.

Q. Do you know the name of one of them? A. No.

Q. You don't know what they belonged to. A. I know they didn't belong to the organization as a Division 4 movement. 10

Q. How do you know that? A. Because I got the information from the grievance men in the wood-mill.

Q. But you don't know their names? A. No, there are lots of them I don't know names in the movement. I couldn't tell you the names of the fellows next door, in the next department.

Q. You were giving some evidence about leaflets over at the shops. A. Yes.

Q. Where were those leaflets distributed? A. Outside the shop gates. 20

Q. Who distributed them? A. Foster distributed some.

Q. Did you see him? A. Yes, I saw him.

Q. What was on it? A. What was on it?

Q. See if you can read it as well in my hand. A. The leaflets had a bearing on the co-operative plan.

Q. What did one of them say? A. You are trying to get me to go pretty far back. There was one of the leaflets said "Workers and the B. and O. slave pact."

Q. What was a single word it said? A. "B and O. slave pact." 30

Q. You identified certain documents here today. Can you tell me what was on any of those pamphlets, the heading on any one of them? You had the opportunity of reading them.

A. I didn't read them; I just glanced at them.

Q. What was on them? A. I didn't pay much attention to them.

Q. How could you identify them? A. I know by the make-up, that is to say, the way it is worded, and the way it is printed. If I was to remember all the contents—

10 Q. Just tell me first the heading. You were able to identify it having seen it before some four or five or six years ago. Now, just tell me the first heading on it?

A. I am able to identify the bulletin, but as regards remembering since the bulletin was issued what was in it, I can't, and it is just the same thing with the leaflets, I know I read every leaflet which was distributed outside of the gates.

Q. How do you identify these pamphlets? A. I am telling you by the manner in which they are printed, and by the stamp that is on the paper. There is the O.B.U. patent stamp.

20 Q. It might be on anything. A. Then I would identify it as being on anything. You couldn't get your O.B.U. friends to identify all the things in those papers. You can't get me to say I know all the stuff in that, word for word; I can't tell you.

Q. Can you tell me anything that is in it?

A. Can you tell me anything that is on it?

Q. Don't be saucy. Just answer the question.

A. I can't tell you. It is dealing with the co-operative plan, attacking the co-operative plan.

30 Q. What does it say? A. It was mentioned in their articles there the bringing about of that plan into the shop was going to increase the exploitation of the worker; that conditions would become worse—

Q. Look, witness.

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Cross-
examination
(Continued)

RECORD
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 Cross-
 examination
 (continued)

MR. LAIRD: Let him answer.

A. I can't give you word for word in those leaflets.

Q. And you didn't read it over. A. No.

Q. Still you are ready to swear to it.

A. I will swear to the material which is in the paper by the manner in which it is printed, and by the stamp on it, the same as I identified the Bulletins.

Q. Where did these come from? A. How do I know? You are holding up a piece of paper that might be anything.

Q. Did you bring it to Court today? A. No, I didn't. 10

Q. You haven't seen that pamphlet, if it was the pamphlet, for six years? A. I don't know what the pamphlet is.

THE COURT: What are you holding up to him?

MR. McMURRAY: I am holding up an exhibit.

MR. HAFFNER: Ten feet from the witness.

MR. McMURRAY: He will identify it as quickly at half a mile as at two feet.

MR. LAIRD: That is not in as an exhibit.

MR. McMURRAY: I thought it was in.

MR. LAIRD: My lord, that is exhibit "Q" for identification. 20

THE COURT: Is that what you were holding up?

MR. McMURRAY: Yes, it was away back where he couldn't possibly see it at all.

MR. LAIRD: I ask, my lord, that the document, my learned friend having cross-examined on a document which I tendered to the witness and which he wasn't able to prove, and asked the witness questions about it, that the document go in. The rule is under those circumstances the document goes in as evidence.

THE COURT: That is the usual course.

MR. McMURRAY: May I reply that I never heard of such an absurd argument in my life. If the witness can't identify it at all how on earth can it become an exhibit?

MR. LAIRD: Because you cross-examined on it.

THE COURT: If you cross-examine on any document—

MR. McMURRAY: That the witness is unable to identify?

THE COURT: Yes— that is in for identification, it goes in.

MR. McMURRAY: I submit that if the witness can't identify it how on earth can it be an exhibit?

THE COURT: You have made it so by cross-examining on it.

MR. McMURRAY: I humbly object to it being made an exhibit.

THE COURT: We will let the usual rule take its way. It will be exhibit 50.

(Leaflet referred to, formerly exhibit "Q" for identification, produced and marked **Exhibit 50.**)

BY MR. McMURRAY:

20 Q. When was the last time you saw any of those pamphlets you allege were distributed at the gate?

A. The last time.

Q. Yes. A. The summer of 1926, if I recollect right.

Q. Two years ago. A. This is 1928.

MR. McMURRAY: My lord, I would ask that those exhibits be struck off.

THE COURT: You may deal with them to break down their weight, but they can't be struck off.

RECORD
—
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King's
Bench
—
No. 26
Defendant's
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John
Glendenning
Cross-
examination
(Continued)

RECORD
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 Bench
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 Evidence
 John
 Glendenning
 Cross-
 examination
 (continued)

MR. McMURRAY: This witness can't identify these at all.

THE COURT: That may break down the weight of them, but he did make the statement that these were the documents, and on the strength of that, that is sufficient to put them in.

BY MR. McMURRAY:

Q. I show you exhibit No. 47, witness. Do you know where it was published?

THE COURT: Tell him what it is.

Q. The O.B.U. Bulletin. A. Sure, I know where it is published, in Plebs Hall. 10

Q. Published in the hall there. A. Well, the material is prepared down there.

Q. Do you know where it is published?

A. Yes, I know where it is printed. It was printed when I was in the O.B.U. in the Wallingford Press, Harry Veitch's.

Q. Do you know if this came off the Wallingford Press, exhibit 47? A. If I didn't see it come off I couldn't tell it came off.

Q. Precisely. If you didn't see it come off the Wallingford Press you couldn't swear it came off the press, could you? And if you didn't see who published it you couldn't swear who published it, could you? A. I know who published it. 20

Q. Just answer the question. A. I saw the papers transferred from the Wallingford Press when I was inside the organization.

Q. Remember you are under oath. I am talking about the papers here. You say if you didn't see it come off the Wallingford Press you couldn't swear it came off the press.

A. As far as these copies are concerned.

Q. And if you didn't see who published them you couldn't swear who published them. A. Excepting getting the paper delivered— 30

Q. Answer the question: If you didn't see who published it you couldn't swear who published it. A. I don't know who publishes the Free Press, but I get the paper.

Q. Certainly, and nobody else knows. A. No.

Q. And what would hold of the Free Press would hold of the humble publication in my hand. A. As far as actually seeing it is concerned I didn't see them come off the Wallingford Press; neither did I see them come out of the O.B.U., but they were delivered from the O.B.U.

10 Q. You only reach that by a process of reasoning.

A. Yes.

MR. McMURRAY: I would ask that exhibit 47 be struck off. This witness knows nothing of it. He just reaches it by a process of reasoning.

THE WITNESS: No, I had the paper delivered up to 1925, that is the only process of reasoning you can do. I didn't see it come off the Wallingford Press.

Q. If somebody called a calf a cat you would think it was a cat. A. No.

20 MR. McMURRAY: Now, my lord, he has not identified these at all.

THE COURT: It is a question of the weight.

BY MR. McMURRAY:

Q. You say, witness, that you never saw this exhibit 47 published, is that right? A. Let us get a definition of what you mean by "publication." I can't understand what you are driving at. You just define what "publication" means.

Q. Answer my question. A. I can't answer your question until I know what the question is.

30 Q. Did you ever see the men writing the manuscript for that paper? A. At the time I was a member.

Q. For that exhibit there, 47? A. What year is that?

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 examination
 (continued)

Q. Never mind. You have identified it; you know all about it. A. As regards the O.B.U. bulletin up to 1922 I have seen Woodward write stuff for the bulletin.

Q. Did you ever see any man write manuscript for exhibit 47? A. No.

Q. Did you ever see them set up the print?

A. No, I never seen them set up the print.

Q. Did you ever see exhibit 47 go through the press?

A. No.

Q. Was exhibit 47 ever delivered to you before my learned 10 friend put it in your hand? A. Yes, I had copies every week.

Q. This? A. That copy you have in your hand I never had that copy until I seen it this afternoon, that specific copy. I have had similar copies.

Q. Did you ever compare them? A. How could I?

Q. Of course, you couldn't. So that for the first time in your life you see this in Court today.

A. The first time I have seen an O.B.U. Bulletin in Court, you are right.

Q. You don't know who wrote it, and you don't know the 20 press it came off. How can you swear that the One Big Union published that? A. Just in the same manner that I can swear that the Free Press is published, by being delivered to you.

Q. Just a resembling case. A. No, it is a known fact that they print the Press and deliver it.

MR. McMURRAY: I submit these ought to be struck off the files. This witness knows no more about them than I do.

THE COURT: Probably you know enough.

MR. McMURRAY: It may be perfectly true, still there is no evidence that is or ever was prepared by the One Big Union organization.

THE COURT: I won't disturb it.

BY MR. McMURRAY:

Q. Witness, you say that this Division No. 4 is growing quite rapidly over in the shops now? A. Yes.

Q. Do you know of the pressure that is being put upon the men to make them join this Division No. 4?

A. No, I don't know of any.

Q. You don't know of any pressure at all. Do you know Myers? A. Byers, you mean?

10 Q. Yes. A. Yes.

Q. Was he up here? A. Yes.

Q. Was he over talking to your Division No. 4 and its officials? Was Byers talking to the officials of Division No. 4 to your knowledge when he was up the last time?

A. Just to the officials alone, you mean?

Q. Was he talking to the officials of Division No. 4 in connection with this B. and O. plan? A. Do you mean themselves, or in conjunction with the members of the organization?

Q. Either way. A. Well, as far as regards being there
20 with the members of the organization, yes, he was.

Q. He was over there talking. Was that before the plaintiff was laid off? A. Yes.

Q. Did Byers advise the officials of Division No. 4 to have the plaintiff and other men laid off if they wouldn't come into Division No. 4?

MR. LAIRD: Objected to.

A. I never heard that from Mr. Byers.

Q. Were you with this Western Railroad Shopmen's Committee at a time when Sir Henry Thornton wrote?

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John
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(Continued)

RECORD

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examination
(continued)

A. What about?

Q. When he wrote up? Do you know anything about that?

A. No.

Q. At that meeting in the Strand Theatre was there a notice sent out to the people to attend it?

A. Yes, hand-bills.

Q. Do you know what was on the hand-bills? A. Yes, calling for a meeting in the Strand.

Q. Calling everybody to come. A. Yes.

Q. And after that meeting the application was made for a board of arbitration? A. Yes.

Q. Made by this Western Shop Committee. A. Yes.

Q. Of which you were chairman, I believe, you told me, and John Garry was secretary. A. Secretary of what?

Q. I see Garry is joining in the application with you.

A. I just knew Garry as being a member of the organization. He wasn't secretary of the Central Labor Council; he may have been secretary of his unit.

Q. You didn't see Young at that meeting in the Strand.

A. No.

20

Q. And you didn't see Young around the Transcona shops.

A. No.

Q. At any of these meetings? A. No.

Q. In fact, you never spoke to Young in your life.

A. I didn't say I did.

Q. I am asking you, did you? A. No, I only remember seeing Young once or twice around the hall on Adelaide Street,

but I can't recollect having any conversation with Young at all.

Q. He may have been a Division 4 man hunting for information, mightn't he? You don't know whether Mr. Young was a member of the One Big Union at any time, do you? A. I have no evidence as far as his card was concerned. He was around the Hall.

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Cross-
examination
(Continued)

Q. You were a member of the Transcona unit of the One Big Union. A. Yes.

Q. Do you remember the day on which you left that unit?

10 A. The exact date?

Q. Yes. A. I can't give you the exact date. It was November or December. It was the election of officers that night I left the unit, and December it would probably be.

Q. What year? A. 1922.

Q. Did you make the statement to them on that occasion that you were very, very sorry to leave? A. I can't recollect that.

Q. But that there was so much pressure and force brought to bear upon you that you had to go into Division No. 4.

A. No, there was never any statement of that kind. I defined the various forms of organization, that was all, and made no apologies or anything else for leaving.

RE-EXAMINATION BY MR. LAIRD:

Q. Why do you say you left the O.B.U.?

A. On account of their policy. Their policy, as I understood it at that time, I haven't seen anything different yet, as contained in their preamble, is one of overthrowing capitalism by economic action. As the result of observation and experience in the movement I came to the conclusion that it is impossible to overthrow capitalism by economic action. It can only be done 30 by the ballot box. Another thing, the different psychologies that prevail in the different trades makes an impossible situation to organize workers in the One Big Union. The different ideas that arise out of the conditions appertaining to the crafts makes the

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 examination
 (continued)

workers organize in craft organizations. They can only make progress as the result of being in that one craft organization, because sometimes there are situations develop where a craft, as regards the jurisdiction of certain work, may become involved in a little dispute with another craft, in the taking care of that work, and that causes these organizations to form in the manner in which they have formed. It is impossible to form different working crafts into one organization. And at that time with the depletion in their membership from 1,300 in 1919 to 150 at about the end of 1922 I came to a realization that there was no use of carrying on in that way any longer, and the only logical way was to be inside the organization that was able to do business.

Q. Does the One Big Union recognize craft organization?

A. It is recognized as a class organization.

Q. But does it recognize a craft organization?

A. It does not recognize a craft organization.

Q. Such as the machinists, boilermakers, pattern-makers, or blacksmiths? A. No, it does not recognize those different craft organizations at all.

20

Q. What is your view as to the value of craft organization?

MR. McMURRAY: I object. This witness said he didn't think he had sense enough to be taken down to Montreal.

MR. LAIRD: They may think that, but I may think he has some sense.

MR. McMURRAY: I submit this witness is not so qualified.

THE COURT: It is not strictly re-examination.

MR. LAIRD: With deference to your lordship my learned friend brought this out; he has touched upon it.

THE COURT: You asked his reasons, and he has given them, but now you are proceeding to discuss the reasons. That is going a little far in re-examination. If you want to put it under examination in chief, go on.

MR. LAIRD: No, I don't, my lord, but my learned friend asked him, and I thought it was directly following that.

BY MR. LAIRD:

Q. You spoke of destroying capitalism by economic action.

A. That is direct action, that is withdrawing your labor power from the shops and paralyzing industry. That is, the workers as a whole will withdraw their labor from the shops and production will cease and cause stagnation and chaos.

Q. In other words, economic action is a strike.

10 A. Yes, direct action.

Q. When was Mr. Byers here? You have spoken about being present and seeing Mr. Byers here, when was that?

A. Mr. Byers was up here, I think it was in the beginning of 1925.

Q. Was that the time you have in mind that he met the officials and members altogether of Division 4?

A. Yes, Division 4 representatives here in Winnipeg.

Q. Is that the time you have in mind in 1925?

A. Yes.

20 Q. Have you met him since, or seen him since?

A. Yes, I saw him a year after, at a similar meeting.

Q. In connection with what? A. Co-operative plan.

Q. Have you seen him since that again? A. No.

Q. You say you saw him about 1925, and about a year later.

A. Yes.

Q. What was the subject being discussed then?

A. Well, the first time he was up he was discussing the

RECORD

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 (continued)

various features of the co-operative plan. The second time he was giving the results of the plan on the Baltimore & Ohio Railroad, and the results being obtained down East.

Q. Was there any suggestion of reduction in staff in the Fort Rouge shops being made at that time?

A. The idea of the whole scheme was to prevent any reduction taking place. The whole idea was stabilization, as far as I understood.

Q. You referred to some men in the wood shop; that was part of the Transcona shops, was it? A. Yes, the car department.

Q. And men were laid off irrespective of the seniority rule at that time. A. They got the opportunity of being transferred to the freight car shop; that was a lower rate.

Q. That was a lower rate. And in case they did not accept the transfer what was to happen?

A. Well, some of them quit.

Q. Was that while you were with the O.B.U. A. That would be around the time I was with the O.B.U.

Q. And do you know whether those were One Big Union²⁰ men or Division No. 4 men, or both? A. They may have been in the O.B.U., but they were not in the Division, as I understood it at that time.

Q. At that time they weren't Division 4 men. Did you know any Division 4 men in that connection? A. No, I can't recall the names of them at all.

Q. My learned friend asked you about being an official of this Western Shopmen's Committee. As I understood it, you were chairman of the Transcona railroad workers unit?

A. Yes.

30

Q. And then you were chairman of the meeting in the Strand theatre. A. Yes.

Q. Were you chairman at any other meetings? A. I was

chairman for a few times at the meetings in the Plebs Hall. Clancy was the first chairman at these meetings.

Q. What organization was that that you were chairman of in Transcona? A. The Unit.

Q. Of what? A. Of the O.B.U.

Q. Meetings apparently, according to this exhibit 46, were held, and you were chairman at how many of them, do you recall? A. Previous to the one held in the Strand?

Q. Well, there were six apparently altogether.

10 A. Most of them were held in the Plebs Hall. I think the only one held outside was the Strand theatre meeting.

Q. That was on the 14th July. A. It was in the middle of the summer.

Q. How were you put in the chair? A. I was just told to go in the chair, that was all.

Q. Under whose instructions? A. The executive of the O.B.U.

Q. This application reads: "It was unanimously decided to strike rather than to accept the reduction." Where was that
20 decision made, do you know, Mr. Glendenning?

A. That decision was made in the Strand.

Q. My learned friend referred to Mr. Garry, secretary. Do you know whether he was appointed secretary of that committee?

A. No, he wasn't secretary of that committee. Tom Mace was secretary.

Q. As I understood your testimony to my learned friend you were dealing here with the men on the western lines, were you, of the Canadian Northern Railway and the Canadian Pacific Railway? A. Only on the Western lines.

30 Q. West of what point. A. West of Winnipeg.

MR. LAIRD: That is all.

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Glendenning
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examination
(continued)

MR. LAIRD: I put in a certificate under "The Newspaper Act" from the deputy prothonotary. It makes evidence a certified copy of a document on file in Court. The certificate is signed by Mr. Christie and under the seal of this Court certifying that the paper writing hereto annexed is a true copy of an affidavit filed under "The Newspaper Act" in the office of the Prothonotary in the Court of King's Bench, in the City of Winnipeg in Manitoba, on the 16th day of May, 1923. The Certificate is dated today, with the signature of the assistant deputy prothonotary, and the affidavit attached is Canada, Province of Manitoba. 10

(Affidavit of A. J. Christie under "The Newspaper Act" referred to, produced and marked **Exhibit 51**.)

RECORD
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No. 27
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Evidence
Henry George
Veitch
Examination

HENRY GEORGE VEITCH, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

Q. You are a printer, and reside in the City of Winnipeg, Mr. Veitch? A. Yes.

Q. And have been here ten or twelve years? A. Yes, more.

Q. What is the printing firm or company with which you are connected? A. The Wallingford Press Limited. 20

Q. You are president of that, are you?

A. President of the Company.

Q. And have been since at least 1923?

A. Since 1912.

Q. The Wallingford Press, I believe, print a newspaper known as the One Big Union Bulletin?

A. Yes.

Q. And they have printed it since at least 1923?

A. I can't remember the exact date. There was an interruption took place when another firm printed it for several weeks. 30

Q. Well, say, 1924 would suit me. Was that interruption before 1924? A. I believe we have printed it since 1924.

BY THE COURT:

Q. Since the beginning or the end of the year.

BY MR. LAIRD:

Q. Since January 1924? A. Yes, that is good enough.

Q. Who are the publishers of the One Big Union Bulletin?

A. The publishers are the Central Labor Council.

Q. Of what? A. Of the One Big Union.

10 Q. Your company, namely, The Wallingford Press, receives copy from whom? A. Our boy goes down regularly about twice a day and picks up the copy and brings it into the linotype operators.

Q. You get the copy from the Winnipeg Central Labor Council offices? A. Yes.

Q. And print the copy that is furnished in that way?

A. Yes.

Q. It is a weekly publication, I believe?

A. Every week.

20 Q. Do you receive copy from any other source than from the Winnipeg Central Labor Council of the One Big Union. A. We have received copy through the mail, and from other members of the Council.

Q. Members of the Winnipeg Central Labor Council?

A. Yes.

Q. Or through the mail from some officer?

A. Well, we don't know from what source. In opening the mail we find at times where it states for the O.B.U.

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(continued)

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 Henry George
 Veitch
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 (continued)

Q. And you verify that before you print it?

A. Well, we set it up, and we leave it to the editor to verify it.

Q. I show you certain papers that have been put in here as exhibit 47. Would you please look at those. I think there are nineteen of them, and tell me whether they were printed by The Wallingford Press Limited. You had better look at them all unless you have already done so. What is your answer.

A. They look very similar to the copies we printed.

Q. Were the papers, exhibit 47, printed by The Wallingford Press? A. They look very similar, but personally I haven't 10 read the paper for years, and I couldn't say so far as the copy goes it was printed.

Q. You can say whether The Wallingford Press has printed that or not? A. No, I could not say.

Q. Who in your establishment would know?

A. Some of the linotype operators, but it all depends on which linotype operator set that.

Q. What do you do with the copies of the One Big Union Bulletin which you print? A. We set the type up in our own office, and on the Wednesday nights we send the forms over to 20 54 Adelaide Street. We rent a part of the basement there for our press. We stock our paper there, and we print the paper, there, that is, at 54 Adelaide Street.

Q. That is the headquarters of the One Big Union?

A. Yes, and they receive all the copies there in their own building.

Q. But you have some men at 54 Adelaide Street?

A. We send our pressmen over to print the paper.

Q. All those papers bear the name of The Wallingford Press Limited as the—

30

A. As the printer.

Q. And they also read "printed for the publishers, by The Wallingford Press Limited," do they not?

A. Yes.

Q. And they also read, "Published by the Winnipeg Central Labor Council of the O.B.U." A. Yes.

Q. Don't you know enough of your own printing, or do you know enough of your own printing and typesetting, Mr. Veitch, to tell me whether or not those are printed by your company, The Wallingford Press Limited for the One Big Union.

10 A. With what I know that takes place in the printing trade today I don't know that anyone could swear to what they have not seen. Anyone who goes to the moving picture houses today and sees the photo pictures, it is pretty hard for anyone to say they actually done the work or not. Therefore, I wouldn't like to say that is our printing, but as I have said already, it looks like it.

Q. And so far as you know no other printer in Winnipeg since January, 1924, has printed anything for the Winnipeg Central Labor Council? A. I think I am safe in saying that. Prior
20 to that date we lost the contract, and then got it renewed.

Q. So the Wallingford Press has a contract for the printing of the One Big Union Bulletin?

A. A year's contract.

Q. And The Wallingford Press has from week to week printed the One Big Union Bulletin? A. Yes.

Q. And printed it right in the hall or building known as Plebs Hall, 54 Adelaide Street? A. That is right.

Q. And delivered all that were printed to the officers of the One Big Union? A. Yes.

30 Q. What is the circulation or the number of copies you print? During 1924 how many copies would you say were printed?

A. I can only guess at the copies for that date. In 1924 it might run about 60,000 or 70,000.

RECORD

In the
King's
Bench

No. 27
Defendant's
Evidence
Henry George
Veitch
Examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 27
 Defendant's
 Evidence
 Henry George
 Veitch
 Examination
 (continued)

Q. And then in 1925 greater or less?

A. Approximately less.

Q. Approximately, how many? A. You are only asking me now to guess.

Q. No, you are the president of the company, and you are paid I suppose so much for each one. You are vitally interested in the circulation? A. I naturally am, but from month to month as our bills are paid insofar as that particular circulation goes we forget it.

Q. Well, in 1925 what would your statement be? 10

A. In 1925 I would say approximately 30,000. It might be more for each issue.

Q. In 1926 what would be the weekly copy?

A. About the same. I believe at that date it was running anywhere from 30,000 to 45,000 during those two years.

Q. And the present, 1927? A. 1927 would run about 25,000.

Q. And 1928? A. 1928, approximately the same.

BY THE COURT:

Q. Can't you say, witness, as to whether or not from the beginning of 1924 there have been any weeks when you failed to publish it? A. I think we have published it every week since that date, if my memory serves me right. Somewhere about 1922 or 1923 we lost the contract for several weeks.

BY MR. LAIRD:

Q. Who printed it then? A. It was printed by an Icelandic Company who have gone out of business since.

Q. You have never heard of them stealing your name and putting it on a paper? A. No, I wouldn't say they had.

Q. There is a declaration made by you in 1923, that was³⁰ after you had taken up the printing contract, by you and Mr.

Wooler. This is a copy sworn on the 16th May, 1923, before Mr. Doyle.

A. The wording seems familiar.

Q. That is exhibit 51? A. Is that a copy of our contract.

Q. No, a declaration filed in the Court under the Statute. Does that assist you in any way in verifying whether it was before or after 1923 that some other printer printed it for a few weeks?

A. I think I could say definitely from that, that we have
10 printed it since that date.

Q. Since 1923. Does the Wallingford Press keep a copy of the One Big Union in its own file?

A. We keep our files intact for 12 months.

Q. You have been subpoenaed to bring certain issues?

A. Well, I have looked through our files, and we do not have any copies. We moved our plant in 1926, September of 1926, and we destroy all our files after they are 12 months old.

Q. Have you any copies of the One Big Union which you have printed before the date of removal?

20 A. No.

Q. Since you moved? A. Since we moved we have copies for a year. We are compelled by law to keep copies for 12 months.

Q. And the last of these are dated sometime in 1926, July 1926. Have you got any of that date?

A. No, sir, we haven't any as far back as that.

Q. Have you any doubt that these are the genuine newspapers?

MR. McMURRAY: I object to that.

A. I have already said, sir, that they look like the One Big
30 Union Bulletin, but I can't swear to it.

RECORD

In the
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No. 27
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(continued)

RECORD
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 (continued)

BY THE COURT:

Q. You say you send the press men to run off the papers?

A. Yes, we send the press men over to our press at 54 Adelaide Street to run off the papers.

BY MR. LAIRD:

Q. Have you ever heard of any other publication in the City of Winnipeg known as the One Big Union Bulletin other than put out by the Winnipeg Central Labor Council?

A. Yes, there was a One Big Union paper, published previous to the institution of the One Big Union Bulletin. 10

Q. That is prior to 1920? A. Yes.

Q. But nothing since? A. Nothing since that I know of.

Q. Can you give me the names of the men who could identify those papers as being printed by you?

A. To identify those papers?

Q. Yes, or other copies of the same date?

A. Well, the only man— There is one man who was in our employ who has now gone West. I don't remember his address, but I could get that easy enough. The foreman of our department goes over to the press room and starts up the press. 20

Q. And you have the same foreman now as you had in 1920?

A. Yes, we have the same foreman now.

Q. What is his name? A. Walter Larsen.

Q. He was foreman in 1924, and still is? A. Yes.

Q. What does he do? A. Mr. Larsen goes over to the press and starts it up and then leaves it in charge of other two men.

Q. And then does he visit it from time to time?

A. No, he does not visit it unless trouble arises.

Q. The actual type is set up in your own office?

A. Yes, in our own plant.

Q. What do you do with the copy, you destroy it at once?

Q. Well, part of the copy goes back to the editor, if for any reason they want that for their own files.

Q. Who does the proof reading? A. They do their own proof reading, and they are sent back to us to make the corrections, and they check to see the corrections are made before the forms go to press.

10 Q. A second check? A. Yes.

Q. And that is all done between The Wallingford Press and the Winnipeg Central Labor Council?

A. And the editor of the O.B.U. Bulletin.

MR. LAIRD: That is all.

CROSS-EXAMINATION BY MR. McMURRAY:

Q. You say, Mr. Veitch, in your opinion, it would be impossible for a printer after a period of years to identify a newspaper that he published?

A. Yes, I don't think any man could say positively that he 20 printed a certain piece of literature that he may have printed a year before or even for a lesser period.

MR. LAIRD: My lord, I will have to crave your indulgence for a moment in regard to these pamphlets. I don't know whether Mr. Veitch can help me or not.

CONTINUATION OF DIRECT EXAMINATION BY MR. LAIRD:

Q. Will you please look at exhibit 48 and tell me whether The Wallingford Press printed that?

A. I couldn't say whether we printed that or not.

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 In the
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 No. 27
 Defendant's
 Evidence
 Henry George
 Veitch
 Examination
 (continued)

No. 27
 Defendant's
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No. 27
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 Re-
 examination

RECORD
 In the
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 No. 27
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 Veitch
 Re-
 examination
 (continued)

Q. You do print leaflets? A. We have from time to time. We do not do all of this type of printing.

Q. I see that bears the mark which deciphers "O.B.U." Do you know what printing is underneath that? Is that some mark you have? A. Some mark they have. This belongs to themselves, this badge, and there are other offices in town have that stamp. The only stamp we have ourselves is our own "Allied Printing Trades Council, Winnipeg," and then we know our own printing in that way.

Q. And then looking, please, at Exhibit 49, being a leaflet, ¹⁰ can you tell me whether or not The Wallingford Press Limited printed that? A. I don't know whether we did.

Q. Then looking at exhibit 50? A. It does not appear like our type.

Q. Looking at exhibits 48 and 49 again, the O.B.U. mark at the top of exhibit 48 and at the foot of exhibit 49. The type for that is in the possession of The Wallingford Press Limited?

A. This originally was used in Vancouver.

Q. And it was sent here to Winnipeg? A. Yes.

Q. And The Wallingford Press got the stamp? 20

A. Yes.

Q. What is the technical name for that?

A. These are the electrotypes or cuts.

Q. Then the cut, or electro-type, is received by The Wallingford Press from the Winnipeg Central Labor Council?

A. Yes.

Q. When was that? A. We have had some in our possession for the last two or three years.

Q. Would it go as far back as 1924?

A. It probably would. 30

Q. And The Wallingford Press, so far as you know, is the only printer in Winnipeg that has the possession and use of that cut or electro-type? A. No, there are at least two other offices that have that.

Q. I gather from you they borrow it from you and use it?

A. They borrow these and then they make their own electros, and copy them.

Q. Can you tell me whether this is from the electro you use?

A. We simply use this particular cut. The cuts we use are 10 solid.

Q. The cuts on exhibits 48 and 49 are the same?

A. Yes, that is a cut which is very seldom used by us; we have the solid cuts. This is stippled.

Q. Can you decipher what is underneath the cut?

A. I think it is "Reg design."

Q. Where would that be registered? A. That particular cut was made in Vancouver. It may probably have been registered over there.

Q. At Ottawa? A. I don't know where they register them.

20 Q. As a printer you don't know? A. I don't know where they register from Vancouver. I imagine they register at Ottawa, but it may just be anything.

Q. The electro that you have, that you received from the Winnipeg Central Labor Council had the words "registered design" underneath it? A. The original design we received from Vancouver like that.

Q. Yes? A. Yes, we made the original cuts ourselves for the O.B.U. from a drawing supplied to us by them, which is different to that.

30 Q. But this is the cut they have adopted on some of their literature? A. It has been used on some of their literature.

RECORD

In the
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Bench

No. 27
Defendant's
Evidence
Henry George
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Re-
examination
(continued)

RECORD
 In the
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 Veitch
 Re-
 examination
 (continued)

Q. The cut received by you from them by way of Vancouver has the words "registered design" on it?

A. Similar to this.

Q. Would your books of account show whether you printed exhibits 48 and 49 for the Winnipeg Central Labor Council or the One Big Union? A. On what date?

Q. One of these was evidently printed late in 1926 or early in 1927. Your books of account would show that?

A. It might go back that far.

Q. The other one may be earlier? A. They go back a few 10 years.

Q. Would you please look up and let us know in the morning whether your books of account show you printed these pamphlets? A. Let me get the titles.

Q. The first one is exhibit 48, four full pages. It is 1925 or 1926. Would your account show the title? "To Our Fellow Workers in the Transcona Railroad Shops?"

A. No, it would just show a 4 page leaflet.

Q. Then the other one, which was probably late in 1926 or early in 1927, I suppose you would call that a four page leaflet? 20

A. Yes, that is, 4— page.

Q. The title of it is, "What the B. and O. Has Brought." And this other, exhibit 50, you think differs from your type.

A. Yes.

THE COURT: It is now time to adjourn, and the cross-examination will be reserved until after the witness comes back.

(The Court adjourned at 5 p.m. May 28, 1928, to 10.30 a.m. May 29, 1928.)

10.30 a.m. May 29, 1928.

BY MR. LAIRD:

Q. I was asking you, witness, last night about The Wallingford Press, of which you are president, having printed leaflets for the One Big Union or the Winnipeg Central Labor Council, and you were to look up some information. Have you found that your company from 1924, 1925 and 1926 printed leaflets for either one of those organizations?

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 (continued)

A. I have a list here from January, 1922, to March, 1926.

Q. Well, confine yourself to 1924, 1925 and 1926. Did your company print leaflets? A. We printed four lots during that
 10 time of four page leaflets.

Q. On four separate occasions? A. Four separate occasions.

Q. You printed what? A. Four page leaflets.

Q. What was the quantity of the first?

A. The 1st of August, 1924, was ten thousand.

Q. Is there any record in your company which shows the title of it? A. We haven't got any of the docket or copies in our possession now.

Q. What was done with those, witness?

20 A. They were destroyed at the end of each corresponding month to the previous year.

Q. Then after August, 1924, what was the next date?

A. August, 1925.

Q. How many were printed then? A. Ten thousand.

Q. And you have told me before about the destruction of any records showing the contents of the leaflets, and that applies to them also? A. It applies, that is to say, at the end of this month we will destroy all copies and dockets in connection with work done in the corresponding month of last year.

30 Q. Is it usual in the printing trade?

A. Well, it is our custom. We have a cabinet made for these records, and each box holds 100 dockets.

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 examination
 (continued)

Q: Is that a part of your agreement with the One Big Union? A. That has nothing to do with any agreement.

Q. Then what was the date of the third leaflet?

A. The date of the third, is January, 1926.

Q. How many copies? A. Five thousand.

Q. And the next? A. In March, 1926, ten thousand.

Q. And the next? A. We haven't any more four page leaflets since that date.

Q. On one of these occasions they were repeated, some order repeated, what about that? 10

A. No, this is in March, 1923, we had eighty thousand of four sets.

Q. You do not send out to any subscriber or news agent, any copies at all of the One Big Union Bulletin?

A. No, we have nothing to do with that. People come to the office and try and buy a paper, and we refuse to sell them.

Q. You refuse to sell them even if you have them in your office? A. Yes.

Q. That is all in the hands of your customer?

A. Of our customer, and we have got to supply all copies to 20 them.

CROSS-EXAMINATION BY MR. McMURRAY:

No. 27
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 Henry George
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 Re-Cross-
 examination

Q. Mr. Veitch, you see this sign or what is called "trade mark" on exhibit 48. What is that? It is a registered trade mark? A. Yes, it is a registered trade mark. Where or when it was registered I can't say.

Q. No. When you go to print that you make what, an electro-type? A. We were supplied with electros in the first case, we were supplied with a drawing in the first case, and we made our own electro-types, but these electro-types came from Van-30 couper to us.

Q. What is an electro-type, what do you mean by that?

A. An electro-type is a process of making a cut with a copper face, and a metal base.

Q. That is not very difficult to do? A. No.

Q. If the Free Press, for instance, wanted to run a facsimile of yourself on the front page of their newspaper and they did not have this type they could easily make one?

A. They would make what we call a zinc etching from a photograph.

10 Q. They photograph that, make a zinc etching and run off eight or ten thousand of them. No trouble at all?

A. No.

BY MR. LAIRD:

Q. You say that is a registered trade mark on exhibit 48?

A. That is the wording there, I don't know where or when it was registered.

Q. I suppose you know it is an offense punishable by law to copy a registerable trade mark?

THE COURT: The witness is not in a position to answer
20 that.

Q. You suggest it would be an easy thing for another printer to copy a registered trade mark? A. Yes.

Q. Have you ever done it? A. No.

Q. Do you know whether it is legal to do that or not?

A. No, it is illegal.

ELIAS KWALHEIN, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

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No. 28
Defendant's
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Elias
Kwalhein
Examination

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(continued)

Q. You live in Winnipeg, I believe, Mr. Kwalhein?

A. Yes.

Q. And worked in the Fort Rouge shops of the Canadian Northern Railway? A. Yes.

Q. And your occupation is a machinist, I believe?

A. Yes.

Q. And you have worked there 15 years or so?

A. I started in 1916, September 18th.

Q. And have been employed continuously ever since?

A. Yes.

10

Q. You know the plaintiff, Mr. William Young, sitting here?

A. Yes.

Q. He was working in the same shops for awhile, I believe?

A. Yes, he was working in the same shops.

Q. You knew him, did you, while he was working there?

A. Yes, I knew him.

Q. Do you know what is known as the co-operative plan or the B. and O. Plan in the shops. A. Yes.

Q. When was it put into effect, Mr. Kwalhein?

A. 1923, I think.

20

Q. You think it was 1923? A. No, it was later, 1925.

Q. It was later in 1925? A. Yes.

Q. You knew about that plan, did you? A. Oh, yes.

Q. And can you tell me whether Mr. Young, the plaintiff,

knew about the plan? A. I guess he knew about the plan; he was speaking in regard to that plan in the shop.

Q. He was speaking in regard to the plan in the shop?

A. Yes.

Q. During working hours? A. Yes.

Q. This occasion that you refer to him speaking, were you present? A. I was there, yes.

Q. Were others there than the two of you?

A. No, only the two of us.

10 Q. Can you fix the date of that conversation, Mr. Kwalhein?

A. No, I don't know the date of it at all. I can't recollect that.

Q. Approximately? A. It was prior to the reduction of staff.

Q. That is, prior to Mr. Young dropping out?

A. Yes.

THE COURT: Was it before or after the plan was put into operation? A. It was after.

BY MR. LAIRD:

20 Q. Can you tell us whether it was a long time or a short time before Mr. Young left that this conversation took place. A. It must have been a month prior to that.

Q. Is that the nearest estimate you can make, about a month prior to his leaving? A. Yes, I couldn't say the exact date.

Q. I know, but you think it must have been a month before he left? A. Yes.

Q. This conversation took place where? A. At the emery stone, alongside of his machine.

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 Elias
 Kwalheim
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 (continued)

Q. Your machines were in the same area in the shop?

A. Well, it was just back of his.

Q. What did Mr. Young, the plaintiff, say about the B. and O. Plan? A. He was speaking along the line of the organization, and he said an organization that takes on a scheme like the B. and O., that organization ceases to function, and becomes a company's union.

Q. Speaking along the lines of the organization, what do you mean by that? A. The international organization.

Q. Are you a member of the International Order of Machin- 10
 ists? A. I am a member now, yes.

Q. At the time of this conversation with the plaintiff were you a member? A. No.

Q. Were you a member of any labor organization at that time? A. No.

Q. You were not? A. No.

Q. Can you tell us anything further Mr. Young said at that time about the B. and O. scheme or the co-operative scheme?

A. No, I can't remember that he talked any more along those lines. 20

Q. You can't remember that he talked any more along those lines? A. No.

Q. What was Mr. Young's attitude towards the B. and O. scheme?

MR. McMURRAY: I object to that.

THE COURT: No, what did he say or do.

BY MR. LAIRD:

Q. What did Mr. Young say or do with respect to the B. and O. scheme? A. Well, what did he do?

Q. Yes? A. I don't know, I can't answer that question, what did he do.

Q. Well, what did he say? A. Well, that is the question he said there, and then after that we never spoke about it.

Q. What did you say to him about the B. and O. scheme?

MR. McMURRAY: I object. What this man said cannot bind my client.

THE COURT: Unless there was some further conversation by Young that might be connected up by something the witness 10 said.

MR. LAIRD: Part of the conversation would be evidence at all events.

BY MR. LAIRD:

Q. You said something, and he replied to that?

A. I thought—

Q. Never mind what you thought. You said something about the B. and O. Plan? A. Yes.

Q. And what did Mr. Young say in answer to you?

A. I can't remember that.

20 Q. Do you recall other occasions before that when Mr. Young discussed the B. and O. Plan with you?

MR. McMURRAY: I object to that. This witness said that was the only occasion and my learned friend is urging him unduly. He has told you there was one conversation.

THE COURT: That is all right.

BY MR. LAIRD:

Q. Do you remember any other conversation with Mr. Young about the B. and O. Plan? A. No, we had very little talk along those lines.

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CROSS-EXAMINATION BY MR. McMURRAY:

Q. When did you join Division No. 4?

A. The first time I joined was in 1905.

Q. Division No. 4? A. In 1916 when I came here.

Q. Division No. 4? A. That is the international.

Q. Do you know what Division No. 4 is? A. Yes.

Q. Did you become a member of that? A. I was a member of that.

Q. When? A. In 1916 when I was transferred from Minneapolis to here. 10

Q. You were a member of the Division down there?

A. Well, they call it district down there, District No. 2.

Q. And then you left the American Federation of Labor, I believe? A. Yes, I left it.

Q. When did you join them again? A. In 1923.

Q. You did not join just lately? A. I joined lately.

Q. You dropped out and joined again. When was the last time you joined them? A. In 1927.

Q. What date? A. The 27th June.

Q. On the 27th June, that was after Young was let out, you joined the international, did you? A. Yes. 20

Q. Did you do it because you were afraid you would lose your position if you did not belong to the international?

MR. LAIRD: Objected to.

A. I did, yes.

Q. Did you tell Mr. Young that if he did not join the international he would be dismissed?

A. No, I did not.

MR. LAIRD: Would your lordship allow that question?

THE COURT: Oh, in cross-examination, yes.

MR. LAIRD: Subject to my objection I would like to ask him in regard to that without prejudice to my objection.

THE COURT: You may re-examine on that.

BY MR. LAIRD:

Q. You say you joined the international order of machinists, which is affiliated with Division No. 4 on the 27th June, 1927?

10 A. Yes.

Q. When did you drop out, I did not catch the date?

A. In 1926.

Q. In the meantime you had not joined any organization?

A. No.

Q. When you joined up on the 27th June, 1927, had any of the officials spoken to you at all? A. No.

Q. You did it without any request or suggestion from any foreman or officers of the company? A. Yes.

Q. Did anybody solicit you to join any other organization 20 when you were not a member of the international?

A. Well, Mr. Young spoke to me several times and asked me when I was going to join the O.B.U.

Q. Mr. Young spoke to you several times and asked you when you were going to join the O.B.U.? A. Yes.

Q. When was that, during what period of time?

A. It was just at the time this conversation was going on.

Q. That is the time of the conversation about the B. and O. Plan? A. Yes.

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Q. And he asked you at that time to join the O.B.U.?

A. He asked me at that time when I was going to join the O.B.U.

Q. How many times did he ask you? A. A few times.

Q. How many? A. Well, I can't remember, two times.

Q. What did he say as to the advantages or disadvantages of the One Big Union? A. Well, he didn't speak about the disadvantages of the organization, that was all he asked me.

Q. Was the attitude of the One Big Union as to the B. and O. Plan referred to? A. No. 10

No. 29
 William
 Young
 Portions of
 Examination
 for Discovery

MR. LAIRD: I will put in portions of the examination for discovery of the plaintiff, William Young.

(Examination for Discovery of William Young produced and marked Exhibit 52.)

MR. LAIRD: I will put in the caption and the first question.

"IN THE KING'S BENCH

BETWEEN

WILLIAM YOUNG

Plaintiff

and

20

CANADIAN NORTHERN RAILWAY COMPANY

Defendant.

This is the examination of the plaintiff, William Young, viva voce, upon oath, for discovery, had and taken before J. T. Whitaker, Esq., a special examiner in this honorable Court, at the offices of Messrs. Munson, Allan, Laird & Co., barristers, etc., in the Victory Building, in the City of Winnipeg, in the Province of Manitoba, on the 3rd day of January, 1928, at the hour of 2:30 o'clock in the afternoon.

PRESENT: Hon. E. J. McMURRAY for the plaintiff, and 30
 D. H. LAIRD, K.C., for the defendant.

It was agreed between counsel present that the examination be taken in shorthand by Joseph L. Donovan, court reporter, duly sworn, and afterwards by him extended on the typewriter, and that the reading over and signing of the transcript by the witness be dispensed with.

By consent of counsel for all parties the further attendance of the examiner on the examination was dispensed with, and it was agreed that the examination as taken down, extended and signed by the court reporter shall be treated in all respects as
 10 if the said examiner had been present throughout the examination, and shall be as valid, binding and effectual in every way and for all purposes as if the said examiner had been present throughout.

The above named William Young, being first duly sworn, testified as follows:

EXAMINED BY MR. LAIRD:

1. Q. Mr. Young, you are the plaintiff in this action against the Canadian Northern Railway Company?

A. Yes.

20 11. Q. Did you personally go over to the shops and look for a job? A. Yes, I went over there.

12. Q. Whom did you see? A. I saw Mr. Albert Hough, machine shop foreman.

21. Q. And Mr. Hough was the man whom you were finally referred to? A. Yes.

22. Q. And the man with whom you made the bargain?

A. Yes.

23. Q. What was said about wages between you and Mr. Hough? A. Mr. Hough signed me up on the books. That was
 30 upstairs in the office of the machine shop. Coming away I asked Mr. Hough the amount of wages I would receive. His reply was I would receive the going rate, the machinists' rate, which I took to mean—

24. Q. Never mind what you took to mean. Just what was said between you. He said you would receive the going rate?

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 (continued)

A. Yes.

25. Q. Did you ask what the going rate was? A. Yes, I asked him the rate.

26. Q. What did he say? A. 72 cents an hour at the time.

27. Q. Was anything else said between you as to wages?

A. No, there was nothing said at that time as regards wages. I was perfectly satisfied when he told me that.

28. Q. Anything said as to how often you were going to be paid? A. No.

29. Q. You were to get 72 cents an hour? A. Yes. 10

33. Q. Was anything said between Mr. Hough and you as to how long you were employed for? A. No, he didn't say for how long.

36. Q. Did Mr. Hough say anything about any agreement?

A. No, he didn't mention any agreement.

53. Q. Then when you concluded your bargain with Hough, as representing the railway company, there was no written agreement made between you and the company, I take it.

A. No.

54. Q. You did not receive any writing from the defendant company at all when you entered its service?

A. The only writing I received was a slip containing my clock number, just to refresh my memory in case I forgot it.

55. Q. Did you preserve it at all? A. No.

56. Q. It just showed your name and number?

A. Just name and number.

57. Q. It didn't show your rate of pay or your job or anything of that sort? A. No.

58. Q. And you started to work on the 10th or the 11th of June? A. Yes, the following morning.

59. Q. And you did not sign any agreement at all relating to your services? A. No, I did not sign any agreement.

69. Q. During all the period you worked for the railway company, from 1920 to 1927, there was no written agreement entered into between yourself and the railway company?

A. No.

78. Q. Division No. 4 is part of the organization known as the American Federation of Labor? A. Yes, that is right.

79. Q. Did you become a member of the American Federation of Labor? A. No.

80. Q. At no time while you were in the company's service were you a member? A. No, I never was a member.

91. Q. And you were not a member of the organization?

A. No.

92. Q. And the negotiations took place entirely by representatives of the American Federation of Labor?

A. Of Division No. 4, yes.

20 93. Q. Of Division No. 4 of that Federation?

A. Yes.

94. Did you, for example, ever interview the representatives of Division No. 4 on the subject of increase of wages?

A. Never.

95. Q. Were you ever told or informed by the railway company that the agreements between the American Federation of Labor and it were for the benefit of you? A. No.

109. Q. When you were engaged was any inquiry made as to whether you belonged to the American Federation of Labor? I take it, not. A. No mention made at all.

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No. 29
William
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Portions of
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 (continued)

110. Q. No mention made of any trade organization of any kind. You weren't, for example, asked if you belonged to any trade union. A. I am not quite sure whether I told him I had an A. S. of C. card from the Old Country. I did tell the foreman, Mr. Bassett.

111. Q. Is that a trade organization or machinists' organization? A. Well, it is what the metal trades belong to, the men in the metal trades. That is my apprenticeship card which I had when I joined up (showing paper).

112. Q. During the period when you were in the shops did you at any time become a member of any organization of machinists? A. Not of machinists.

113. Q. Did you during the period you were in the company's service ever become a member of any labor organization?

A. Yes, I joined the One Big Union, that is an organization comprized of workers of all grades and classifications.

114. Q. When did you join it? A. I joined that about one month after I joined the company's service.

115. Q. That would be during the July, 1920?

A. As near as I can remember it.

20

116. Q. Have you been a member of that organization ever since? A. Certainly.

117. Q. You have? A. Yes.

292. Q. You never did ask any committee of Division 4 to do anything for you? A. No.

363. Q. How much do you earn a day? A. \$6 and a few cents a day. Two weeks pay for ten days runs sixty dollars and seventeen or eighteen cents.

364. Q. And during the seven years sometimes it was a little more and sometimes a little less due to the fluctuation in wages? A. Yes.

366. Q. Do you know a plan or system which is in operation in the Fort Rouge shops known as the B. & O. system?

A. Yes.

367. Q. And it is also called The Co-operative Plan, isn't it?

A. Yes.

368. Q. That was in force in the Fort Rouge shops when you were employed there? A. Yes.

369. Q. What was your position and attitude towards it, Mr. Young?

MR. McMURRAY: I object. You don't need to answer that question.

10 370. Q. That system had the approval of the management of the railway, and was put in force by the railway company, was it not? A. So I believe.

371. Q. What was your position and attitude towards that plan or system as an employee of the defendant company?

MR. McMURRAY: On advice of counsel the witness declines to answer.

372. Q. You decline to answer? A. Yes.

373. Q. Were you in favor of the system or not, which was known as the B. and O. system?

20 MR. McMURRAY: The witness declines to answer.

405. Q. I will put it this way, Mr. Young. Prior to the 13th of June had you in your possession or power a copy of Wage Agreement No. 4 at all? A. No, not personally.

406. Q. You told me a moment ago that you had seen one or read one? A. Yes.

407. Q. Where did you get that? A. It was in the possession of some friend.

408. Q. Who belonged to the Federation of Labor?

A. Yes. You must understand I have a certain amount

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of individual friends whether they belong to the different organizations or not.

409. Q. So you saw a copy of this agreement No. 4 while you were working in the shops? A. Sure.

410. Q. And obtained it from a fellow employee?

A. Yes.

411. Q. And this wage agreement No. 4, as you will see, purports to be made between Division No. 4, Railway Employees' Department of the American Federation of Labor, and the Canadian Railway War Board? A. Yes. 10

412. Q. And you saw that? A. Yes.

413. Q. And you have already told me that you, during your period of employment with the company were not a member of Division No. 4 of the American Federation of Labor, were you? A. I have already stated that.

414. Q. Then you refer to supplements of agreement No. 4. Have you got those? A. No.

415. Q. Did you see the supplements to wage agreement No. 4? A. Yes.

416. Q. In the same way, you borrowed them from a fellow employee? A. Yes."

"CERTIFIED true transcript of the examination of WILLIAM YOUNG, taken by me in shorthand, at the time and place first above written.

SWORN J. L. Donovan,
 Court Reporter."

"CERTIFIED true transcript of the examination of WILLIAM YOUNG, had and taken before me, viva voce, upon oath, at the time and place first above written.

J. B. Whittaker 30
 Special Examiner."

MR. LAIRD: I now put in portions from the second part of

the examination of William Young taken on the 20th day of January, 1928. I put in the caption.

"IN THE KING'S BENCH
BETWEEN
WILLIAM YOUNG

Plaintiff,

and

CANADIAN NATIONAL RAILWAY COMPANY

Defendant.

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—
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—
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William
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Portions of
Examination
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(continued)

10 This is the further examination for discovery of William Young, plaintiff in this action, had and taken viva voce, upon oath, before Joseph T. Whittaker, one of the Special Examiners of this honorable Court, at the Law Chambers of Messrs. Munson & Allan, Barristers, etc., Victory Building, Winnipeg, on the 20th day of January, 1928, at the hour of ten o'clock in the forenoon.

PRESENT: Hon E. J. McMurray for the plaintiff,
D. H. Laird, K.C., for the defendant.

It is agreed that the examination shall be taken down in short-
20 hand by F. Hand, Court reporter, and transcribed by him on the typewriter, and that the reading over and the signing of the transcript by the witness be dispensed with.

By consent of counsel the further attendance of the Special Examiner at this examination is dispensed with and it is agreed that the examination, as taken down and extended by the court reporter, shall be treated in all respects and may be used for all purposes and shall be as valid, binding and effectual in every way, as if said Examiner had been present throughout.

The said William Young, having been first duly sworn and
30 being examined by Mr. Laird, deposes as follows:

1. Q. You have already been examined in this action, Mr. Young? A. Yes.

100. Q. Now, Mr. Young, the other day I asked you about what is known as the "Joint Cooperative Plan" of the Canadian National Railways, and you told me it was in force in the Fort Rouge shops and you were familiar with it. You knew it was put into force by the management? A. From information I received, but it was never bulletined.

102. Q. When was it put into force,—1923? A. I don't
40 think it was quite as far back as that. I am not sure.

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103. Q. I may be wrong, but it was, at least, in force in 1925? A. About the summer of 1925, I think.

162. Q. Who was foreman in the shops?

A. Alfred Bassett.

194. Q. Did Mr. Bassett have occasion to reprove you for the slowness with which you worked? Did he reprimand you for that?

MR. McMURRAY: When?"

THE COURT: Is there no answer to that?

MR. LAIRD: No.

10

THE COURT: That means nothing.

MR. LAIRD: No, except it connects with question 198.

"198. Q. He did complain and reprimand you for slow work on several occasions during 1926 and 1927?

A. Yes."

MR. LAIRD: There was another portion of this examination on the 23rd January, 1928, which I am not using at all.

The fourth part was on the 1st of February, 1928, and I put in the caption.

"IN THE KING'S BENCH

20

BETWEEN

WILLIAM YOUNG

Plaintiff

and

THE CANADIAN NORTHERN RAILWAY COMPANY

Defendant.

Continuation of the examination for discovery of the plaintiff, WILLIAM YOUNG, under and pursuant to the order of the Referee herein, dated the 30th January, 1928, had and taken before J. T. Whittaker, Esq., Special Examiner in this honorable Court, at the offices of Messrs. Munson, Allan & Company, in the Victory Building, in the City of Winnipeg, in the Province

of Manitoba, on the 1st day of February, 1928, at the hour of 2:30 o'clock in the afternoon."

"238. Q. The One Big Union Bulletin is the official publication of the One Big Union organization?

A. Yes.

293. Q. Were you ever an officer of the One Big Union?

A. Yes.

294. Q. What office did you hold? A. Assistant Secretary in the Fort Rouge unit.

10 295. Q. That included machinists in the Fort Rouge shops?

A. That takes in all workers.

296. Q. All workers in the Fort Rouge shops? A. Yes.

297. Q. And includes the members of the One Big Union who work in the Fort Rouge Shops of the defendant?

A. Yes.

298. Q. What years or what period did you occupy the position of assistant secretary? A. I took the position of assistant secretary in January of 1927, about five months before my dismissal.

20 299. Q. And you continued in that position until the present time, did you? A. Yes.

300. Q. And you still occupy it? A. Yes.

301. Q. Were you in any other official position prior to that? A. I held the position of secretary for what they call the railroad department.

302. Q. The railroad department of the One Big Union?

A. Yes.

303. Q. On what date was that? A. As near as I can remember it was December of 1926.

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304. Q. That you were appointed? A. Yes.

305. Q. And you continued in that during the time you were with the defendant company? A. Yes.

307. Q. Your duties as secretary of the railroad department would be to do the ordinary secretarial duties, keep track of the members, notices of meetings, and minutes of the meetings? A. It was only like an executive, it was only like an advisory Board comprising the railroad units of the organization.

308. Q. Then as assistant secretary of the Fort Rouge unit of the One Big Union of course you would have to do the duties in assisting the regular secretary, I suppose? 10

A. Yes.

378. Q. These papers, looking at this one of May, 1924, reads, "Published by the Winnipeg Central Labor Council of the O.B.U." The Winnipeg Central Labor Council is the governing body of the One Big Union, isn't it?

A. Yes.

379. Q. Are you a member of the Central Labor Council of the One Big Union? A. I am a delegate to that body.

380. Q. By reason of your office as assistant secretary? 20

A. No.

381. Q. You are elected by your fellow members?

A. Yes.

382. Q. From the Fort Rouge Shops? A. Yes.

383. Q. As a delegate elected for one year, or for a period of years? A. For one year.

384. Q. When were you first elected as a delegate from the Fort Rouge shops? A. I believe it was in 1926.

385. Q. And you were also elected in 1927? A. Yes.

386. Q. And as a delegate you have sat as a member of the 30

Central Labor Council of the One Big Union? A. Yes.

387. Q. And that Central Labor Council of which you are a delegate publishes the One Big Union Bulletin?

A. It publishes a One Big Union Bulletin.”

“CERTIFIED true transcript of the examination of WILLIAM YOUNG, had and taken before me, viva voce, on oath, at the time and place first mentioned.

J. B. Whittaker,
Special Examiner.”

10 “CERTIFIED true transcript of the examination of WILLIAM YOUNG, as taken by me in shorthand, at the time and place first above mentioned.

J. D. Donovan,
Court Reporter.”

MR. LAIRD: There are also some questions which I wish to put in due to something that arose during the trial, questions 156 of the second part.

MR. BERGMAN: It is not answered and it should not go in.

20 MR. LAIRD: Questions 156 to 160.

THE COURT: The question of the identity of the One Big Union?

MR. BERGMAN: I object to those going in.

THE COURT: They do not advance the case any.

MR LAIRD: He says he is able to identify a copy.

THE COURT: What has that to do with this case? Has he identified any?

MR. LAIRD: I haven't asked him in the witness box to do it, but he says he was taking the One Big Union Bulletin 30 for several years, and he was able to identify it.

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THE COURT: I don't think Questions 156 and 157 should go in.

MR. LAIRD: All right. I will limit myself to Question 160.

"160. Q. Are you able to identify a copy of the One Big Union when you see it? A. Yes."

THE COURT: That is laying the foundation if he is ever asked that.

MR. BERGMAN: I would like to have the same privileges that Mr. Laird had, that is, that we may go over this examination and see whether we wish to put in any questions as explanation.

THE COURT: Yes, before the case is closed you may do that.

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 Defendant's
 Evidence
 Joseph
 Greenhalgh
 Examination

JOSEPH GREENHALGH, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAFFNER:

Q. You are a machinist? A. Yes.

Q. Living in Winnipeg? A. Yes.

Q. And working in the Fort Rouge shops of the defendant railway? A. Yes. 20

Q. How long have you worked there? A. 11 years.

Q. You are working there still? A. Yes.

Q. Do you know William Young, the plaintiff, in this action?

A. Yes.

Q. You knew him working in the shops too? A. Yes.

Q. Do you know the plan in force there known as the Co-operative plan, or the B. and O. plan? A. Yes.

Q. Do you remember when that was put into force?

A. In 1925.

Q. Have you had any conversation with the plaintiff Young about that plan? A. Well, general conversation amongst a few of us.

Q. When were these conversations? A. Oh, I should say about two years back.

Q. That would be in 1926? A. In 1926 or 1925, I couldn't just exactly say the dates.

10 Q. Whereabouts did the conversations take place?

A. In the lavatory.

Q. In the shops? A. Yes.

Q. During working hours? A. Yes.

Q. Tell me as nearly as you can what Mr. Young said about this co-operative plan? A. Well, in one conversation he was talking about it was mostly for the bosses and nothing for the men, a kind of a slave pact, and mostly a speeding-up plan.

Q. Anything else? A. Well, I couldn't just exactly say anything further.

20 Q. Tell us about the conversation that took place between you and him in regard to it? A. Well, we had a little argument one day in the lavatory. It all originated over some agreement that the street railway men's O.B.U. unit had started, and they had signed up the schedule, and he was saying what a good schedule it was, and that was the only form of organization there was for the men.

Q. He spoke about the schedule that the O.B.U. had signed up with the street railway? A. Yes.

Q. And he said that was the only organization for the men?

30 A. Yes.

Q. What was the organization for the men?

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(continued)

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 (continued)

A. The O.B.U. I quoted a case where they could not protect their own men, and I couldn't see that it was a strong organization when they could not protect the men. I told him of two cases of machinists down there who was not getting the raise.

Q. In the C.N.R. shop? A. No, on the street railway, that was not getting the raise, and he would not believe me.

Q. Anything more said about the co-operative plan?

A. Well, general conversation, but I couldn't just recollect everything that was said. It was mostly on that line of talk, about it being a speeding-up plan. 10

Q. Was this just one conversation or more than one conversation? A. Oh, I never had very much conversation with him.

Q. Was there more than one occasion on which the plan was discussed? A. Maybe three or four occasions.

Q. Were there any other persons present?

A. Yes, at one conversation there was Eli Kwalhein.

Q. Anybody else, do you remember being present?

A. I don't remember; I knew very few, there were two or three men besides.

Q. Present at these conversations? 20

A. Yes.

BY THE COURT:

Q. Were the conversations before or after the plan had been put into operation? A. They were before and after.

BY MR. LAIRD:

Q. Both before and after? A. Yes, in 1925.

MR. LAIRD: That is all.

CROSS-EXAMINATION BY MR. McMURRAY:

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 Defendant's
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 Joseph
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 Cross-
 examination

Q. You like an argument sometimes?

A. Well, I am not one that argues.

Q. I suppose you would hardly know who started the conversation, you were out there smoking and talking together?

A. No, sir, not smoking.

Q. You wouldn't do anything like that?

A. Well, there is no telling what I would do.

Q. In the company's time? A. No.

Q. You are an old O.B.U. man yourself? A. Yes.

10 Q. And you hardly know how this conversation started?

A. Well, no the conversation was in progress when I got there.

Q. Just exactly, a Division No. 4 man would be taking a rap at the O.B.U., and the O.B.U. man would be taking a rap at Division No. 4 A. Yes, but I wasn't a Division No. 4 man then.

Q. When did you get into Division No. 4?

A. I have been back about two years and a half.

Q. Why did you go into Division No. 4?

A. Because I did not have very much use for the other one.

20 Q. You are an old machinist, an old hand?

A. Yes.

Q. How long have you been a machinist?

A. I have been a machinist forty years.

Q. That is a long time in life. How long have you been in Winnipeg? A. Since 1912, 16 years.

Q. Among the machinists the seniority rule has always governed in the shops there?

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examination
(continued)

MR. LAIRD: Objected to.

A. I haven't taken much interest in organization in my life.

Q. But you have seen a number of lay-offs there, and reduction in staff in the past, haven't you?

A. Yes.

Q. And the junior men were always released before the senior men?

MR. LAIRD: I object.

A. I couldn't say.

THE COURT: I will allow that if he knows. 10

BY MR. McMURRAY:

Q. You have been there since 1912? A. I have been in Winnipeg since 1912.

Q. How long were you with the railroad company?

A. Since 1916.

Q. Twelve years there? A. Yes.

Q. There have been reductions of staff? A. Yes.

Q. I take it you are a senior man yourself?

A. Well, I couldn't say for that. I may be amongst the senior bunch, but I couldn't tell you what seniority I have. 20

Q. You never looked up on the list to see where you were?

A. No.

Q. In the reduction of staff were you laid-off at any time while junior men were retained?

A. I have never been laid off.

Q. But other machinists have been laid off in the reduction of staff when you were there? A. Yes.

Q. And other men were laid off while you were there when you were a member of the One Big Union, I suppose?

A. Well, I couldn't say, I don't know, I don't recollect that.

Q. About this B. and O. scheme was there a notice ever posted up in the shops concerning it?

A. I couldn't say.

Q. Did you ever see one? A. I never saw one.

Q. And you took no part in bring the B. and O. scheme in yourself? A. No.

10 Q. You know nothing about it? A. No.

Q. I believe you got a new wash dish or something like that as a result of it? They put up a wash basin or something, or do you know that they did that?

A. I don't know anything about it.

RE-EXAMINATION BY MR. HAFFNER:

Q. Do you know about the committee known as the co-operative committee in the shops? A. I have known some of them.

Q. Do you know about the election taking place for that committee? A. Yes.

20 Q. Have you voted on that? A. Once.

Q. You know that much about it? A. Yes.

Q. Do you know what the design or purpose of the plan is?

A. Co-operation.

Q. Co-operation between whom? A. Between the company and the men.

MR. LAIRD: My learned friend, Mr. Haffner, will read the de bene esse evidence of Frank McKenna.

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 (continued).

This evidence was taken under the same order as my learned friend took the examination of Charles Dickie.

(De bene esse evidence of Frank McKenna produced and marked Exhibit 53.)

MR. HAFFNER: Will put in the caption, my lord.

"IN THE KING'S BENCH

BETWEEN

WILLIAM YOUNG

Plaintiff

and

10

THE CANADIAN NORTHERN RAILWAY COMPANY

Defendants.

April 25, 1928

EXAMINATION-IN-CHIEF OF FRANK McKENNA DE
 BENE ESSE AND HIS CROSS-EXAMINATION

This is the examination de bene esse of Frank McKenna, viva voce, on oath, taken before H. Ferguson, a Special Examiner, pursuant to the order of the Referee, on Wednesday the 25th day of April, A.D. 1928, at the hour of 10:30 o'clock in the forenoon, in the offices of Messrs. Munson, Allan, Laird & Company, bar-20 risters-at-law, 333 Main Street, Winnipeg, Manitoba.

The Hon. Mr. McMurray appeared for the plaintiff.

Mr. Laird, K.C., and Mr. G. M. Hair for the defendant company.

FRANK McKENNA having first been duly sworn, was examined by Mr. Laird and deposed as follows:

1. Q. Do you live in Montreal, Mr. McKenna?

A. I live in Vancouver but my official address is in Montreal.

2. Q. You are, I believe, a vice-president of what is known as Division No. 4 of the Railway Employees' Department of the American Federation of Labor?

A. Yes, sir.

3. Q. The American Federation of Labor is, I believe, an international association of various trades unions in the United States and Canada?

A. Yes, that is so.

4. Q. Division No. 4 of the Railway Employees Department of the American Federation of Labor is an organization composed in what way, Mr. McKenna?

A. Composed of the International Association of Machinists, the International Brotherhood of Boilermakers, the
10 Brotherhood of Railway Carmen, the Electrical Workers' organization, the Sheet Metal Workers' Organization and the other associations or trades which are usually known as the shop trades, the members of those trades which are members of those organizations.

5. Q. Would it be correct to refer to Division No. 4, Railway Employees' Department of the American Federation of Labor, as an organization or combination of several trades union organizations? A. Yes, that would be correct.

6. Q. Division No. 4, and when I say "Division No. 4" for
20 the sake of shortening the examination, I mean Division No. 4 of the Railway Employees' Department of the American Federation of Labor. Division No. 4 has or has it not any members in the sense that they are members of a primary union of any particular workmen?

A. Yes, it consists of the organizations I have mentioned and alluded to and those organizations consist of the workers which are organized in these respective trades.

7. Q. By Division No. 4? A. In the craft unions.

8. Q. That is, the boilermakers have a union in themselves?

30 A. Yes, exactly. And the other trades, the machinists have a union by themselves, and the sheet metal workers, the carmen and the electricians.

9. Q. And then Division No. 4 is made up at least in part of representatives or delegates from these craft organizations forming a trade federation, is that correct?

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A. Yes, that is correct.

10. Q. Well, then, I gather from your answer that there were some other aspects of Division No. 4 in addition to such craft organizations which were forming part of Division No. 4. What is that?

11. Q. The principal purpose of Division No. 4 is to negotiate working agreements with the Railway Association of Canada to cover the members in those organizations which go to make up Division No. 4.

12. Q. Then had Division No. 4 any constituent or element 10 which is not composed of a craft organization or an organized craft of which the members are employed on some of the Canadian railways?

A. No; it consists of none other than what I have already spoken of.

13. Q. That is, there are no trade union organizations of which the workmen are primarily members? A. No.

MR. McMURRAY: I presume that all this information is contained in the constitution of Division No. 4?

MR. LAIRD:

20

14. Q. I show you exhibit marked No. 1 on the examination of Mr. Dickie in this action: look at that and tell me what it is? A. That is the constitution and by-laws of Division No. 4."

MR. HAFFNER: That Exhibit 1 on the examination, my lord, is now Exhibit 24 on this trial.

"15. Q. To which we have been referring?

A. Yes.

16. Q. I notice it mentions it was revised in March, 1926. Is this the constitution at the present time? 30

A. A convention has recently been held at which a few changes have been made.

17. Q. That convention was held last week?

A. Yes.

18. Q. Do you know if any of these crafts were struck out or not? A. I would not be able to speak authoritatively until we go through the minutes of that convention.

19. Q. The constitution was amended every two years at the conventions which were held?

A. Yes, whatever changes would be decided on would be very minor things, not of any great consequence.

10 20. Q. In Article 15 it says you have got to have a referendum of the whole Division?

A. Yes. In addition.

21. Q. Has it been held? A. No, so there is no change yet.

22. Q. So any changes you have referred to have not become effective? A. No.

23. Q. And will not become effective until the referendum reports on it? A. No.

24. Q. The convention to which you have referred was held in the city of Winnipeg last week?

A. Yes.

25. Q. I show you exhibit No. 9 in the examination of Mr. Charles Dickie under this order. Can you tell me what that is?

A. "Constitution and by-laws of the Railway Employees' Department of the American Federation of Labor".

(Exhibit 31 on trial.)

"26. Q. Division No. 4 bears what relation to the Railway Employees' Department: is it one of several divisions? Can you tell me briefly?

30 A. Yes, it is the 4th Division.

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27. Q. I show you exhibit No. 14 upon Mr. Charles Dickie's examination. Look at that and tell me what it is?

A. It is the constitution of the American Federation of Labor adopted at Los Angeles in October, 1927."

(Exhibit 34 on trial.)

"28. Q. You have told me, I think, that the general purpose of the Division No. 4 was the negotiating of wage agreement with the Railway Association of Canada? Is that correct, Mr. McKenna? A. That is correct.

29. Q. Where does Division No. 4 get authority from the 10 men such as the machinists, boilermakers or carmen to negotiate on their behalf?

MR. McMURRAY: I object. It is in the constitution.

MR. LAIRD:

30. Q. If so, the witness can say so.

A. They get their authority from the craft organizations. The craft organizations—

MR. McMURRAY: All powers they have will be in the constitution and must be.

MR. LAIRD: No, not must be.

20

MR. McMURRAY: Take my objection and the witness can answer.

MR. LAIRD:

31. Q. Division No. 4 gets its authority from what source?

A. The craft organizations which comprise Division No. 4. The machinists, for instance: they have what is known as a district board. The carmen have a joint protective board. The machinists' board would represent the members of their organization working on Canadian railways, the carmen's protective board would represent their members working all over Canadian 30 Railways and the same with all the other trades, and they determine in their own conventions just what they think they ought

to have for their services and bring their recommendations to Division No. 4 in its convention and Division No. 4 in its convention endeavors to harmonize the different organizations which comprise Division No. 4.

32. Q. Division No. 4 in approaching the railways of Canada obtains its authority from what source?

A. From the craft unions, which comprise Division No. 4.

33. Q. They have authority or power or instructions from no other man or body of men than the craft organizations?

A. No.

34. Q. How long have you been connected with Division No. 4, Mr. McKenna? A. Ten years.

35. Q. Has that been the position throughout those 10 years? A. Yes.

36. Q. Then when Division No. 4 considers it wise in the interest of the employees it represents to approach the railways what is done?

MR. McMURRAY: Now I object. I think, Mr. Examiner, this should not be what may or may not be, but what was or has been done in the past.

MR. LAIRD: All right. I have no objection to that.

37. Q. Does or does not Division No. 4 regulate or provide for the relations between employees of the railway companies in Canada and the railway companies?

MR. McMURRAY: I submit the question cannot go outside of what was actually done and that the witness should not interpret what was done.

MR. LAIRD:

38. Q. Well, has Division No. 4 done anything to regulate relations or conditions existing from time to time between the

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employees of railway companies and the railway companies in Canada?

MR. McMURRAY: I object to the use of the term "regulate." I think my learned friend should ask what contracts were made.

MR. LAIRD: I am not dependent on the contracts and I am not bound by the contracts in this matter.

MR. McMURRAY: What they have done is proved by their overt acts and contracts.

MR. LAIRD:

10

39. Q. What has Division No. 4 done in respect to relations between the men employed on the railways of Canada or some of those relations and such relations?

A. They have in the interests of their constituents negotiated wage agreements No 1, No. 4 and No. 6 with their various supplements.

40. Q. You have referred to wage agreement No. 6. I understood from Mr. Dickie's evidence that no agreement was signed but that it was simply a consolidation of previous signed contracts. Are you familiar with that, Mr. McKenna? 20

A. I think you will find that No. 6 was an agreement with various supplements and then there was another issue which contained the supplements in the same book as No. 6 agreement.

41. Q. Agreement No. 6 as I understood Mr. Dickie's testimony was a consolidated of agreement No. 4 and the supplements to agreement No. 4? A. Yes.

42. Q. But no new writing was made up and signed to constitute a No. 6 as I understood his evidence?

A. That's correct.

30

43. Q. Then in addition to these agreements to which you have referred what else has Division No. 4 done in respect to relations between railway employees and the respective railway companies by whom they are employed?

A. Well, they on other few occasions had meetings with the Railway Association of Canada to adjudicate upon grievances.

44. Q. Anything else? A. No, nothing else.

45. Q. And as an official of Division No. 4 what are your duties besides vice-president?

A. My duties are to assist in the presentation of proposed agreements to the Railway Association of Canada.

46. Q. And have you done that while you have occupied that position? A. Yes.

47. Q. As to the grievances to which you have referred what do you mean? They may be familiar to you.

A. Yes. In the development of industrial methods questions sometimes arise as to what rate of pay should apply to a certain kind of a job and if the men's committee and the railway company cannot agree then the matter is referred to the railway association, and the secretary of our Division No. 4 and a committee of the Railway Association meet and find a settlement for that particular problem or a solution of it.

20 48. Q. That is, a question arising between the men and the employer? A. Yes.

49. Q. What is the policy of Division No. 4 in respect of the individual workingman or mechanic negotiating directly with the railway company by whom he is employed as to wages and other matters between employer and employee?

MR. McMURRAY: I object to the question. The policy of Division No. 4 will be set out in its constitution and by-laws.

MR. LAIRD:

30 50. Q. Is the policy of Division No. 4 in that respect set out in the constitution to which you have referred, Mr. McKenna? Do you know? A. I don't think it is.

51. Q. What is such policy?

MR. McMURRAY: I object but you can answer subject to my objection.

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A. I have no knowledge of railway companies dealing with individuals, Mr. Laird, in connection with their rates of pay or working conditions.

52. Q. MR. LAIRD: That is hardly an answer to my question. I was asking what is the policy of the Division No. 4, in respect to individuals doing that?

MR. McMURRAY: He has no knowledge of it being done.

A. In the event of anything like that happening the division would frown upon it. 10

MR. LAIRD:

53. Q. The Division No. 4, does negotiate with the railways upon these subjects? A. Yes.

54. Q. And in doing so whom does it represent?

A. It represents the membership of the craft organizations which comprise it.

55. Q. And is a member of such a craft organization free while he remains such a member to negotiate with such railway companies as to his wages?

A. No, he is not. 20

56. Q. That is, what body negotiates such matters for the individual employee represented by Division No. 4?

A. Just the division.

57. Q. What craft or trade organization did you belong to before you took up executive duties?

A. Railway carmen.

58. Q. You are still a member of that organization?

A. Yes.

59. Q. Have you got their constitution with you?

A. No, I have not got the carmen's constitution.

60. Q. Can you tell me approximately how many members there are in the Carmen's organization in Division No. 4?

MR. McMURRAY: I object to the carmen. They are not parties to this action, in any shape or form.

MR. LAIRD: They are a part of Division No. 4.

61. Q. Are not the Carmen a part of Division No. 4?

A. Yes.

62. Q. Just as much as the machinists are?

10 A. Yes.

63. Q. Tell me approximately the number of carmen on the Canadian railways?

MR. McMURRAY: I object. Take the answer subject to my objection.

A. About 12,000.

MR. LAIRD:

64. Q. Division No. 4 has territorial jurisdiction throughout what area of country?

A. Provided there are trade organizations any parts of 20 that country from the Atlantic ocean to the Pacific ocean.

65. Q. Can you tell me whether there are trade organizations in Victoria and Vancouver which are affiliated with Division, No. 4? A. Yes, there are.

66. Q. What about Sydney and Halifax?

A. In Halifax, yes.

67. Q. And extending throughout the whole of Canada?

A. Yes.

68. Q. Where there are railway company employees in the

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particular trades which Division No. 4 is interested in or is composed of? A. Yes.

69. Q. Do you know whether Division No. 4 is registered under what is known as The Trades Union Act?

A. Not to my knowledge.

70. Q. It is not registered? A. No.

71. Q. If it were registered you would know?

A. Yes, I would know.

72. Q. There is an organization I believe known as the One Big Union, and you have heard of it? A. Yes. 10

73. Q. Is the One Big Union affiliated or connected with Division No. 4? A. No.

74. Q. Has it ever been? A. No.

75. Q. In negotiating with the Railway Association of Canada in respect of wages and working conditions did Division No. 4 or its committees act for members of the One Big Union?

A. No.

76. Q. Has it ever done so during the 10 years you have been connected with Division No. 4? A. No.

77. Q. Had they any authority from the One Big Union to do so? A. No. 20

78. Q. Were they ever instructed by the One Big Union to protect or negotiate for members of the One Big Union.

A. No.

79. Q. The negotiations leading up to these agreements, No. 4 and the supplements, occupied, I would suppose, some days in some instance or some weeks? A. Yes, they do.

80. Q. Take agreement No. 4, exhibit No. 3 on these examinations, do you know what period of time the negotiations occupied? It is dated November 12, 1919? 30

A. They lasted a good many weeks.”

(Exhibit 25 on trial.)

“81. Q. “A good many weeks” would mean 5, 6, 8 or 10?

A. Yes, off and on they were negotiating and adjourning for a day or two and would negotiate again for a week and adjourn for a day or two. Speaking from memory I would say about 5 months were taken up in that way.

82. Q. Then, supplement “A” to Wage Agreement No. 4, dated August 24, 1920, exhibit No. 4 herein, would not, I suppose, take as long as it is a shorter and more simple document?

A. Yes.”

(Exhibit 26 on trial.)

“83. Q. This provides for a wage increase and it might take some time? A. Let me see it.

84. Q. Can you tell me approximately speaking now how long it took to negotiate that? A. From the month of May until the month of August.

85. Q. Your convention was held in April or March?

A. Yes.

20 86. Q. And you received instructions?

A. Yes, received instructions to go after some more money.

87. Q. In negotiating wage agreements such as agreement No. 1 and supplements and agreement No. 4 and supplements and the so-called agreement No. 6 had you any instructions or authority from non-members or employees of the railcompany who were not members of affiliated craft organizations?

A. No.

88. Q. And that applies to agreements negotiated since 30 1920? A. Yes.

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89. Q. You know, I suppose, as a matter of fact, that there are men employed by the railway companies in Canada in the capacity of machinists, boilermaker and so on who are not members of organizations affiliated with Division No. 4?

A. Yes, that's so.

90. Q. And there are men employed in the shops throughout the whole of Canada, working beside the members, who are not in your affiliated organizations? A. Yes.

91. Q. Who are, not members of your affiliated organizations? A. Yes. 10

92. Q. And that has been so since 1920? A. Yes.

93. Q. What is the position of Division No. 4 in respect, to such employees who are not members of affiliated craft organizations? A. Our position is we are disinterested in the fortunes of non-members except insofar as any grievance which they may have might be detrimental to those who are members.

94. Q. That is, some grievance which might be common to a member of an affiliated organization and a non-member would be a grievance you were interested in because it would affect a member of your affiliated crafts? 20

A. Yes.

95. Q. What is the position of Division No. 4 in respect to any grievance which a non-member of an affiliated craft organization may have? A. Division No. 4 would not be interested.

96. Q. In the case, Mr. McKenna, of slack times on the railway when they have not work for all their employees and it requires in the interests of economy to dispense with some of their services what does Division No. 4 under such circumstances do?

A. We expect our local committees to do all they can to keep as many of our members as possible employed. 30

97. Q. What do you mean by "our local committees"?

A. In each shop or roundhouse there are committees consisting of members of the respective unions affiliated with our division.

98. Q. What is the policy of Division No. 4 in respect to non-members of affiliated crafts, in respect to men employed by the railways who are not members of crafts affiliated with Division No. 4? A. Disinterested.

99. Q. Do you, as Vice-President of Division No. 4, have occasion to take up with the railway companies such matters as the reduction of staffs and individuals who may be laid off, or is it left to the local committee?

A. That is left to the local committee, Mr. Laird.

10 100. Q. From what source are the funds required to carry on the work of Division No. 4 obtained?

A. By monthly contributions from the members of the respective craft organizations.

101. Q. Does the individual member of such craft organizations make any direct contributions to Division No. 4?

A. The individual member makes contributions to a craft organization direct and the craft organizations pay to the Division 10 cents a month for each of their members who are working.

102. Q. Has Division No. 4 received any funds or assistance from any who are not members of the affiliated crafts?

A. None whatever

103. Q. Has it since 1918? A. Not at any time.

104. Q. In respect of a proposed strike, for example, among the machinists or carmen if they were dissatisfied with the treatment or wages they received from their employer at any particular point can you tell me what steps would have to be taken, confining your answer to machinists, or, if not refer to the carmen with whom no doubt you are more familiar?

MR. McMURRAY: I object to the question as to what might be done in the future.

MR. LAIRD:

105. Q. Do you know what procedure is taken in respect of a strike?

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MR. McMURRAY: Objected to. Answer subject to the objection.

A. They would lay their grievances before Division No. 4 and they would be obliged to take a referendum of their membership by which it has to be demonstrated that at least two-thirds of their membership desire to strike before a strike would be authorized.

106. Q. You say "before a strike would be authorized." What do you mean? A. Authorized by the executive of the Division and by the carmen's own grand lodge. 10

107. Q. Could the carmen or machinists go on strike without the approval or authority of the Division No. 4?

A. No, they must secure that approval.

108. Q. Then in the case of terminating a strike is the approval of Division No. 4 or its executive required for the men to return to work? A. Yes.

109. Q. You have told me the number of carmen employed on the railways in Canada associated with Division No. 4: can you give me any figures as to the number of boilermakers, approximately? 20

A. Not the exact figures; approximately about 4600 machinists and 1200 boilermakers.

110. Q. The Sheet Metal Workers and Electrical Workers are smaller crafts? A. Yes, they are very much smaller.

111. Q. And the schedule or at least the Wage Agreement No. 4 and supplements thereto and the supplements to Wage Agreement No. 6 were negotiated by Division No. 4 for whom?

A. For the members of the craft organizations which comprise Division No. 4.

112. Q. What is the policy of Division No. 4 or its executive with respect to the application of or the working of wage agreements? A. Division No. 4 may negotiate— 30

MR. McMURRAY: Objected to. It is set up in the constitution.

113. Q. MR. LAIRD: Is there anything in the constitution as to that? A. The wages agreement states how our grievances may be taken up.

114. Q. The wage agreement has that? A. Yes.

115. Q. And that is contained in the wage agreement with the approval of Division No. 4, is that it?

A. Yes.

116. Q. I asked you about the registration under The Trades Unions Act of Division No. 4. I did not ask you about the registration under that Act of the Railway Employees' Department, that is, distinct from Division No. 4?

A. No.

117. Q. Can you tell me whether the Railway Employees' Department of the American Federation of Labor is so registered? A. No, it is not.

118. Q. Do you know if the Carmen's Union of which you are a member is so registered? A. No.

119. Q. Do you know if the International Association of Machinists is registered?

20 MR. McMURRAY: Objected to.

A. Not to my knowledge."

MR. McMURRAY: I will read the cross-examination.

THE COURT: Yes.

"CROSS-EXAMINED BY MR. McMURRAY:

120. Q. I show you exhibit No. 9 of the evidence of Mr. Dickie; is that the constitution and by-laws of the Railway Employees' Department? A. Yes.

121. Q. I show you exhibit No. 1: Constitution and By-

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laws of Division No. 4. Is it the Constitution and By-laws of Division No. 4? A. Yes.

122. Q. And I show you exhibit No. 12 of the evidence of Mr. Dickie. What is that, Mr. McKenna?

A. Wage Agreement No. 1.

MR. LAIRD:

123. Q. Printed? A. It is a printed copy.

MR. LAIRD: I must object to exhibit No. 12 on the ground that it is irrelevant and that it is a copy.

MR. McMURRAY:

10

124. Q. Will you have this verified with the original, Mr. McKenna? A. I am not able to do so; I don't have the original.

125. Q. Who has the original?

A. The Railway Association of Canada; and the secretary.

126. Q. That is, Mr. Dickie? A. No. This one held by the secretary of the Division would be a duplicate of the copy of the original, the original being in the possession of the Railway Association of Canada.

127. Q. Were there two originals? A. I may be in error. They may be both original copies or Dickie's may be a copy of the original in the possession of the Railway Association.

128. Q. I show you schedule "B" exhibit No. 8 of Dickie's evidence?

MR. LAIRD: I object to that as being irrelevant.

MR. McMURRAY:

129. Q. Is that your signature there?

A. Yes.

130. Q. And Mr. Tallon's? A. Well, it looks like it.

131. Q. There is no doubt about it and you have no doubt it is his signature? A. It looks like his.
132. Q. You have no doubt it is his signature?
A. It looks like it.
133. Q. You have not the slightest doubt in your mind but that is Mr. Tallon's signature?
A. It looks like Mr. Tallon's signature.
134. Q. Have you any doubt as to its being Mr. Tallon's signature? I ask you to say have you any doubt?
10 A. No, how can I certify it is his signature?
135. Q. I have asked you have you any doubt?
A. It looks like his signature.
136. Q. Have you a doubt? You know whether you have a doubt or not. What is your answer?
A. Mr. McMurray, I cannot tell you any more.
137. Q. You can tell me if you have any doubt?
A. It looks like R. J. Tallon's signature.
138. Q. You refuse to answer my question?
A. I am answering the question.
- 20 139. Q. You have often seen Mr. Tallon sign, I presume?
A. I have not seen Mr. Tallon sign many documents.
140. Q. You have seen his signature a great many times?
A. No.
141. Q. Do you know the signature of Grant Hall?
A. Yes.

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142. Q. Is that his signature? A. I have not got any doubt about his signature.

143. Q. And what about the signature of Mr. Riddell?

A. It looks like his signature.

144. Q. Now then, as to Division No. 4: All the crafts such as machinists, boilermakers and so on in the various railway shops in Canada constitute a part of Division No. 4?

A. They constitute the whole of Division No. 4.

145. Q. Are they affiliated with Division No. 4 or is it their membership, which constitutes the membership of Division No. 10 4? A. The crafts are affiliated with Division No. 4; the craft organizations.

146. Q. The craft organizations are affiliated with Division No. 4 and the memberships of these crafts are also members of Division No. 4?

A. The members of crafts organized are.

147. Q. That is, a machinist belonging—?

MR. LAIRD: That is a question of interpretation of these documents. They don't get any ticket or cards. For instance, you and I are citizens of Canada and of Winnipeg. 20

MR. McMURRAY: That is what I want to get. It will be raised in court.

148. Q. That is, a machinist belonging to the American Federation of Machinists in Canada is also a member of Division No. 4? A. By virtue of the fact that a member of the International Association of Machinists pays indirectly to the Division 10 cents a month he is a member, yes.

149. Q. Do you issue to him a membership card in the Division? A. None whatever.

150. Q. At the time of sending down delegates how are they 30 sent down from the various crafts to your convention meetings of Division No. 4?

A. The lodges of the respective craft organizations elect one or more of their members to represent them in convention of Division No. 4.

151. Q. There is a vote taken, is there? A. Yes.

152. Q. And Division No. 4 is under the jurisdiction of the American Federation of Labor to a certain extent?

A. Very limited.

153. Q. It is under the jurisdiction to a certain extent of the Railway Employees' Department? A. It is affiliated with
10 the Railway Employees' Department and the Railway Employees' Department is under the jurisdiction of the American Federation of Labor. It is a part of the American Federation of Labor.

154. Q. Exactly. Now your original Division No. 4 does not attempt to prevent the railroads in Canada hiring non-union men? A. No.

155. Q. The railway company hire whom they please?

A. We don't attempt to tell the railway companies whom they shall hire, or whom they shall not hire.

156. Q. And the machinists, boilermakers and other crafts
20 whose members are members of Division No. 4 cannot strike without the consent of Division No. 4 or its executive, is that right?

A. Yes.

157. Q. Yes; they could not strike?

A. We could not stop anybody from striking if they defied our authority.

158. Q. But as a general practice they would submit the proposition of striking to the executive of Division No. 4?

A. Yes.

159. Q. The relationship of Division No. 4 with the Railway
30 Association of Canada has always been an amicable one?

A. Always.

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160. Q. And also with the War Board? A. Yes.

161. Q. Was it a fact that Division No. 4 was formed with the approval of the railways of Canada?

A. The railways of Canada were never asked for their approval.

162. Q. You have been a vice-president of Division No. 4 from its inception and creation, I suppose?

A. Yes.

163. Q. Have you had any friction with the Railway Association or with the Canadian Railway War Board? 10

A. What do you mean by "friction"?

164. Q. Has there been enmity of any kind between you?

A. No.

165. Q. Of course, there have been arguments and opposition no doubt as to adjusting grievances and things of that nature, from time to time?

A. Yes, increase of wages, naturally. That is so.

166. Q. Now, your officers, I presume, are elected by the votes of delegates elected to your convention?

A. Officers of what? 20

167. Q. Of Division No. 4? A. They are elected in convention.

168. Q. From delegates who have been elected to attend the convention? A. Yes.

MR. LAIRD:

169. Q. You cannot elect somebody who is not a delegate?

A. We have never attempted to elect anyone except from those present at the convention.

MR. McMURRAY:

170. Q. Throughout your organization the views of the rank and file of the membership finds full expression, does it?

A. Yes.

171. Q. And your officers are elected every two years?

A. Yes.

172. Q. And the executive is elected every two years?

A. Yes.

173. Q. And in all the conducting of your negotiations and **10** everything you follow the views of the membership as expressed in your conventions? A. So far as it is practicable to do so.

174. Q. And before amendments are made to your agreements or before any agreement or amendment to agreement between Division No. 4 and the railroads is fully completed it is submitted in a referendum to the membership of Division No. 4, is it? A. No.

174. Q. At the last convention you held here in Winnipeg certain changes to the schedules were discussed, I presume?

A. Yes.

20 175. Q. Now, before you enter into negotiations with the Railway Association of Canada am I right in believing that this contemplated change or changes to be subject to negotiation are to be submitted to a referendum of Division No. 4? A. No.

176. Q. What was it you told my learned friend you submitted? An amendment to the constitution?

A. Yes.

177. Q. But in convention a discussion is held as to a desired change or changes or an agreement which now exists, or possibly new agreements to be made. The terms in that are fully **30** discussed in the convention?

A. Yes.

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178. Q. Then there is a negotiating committee of Division No. 4 which discusses the matter with the Railway Association of Canada? A. Yes.

179. Q. Has the committee of Division No. 4 full power to enter into an agreement without submitting it back?

A. The negotiating committee negotiates.

MR. LAIRD: It is a question of law.

MR. McMURRAY:

180. Q. No, I want to know what they do?

A. They do the best they can, and submit the results¹⁰ of their efforts to the membership if the opportunity enables them to do so.

MR. LAIRD:

181. Q. When it meets the convention sitting at the time?

A. No. The question is so broad that to answer that properly it must be answered at some length.

MR. McMURRAY:

182. Q. I wish you would give us a general outline?

A. The convention determines the nature of the presentation to the Railway Association. The negotiating committee may gain all they seek. They may gain nothing. They may gain something betwixt and between.

183. Q. Before they sign any agreement the membership are made acquainted with the actual conditions?

A. Yes.

184. Q. Always? A. Yes, they don't always take a referendum, if that is your question.

184. Q. Yes, that is well expressed. You used an expression to my learned friend, or in your testimony, something about crafts forming a trade federation. What do you mean by that?³⁰

A. I have no knowledge of making that statement.

185. Q. Was that forming a system federation?

A. Crafts do form system federations.

186. Q. You told my learned friend that you have on occasion or Division No. 4 has on occasion met the Railway Association of Canada to adjudicate upon grievances?

A. Yes.

187. Q. Did you at anytime adjudicate upon a grievance for a railway employee other than a member of Division No. 4?

10 A. No.

188. Q. You told my learned friend you have no knowledge of railway companies dealing with individuals as to rates of pay?

A. No knowledge of it.

189. Q. Collective bargaining has been in vogue on Canadian lines for how long, do you know, approximately?

A. Some 20 years.

190. Q. I believe the crafts originally negotiated as a craft organization with the railway? A. Yes.

191. Q. And that finally it has worked up now to a large organization, to say, your own Division No. 4 negotiating on one side and the Railway Association of Canada negotiating on the other side? A. Correct.

192. Q. You have no knowledge of the railways set forth in the schedule exhibit No. 6 in wage agreement No. 6 and wage agreement No. 4 carrying on or conducting negotiations as to wages, seniority rights, adjustment of grievances and working conditions and so on, outside of Division No. 4? A. No.

193. Q. And if there were such you would know of it in your position as vice-president of Division No. 4 and the interest you take in the subject?

A. There is an organization known as the Canadian

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Brotherhood of Railway Employees who negotiate for certain employees on the Canadian National Railways.

194. Q. Does that include machinists and boilermakers?

A. No.

195. Q. Does the Canadian Brotherhood of Railway Employees take any kind or take any men belonging to the different crafts from right-of-way men to locomotive engineers?

A. They try to.

196. Q. And I suppose they have some success and they have some members belonging to each craft? A. Very few. 10

197. Q. And you say they have made a contract with the Canadian National Railways? A. Yes.

198. Q. Would that be a contract on behalf of—?

MR. LAIRD: He did not say that. You said they made a contract. He did not say that.

MR. McMURRAY:

199. Q. We will clear that up: what negotiations did they have with the Canadian National Railways and with what result? A. I don't know.

200. Q. Did it terminate in a contract? A. Yes. 20

201. Q. Do you know what the contract was?

A. It is a wage agreement for railway clerks and certain kinds of shop labor.

202. Q. Machinists and boilermakers?

A. No machinists or boilermakers.

203. Q. Blacksmiths? A. No.

204. Q. And that was completed just lately, was it not? Within the last 3 or 4 months?

A. The Canadian Brotherhood of Railway Employees is more than 20 years old.

205. Q. I mean the contract? A. They have had relations with the Canadian National management for a long time.

206. Q. So that this contract has been in existence for some considerable time? A. Well, I don't know anything about the contract.

207. Q. So you say that any men working on railways at rates set forth in wage agreement No. 4 and wage agreement
10 No. 6 would be hired under some form of collective bargaining?

A. I don't understand the question.

208. Q. You have told me you have no knowledge of a railway company dealing direct with individuals as to rates of pay or working conditions? A. Yes.

209. Q. That being the case, I say, any machinists or boiler-makers hired by any of those railroads would be hired under some form of collective bargaining?

A. I still don't understand the question.

210. Q. Well, an employee today is not hired individually
20 by a railroad?

MR. LAIRD: I object to that.

MR. McMURRAY:

211. Q. As to rates of wages, working conditions and so on is that not a fact?

A. When a man seeks employment from a railway company we don't know what happens between him and the man he is seeking the job from.

211. Q. But you do know that any man hired on the railway is hired under some form of collective bargaining, don't you?

30 A. I don't understand your question.

212. Q. Does collective bargaining exist today on all the

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railways of Canada insofar as machinists, boilermakers and similar shopmen are concerned? A. Yes.

213. Q. What do you mean by collective bargaining in that sense of the word: you are more familiar with it?

A. A committee from Division No. 4 waits on the railway association to make a bargain for the members of the organizations representing and comprising Division No. 4.

214. Q. Wage agreement No. 4 and so on are the final results of that negotiating or bargaining?

A. Yes.

10

215. Q. You say that was made on behalf of Division No. 4?

A. Yes.

216. Q. Why have you not put that in your agreement?

A. I think the title is sufficient; the title page and under rule 154.

217. Q. Was this discussed with the Railway Association of Canada as to whether it was to cover all employees or just your own? A. No.

218. Q. Never was discussed? A. No.

219. Q. And you simply took it for granted that this title 20 page was sufficient for your purpose along with rule 154?

A. We believe that is the meaning of the language in conjunction with the rule.

220. Q. But there was no interpretation put on it by the railway association of Canada and yourselves in consultation?

A. We were not asked to interpret it.

221. Q. Then you never did it. The railways enumerated in wage agreements Nos. 4 and 6 have applied the provisions of these two agreements to all their employees or not? A. I don't know.

30

222. Q. Do you know if the Canadian Northern railway has? A. I don't know. If they did not apply it to any of our members we would know. But we could not possibly know what they did to non-members.

223. Q. You at no time prior to this particular case we have under consideration now ever had any complaints from non-members of your association, have you?

A. We don't deal with non-members.

224. Q. Have you had any complaints from them?

10 A. We are not interested in non-members.

225. Q. I asked you had you any complaints from non-members? A. No, they have no right to complain.

226. Q. But you had none? A. For the reasons I have mentioned.

227. Q. Now, is it a fact, that your association in the past has asked the Canadian Northern Railway company to discriminate in seniority privileges against non-members of Division No. 4 and is it not a fact that the Canadian Northern and the Canadian National Railways refused to accede to the request of Division No. 4 in that particular?

A. I have no knowledge of Division No. 4 entering into any such question or controversy with either the Canadian Northern or the Canadian National Railways.

228. Q. Going back to this preamble or title page of agreement No. 4: where is your title page on agreement No. 4 (Exhibit No. 3)? I will be fair. I show you exhibit No. 3 which is wage agreement No. 4: is there any title page there?

A. Where is the agreement? "Agreement between the Canadian Railway War Board and Division No. 4, Railway
30 Employees' Department."

229. Q. Who manufactured that? A. The Canadian Railway War Board and Division No. 4 Railway Employees' Department.

230. Q. But the contract which was signed did not have a

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title page on it? Exhibit No. 3 which I show you has no title page? A. No.

231. Q. So you tell me it covered your contention (on account of the title page on a printed copy and of rule 154) that the agreement did not cover all employees in the shops? A. It covers all the members of the organizations comprised in exhibit No. 4.

232. Q. Are you sure of that 154? A. Let me look at the book. I mean 154 in wage agreement No. 6 in the consolidated issue. But Rule No. 184 of Exhibit No. 3 reads as follows: "For the carrying out of this agreement the Railways concerned, when acting collectively, will deal, only with the duly authorized officers of Division No. 4, Railway Employees' Department, American Federation of Labor. Grievances or the application or interpretation of the provisions of this agreement will be initially handled between the respective railways and Committees of their Employees comprising said Division and as herein provided."

233. Q. So they are the only two parts of the agreement which you can recall to support your contention that these agreements Nos. 4 and 6 were made purely for the benefit of the members of Division No. 4? A. Yes.

234. Q. And you never discussed the matter with the other contracting part? A. No. You can understand in compiling rule 184 there would necessarily be discussions between the committee of Division No. 4 and the committee representing the Railway Association of Canada both parties agreeing that the rule means what it says.

235. Q. I have no objection to that. Now, you were present at the sixth annual convention of Division No. 4?

A. Yes.

30

236. Q. And you heard the resolutions which were passed there wanting to put a definite interpretation on the word "employee" or "employees" where used so as to confine them (those words) strictly to employees who were members of Division No. 4. You heard that read by me to Mr. Dickie? A. Yes.

MR. LAIRD: I object to your statement, Mr. McMurray. I don't want inaccurate statements made.

MR. McMURRAY:

237. Q. You heard that resolution at the Convention No. 6 of your organization held March 22 to March 27. "Resolution No. 88—Submitted by the Carmen's craft . . ."

MR. LAIRD: I object."

MR. HAFFNER: I don't know whether that should be allowed in, my lord, the question of the resolutions being brought up.

THE COURT: I ruled that when these questions were
10 read objection would be taken, and we can rule upon them.

MR. HAFFNER: This is the first time they have come up.

THE COURT: The ruling I am now making is what I made before, that they are reserved.

"MR. McMURRAY:

238. Q. "—with reference to section dealing with the preamble, amend to read: 'For the purpose of this agreement the word 'employee' or 'employees' wherever it may appear, shall mean a 'member' or 'members' of one of the organizations affiliated with Division No. 4.'" Do you remember that resolution being brought in?
20

A. Since it is in the record I take it for granted it was brought in.

239. Q. 'Committee recommends non-concurrence.' And 'Recommendation of Committee adopted'? A. Yes.

240. Q. I suppose it was adopted by the whole convention?

A. There would be a majority and a minority, of course.

241. Q. And the amendment was not made?

A. Are you looking for an answer?

30 242. Q. Yes. A. What do you want me to answer?

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243. Q. I asked you was this amendment ever made to the agreement? A. No.

244. Q. Now, there was another resolution put to that convention which was carried, something to the same effect, that the Executive was to take it up with the Railway Association and have it put into the agreement. Mr. Jewell spoke upon it and that was carried. Was that ever taken up with the Railway Association of Canada to your knowledge?

A. What was the resolution?

245. Q. 'Resolution No. 84—Submitted by boilermakers¹⁰ District Lodge No. 30: "Resolved, that all employees coming under Wage Agreement No. 6, not affiliated with the respective organization of their craft party to such agreement, shall have no seniority rights. 'Further Resolved, that this be referred to Division No. 4 Executive for consideration and determination as to how best to proceed to secure the desired end.'" Your Committee recommends concurrence. President Tallon: The adoption of the resolution would mean that we adopted the principle and it was up to the schedule committee.'

Now, speaking of that further President Tallon said:²⁰ 'In the past this matter had been dealt with, and you know what happened, he would advise leaving it with the Executive and Schedule committee.'

MR. LAIRD: I object to this. This is irrelevant, immaterial and improper."

MR. HAFFNER: The same objection to that.

THE COURT: Reserved.

"MR. McMURRAY:

246. Q. Now, if this resolution means anything it would mean that the railway companies under this agreement were recognizing the seniority rights of non-members of Division No. 4, would it not? A. I don't know.

247. Q. President has stated 'In the past this matter has been dealt with.' Do you know in what manner it had been dealt with? A. I don't know, what he had in his mind.

248. Q. And he said 'and you know what has happened.' Is it not a fact that the railways had been approached, particularly the Canadian National Railways to insist on preference being given to your members and that these non-union men should be deprived of their seniority rights, and that the railways absolutely refused to interpret the agreement to your satisfaction?

A. Again, I have no knowledge of anything like that occurring. I have never been called upon to meet the Canadian National management.

10 249. Q. Did President Tallon ever tell you of this matter which I have discussed with you? A. No.

250. Q. Now, the policy of Division No. 4 is determined for them pretty largely by the policy of the Railway Employees' Department, that is, you work along the same lines? A. Say it again.

251. Q. The policy of Division No. 4 is determined for them pretty largely by the policy of the Railway Employees' Department, that is, you work along the same lines?

A. So far as it is practicable to do so.

20 252. Q. And your attitude to the general body of employees on the road, the shopmen on each railroad, would be the same as that of the Railway Employees' Department?

A. Not necessarily.

253. Q. Do you know if the contract made with the Railway Department and the United States railroad administration cover all employees on the road?

MR. LAIRD: I object.

MR. McMURRAY:

254. Q. Do you know this agreement which I now show you?

30 A. Yes.

255. Q. What is it?

MR. LAIRD: Objected to. It is entirely irrelevant. It

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is not cross-examination. There must be some limit.

MR. McMURRAY:

256. Q. The witness should tell us what it is.

MR. LAIRD: What you said it was.

A. Am I permitted to answer?

MR. McMURRAY: I have asked him what it is and my learned friend without knowing what it is objects.

MR. LAIRD: I have looked at it and I have objected to it. It is entirely irrelevant and immaterial.

MR. McMURRAY: I won't push that then. 10

257. Q. Are you familiar with the agreement between the United States administration and the employees on the American roads? A. I know there was such an agreement.

258. Q. Now we are coming to agreement No. 1?

A. Yes.

It being one o'clock the examination at this stage was adjourned until 2 o'clock in the afternoon, when it was resumed.

BY MR. McMURRAY:

259. Q. Now, the Preamble in Wage Agreement No. 1, that is the first agreement you made, reads: 'Agreement between the 20 Canadian Railway War Board and Division No. 4, Railway Employees' Department, American Federation of Labor, in respect to rates of pay, work hours, and certain conditions of service for employees in the Locomotive and Car Departments of the several railways mentioned herein.'

You say there was no discussion at that time: The term 'employees' there meant simply members of Division No. 4?

A. No, Division No. 4."

THE COURT: What about this Exhibit 1? That was ruled out. What about this cross-examination on it? 30

MR. HAFFNER: It is irrelevant.

MR. McMURRAY: No objection was taken at the time on the de bene esse evidence.

MR. LAIRD: I did not object the way the pleadings were then. The position is that the Examiner allowed the agreement, overruling my objection, and your lordship ruled it out.

MR. BERGMAN: This is de bene esse evidence, and anything that was not objected to at the time when the question was asked is in the same position as if it occurred at the trial.

10 MR. LAIRD: I object to it.

THE COURT: You had better continue with your reading.

MR. HAFFNER: I would ask that questions 258 to 275 be disallowed on the ground that wage agreement No. 1 was allowed in over my objection, and disallowed by your lordship.

THE COURT: The record of this evidence will have to speak for itself.

MR. LAIRD: Yes, but I beg your lordship to rule on the subject, and to disallow those questions. Many of them I
20 objected to at the time.

THE COURT: It is difficult to rule on each of them and have them embodied in the record, because the evidence is here and the answer is made subject to objection, and any court can deal with them.

MR. LAIRD: I am not going to suggest that your lordship is going to be influenced by improper evidence, but the learned trial judge has got to rule on many things, and this evidence is in the same position, as I see it, as the evidence taken in Montreal. A good deal of that evidence was read, a good deal of it was ob-
30 jected to, and your lordship ruled it out, and this, I take it, is in the same position.

THE COURT: You want a definite ruling upon this. That is not a good ground, is it Mr. Laird, for excluding admission of agreement No. 1, the fact that I have excluded it, the fact that it was insufficiently proven by other evidence. Supposing by Mr.

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McKenna's evidence it is sufficiently connected? Of course, there is not a thing here to show it was in force during the plaintiff's employment, and that is the reason I excluded it before.

MR. LAIRD: And that the plaintiff had not connected it.

THE COURT: It was an agreement made and lived up to awhile and then superseded by another agreement before the plaintiff was employed. It is not relevant.

MR. BERGMAN: There is a further point in your ruling, that where counsel shows a document to the witness and 10 cross-examines on it it should go in. The same thing applies here.

THE COURT: In the other case it was a document which the Examiner in Chief tried to put in, and it was objected to and ruled out, and when you came to cross-examine upon that document then it goes in. This is different. This is a document that you yourself in cross-examination bring up.

MR. BERGMAN: There was no objection to it, and the document was referred to as an exhibit.

THE COURT: That is the difficulty. Where is it referred to as an exhibit in McKenna's evidence? 20

MR. LAIRD: It is not at all.

THE COURT: If it is not, it is simply excerpts from it read into the evidence. That does not put the agreement in as an exhibit.

MR. LAIRD: I leave it with your lordship.

THE COURT: But if the agreement is not put in as an exhibit to Mr. McKenna's evidence it is not in. I don't know how I could exclude these questions and answers if you object to them now unless the objection was raised specifically at the time.

MR. McMURRAY: I think it was marked in Mr. 30 Dickie's examination as an exhibit there.

THE COURT: Perhaps you might read the evidence, and just before the evidence is finally closed we might deal with it if you want to raise the point then.

"260. Q. This says 'for employees in the Locomotive and Car Departments of the several Railways mentioned herein'?"

A. We were not troubled much then with any outlaw movements.

261. Q. So at that time you were quite agreeable when agreement No. 1 was made that it was covering all employees?

A. Yes, because all employees so far as we knew were members of our organization.

262. Q. That is, you were pretty nearly 100 per cent American Federation of Labor on the roads at that time?

A. Yes.

263. Q. And there was no doubt that at the time Wage Agreement No. 1 was drafted it was to cover all employees?

MR. LAIRD: Objected to. The document speaks for itself.

MR. McMURRAY:

264. Q. There was no discussion to the contrary at any rate? A. No, there was no need for any discussion.

265. Q. This further says: "This agreement shall be effective from May 1st, 1918, for Locomotive and Car Department employees covered by expired agreements or who have not an existing agreement. For other Locomotive and Car Department employees this agreement shall become effective on the date of expiry of existing agreements." That is, you discussed with the railways, I take it, the condition of employees who were covered by agreements and also the condition of employees who were not covered by agreement?

MR. LAIRD: Objected to.

MR. McMURRAY:

30 266. Q. Was that your discussion? A. Not in the way your question would imply it.

267. Q. Would you explain? A. In those days some of

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the shop craft unions had not acquired or secured any agreement from the Grand Trunk Railway Company.

268. Q. I suppose there were a number of employees at this time, Mr. McKenna, who did not belong to your Division No. 4?

A. If there were I did not know of any.

269. Q. There would be a number of non-union men at that time? A. We would have an organization at that time of about 97 or 98 per cent.

270. Q. In the West here? A. All over Canada.

271. Q. Were there not large numbers of non-union men in Montreal? A. No.

272. Q. You are certain of that? A. Yes.

273. Q. Did you presume to go and contract for that 2½ or 3 per cent who might not be in your organization?

MR. LAIRD: I object.

A. We never had in mind anybody but members of our own organization.

BY MR. McMURRAY:

274. Q. But your wage agreement says you covered those 'who have not an existing agreement.' It takes in here employees who are 'covered by expired agreements' and others?

A. That refers to men on the Grand Trunk Railway.

275. Q. It does not here specify or refer to the Grand Trunk Railway men, does it? A. No.

276. Q. So that a great deal of these agreements was carried round in your mind without being put in writing?

No answer.

277. Q. I won't insist on an answer to that. Now, we come to the question of a reduction of the staff, and you told my learned friend that the negotiations were left to the local com-30

mittees? A. In connection with the reduction of staffs?

278. Q. Yes? A. Yes.

279. Q. Do you understand that with wage agreement No. 1, or any of these wage agreements 1, 4 and 6, which provide for seniority rights for a man, and his seniority is put down in a list kept by the Company (as in this case) that the local committee has power to vary that agreement or deprive him of his seniority rights?

MR. LAIRD: I object.

10 MR. McMURRAY:

280. Q. Has that been the practice? A. The local committee has a copy of the seniority lists and they are only interested in those men on those lists who are members of our affiliated organizations.

281. Q. Dealing with the men who are members of your organization. What is the practice as to seniority right? I mean as to the man who is a member. His rights are provided for in the contract? A. Yes.

282. Q. And do you say it has been a matter of practice
20 for the local committee of Division No. 4 to enter into arrangements with the railway company to dismiss the men with seniority rights who are not members of Division No. 4?

A. I did not say that that has been the practice.

283. Q. What did you say? A. I said our committees are not interested in the men who are not members of any one of our affiliated organizations.

284. Q. Pardon me. I thought you told my learned friend when he asked you about reduction of the staff that that was left to the local committee. What did you mean by that?

30 A. The local committees endeavor to keep as many of our members employed as they possibly can.

285. Q. We are talking of the time when the staff is being reduced? A. Yes.

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286. Q. Your local committees consult and work with the officers of the railroad company in having men with seniority rights who are non-union men dismissed and junior men in Division No. 4 kept on?

A. Our committees meet in conference with the local officials of the railway company at such times for the purpose of protecting the interests of our members.

287. Q. To do what? A. To keep the men employed.

288. Q. That is, they see that senior men, outside of your Division No. 4, are dismissed and junior men, in Division No. 4, kept on? That is what that means to them? A. I cannot help your interpretation. Our committees are only interested in the welfare of our members.

289. Q. But I want to know what they do to maintain that interest. Do they not insist on or urge on the railway company to dismiss senior men who are not members of Division No. 4? That is what it amounts to, does it not? A. Merely because you say it is your opinion I am not going to quarrel with you. I have told you what our committees do.

290. Q. All right. We will take as a case: there are 10 men to be paid off in a shop, 10 machinists. There must be that reduction. There are 10 machinists who are senior to any machinist who is a member of Division No. 4. What does your local committee do in that case?

A. They are not interested in a man who is not a member of our affiliated units.

291. Q. I think they would be very much interested in seeing that the machinist who was not a member of your affiliated unions was dismissed, is that not a fact? I think they would be very much interested in it. 30

A. I don't know what passes through the minds of the hundreds of men who go to form our committees. The only thing I am able to speak of is our object which is to protect the interests of our members.

292. Q. Even if it means urging the dismissal of men who are not your members but are senior men?

A. I didn't say that.

293. Q. It amounts to that, does it not?

No answer.

294. Q. But I think we have cleared that up enough without pushing it any further. Do you know if Mr. Tallon was here in May just prior to the dismissal of these men?

A. I have not the slightest idea where he was in May.

295. Q. Do you and Tallon occupy the same offices in Montreal in the Coronation Building? A. No.

10 296. Q. Where is your office there? A. My office is 311 Coronation Block.

297. That is the headquarters of Division No. 4?

A. No, but the headquarters of Division No. 4 are in the same building.

298. Q. What office does Mr. Dickie occupy, which number?

A. No. 213.

299. Q. And Mr. Tallon? A. No. 213.

300. Q. Were you aware of efforts being made in May and June, 1927, by your organization in connection with the reduction of the staff in Winnipeg here? A. No.

301. Q. You knew nothing of that at all? A. No.

302. Q. You never discussed with Mr. Tallon his activities in that particular? A. No.

303. Q. Did you read the letters he wrote?

A. No.

304. Q. Did you know of the dismissal of Clancy and Foster in the Transcona shops of the Canadian National Railways?

MR. LAIRD: Objected to. What has it to do with this?

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MR. McMURRAY:

305. Q. It is all part of the same scheme. Do you know of that?

MR. LAIRD: Objected to.

MR. McMURRAY:

306. Q. The reason I am asking that question is this: We claim that an agreement had been made between certain officials of Division No. 4 and certain officials of the defendant company to secure the dismissal of men who were not members of Division No. 4, among others the plaintiff. We don't say how long this agreement had been in existence, we think it was in existence some 3 or 4 years, and under that agreement Clancy and Foster were we claim dismissed.

MR. LAIRD: The paragraph in the pleadings refer only to the dismissal of the plaintiff. And I am not interested in the men named; Clancy and Foster were never in the employ of the defendant company at all. The defendant company has its own troubles without going into others.

MR. McMURRAY: I won't urge that.

307. Q. Do you know if the plaintiff made application to 20 Division No. 4 to have his case adjudicated upon as provided by Wage Agreements Nos. 4 and 6?

A. I have no knowledge of the plaintiff making any overtures whatever to Division No. 4.

308. Q. You know nothing whatever of that. A. No."

MR. LAIRD: I will read my re-examination.

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 Re-
 examination

309. Q. Mr. McKenna, my learned friend asked you about the preliminaries leading up to this wage agreement, so called, and about your submitting them to a referendum or vote, and 30 my recollection is you stated that before they were signed the members were made acquainted with the actual conditions. In what way? By some notices sent out by Division No. 4, or, were

they made aware by their representatives at Montreal?

A. Yes, through their representatives.

310. Q. That is, the International Association of Machinists in Winnipeg would not be aware of what was done in Montreal until the matter had been completed?

A. Yes, that has happened in some cases, excepting that the machinists' representatives now of our committee are in close touch with their secretaries in Western Canada.

311. Q. They communicate from day to day?

10 A. Yes, just when any new situation develops.

312. Q. When you take a referendum or vote on wage agreements is that submitted to the members of the crafts organizations? A. The secretary of Division No. 4 prepares the ballots and he forwards to each union sufficient ballots to cover the membership of each union.

313. Q. The ballot is; do they approve or disapprove of the proposed schedule? A. Yes.

314. Q. And they take the vote from each member of the affiliated crafts? A. Yes.

20 315. Q. And the majority, I suppose, governs?

A. Yes.

316. Q. A bare majority? A. Yes, unless there is a strike feature in it. Then it would have to be two-thirds.

317. Q. But if it is a question of hours or wages a bare majority controls? A. Yes.

318. Q. The minority can do nothing except to submit to the majority? A. Yes.

319. Q. And when there is no vote or referendum the matter is dealt with by the representatives such representatives keeping in touch with the local organizations as to what is being done?

A. Yes.

RECORD
—
In the
King's
Bench
—
No. 31
Defendant's
Evidence
Frank
McKenna
Evidence De
Bene Esse
Re-
examination
(continued).

RECORD

In the
King's
BenchNo. 31
Defendant's
Evidence
Frank
McKenna
Evidence De
Bene Esse
Re-
examination
(continued).

320. Q. And I suppose in dealing with such a mass of men it is inevitable that agreements are made which do not meet with the approval of the entire body of individual men?

A. Yes, there is very often a minority which does not approve.

321. Q. My learned friend asked you as to the relationship between Division No. 4 and the Railway Association and the War Board as to whether they were amicable or hostile. You have carried on your negotiations as business men, your division protecting your interests and the railway proper protecting its interests, I suppose?

A. Yes. The Railway Association would not be concerned as to what any railway company of Canada thought which was not a member of that Association any more than we would be concerned as to what individuals thought who were not members of our Division.

322. Q. My learned friend asked you about collective bargaining and individual dealing with the railway companies. Do you know in what way a bargain is made between a man who is not a member of an organization affiliated with Division No. 4 and the Railway Company?

A. No; I don't know what such a man as that does.

323. Q. Do you know whether he makes individual bargains or whether he deals collectively or some organization?

A. He does not deal collectively through any organization unless he is a member of one of our affiliated unions; the Railway Association of Canada doesn't recognize anybody but the Division.

324. Q. That has been how long? A. Since 1918.

325. Q. So collective bargaining between the employer and the machinists can only be made since 1918?

A. Yes.

326. Q. Through your Division? A. Yes, through our Division.

327. Q. You referred Mr. McMurray to a printed book of wage agreement No. 6? A. I might say that is the first time I ever saw a schedule with that caption on it.

MR. McMURRAY: Mr. Laird, that is not put in yet.

328. Q. MR. LAIRD: In answering my learned friend's questions and in giving your evidence you referred to a printed book of Wage Agreement No. 6, did you not?

A. Yes.

329. Q. It is printed in a small booklet with a brown cover?

10 A. Yes.

330. Q. Is the book I show you the book to which you refer?

A. The contents may be the same but it has a caption reading 'Canadian National Railways.'

331. Q. You looked at a book when you were being cross-examined: Is that the book, do you know?

A. The contents may be identical with the typed schedule issued under the authority of the Railway Association. There is the correct title on page One which is different to the cover.

332. Q. You referred in giving your evidence to the title 20 page of a document. Do you know to what you were referring? I want to know to what particular document or paper you were referring?

A. Wage agreement No. 6 issued by the Railway Association of Canada. It states it is an agreement between the Railway Association of Canada and Division No. 4, Railway Employees' Department.

333. Q. Have you got that with you? A. Not in my pocket. But you must have it in the exhibits there somewhere.

334. Q. I understood from Mr. Dickie's evidence the other 30 day that no original agreement No. 6 was signed but that it was a compilation of agreement No. 4 and the supplements thereto, and that what has gone in as exhibits are agreement No. 4 and the supplements to agreement No. 4 and some supplements to

RECORD

In the
King's
Bench

No. 31
Defendant's
Evidence
Frank
McKenna
Evidence De
Bene Esse
Re-
examination
(continued).

RECORD
 In the
 King's
 Bench
 No. 31
 Defendant's
 Evidence
 Frank
 McKenna
 Evidence De
 Bene Esse
 Re-
 examination
 (continued).

No. 6. What I wanted to clear up was to what you referred in your testimony to my learned friend?

A. Wage agreement No. 6 containing certain changes agreed upon in the summer of 1926 and which was eventually consolidated with the next amendments of July, 1927.

335. Q. It was consolidated by the office staff?

A. Yes.

336. Q. No new paper was written and signed by you?

A. No.

337. Q. So you have not got a copy of that?

10

A. No. But I could get you one.

338. Q. Does what you refer to as being on the title page appear on any of the documents before the Examiner now?

A. Yes.

339. Q. On what? A. This original of wage agreement No. 4. 'Agreement between the Canadian Railway War Board and Division No. 4, Railway Employees' Department, American Federation of Labor.' Those are the contracting parties. That is what I referred to and that is in conjunction with rule 184 which states how matters may be handled by the contracting party I happen to be a member of.

CLOSED.

I, Harry Ferguson, of the City of Winnipeg in the Province of Manitoba, Special Examiner, Do Hereby Certify

1. That I did on the 25th day of April, A.D. 1928, report in shorthand the evidence of Frank McKenna, as contained in the foregoing attached 67 pages, pursuant to the Order of the Referee in Chambers, dated the 19th day of April, A.D. 1928.

2. That the foregoing 67 pages of typewritten matter contain a true and correct transcription of the shorthand notes of the examination, cross-examination and re-examination of the said witness Frank McKenna.

3. And that the said witness was properly sworn previous to the taking of said examination.

H. Ferguson
Special Examiner.”

THE COURT: Now if you want any of these objections specifically dealt with I will rule them out, and will strike them out and it will go in in that form.

MR. LAIRD: I file, my lord, a certificate from the deputy registrar general of Canada as to the non-registration of certain unions. My learned friend has seen the certificate and there is no objection to it. It is a certificate signed under the seal of the Secretary of State. The One Big Union is in this too, but the clauses were struck out of the Statement of Claim and they are really irrelevant, but they are in the document.

(Certificate of the Deputy Registrar General of Canada in reference to trade unions produced and marked **Exhibit 54**.)

MR. LAIRD: A question arose in the report of Mr. Tisdale's examination, when my learned friend put in Mr. Tisdale's examination, a question of the punctuation of the report of a question and answer. During the interval I wrote to the court reporter on the subject, and I have his reply, which I have shown my learned friend, and I am going to ask your lordship to allow the court reporter's reply as an officer of this Court to be filed.

THE COURT: It would have the effect of changing the punctuation, would it?

MR. McMURRAY: I object to any change. The man made it to the best of his ability. There would be no security at all if court reporters could interpret their own written documents afterwards.

MR. LAIRD: The reporter is not here. I think it is very unusual to call an officer of the court, but I have seen certificates made by reporters of corrections in their transcript. I tender a copy of my letter from my firm of the 21st May to Mr. Hand, court reporter at Minnedosa, and Mr. Hand's reply on the 22nd May, relating to question 822 on Mr. Tisdale's examination.

RECORD
In the
King's
Bench
No. 31
Defendant's
Evidence
Frank
McKenna
Evidence De
Bene Esse
Re-
examination
(continued).

RECORD

In the
King's
BenchNo. 81
Defendant's
Evidence
Frank
McKenna
Evidence De
Bene Esse
Re-
examination
(continued).

THE COURT: If that is objected to I don't know how I can admit it. If it was in the form of an affidavit I might do something, but just the bare letter—

MR. LAIRD: There is an objection to asking officials to make an affidavit.

THE COURT: Yes, but an affidavit by anybody is sometimes admitted, but the bare letter coming in this way, I could hardly admit it.

MR. LAIRD: I asked the court reporter if he was likely to be in the City and he said that he might be here, but I haven't seen him.

THE COURT: Well, perhaps he will be here before the matter is disposed of.

MR. LAIRD: Shall I file these letters?

THE COURT: No, you may renew your application when you get your material in proper form.

(Court adjourned at 1 p.m. May 29, 1928, to 2:30 the same date.)

2 p.m. May 29, 1928.

No. 82
Defendant's
Evidence
William
J. Healy
Examination

WILLIAM J. HEALY, being first duly sworn, testified²⁰ as follows:

DIRECT EXAMINATION BY MR. LAIRD:

Q. You occupy the position of Provincial Librarian, and have your office in the Parliament Buildings in the City of Winnipeg?

A. Yes.

Q. And have been in that position for how long?

A. Since 1920.

Q. As such librarian you have charge of the books, papers, documents and magazines? A. Yes.

Q. The library you are connected with is the library of³⁰

what? A. The library of the Provincial Government of Manitoba.

Q. Can you tell me whether they subscribe for a newspaper known as the One Big Union Bulletin?

A. Yes, every year I have been there we have towards the end of the year sent a written order that the paper should be sent during the following year. The account is sent in in triplicate in the usual way, as required by the Government, and then the Government of Manitoba's cheque is given in payment.

10 Q. That is, the Provincial Library has subscribed for and paid and received the One Big Union Bulletin?

A. Yes.

Q. Are they received at the Library?

A. We receive them in the regular course.

Q. Are they delivered by messenger or through the mail?

A. Through the mail.

Q. To whom do you send the order, Mr. Healy, for the One Big Union Bulletin? A. Just in the ordinary course I make out a requisition.

20 Q. From whom do you order the paper?

A. The practice is usually to send the order to the manager or whatever name appears or whatever indication appears on the paper itself, the manager of the One Big Union Bulletin probably.

Q. And the money is paid to the publishers of the paper?

A. The Government of Manitoba's cheque goes in payment. I make out a requisition to the treasurer.

Q. Does the Provincial Government Library and you as Provincial Librarian preserve the copies?

30 A. Yes, we keep the copies, and in the case of this paper

RECORD
—
In the
King's
Bench
—
No. 32
Defendant's
Evidence
William
J. Healy
Examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 32
 Defendant's
 Evidence
 William
 J. Healy
 Examination
 (continued)

once every three years they are made into a bound volume and preserved in the Provincial Library.

Q. Have you got the One Big Union Bulletin for the year 1924? A. I have brought over with me a bound volume containing the years 1923, 1924 and 1925, and the following year unbound.

Q. This is the book you refer to? A. Yes, the O.B.U. Bulletin for the years 1923 to 1925 inclusive.

Q. And this book is the property of the Provincial Library?

A. The property of the Provincial Government. 10

Q. And includes the One Big Union Bulletin as received by mail from January, 1923, to December, 1925?

A. Yes, each number has our address put there by the office of the publication, I suppose, and also our stamp.

MR. LAIRD: I put in this book, my lord, as an exhibit.

MR. McMURRAY: I object to that, my lord. There is no evidence that this is the One Big Union publication at all. There is no evidence that the witness himself received this. Unquestionably what he ever did receive must have gone out of his hands altogether and he wouldn't be able to testify as to what he did receive. 20

BY THE COURT:

Q. What do you say as to the contents of this volume that you produce? A. Of course, they come in in a routine way. I do not handle everything that comes into the Library, but the instructions are, and the system is, that everything that comes in is first of all stamped with the Provincial Library of Manitoba stamp.

BY MR. LAIRD:

Q. That appears on the right hand corner? 30

A. Yes, and these different numbers I have kept in order, and when the time comes for binding it is sent to the binder the same as that one in 1926.

MR. McMURRAY: That is the very point it went out of his possession.

BY MR. LAIRD:

Q. It was sent by you as Librarian to the bindery?

A. Yes, to the bindery down town and delivered back to us.

Q. And delivered back with the stamp of the Province on it just as you sent it? A. Yes.

Q. And the address on the left hand side of the copy just as you received it through the Post Office.

10 A. It looks to be the same.

Q. And these are the copies of the One Big Union Bulletin that the Province of Manitoba paid for to the publisher for those years? A. To the best of my knowledge and belief.

Q. Well, you received them through the mail and had them bound and preserved? A. Yes.

MR. McMURRAY: The second objection is that there must be a great deal of matter in there that is absolutely irrelevant to this case.

20 THE COURT: Are we going to put that book in? That would have to be portable if you carry this case beyond this Court.

MR. LAIRD: I am willing to put in the issues of the dates I put in yesterday in exhibit 47 and the same parts.

THE COURT: To that extent only.

MR. LAIRD: There is an additional point I do not think I should be surrendering, namely, the similarity of the document, of the paper from week to week, from month to month and from year to year in type that your lordship sitting as a jury could act upon.

30 THE COURT: What I am concerned about is the extent to which you are going to put it in.

RECORD

In the
King's
Bench

No. 82
Defendant's
Evidence
William
J. Healy
Examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 32
 Defendant's
 Evidence
 William
 J. Healy
 Examination
 (continued)

MR. LAIRD: I will ask to put it in for 1924, 1925 out of this volume.

THE COURT: The whole paper.

MR. LAIRD: Yes.

THE COURT: If you confine it to a duplication of exhibit 47 to that extent it would be within—

MR. LAIRD: There is the point I have mentioned. Take the comparison of handwriting: it is the same with newspapers. However I will tender it for the dates, the papers of the date put in in exhibit 47, and the parts as put in. It will be a duplicate of 10 exhibit 47 with the additional thing that this bears on the face of it the address which Mr. Healy testifies the publishing office put on, "Prov. Library Broadway City," and the stamp of the Provincial Library wherever it appears.

THE COURT: It will be a duplicate of exhibit 47 with the additions you have mentioned.

MR. LAIRD: Of course, this book only covers 1924 and 1925.

THE COURT: Insofar as it goes.

(Bound Volume O.B.U. Bulletin 1924-1925 produced and marked Exhibit 55.) 20

BY MR. LAIRD:

Q. I think you told me the ones for 1926 and 1927 are not yet bound? A. No, they are ready to go to the binder now.

Q. What are these papers you produce?

A. These are the issues of the One Big Union Bulletin from January 7, 1926, to December 30, 1926.

Q. And the printing in blue on the upper left hand corner called "Prov. Library, Broadway, City," who put that on?

A. It is there when the paper arrives.

Q. How did this paper come to you? A. Through the mail. 30

Q. Then the stamp reading "Provincial Library, Manitoba," wherever it appears in rubber stamp in red—?

A. Is put on after the paper arrives.

Q. —is put on after the paper arrives from week to week as you receive them? A. Yes, as soon as each copy comes in.

MR. LAIRD: I tender, my lord, issues of 1926 bearing the same date as those contained in exhibit 47 and the heading and second line and third line on the editorial page, and the parts put in under exhibit 47, and also the stamp of the addressee on each
10 one and the Provincial Library stamp put on as your lordship has heard.

MR. McMURRAY: I object to that, my lord.

MR. LAIRD: Perhaps, Mr. Healy, if you would hand me those of the dates I read. The first date of 1926 is the 7th January, then the 21st of January, the 18th of February, the 15th of April, the 17th of June, and the 29th July? A. Yes.

Q. Now look at these, Mr. Healy, these six issues of the dates I have given you, do they all contain the address "Prov. Library, Broadway, City?"

20 A. Yes.

Q. Some of the later ones are Government Buildings, and some of them Broadway, but the address on the left-hand corner was as you received them.

A. They are all Provincial Library.

Q. Some of them Government Buildings and some of them Broadway as they read? A. Yes.

Q. And the stamp Provincial Library, Manitoba, on each one is whose stamp? A. Our stamp, put on after the paper is received.

30 (6 papers above enumerated of the One Big Union Bulletin produced and marked Exhibit 56.)

Q. And these papers, Exhibit 56, I think you said have been

RECORD

In the
King's
Bench

No. 82
Defendant's
Evidence
William
J. Healy
Examination
(continued)

RECORD in your possession as Provincial Librarian as they were received from week to week.

In the
King's
Bench
No. 32
Defendant's
Evidence
William
J. Healy
Examination
(continued)

A. Since they were received from week to week.

Q. You are continuing to receive the One Big Union Bulletin from week to week? A. Yes.

Q. Throughout 1927 and 1928 up to the present time?

A. Yes.

Q. As a paid subscriber? A. As a paid subscriber.

No. 32
Defendant's
Evidence
William
J. Healy
Cross-
examination

CROSS-EXAMINATION BY MR. McMURRAY:

Q. You receive these documents through the mail, Mr. 10 Healy? A. Yes.

Q. Do you receive them yourself? A. No.

Q. So that the only way you know they have been received through the mail is by what you have been told. You do not get them yourself? A. By our stamp.

Q. Well, that is only an inference. You could not tell by the stamp whether they came through the mail or by airplane?

A. No.

Q. So your knowledge of them coming through the mail is simply hearsay information? A. Yes. 20

Q. You don't know of your own knowledge where they come from; you only reach it by a process of thought?

A. Yes.

Q. You are perfectly certain but you have got no evidence?

A. Yes.

Q. You did not put the stamp on them yourself, did you, The Provincial stamp? A. No.

Q. You don't know who put that on, do you?

A. I couldn't swear I saw them put on.

Q. You didn't see them put on? A. No.

Q. Of your own knowledge you don't know whether they have been in your Library from week to week. You don't go and look at them each week? A. Not always, but I would hear of them—

Q. Well, possibly if your people were doing their duty. My learned friend might have had them out reading them for three **10** or four months and you wouldn't know?

A. I would know, I think.

Q. But you are not certain. I believe you did not bring exhibit 55 into Court yourself? A. Yes.

Q. I thought it was brought in by Mr. Tallon?

A. No, I brought it over myself. I brought it into the Court room myself about a quarter to One.

Q. But it has been away from you for quite a long while?

A. While I was out at lunch.

Q. You don't know what they did to it inside at all during **20** that time? A. No.

RE-EXAMINATION BY MR. LAIRD:

Q. What did you do with this big volume when you went to lunch? A. I brought it about a quarter to One and left it in the Court room, and when the Court rose at One I think my learned friend down at the table took it.

Q. Mr. Tallon? A. Yes.

Q. Did you see what he did with it?

A. He brought it up somewhere in this neighborhood.

RECORD

In the
King's
Bench

No. 32
Defendant's
Evidence
William
J. Healy
Cross-
examination
(continued)

No. 32
Defendant's
Evidence
William
J. Healy
Re-
examination

RECORD

In the
King's
BenchNo. 32
Defendant's
Evidence
William
J. Healy
Re-
examination
(continued)

Q. Is exhibit 55 the volume that you brought over from the Parliament Buildings? A. I think I could swear to that.

Q. What do you say as to the other one, exhibit 56, these are the ones you brought over? A. I think so.

Q. And is it the usual and regular thing to stamp loose papers as they are received? A. It is the first thing done with them when the wrappers are taken off.

No. 33
Defendant's
Evidence
Walter
Larsen
Examination

WALTER LARSEN, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

10

Q. You are a printer in the service of The Wallingford Press Limited of the City of Winnipeg? A. Yes.

Q. And occupy the position of foreman?

A. Mechanical foreman in charge of the printing presses.

Q. And you have been in that position since prior to 1924?

A. March, 1922. I have been foreman since July 1, 1922.

Q. The Wallingford Press print, I believe, a newspaper known as the One Big Union Bulletin? A. Yes.

Q. Do you know for whom it prints that, Mr. Larsen?

A. It prints that for the Winnipeg Central Labor Council of 20 the One Big Union.

Q. It is a weekly publication, I believe?

A. A weekly publication.

Q. Where is it set up, the type? A. The type is set in the plant at the Wallingford Press, 303 Kennedy Street.

Q. Has that been so since 1924? A. Well, it used to be set

at 281 or 283— Yes, it has been since I have been in the employ to the best of my memory without any breaks.

Q. Then the printing is done where? A. The printing is done over at 54 Adelaide Street in the basement of the One Big Union Bulletin.

Q. In the basement of the One Big Union Bulletin Building?

A. Yes.

Q. And the Wallingford Press own the presses that are in the basement? A. Yes, that is, to the best of my memory.

10 Q. And you used them? A. Yes.

Q. And you go over there as foreman and oversee the operation of the printing? A. I go over there every Wednesday night at 5 o'clock and start the paper away. Then I leave a couple of the boys in charge of the press to continue on and complete the run.

Q. You know the One Big Union Bulletin, the newspaper?

A. I do, yes.

Q. I show you a bundle of papers that have gone in marked as exhibit 47. Would you please look at each of them and tell
20 me what each one of those papers making up that exhibit is, Mr. Larsen? You have examined the papers, have you, in exhibit 47?

A. Yes, I have looked at them.

Q. Can you tell me now what exhibit 47 is comprised of?

A. Exhibit 47 to the best of my knowledge is comprised of copies of the One Big Union Bulletin.

Q. Can you tell me by whom the papers comprising exhibit 47 were printed, Mr. Larsen? A. Well, you are carrying me away back in time to 1922—

A. No, 1924.

30 THE COURT: I don't hear the witness.

RECORD

In the
King's
Bench

No. 33
Defendant's
Evidence
Walter
Larsen
Examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 33
 Defendant's
 Evidence
 Walter
 Larsen
 Examination
 (continued)

A. I was just telling the counsel that he was taking me away back, and testing my memory quite a lot.

BY MR. LAIRD:

Q. The first one is January, 1924, Mr. Larsen, and they run on up until July, 1926, can you tell me by whom the papers comprised in exhibit 47 were printed? That is, by what printing concern or company?

A. They look very much like our product.

Q. That is, The Wallingford Press product?

A. Well, they look very much like ours, but as to the contents of them or any substitutions I don't like I could swear to it.

Q. Then will you please look at exhibit 56, being 5 papers, witness? A. They look very much like our product too.

Q. What is exhibit 56 composed of?

A. Exhibit 56 is composed of copies of the One Big Union Bulletin.

Q. I am going to ask you to look at this volume marked as exhibit 55, and will you please look at the issues in 1924, the issue of January 24th, 1924. The paper of January 24th appearing in exhibit 55 is another copy of the same paper of the same date appearing in exhibit 47, is it or is it not?

MR. BERGMAN: That is rather leading, my lord.

A. Well, I have not examined the whole of the contents of that paper to be able to identify that definitely.

Q. Well, as a printer can you say whether the one of the 24th January, 1924, in exhibit 55 is printed from the same type as the one of that date in exhibit 47?

MR. BERGMAN: The same type or similar type?

A. It is very much the same to me.

Q. You are an experienced printer engaged in the printing

trade for how many years? A. For a period of approximately 18 years.

Q. Then will you please look at the paper in exhibit 55, bearing date the 7th February, 1924, and comparing the one in exhibit 55 with the one of the same date in exhibit 47, can you tell me whether they are copies of the same newspaper?

A. They look very much the same.

Q. Do you see anything that suggests any difference at all, Mr. Larsen? A. Not with a miniature examination.

10 Q. Then look in the one of exhibit 55, dated March 6th, 1924, and will you please compare that one with the one of the same date in exhibit 47, or such parts of it as you wish to compare to enable you to answer my question whether or not they are the same or different copies of the same newspaper?

A. They look very much the same, but if you would allow me to make a little explanation. The mechanical foreman or the man in charge of the printing presses has absolutely no relationship to the setting of the type whatsoever. His only capacity is to see that the ink and the paper is running through the press
20 correctly, and that there are no spaces or unnecessary slugs or leads showing on that paper there, and then that paper received his O.K. without the pressmen or the foreman in charge having any knowledge of the contents of that paper.

Q. You see no difference between those two papers?

A. I see none with the miniature glance I am taking here. They seem to be identical.

Q. Then look at the one of the 27th March, 1924, and compare the one in exhibit 55 with the date of 27th March with the one in exhibit 47.

30 MR. BERGMAN: I object. This witness has told your lordship that the work he does does not qualify him to give testimony of this kind at all. He does not check over the printing. He simply looks to see if there are no blots on it, or whether it is running out properly. My learned friend has not qualified him to give this testimony at all.

THE COURT: The very reverse. His own witness states he

RECORD

In the
King's
Bench

No. 33
Defendant's
Evidence
Walter
Larsen
Examination
(continued)

RECORD
 In the
 King's
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 Defendant's
 Evidence
 Walter
 Larsen
 Examination
 (continued)

has been engaged in the printing trade 18 years.

MR. BERGMAN: Yes, but he says his work does not qualify him to make any comparisons like that at all.

MR. LAIRD: No, no, pardon me. I think anybody without being an expert printer, my lord, could do that.

THE COURT: The matter of comparing type is comparatively a simple matter.

MR. BERGMAN: What assistance is it to the Court? What weight has evidence of this kind?

THE COURT: I don't know, there is a lot of this at the 10 very fringes.

MR. LAIRD: Perhaps my learned friend will admit that these copies are the same.

MR. BERGMAN: We are not proving your case.

BY MR. LAIRD:

Q. Will you tell me, Mr. Larsen, whether or not the one in exhibit 55 is the same as the one of the same date in exhibit 47?

A. They look very much identical to me with the miniature glance I give it.

Q. Can you point out to his lordship any difference in the 20 two papers at all? A. I wouldn't say that I could.

Q. Then please let us get on and look at the next one, the 24th April.

THE COURT: I don't know that this evidence is of much value. The documents are in.

MR. LAIRD: The documents are in, but I didn't want to go over and read all these papers to your lordship and to compare them and point out to your lordship they are the same. I thought this witness could do it much better than I could by reading them.

THE COURT: He might say whether or not he has turned 30 those out.

MR. LAIRD: He has already said so.

BY THE COURT:

Q. Are there any other O.B.U. Bulletins published or printed by you? A. Any other copies?

Q. Any other publication of that name?

A. No, your lordship, not to my knowledge. There are none that have passed through the shop.

BY MR. LAIRD:

Q. That is, the only One Big Union Bulletin printed by The Wallingford Press is printed for the Winnipeg Central Labor Council? A. Yes.

Q. And you have already told me that exhibit 47 is composed of copies of that paper?

A. Quite right, to the best of my knowledge.

Q. And you were foreman of The Wallingford Press?

A. Wallingford Press press room.

Q. I show you a paper bearing date the 17th May, 1928. Will you please look at that, witness, and tell me if you can what it is?

MR. BERGMAN: This is long subsequent to the commencement of the action.

MR. LAIRD: Yes, subsequent to the commencement of this action and subsequent to the commencement of the trial.

BY MR. LAIRD:

Q. Can you tell me what that is?

A. That is a copy of the One Big Union Bulletin.

Q. Printed by whom? A. By The Wallingford Press.

Q. For whom? A. For the Winnipeg Central Labor Council.

RECORD

In the
King's
Bench

No. 38
Defendant's
Evidence
Walter
Larsen
Examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 38
 Defendant's
 Evidence
 Walter
 Larsen
 Examination
 (continued)

BY THE COURT:

Q. Of what? A. Of the One Big Union.

BY MR. LAIRD:

Q. You have no difficulty or hesitation about identifying that, have you? A. I have no hesitation in saying that looks like the product I started to run on May 17, 1928, and as regarding any reading matter that may be in it I will not swear to it.

Q. You will not swear to the contents of the paper?

A. To the contents of the paper as being identical.

Q. With what? A. With the paper I started on the 17th, 10 if my memory is correct.

Q. At any rate, was this paper I show you one printed by The Wallingford Press turned over to the One Big Union?

A. To the best of my knowledge it is, yes.

Q. When you print the One Big Union Bulletin in the basement of the Plebs Hall, what do you do with the copies you print?

A. The copies we print are taken away from the end of the press by the girls of the mailing room.

Q. Who employs those girls? A. The One Big Union Bulletin. 20

Q. They are taken away from the end of the press?

A. Yes. We merely handle those papers until they come out of the press.

Q. After they leave the press they are taken by employees of the Winnipeg Central Labor Council.

A. Of the One Big Union.

Q. You have seen that done during these several years?

A. I have, yes.

MR. LAIRD: I tender this paper of the 17th May.

MR. BERGMAN: I object, my lord.

THE COURT: What is in it that is of interest to us?

MR. LAIRD: There is an article here.

THE COURT: Then you will want the whole paper in?

MR. LAIRD: I think it will satisfy me if we put in the heading, the second line, and date line. "Local Labor Official on Company Business," commencing on page 1 and continuing on page 3.

MR. McMURRAY: My lord, we are suing for an improper
10 dismissal. My learned friend has set up somehow or other that my client is responsible for the actions of the One Big Union, an institution with which he is connected long after he left the service of the Company, and the One Big Union is carrying on some correspondence or other. How on earth can that affect his employment?

MR. LAIRD: Do you withdraw your plea, may I inquire, as to reinstatement? If you withdraw your plea for reinstatement I will withdraw the evidence.

MR. McMURRAY: My learned friend has got to fight; he
20 can't make any bargain with me.

THE COURT: You are suing for being wrongfully deprived of seniority rights.

MR. LAIRD: I tender the evidence. The plaintiff claims "that an order to issue from this honorable Court reinstating the plaintiff." I have shown that he is an officer of the One Big Union, and this article tends to reflect on the management and the B. and O. plan.

MR. McMURRAY: All this witness can swear to is that he
30 sees a sheet of blank paper going into the press, and what comes out of the other end is taken away, and he never sees it. How on earth he can testify to it is beyond my comprehension.

THE COURT: Well, he has done it, and most reasonably I think. I will admit it.

(Heading, second line and date line and heading "Local Labor

RECORD

In the
King's
Bench

No. 38
Defendant's
Evidence
Walter
Larsen
Examination
(continued)

RECORD
In the
King's
Bench

No. 33
Defendant's
Evidence
Walter
Larsen
Cross-
examination

Official on Company Business," on page 1, continued on page 3, of the One Big Union Bulletin of the 17th May, 1928, referred to, produced and marked Exhibit 57.)

CROSS-EXAMINATION BY MR. McMURRAY:

Q. Mr. Veitch on the stand yesterday stated it was very difficult to identify printing, do you agree?

A. I quite agree with him.

Q. He gave an instance of seeing a copy of a printed page on the screen, and pointed out it would be impossible in his opinion to distinguish one from the other in its workmanship, would you agree with that?

A. I would.

Q. And I suppose you do not get one kind of type. The Free Press, the Tribune and all the other papers would be buying from the same people? A. Yes, and the moulds of the linotype machine are more or less identical.

Q. So that all these things would make it almost impossible for a man to distinguish his own printing?

A. It could easily be substituted, and you could deceive yourself despite the fact that it look absolutely identical. 20

Q. So that while you may in your own mind be convinced this was published on the press simply by the name on it, you could not swear? A. No, unless I saw the forms, and handled the forms directly for the press.

Q. If a man looks at the shop outside and only sees one side he could go into Court and swear that the shop has two sides?

MR. LAIRD: I object to that. This man is a printer.

BY MR. McMURRAY:

Q. So you would not in the light of that swear positively that you printed this exhibit 47? 30

MR. LAIRD: I object. He has already so sworn.

MR. McMURRAY: No, he didn't so swear.

BY MR. McMURRAY:

Q. You wouldn't swear? A. I would say the same as I said previously, and that is I couldn't absolutely swear to that fact. It looks like our product and to the best of my knowledge it is our product.

Q. And if a man can't jump across a ditch absolutely, he can't jump at all? A. No.

Q. And if he can't swear absolutely to a thing he can't identify it, isn't that right? You believe that, but you wouldn't swear to it? A. I believe that, and I wouldn't swear to it, for this reason, that a column of type could be changed in any manner on those papers, and identical forms used with the same sub-heading, which would give you an absolute relationship, which would not exist if you read it.

Q. These might have been printed by "The Sportsman" for instance. You told my learned friend you did not read the contents? A. Absolutely not.

Q. And you did not check over the printing when it was through? A. No.

Q. What you simply did was to see there was no blurs on it?

A. Yes, no spaces, leads or slugs.

Q. You see the blank page going into the machine?

A. That is right.

Q. And what came out was taken away by other people?

A. Yes, at the rate of 3000 an hour.

Q. And what you have stated concerning exhibit 47 would also apply to this exhibit 57?

A. I would say it looks like our product, to the best of my knowledge.

Q. And it also looks like the Free Press printing, and this

RECORD

In the
King's
Bench

No. 33
Defendant's
Evidence
Walter
Larsen
Cross-
examination
(continued)

RECORD

In the
King's
BenchNo. 33
Defendant's
Evidence
Walter
Larsen
Cross-
examination
(continued)

looks very much like the Free Press, doesn't it, the same style of printing? A. The same style of printing, but much more modern equipment.

Q. They have more modern equipment. Now, you did not read what went into the issue of May 17, exhibit 57?

A. Absolutely no. All our relationship to the paper is to look for foreign matter which consists of spaces, slugs or undesirable matter which may be printing from the ends of slugs or which may spoil the appearance of the paper.

Q. That is, you look at it from the mechanical viewpoint? 10

A. From the mechanical viewpoint entirely.

RE-EXAMINATION BY MR. LAIRD:

No. 33
Defendant's
Evidence
Larsen
Walter
Re-
examination

Q. You are there when the papers come out at the end of the printing machine? A. When I go over and put on that press I am in charge of that machine.

Q. You are there when the papers come out through the machine? A. During the process we take an occasional sheet, hold it up and look for spaces, slugs, or anything that may be obnoxious stuff in any of the reading matter.

Q. But you are there and see them coming through the press 20 with the heading One Big Union Bulletin, and all the rest of it?

A. Yes, I start it. I am only there for, roughly, three hours each evening. Of course, that varies as to the amount of trouble I have in setting the machine.

Q. And in 1926 do you know how many copies there were printed? A. Between the years 1926 and 1927 I would give you an approximate figure of somewhere roughly around 30,000. I would not bind myself to a definite 30,000, but in the proximity of 30,000.

Q. And at the present time in 1928 it is less, I think Mr. Veitch 30 told us yesterday? A. Yes, it has dropped considerably.

Q. What is it, about 15,000? A. About 15,000. It fluctuates

from week to week, so I could not give you an absolute definite figure.

Q. Would you please look at exhibit 48?

MR. McMURRAY: I object to that. I did not touch on that.

MR. LAIRD: No, he did not, my lord. These are the leaflets about the B. and O. plan.

THE COURT: We have got in the habit from the very beginning of dividing the examination-in-chief into two parts, as a rule, sometimes three. However, go on.

10 BY MR. LAIRD:

Q. Will you please look at exhibit 48 and tell me whether that was printed by The Wallingford Press?

A. That sheet of paper is a very hard thing to identify.

Q. Please just answer my question.

A. Definitely I cannot identify it.

Q. What is your belief on the subject?

MR. McMURRAY: I object.

THE COURT: As far as his knowledge is concerned.

BY THE COURT:

20 Q. So far as you know what do you say?

A. So far as my knowledge is concerned I could not positively swear we have done that piece of printing there because there are so many people carrying on the same occupation.

BY MR. LAIRD:

Q. To the best of your knowledge did or did not the Wallingford Press print it? A. It could look like some of our printing.

Q. It could look like some of your printing?

RECORD
In the
King's
Bench
—
No. 88
Defendant's
Evidence
Walter
Larsen
Re-
examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 38
 Defendant's
 Evidence
 Walter
 Larsen
 Re-
 examination
 (continued)

A. And judging by the type, there are so many people that have the same class of type, the newspapers and everything else in the city, I could not positively tell you that was ours.

Q. You have told me that, witness, please tell me whether or not to the best of your knowledge it is yours?

A. To the best of my knowledge I would say that it looks like ours, but I would not swear to it.

MR. LAIRD: That, my lord, is a leaflet, exhibit 48.

BY MR. LAIRD:

Q. Then, witness, will you please look at another leaflet, 10 which I show you, exhibit 49, and tell me whether or not it was printed by the Wallingford Press Limited? A. Your lordship, that is a very hard question to answer.

BY THE COURT:

Q. Do not answer if you can't, but if you can, give an answer.

A. I would rather not answer.

Q. But if you can answer it, you should.

A. I would not swear to the fact that was printed by us.

Q. When you use the word "us" you mean the Wallingford 20 Press? A. Yes.

BY MR. LAIRD:

Q. Have you any doubt on the subject? A. The doubt exists—

Q. Have you any doubt that it was printed by you or not?

MR. BERGMAN: This is cross-examination.

A. I have told you I could not conscientiously or absolutely say to you I have printed it.

BY MR. LAIRD:

Q. I know you have told his lordship that. I appreciate that.

THE COURT: That is an answer to the question.

MR. LAIRD: That he cannot absolutely swear, but take a case of forgery. A man might be satisfied it was a forgery and not be able absolutely to say that he had seen another man write it.

THE COURT: That would be a matter of opinion.

MR. LAIRD: Yes, and this is an expert printer of 18 years' experience.

10 THE COURT: Well,—

BY MR. LAIRD:

Q. To the best of your knowledge was exhibit 49 printed by the Wallingford Press, judging by its appearance? I suppose you have no recollection of it being printed.

MR. BERGMAN: My learned friend has been in court long enough to know he cannot examine that way.

MR. LAIRD: What way?

MR. BERGMAN: Cross-examine the witness.

BY MR. LAIRD:

20 Q. To the best of your knowledge is or is not exhibit 49 a product of the Wallingford Press?

A. Very last exhibit you have showed me there?

Q. Yes. A. I can't very well answer that question.

MR. McMURRAY: No questions.

ARTHUR ATCHISON TISDALE, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

RECORD

In the
King's
Bench

No. 33
Defendant's
Evidence
Walter
Larsen
Re-
examination
(continued)

No. 34
Defendant's
Evidence
Arthur
Atchison
Tisdale
Examination

RECORD
In the
King's
Bench

No. 84
Defendant's
Evidence
Arthur
Atchison
Tisdale
Examination
(continued)

Q. You are the assistant to the General Manager of the Canadian Northern Railway in the City of Winnipeg, and have occupied that position for several years?

A. Yes.

Q. You were examined as an officer of the defendant company in the case of William Young against the company?

A. Yes.

Q. Do you recall the examination? A. I can remember a good deal of it; it was quite lengthy.

Q. The examination has been marked in this action as exhibit 10 18, and I am going to ask you to look at question 822 on page 144, which has been put in as evidence. The question reads, or the question before that reads: "821. Q. Rules 1, 2, 3, and 4 and rule 7 would all apply in the same way? Answer: Are you trying to lead me into some admission? 822. Q. No, I am taking you along your own line, for the purpose of convenience. All those rules would apply? A. Yes." In answering the question 822 "No, I am taking you along your own line, for the purpose of convenience. All those rules would apply? A. Yes," what were you testifying to? 20

MR. McMURRAY: I object; the document will speak for itself.

THE COURT: It would not be on that principle.

A. There was obviously a mistake in the punctuation. Mr. McMurray said: "No, I am taking you along your own line. For the purpose of convenience all those rules would apply?" That is a sentence I had used quite frequently throughout the examination.

BY MR. LAIRD:

Q. What sentence had you used quite frequently? 30

A. That the company for reasons of policy or convenience applied these rules—

THE COURT: This is not something the witness said. Now you are asking what Mr. McMurray said.

MR. LAIRD: No, I drew his attention to the question and answer and asked what his testimony on that point was.

BY MR. LAIRD:

Q. Does the question 822 as the question and answer read, correctly report what your testimony was?

A. No, it does not.

Q. You were being questioned as to the application of certain rules in these wage schedules or wage agreements, you recall those? A. Yes.

10 Q. And you were being asked as to the application of those?

A. Yes.

Q. What do you say in respect of those rules in so far as the Fort Rouge shops are concerned?

A. I repeat that the—

THE COURT: As to those rules. What rules? Are you referring to question 821.

MR. LAIRD: Rules 1, 2, 3, 4, and 7.

THE COURT: Of what?

MR. LAIRD: Of wage agreement No. 6 in question 821.

20 A. As I stated the company for the purpose of policy and convenience, generally speaking, applied the rules of the schedules to all the men in the shop, but the individual men had no agreement with the company and as to the application of any of those rules there was no obligation on the part of the company to apply them to any individual.

Q. Does what you say as to rules 1, 2, 3, 4, and 7 apply as to the rules of seniority in case of a reduction of staff? A. Yes.

CROSS-EXAMINATION BY MR. McMURRAY:

Q. You don't remember all the questions I asked you, Mr.

RECORD

In the
King's
Bench

No. 34
Defendant's
Evidence
Arthur
Atchison
Tisdale
Examination
(continued)

No. 34
Defendant's
Evidence
Arthur
Atchison
Tisdale
Cross-
examination

RECORD
 In the
 King's
 Bench
 No. 84
 Defendant's
 Evidence
 Arthur
 Atchison
 Tisdale
 Cross-
 examination
 (continued)

Tisdale? A. I can hardly do that.

Q. I think I asked you about a thousand?

A. Very likely.

Q. And you don't know whether I asked you the whole of 822 or not? Do you? You can't remember whether I asked you 822? A. Yes, sir.

Q. Did I ask you the whole of 822 as it is in there?

A. Yes, but the period is in the wrong place.

Q. And was the answer yes? A. The answer was yes to the question you put to me. 10

Q. What question did I put? A. As to whether certain rules in the schedule were applied to all the men in the shops. I objected to the way you put that question. I thought you were trying to trap me.

Q. You didn't think that, did you?

A. And then you said you would put the question along the line I had in view, which was exactly as I have stated for convenience the company would apply the rules.

Q. You knew Mr. Warren, did you, the General Manager of the company? A. Yes. 20

Q. Did you ever see the letter which is in as an exhibit here that he wrote to Mr. M. H. Davy?

A. Just what letter do you refer to?

Q. There was a letter written to Mr. M. H. Davy in which Mr. Warren expresses great astonishment that every man in the shop was not familiar with the contents of wage agreement No. 4 and wage agreement No. 6?

A. I do not think it is for me to make any comment on any letter Mr. Warren may have written.

Q. I am asking you were you familiar or did you know of such a letter? 30

MR. LAIRD: Is there any such letter?

THE COURT: Better deal with it as an exhibit.

MR. McMURRAY: A letter dated January 31, 1923.

THE CLERK OF THE COURT: A letter formerly "F" for Identification and then marked Exhibit 12, but it is now mislaid.

BY MR. McMURRAY:

Q. In your official capacity with the company, Mr. Tisdale, did you know of the correspondence carried on between the Shop Employees committee of the Western Lines and Mr. Warren and
10 Sir Henry Thornton?

A. I didn't see the correspondence with Sir Henry Thornton. I may have seen some of the correspondence with Mr. Warren.

Q. Did you see a letter of January 31, 1923, written by Mr. Warren, and your counsel admits that letter was written, "I am rather surprised that the statement is made that the contents of the agreement between certain Canadian railways, of which this company is one, and the shop trades as represented by Division No. 4, is not known to all men working in the shops of this company."

20 MR. LAIRD: I object.

Q. Did you ever see that letter? "If such be the case (and I must candidly confess that I cannot think it is) then I would advise that whatever information the individual man may require can be most easily obtained by request of his foreman or assistant foreman." "The question of representation is a matter that has already been settled and no deviation can be made in that respect. The agreement with Division No. 4 was not made on the allotment of any certain proportion in any particular region of the Canadian National Railways, but for the Railway as a whole as per-
30 taining to the mechanical trades."

A. Is that letter signed by Mr. Warren?

Q. Your solicitor and yourself for the purpose of this trial admit that is his signature?

A. I don't remember seeing the letter.

RECORD

In the
King's
Bench

No. 34
Defendant's
Evidence
Arthur
Atchison
Tisdale
Cross-
examination
(continued)

RECORD
 In the
 King's
 Bench
 No. 34
 Defendant's
 Evidence
 Arthur
 Atchison
 Tisdale
 Cross-
 examination
 (continued)

Q. Did you see a letter of February 20, 1923, exhibit 13, written from Seattle, Mr. Tisdale, and my learned friend, your counsel, has admitted it was signed by Mr. Warren. "Seattle February 20, 1923. Referring to your letter of the 6th instant. As stated to you in my letter of January 31——"

MR. LAIRD: I object, my lord, to this on the ground that these letters are inadmissible.

THE COURT: The letters have been allowed in subject to objection, and they may eventually be ruled out.

BY MR. McMURRAY:

10

Q. "As stated to you in my letter of January 31, the question of representation is a matter that has been settled, and we are not prepared to give notice of any changes to Division No. 4, as you suggest. In order to overcome the difficulties regarding certain men being unable to learn the contents of the agreement with Division No. 4, arrangements are being made to print the agreement, and either have it posted up in the shops or distribute it to the men, who may desire a copy. These arrangements are now in hand and will be completed within a short time." Now, that would come under your department, the reprinting of that and 20 the distribution of the information to the men?

A. I presume if instructions were given that might pass through my hands.

Q. Don't you presume a little farther, that they would pass through your hands? A. Well, might or might not.

Q. But you have charge of that? A. Not necessarily.

Q. Who would have charge? A. I might ask the General Superintendent of Motive Power to arrange for the printing.

Q. "These arrangements are now in hand and will be completed within a short time." Were the arrangements being made³⁰ to distribute wage agreements No. 6 or No. 4 whichever it was to all the men?

A. I am not aware of any.

Q. Do you know if those were posted up?

A. I gathered information for you for the examination to the effect that they were not posted up.

Q. And you are going to stick to that? A. Yes.

Q. I show you exhibit 3. It states "Canadian National Railways Lines in Canada. Rates of pay and rules governing services of employees in motive power and car departments federated trades effective December 1, 1922." Was this wage agreement, exhibit 3, distributed in your shops or copies similar to it?

A. I don't know. I know they were not distributed through
10 the company.

Q. Was it handed to your foreman? A. Some foreman would have it.

Q. You note that it says "Rates of pay and rules governing services of employees in the motive power and car departments." Who had that printed?

A. That is simply a back.

Q. I know that? A. This agreement was really negotiated with the Railway Association of Canada.

Q. I asked you who had it printed?

A. It was customary for the Railway Association to have it
20 printed.

Q. That was, the party of the first part to this contract had that printed in the manner in which it appears? A. Yes.

Q. And was so used by the railroads? A. Yes.

Q. I show you exhibit No. 2 which purports to be Wage Agreement No. 4. It says on the outside of that: "Wage Agreement No. 4, between the Canadian Railway War Board and Division No. 4, Railway Employees' Department, governing rates of pay and rules of service for locomotive and car departments."
30 Was that distributed among your foremen and officers?

A. I believe so.

RECORD
In the
King's
Bench
No. 34
Defendant's
Evidence
Arthur
Atchison
Tisdale
Cross-
examination
(continued)

RECORD

In the
King's
BenchNo. 34
Defendant's
Evidence
Arthur
Atchison
Tisdale
Cross-
examination
(continued)

Q. You believe it was. Why do you say that?

A. I didn't have any personal part in distributing these things.

Q. You are only guessing at it then? A. Yes, I am guessing at it.

MR. McMURRAY: That is all.

RE-EXAMINATION BY MR. LAIRD:

Q. Looking at exhibit 3, called Wage Agreement No. 6, on the outside cover, you referred to this as the back?

A. Yes, it is really not a part of the schedule, something made 10 up for a back.

Q. To protect the printing? A. Yes.

MR. McMURRAY: It is not the back, it is the front.

THE COURT: The cover.

BY MR. LAIRD:

Q. I see the words "federated trades" on what you call the back or cover of exhibit 3. What does federated trades mean, Mr. Tisdale, in railroad language, what do you mean by federated trades?

A. Shop crafts. 20

Q. And does or does not the expression "federated trades" include men who are not in the American Federation of Labor.

A. Yes, it would include the shop crafts, men who are working in the shop.

MR. LAIRD: That is all.

GEORGE PERCY RAY TALLON, being first duly sworn, testified as follows:

No. 35
Defendant's
Evidence
George Percy
Ray Tallon
Examination

DIRECT EXAMINATION BY MR. LAIRD:

Q. You are a barrister in the employment of the firm of solicitors for the defendant company in this action, Mr. Tallon?

A. Yes.

Q. And have been there since the commencement of the action? A. Yes.

Q. And are familiar with the conduct of the action?

A. Yes.

Q. I show you exhibit 55 upon the trial of this action. Tell me 10 when you first saw that?

A. About quarter to one, Mr. Healy, Provincial Librarian, brought it into this Court room, and I requested Mr. Healy to leave the room as witnesses were excluded, so he left it with me.

Q. He left it in the Court room? A. Yes.

Q. And at lunch time what happened?

A. At lunch time he did not wish to take that back to the Parliament Buildings, so I told him I would look after it. I tried to get Mr. Corbett, and could not get him, and I took it to the Prothonotary's office, and left it with Mr. Gresham, and asked 20 him to put it in the vault.

Q. After the noon hour what did you do.

A. I went and asked Mr. Gresham for exhibit 55.

THE COURT: It wasn't an exhibit then?

A. No.

BY MR. LAIRD:

Q. You asked him for the book, and what did you do with it then? A. I brought it into the Court room.

Q. What did you do with it then? A. I looked over it to see that the various issues of the O.B.U. in this book corresponded

RECORD
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King's
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No. 35
Defendant's
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George Percy
Ray Tallon
Examination
(continued)

RECORD
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 Defendant's
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 George Percy
 Ray Tallon
 Examination
 (continued)

with the other issues which I had had in my charge for some time.

Q. What do you mean by this book? A. Exhibit 55.

Q. That is, you compared a number of them?

A. I compared a number of them with exhibit 47.

Q. And so far as you compared them what did you find?

A. So far as I compared them the matter was identical in every respect so far as I can see.

Q. Then looking at exhibit 56. These are the 1926 Bulletins. What do you know about exhibit 56?

A. I saw Mr. Healy take those out at your request from a 10 bunch up there in my charge in the same way as exhibit 55.

Q. That is, you got the 1926 Bulletins along with the 1923 and 1925? A. Yes.

Q. Were they together during the lunch time?

A. They were dealt with exactly as I dealt with what is now exhibit 55.

Q. Look at exhibit 57. What do you know about that, Mr. Tallon? A. I purchased these from a news stand opposite Eaton's, on Portage Avenue, next to Liggett's drug store. I don't know the name of the news stand. 20

Q. In the city of Winnipeg? A. In the city of Winnipeg.

Q. Approximately when? A. I think it was Monday the 21st day of May.

Q. And were there other copies of the Bulletin for sale in the news stand? A. Yes, as far as I could see they were exactly the same as that.

MR. LAIRD: Now, notice, my lord, has been given of intention to use certain copies.

BY MR. LAIRD:

Q. Looking at exhibit 40, you are familiar with it, about using copies of documents? A. Yes.

Q. It states that the copies might be inspected. Can you tell me whether there was any inspection of the copies referred to under this notice within the period mentioned in the notice by the plaintiff's solicitors?

A. No, sir.

Q. Was there any inspection afterwards?

A. Yes, on Thursday, the 3rd day of May, Mr. McMurray¹⁰ telephoned to me and asked if I had a copy of that notice as he had lost the copy served upon him. I told him we had. He asked if he could get a copy if he came to the office. About 5 o'clock he came to the office, and I gave him a copy of that notice. He looked at it and looked at some of the documents referred to in the schedule to the notice. He said that the O.B.U. Bulletin he did not want to see as he had his own copies that he could look at. He did not have a copy of the telegram from Mr. Mace to Mr. Riddell. I had a copy of that made and I gave it to him.

Q. No. 3 in this is the constitution of the One Big Union of²⁰ August, 1923. Can you say what copy was referred to in exhibit 40? A. Yes, I think this is the copy. I have it marked with a pencil.

Q. O for Identification on this trial was the copy referred to? A. Yes.

MR. LAIRD: I tender that, my lord, as evidence.

MR. McMURRAY: I object to that.

MR. BERGMAN: It is not a commercial document coming within the section 27 of The Evidence Act?

THE COURT: I don't think so.

³⁰ BY MR. LAIRD: Q. No. 4 of the schedule to exhibit 40 covers a number of issues of the One Big Union Bulletin? What papers are referred to in exhibit 40 under No. 4?

A. They are 19 of the 24 referred to in 4 of the schedule. I took the other five out myself.

RECORD

In the
King's
Bench

No. 35
Defendant's
Evidence
George Percy
Ray Tallon
Examination
(continued)

RECORD

In the
King's
BenchNo. 85
Defendant's
Evidence
George Percy
Ray Tallon
Examination
(continued)

Q. What are they on this trial? A. They are exhibit 47 on this trial.

Q. That is, the One Big Union Bulletin of the dates mentioned in the notice, exhibit 40, are the same as those of the same date in exhibit 47? A. Yes.

Q. Then the three leaflets are referred to as No. 5 in exhibit 40. Can you look at exhibits 48, 49 and 50 on the trial and tell me what relation, if any, they bear to the documents in No. 5 in exhibit 40?

A. Exhibit 49 on this trial is the first document referred to¹⁰ in the fifth paragraph of the schedule to exhibit 40. Exhibit 48 is the second document referred to in the same paragraph, and exhibit 50 is the third leaflet referred to in that paragraph.

Q. And these three exhibits are the three documents specified in exhibit 40? A. Yes.

Q. And they have been in your custody until they were produced here? A. Yes.

Q. And then the letter and telegram from Mr. Mace, they have gone in as exhibits on this trial?

A. Yes, I handed them to you to put in.

20

Q. Then the certificate of the registrar, that is already in as an exhibit. My learned friend admitted that. The certificate was among them, and that has already gone in? A. The certificate and the affidavit.

MR. McMURRAY: No cross-examination.

No. 8
Proceedings
at Trial

MR. LAIRD: Your lordship referred to the evidence of Mr. McKenna where the question might arise, and I would respectfully ask that those questions referred to this morning in cross-examination be disallowed. Apart from that that is all I have to offer.

30

THE COURT: As I understand, when de bene esse evidence is taken and objection is recorded, the objection is practically repeated to the Court when it comes to be read, and upon that I ask

if I am to rule upon all these objections in all the de bene esse evidence, or are you going to single out a few? If you are going to single out a few perhaps you have better indicate what they are. The same would apply to the other side. There was a lot of evidence read this morning of Mr. McKenna's with objections by Mr. McMurray that were not specifically referred to here at all.

RECORD
—
In the
King's
Bench
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(continued)

MR. LAIRD: Well, particularly what I had in mind was Mr. McKenna's evidence. I think your lordship spoke about hearing
10 further argument, and there was some opportunity to be given for further argument on the subject of those letters from Sir Henry Thornton and Mr. Warren, but so far as I recall that is—

THE COURT: I was going to make the suggestion that during the recess counsel draw attention to the questions that you want rulings upon, and then we will deal with them all. It might save time and probably be satisfactory to counsel.

MR. LAIRD: Subject to that, my lord, the defence is closed.

THE COURT: Is there any other of the discovery evidence you wish to qualify by further questions? If you are not ready
20 with that you can do that in the morning.

MR. McMURRAY: The evidence, as your lordship knows, in this case has been very extensive, and there is the question of the argument which involves possibly some very nice points of law, at least, I expect those points to be raised by my learned friend, and if it was possible we would like to have a copy of some of this evidence made by the reporter, particularly the evidence of Mr. Eager. I feel, my lord, and my learned friend with me, that we could possibly lighten your lordship's heavy duties if we
30 had an opportunity of getting over that evidence, and there are several cases in the library that I was looking for last night, that I cannot locate, in fact, they are not in our library, cases involved in this case, which it is necessary to send out of town for, and I would ask, my lord, that possibly we could argue this sometime at the beginning of next week, that is, provided Mr. Donovan can get it out?

THE COURT: I have to go to Morden on Tuesday.

MR. McMURRAY: Possibly you could sometime later than that. My clients want it disposed of, and we feel we can't do it without that evidence.

RECORD
 In the
 King's
 Bench
 No. 8
 Proceedings
 at Trial
 (continued)

THE COURT: You want the evidence extended of one witness?

MR. McMURRAY: Of one witness anyway, Mr. Eager.

MR. LAIRD: I must oppose very strongly any postponement. My learned friend, if he wanted the evidence, as your lordship knows, he had a postponement of a week, and there was no suggestion that he had done anything to get that evidence in the meantime. It so happens, my lord, that I have engagements which make it absolutely necessary, if I am to take any part in the case, that it be disposed of next week, and I have other engagements in court, and I do want the argument to be received now and the case to be completed. I must oppose any postponement for the sake of getting evidence. 10

THE COURT: How would it do if we adjourned to Thursday morning. Mr. Donovan thinks he can get the evidence out for that time, and we can probably complete the argument Thursday and Friday and have Monday to run over on?

(Court adjourned at 5 p.m. Tuesday, May 29, 1928, to 10:30 a.m. May 30, 1928.)

10:30 a.m., May 30, 1928. 20

THE COURT: You wish to deal with the discovery evidence of the plaintiff?

MR. BERGMAN: My learned friend put in questions 33 and 36. Your lordship will see the connection. I am asking that question 34 be put in as explanatory of 33, and 37 in connection with 36 and 406—if your lordship would look at 406 now. I am asking that question 37 go in as connecting up 36 and 406.

MR. LAIRD: Question 37 is complete in itself.

THE COURT: I think 37 introduces a new topic. Question 36 deals with what was said. 30

MR. BERGMAN: But possibly more necessary in connection with 406. It may be of some importance to know whether he saw that wage agreement No. 4 prior to the time he was hired.

THE COURT: 409 tells when he saw it.

MR. BERGMAN: 37 and 38 show he knew about wage agreement 4.

THE COURT: Before he ever started to work there.

MR. LAIRD: You can give evidence to that effect. There is no reason why it should be made part of my case.

THE COURT: It is a new topic.

MR. BERGMAN: How about 34?

THE COURT: The answer is No. The rest of the answer is not an answer, it is his reason for it.

10 MR. BERGMAN: Your lordship rules they should not go in?

THE COURT: I don't think they should.

MR. BERGMAN: Then if your lordship will turn to questions my learned friend put in, he put in questions 91 to 95 on page 13. The last previous questions were 78 to 80 in which my learned friend asked Mr. Young whether he was at any time while in the company's employ a member of Division No. 4. Then he goes over to 91 and asks "Q. And you were not a member of the organization? A. No. 92. Q. And the negotiation took
20 place entirely by representatives of the American Federation of Labor? A. Of Division No. 4, yes." There is nothing to show in what precedes that what negotiations are being referred to, and it seems to me that in order to connect that up properly questions 81, 85, 88 and 96 should all go in, if your lordship would just look at them.

THE COURT: 81 does not refer to the negotiations. Increases are not the same as negotiations. Now, question 88—

MR. LAIRD: I object. It is clear from question 89 what the negotiations were.

30 MR. BERGMAN: I submit that 88 is clearly explanatory.

THE COURT: I think possible to explain what is included in question 92, 88 should go in.

MR. LAIRD: 88 is not a proper question at all. And then he argues in his answer.

RECORD
 In the
 King's
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 No. 8
 Proceedings
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 (continued).

THE COURT: The last part of his answer is in a sense an answer to your question. You asked him how he could be subject, and the answer is the statement he makes for what it is worth. I will allow it. The first part of his answer to question 88 is beside the point, but the last part seems to be relevant. I will allow 88, 89 and 90.

"88. Q. If you were not a member of the American Federation of Labor how could you be subject to what they agreed to do? A. For this reason that when I first entered the shops, the American Federation of Labor—the men in the shops in that organization was very small, I don't believe they had twenty per cent, at a limit, I don't think they had twenty per cent. They negotiated schedules on behalf of all employees, and all the other men was subject to that.

89. Q. Why do you say that they negotiated schedules on behalf of all employees when you yourself never instructed or authorized the American Federation of Labor to represent you, did you? A. I never instructed them. We never had any say in the matter.

90. Q. You never had any say in the matter?

20

A. No."

MR. BERGMAN: Then there is only one other point. It is in connection with question 292, which my learned friend put in. The witness has explained in questions 275 to 281 that he did apply, and what happened when he did apply.

THE COURT: What do you suggest?

MR. BERGMAN: I was suggesting that questions 275 to 281 and 290 and 291 and 293 be put in all as explanatory of that.

MR. LAIRD: It is all in connection with conversations with Mr. Anderson that I did not touch on at all.

30

MR. BERGMAN: My point is this that the answer creates an impression that he never applied.

THE COURT: That is a rather big order.

MR. BERGMAN: Yes, I realize that. If there was anything to connect up Mr. Anderson from question 290 on it would be quite sufficient.

THE COURT: I suppose that question 292 standing by itself might be strictly construed as admitting. But what he did try to do was to see a committee. Strictly speaking I suppose that is probably correct.

MR. BERGMAN: He saw the chairman.

THE COURT: However, he has given that in his own testimony. I don't like to introduce a question like question 280. It is a whole history, more than a qualification.

MR. LAIRD: Question 292 is complete in itself.

10 THE COURT: Yes, I suppose in fairness it should be rather strictly construed.

MR. BERGMAN: The way to meet that then would be to put Mr. Young in the box.

THE COURT: I will have to refuse those questions. Then the net result of the application is that questions 88, 89 and 90 are added to those which Mr. Laird has already put in on behalf of the defendant.

THE COURT: Any rebuttal?

MR. McMURRAY: I will call Mr. Young in rebuttal, my
20 lord.

R E B U T T A L

WILLIAM YOUNG, recalled:

DIRECT EXAMINATION BY MR. McMURRAY:

Q. You are still under oath, Mr. Young?

A. Yes.

Q. You heard the witness Murton state that you refused to teach him when he was an apprentice? A. Yes.

Q. What do you say as to that? A. Murton, as near as I can recollect, came to work with me about December of 1926.
30 As following the usual practice I endeavored to instruct him and show him the various things about the job, and Alfred Bassett,

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No. 36
Plaintiff's
Evidence
William
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Rebuttal
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RECORD
 In the
 King's
 Bench
 No. 36
 Plaintiff's
 Evidence
 William
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 Rebuttal
 Evidence
 (continued)

foreman, came along and told me that Murton could look after himself, and that I had to look after my own work, and leave him alone, that it wasn't necessary for me to instruct Murton, and that if Murton needed any instructions he himself would personally do it, so after that time I just left Murton to himself.

Q. Murton says that you were wasting and idling your time at the lavatory, and matters of that kind, what do you say?

A. That is incorrect. He stated that I went away for half an hour at a stretch. I never left my machine at any more than ten minutes at a time, that is, when I had occasion to go to the lavatory, and Mr. Bassett was in the habit of taking out his watch and swearing that I had been away for half an hour. On one occasion I came back and he said, "You have been away half an hour." I said, "That is incorrect because I timed myself on this occasion." "Oh, well, you have been away 20 minutes—"

THE COURT: That is only talk.

BY MR. McMURRAY:

Q. Yes, there is no use going into all those details. You deny that you idled your time away.

A. Yes.

20

Q. Several witnesses have testified to seeing you at meetings outside of the shop where you were employed where there were speakers speaking in connection with the B. and O. system.

MR. LAIRD: I object to this. My learned friend has gone into the B. and O., and the plaintiff's activity in it. He examined him as part of the case in chief.

THE COURT: It is not so much that, as the fact that the witnesses have made statements about the plaintiff, that he did. It seems to me that the plaintiff ought to have an opportunity to meet them.

30

MR. LAIRD: He was asked about that.

THE COURT: That was before these witnesses came on, and made specific statements.

BY MR. McMURRAY:

Q. Witness, were you present at any of these meetings?

A. No.

THE COURT: What meetings?

Q. Meetings in front of the shops? A. I have been present at some meetings, political meetings, and other meetings.

Q. Were you present at meetings where Mr. Russell and Mr. Clancy were speaking in opposition to the B. and O. system at the shop gates? A. No.

Q. You were not present? A. No.

10 Q. Witnesses have stated that Russell had been a speaker at these meetings in the summer of 1926?

A. Russell could not have been at them meetings—

BY THE COURT:

Q. How would you know, you weren't there?

A. Well, I know Mr. Russell was away over in the Old Country for a holiday in 1926.

Q. Witness, will you kindly confine yourself to answer the question, no argument or speech making. You say you were not present? A. I wasn't present, no.

20 BY MR. McMURRAY:

Q. Was Mr. Russell in Winnipeg in the summer of 1926?

MR. LAIRD: Objected to.

A. No, Russell was in the Old Country at that time.

BY THE COURT:

Q. Were you in the Old Country at that time?

A. No.

Q. How do you know he was there? A. Because he was ordered to go over there for a holiday.

RECORD

In the
King's
Bench

No. 36
Plaintiff's
Evidence
William
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Rebuttal
Evidence
(continued)

RECORD
 In the
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 No. 36
 Plaintiff's
 Evidence
 William
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 Rebuttal
 Evidence
 (continued)

Q. Yes, that is what you know about it.

BY MR. McMURRAY:

Q. Mr. Greenhalgh stated that you had a discussion in the lavatory in connection with the B. and O. Scheme in the shops, in which you spoke in opposition to it, what do you say as to that?

A. I say that is incorrect.

Q. Some witness, I don't recall which one, made the statement that Mr. Kingsland's secretary on the occasion on which you went to see him in June in connection with your dismissal, had stated that he was willing to see each one of you separately, 10 but refused to meet you as a body?

MR. LAIRD: I object; this is not rebuttal.

THE COURT: No, that is brought in by your own witness.

MR. McMURRAY: Possibly it was Mr. Eager said that. I may be in error there.

Q. There is evidence put in that you had seen and that you knew of an agreement, this wage agreement No. 4. When did you first know of that agreement?

MR. LAIRD: I object to that. My learned friend went into that in the case in chief. 20

THE COURT: There was evidence put in. He himself has stated when he was examined in chief.

BY MR. McMURRAY:

Q. There was evidence put in that you never did ask any committee of Division No. 4 to do anything for you. Did you ask a committee of Division No. 4 to do anything for you?

MR. LAIRD: Objected to.

A. Yes, I asked them to take up my grievance when I was let out.

Q. Who did you ask? A. I asked G. B. Anderson. 30

MR. LAIRD: Is that in writing?

THE COURT: All right, he is contradicting himself when he said he asked a committee.

BY MR. McMURRAY:

Q. Who did you ask? A. I presented a letter to Mr. G. B. Anderson asking him—

MR. LAIRD: I object.

A. Asking him—

BY THE COURT:

10 Q. Will you kindly wait when an objection is made. You are not going to jam through your answer in spite of the rules.

Q. You say you did ask some committee?

A. Yes, the chairman of the shop committee.

Q. It is important that you should answer this accurately, did you ask some committee of Division No. 4?

A. I presented a letter to the committee—

Q. To the committee? A. To the chairman.

Q. The committee consisted of whom? that you spoke to?

A. G. B. Anderson, Peters, I forget his initial, Frank Pratt, 20 and Nick Lamb.

MR. McMURRAY: I don't think the witness understood the question.

Q. Yes, the gentlemen present comprising that committee that were present and whom you spoke to?

A. I did not meet the whole of the committee.

BY MR. McMURRAY:

Q. Who did you meet? A. G. B. Anderson.

RECORD
In the
King's
Bench
No. 36
Plaintiff's
Evidence
William
Young
Rebuttal
Evidence
(continued)

RECORD
 In the
 King's
 Bench
 No. 86
 Plaintiff's
 Evidence
 William
 Young
 Rebuttal
 Evidence
 (continued)

Q. Alone? A. Yes.

Q. And handed him the letter? A. Yes.

BY THE COURT:

Q. Then you did not meet the committee as a committee?

A. No.

Q. You met one member of it, Mr. Anderson?

A. Yes.

BY MR. McMURRAY:

Q. I show you exhibit No. 10, was that what you handed to Mr. Anderson? A. Yes. 10

MR. McMURRAY: That is all.

CROSS-EXAMINATION BY MR. LAIRD:

No. 86
 Plaintiff's
 Evidence
 William
 Young
 Rebuttal
 Evidence
 Cross-
 examination

Q. You knew Mr. Greenhalgh, a machinist who appeared and testified here? A. Yes, I knew him.

Q. And you had conversations with him many times in the shops. A. No, not many times.

Q. He was there all the time you were in the shops?

A. Yes.

Q. You had several conversations with him?

A. Several, yes. 20

Q. You were, when you were in the company's service, opposed to the B. and O. plan? A. No.

Q. I beg your pardon? A. No.

Q. You were not opposed to it? A. No, I did not understand it. I did not know what it was. I could not oppose anything that I did not understand.

Q. Didn't you hear it discussed at meetings at all?

A. No?

Q. Not at all? A. No.

Q. What meetings did you attend at the gates?

A. I attended some political meetings once in awhile.

Q. What do you mean by political meetings?

A. Election meetings and so on, at which Woodsworth and Heaps might be speaking.

Q. What was the "so on"? A. It might be general discussion on political matters. I am very interested in political matters.

Q. Who were the speakers when you were there?

A. There were Heaps, Woodsworth, Rogers, one of the other party, Kennedy, and others.

Q. And when the O.B.U. men were speaking you never went near them? A. Well, I have been there when they have been speaking.

Q. You have been at meetings when the O.B.U. men have been speaking? A. Occasionally.

20 Q. What subjects did they speak on? A. General subjects, about joining the organization.

Q. General subjects about joining the organization?

A. Yes.

Q. And one of their arguments was that they needed the support of the employees to defeat and destroy the B. and O. plan? A. No, I never heard the B. and O. plan discussed.

Q. You never heard it discussed? A. No, never at any meetings I was at.

RECORD
 In the
 King's
 Bench
 No. 36
 Plaintiff's
 Evidence
 William
 Young
 Rebuttal
 Evidence
 Cross-
 examination
 (continued)

RECORD
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 King's
 Bench
 No. 36
 Plaintiff's
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 Evidence
 Cross-
 examination
 (continued)

Q. Never at any meeting you were at when the O.B.U. speakers were speaking, is that right? A. What is that?

Q. You never heard the B. and O. plan discussed by One Big Union officials or members at any meetings outside of the gates?

A. At any meetings I was at?

Q. Yes? A. Yes.

Q. That relates to 1924 and 1925?

A. Well, I couldn't say what dates.

Q. You can't say what dates? A. No.

Q. Meetings were pretty frequent in the summer months? 10

A. They may have been.

Q. They were? A. I don't know.

Q. How many meetings did you attend during the summer of 1924? A. Two or three, maybe.

Q. And during 1925? A. I may have been passing on some occasions and just listened for a minute or two. I mean, when I punched the clock and go into work everybody has to go outside the shops to punch the clock.

Q. How many times? A. I cannot say definitely, maybe two or three occasions. 20

Q. And in 1926? A. Possibly the same.

Q. Now you had lunch in the shops, did you?

A. Yes.

Q. Why would you want to go outside of the gates at all?

A. Well, sometimes I might go over to the baseball field and see the baseball game, it would just depend on the weather.

Q. Depending on the weather. Then you told me you did

not hear the B. and O. plan discussed at any meetings?

A. No.

Q. Where did you hear it discussed? A. I did not hear the B. and O. plan discussed.

Q. You never heard the B. and O. plan discussed at all?

A. I just heard rambling statements about the B. and O., and that is all I knew about the B. and O. plan.

Q. Wasn't the B. and O. plan the most frequent subject of discussion in the shops? A. You could just hear shouts of B. and O. and that is all.

Q. Was there any subject of conversation among the men working in the shops as live a subject as the B. and O. plan during 1925? A. No, I didn't hear any discussion.

Q. No talk about it at all? A. No, except what I have just heard somebody shout B. and O.

Q. All you heard were the words B. and O.?

A. Yes, somebody might shout that out to somebody else.

Q. You never heard it approved or condemned?

A. No.

20 BY THE COURT:

Q. Did you ever have any idea of what those letters "B. and O." referred to? A. I just heard—

Q. I know, but did you have any idea what they referred to?

A. No, I had never been made acquainted. It was never bul-
letined.

Q. As far as you knew it might have been some car from that railroad? A. Yes, I knew there was a railroad in the States called the Baltimore and Ohio, and as far as I knew it might have referred to that.

30 Q. You never suspected it went beyond that?

RECORD

In the
King's
Bench

No. 36
Plaintiff's
Evidence
William
Young
Rebuttal
Evidence
Cross-
examination
(continued)

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 examination
 (continued)

A. No, I can't say I suspected anything.

Q. And you were secretary of this organization, and acting on the shop committees all this time?

A. No, I was only secretary from the end of 1926.

Q. Do you seriously ask the Court to believe that?

A. I was very busy during 1924 and 1925, and the biggest part of 1926, in the company's service on first aid work. Most of my nights were spent down at the Union Depot.

Q. It is almost incredible.

A. I became secretary of the unit in December of 1926. 10

Q. All right.

BY MR. LAIRD:

Q. What about O.B.U. meetings? Did you attend O.B.U. meetings? A. In the latter part of 1926.

Q. Did you hear the B. and O. plan discussed there, or talked about? A. No, I did not.

Q. Not at all? A. No, I did not.

Q. Well, you at least saw it discussed or written about in the O.B.U. Bulletin? A. No, I can't say I did.

Q. You can't say you did. You read the One Big Union Bulletin? A. Occasionally. 20

Q. But you say you never heard it talked about, the B. and O. plan talked about at the One Big Union meetings? A. No.

Q. Mr. Bassett did have occasion to complain and reprimand you about being absent from your work for, as he said, half an hour? A. He said I was away half an hour, but I proved I was not.

Q. And that was quite frequent, I gather?

A. No.

Q. And were his complaints quite frequent?

A. No, I don't know as they were frequent, but possibly once a year or sometime twice.

Q. What wages are you receiving now? A. 70 cents an hour.

Q. When you left the company you were receiving 72?

A. 74.

Q. How many hours a day do you work? A. Sometimes 8 and sometimes nine.

10 Q. Generally nine, is it? A. No, it has been about half an hour to an hour and a half.

Q. What is the regular hours per day? A. 8 hours are the regular hours.

Q. That is, at the Western Steel? A. Yes.

Q. Do you work on Saturdays? A. Yes.

Q. All day? A. No, half day, four hours.

Q. Can you tell us anything more about the conduct of this litigation now than you could a few days ago?

A. No.

20 Q. You have had no conversation with your solicitor about it since? A. No, I have made no inquiries.

Q. You haven't talked to Mr. Russell about it since?

A. No, not except just about the progress in Court.

Q. You were telling him about the progress of the case?

MR. McMURRAY: Surely my learned friend is going outside of my rebuttal.

MR. LAIRD: I am, haven't I a right to do that?

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In the
King's
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No. 36
Plaintiff's
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Cross-
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(continued)

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 (continued)

THE COURT: Isn't he in for all purposes?

MR. McMURRAY: No, I called him in for rebuttal purposes.

THE COURT: I know you did, but if you put a rebuttal witness in the box isn't he in for all purposes?

MR. McMURRAY: I called him for the purposes of rebuttal.

BY MR. LAIRD:

Q. You have been talking to Mr. Russell and telling him about the progress of the case? A. Just casually.

Q. You haven't said anything about the cost, or who is paying for it? A. No, never mentioned it. 10

Q. Nor to Mr. McMurray, your solicitor? A. No.

Q. You talked to the witness Mr. John Aird about the cost, do you remember him at all? A. I know Mr. Aird.

Q. You remember his evidence. He, Aird, has testified that the Winnipeg Central Labor Council is financing this litigation, and that is correct? A. I don't know.

Q. You don't know? The correspondence which has been put in here between Mr. Warren and Mr. Davy, and I think one letter from Sir Henry Thornton, you obtained that from the One Big Union? A. Yes. 20

Q. Immediately at the commencement of the action?

A. No, that came into the possession, but I knew it was there, I had seen the letters, I had read the letters when they were received.

Q. You got letters and documents from the One Big Union office? A. No, the letter Mr. Davy had was in his possession.

Q. And he was working in the One Big Union office?

A. No, he had them.

Q. As a clerk or employee of the One Big Union?

A. No, he wasn't an employee of the One Big Union.

Q. He was in the pay of the One Big Union?

A. No.

Q. Mr. Davy? A. No.

Q. Do you mean to tell me that Mr. Davy has not been paid by the One Big Union since June last?

A. He has been receiving a loan the same as myself. That is not in the pay.

Q. That is under this agreement Mr. Aird produced?

10 A. That is a loan.

Q. Under the agreement that Mr. Aird produced here?

A. It is stated as a loan.

Q. Never mind that. It is under that writing that you and Mr. Davy have been receiving the money?

A. Yes, as a loan.

Q. Can you tell me who drew that agreement? I show you exhibit 42. That, of course, is Mr. Davy's signature and your own signature? A. Yes.

Q. And the proper signature of all the men whose names
20 appear there? A. Yes.

Q. Did Mr. Davy draw this? A. I don't know who drew it. It was authorized by the Fort Rouge unit and endorsed by them after it was drawn up.

Q. It was endorsed by them after it was drawn up?

A. Yes.

Q. What about the question of the costs of the litigation and the Fort Rouge unit? You have attended the meetings? A. I have already stated it has never been discussed to my knowledge.

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Rebuttal
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Cross-
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 (continued)

Q. Never been discussed at the Fort Rouge unit meetings. Was it discussed before the meetings began?

A. I have no knowledge of discussion of that matter.

Q. Or talk? A. I never heard anything.

Q. You never heard any talk about the costs of this litigation? A. No.

Q. You have read articles in the One Big Union Bulletin of the B. and O. Plan? A. No.

Q. You never have? A. No.

Q. On your examination for discovery, Mr Young, I asked you question 132: "Q. You have discussed the joint co-operative plan with your fellow employees in the service of the defendant company? Answer: Yes; sometimes."

A. I have no recollection of saying that.

Q. Have you any recollections of those discussions?

A. No.

Q. You have no recollection of the discussions, you have no recollections of so testifying on your examination?

A. I have no recollection.

Q. Of course, if you have no recollection you can't tell me what the discussions were, I suppose, can you? Please look at exhibit 52, the examination of yourself under the part of the examination of the 20th January, 1928, and at question 132. Will you read it please?

MR. BERGMAN: That is not proper cross-examination, asking him to read the question.

A. "You have discussed the joint co-operative plan with fellow employees in the service of the defendant company? Answer: Yes; sometimes." That is incorrect.

Q. Do you remember my asking you "Q. What did you say about it?" and Mr. McMurray objecting?

A. Yes.

Q. Do you remember that? A. No, I don't.

Q. No recollection of that examination?

A. I have recollections of the examinations.

Q. But not of those questions? A. No.

Q. You simply say you don't remember. You do not say you did not so answer the question.

A. I did in regard to that question, yes.

Q. That is, you never answered that question, 132, as it is reported? A. No.

BY THE COURT:

Q. I didn't understand that. Is it that the answer there is incorrect and you never made it as reported in exhibit 51

A. No.

Q. Do you remember the answer that you did make?

A. I said no to all question of that kind.

Q. How do you know, do you remember that?

A. Well, because I couldn't say anything else.

MR. LAIRD: That is all.

20 RE-EXAMINATION BY MR. McMURRAY:

Q. Witness, I show you a letter, exhibit "E" for Identification, did you ever see the original of that?

A. Yes.

MR. LAIRD: I object, my lord.

THE COURT: Are you going into your whole case again?

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MR. McMURRAY: No, my lord. My learned friend cross-examined this witness upon these letters. He referred to the Thornton letter and the Davy letter.

MR. LAIRD: This is not rebuttal.

MR. McMURRAY: He referred to these letters written by Warren and Thornton, and now, my lord, I formally tender the letter as exhibit to the court. It is identically the same thing that occurred the other day.

THE COURT: If he has cross-examined upon them you may ask that they go in. 10

MR. LAIRD: No, I referred to the letter of Mr. Warren and Sir Henry Thornton that are in on the files of the Court. I did not refer to anything that is not in.

MR. McMURRAY: My learned friend spoke about those letters, the letters of Mr. Warren and Mr. Thornton, and those letters. I was watching him closely when he asked the question.

THE COURT: "Those letters" are very very wide.

MR. McMURRAY: Those are a series of letters written at that time.

THE COURT: That is stretching it. 20

MR. McMURRAY: The other day, my lord, I merely held it in my hand.

THE COURT: You picked up a document and going to the witness asked a question based upon it. Then it goes in. But to refer to some letters, some in as exhibits and some are not, it seems to me stretching the point.

MR. McMURRAY: He referred to the letter and tried to show the witness had a knowledge of that.

THE COURT: But his reference might very well—there are no letters specifically before him—might very well refer to letters 30 already in as exhibits.

MR. McMURRAY: The other day I simply held up a let-

ter and asked him what it was, without asking him further than that.

THE COURT: I don't think that would be a fair application of the rule.

MR. McMURRAY: In connection with this very letter, my lord, I have a letter, my lord, of March 19th of my learned friend, exhibit 38. He said: "We have now considered your letter of the 14th inst. asking us to make admissions as to certain letters and also your motion for commissions. We are prepared either to
10 produce at the trial the originals of the letters addressed by M. H. Davy to Sir Henry Thornton, or to Mr. Warren of the 6th February, the 26th February, the 28th February, and the 19th of March, 1923, or failing that to admit that the documents Nos. 21, 23, 24 and 25 in the first schedule of the plaintiff's affidavit on production of January 19, 1928, are respectively true copies of such letters, and that such copies may be treated as originals. We are also prepared to admit that Sir Henry Thornton and Mr. Warren wrote and signed letters of the 2nd of January, 31st January, the 2nd of February, the 20th February, the 10th April,
20 1923, to R. B. Russell or M. H. Davy, and that the copies you have produced as Nos. 16, 18, 20 and 22 in said schedule are true copies of the first four of such letters and that document No. 17 in said schedule is the letter of the 10th of April, 1923. We are also prepared to admit that Sir Henry Thornton was president of the defendant and Mr. Warren was General Manager of its Western Division at the dates covered by these letters."

This was drawn at the time I was making application for commission to take Sir Henry Thornton's evidence in Toronto. My learned friends then say: "So far as we can see this is all that
30 Sir Henry Thornton or Mr. Warren could prove in respect of these letters and we trust it will be satisfactory for your purpose. We do not admit that the original letters are evidence in this action and this admission stays and reserves all just acceptance to the admissibility of the documents."

THE COURT: The letter relieved you of any necessity of proving it, but these letters were written by the parties, Sir Henry Thornton and others, and were sent to the addressees. Now, then, you may treat the copies as though they were originals and their mailing and receipt have been duly proven.

40 MR. McMURRAY: Now, we offer the original letter. There is a constructive interpretation of this agreement which appar-

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ently is ambiguous in its interpretation, to assist the court in that interpretation. It showed away back in 1923 how Sir Henry Thornton—

THE COURT: That is a motive. But on what evidential ground do you tender this document as evidence.

MR. McMURRAY: On this, my lord, that it is the way in which the highest executive of the Canadian National Railway, one of the parties to this action, treated it.

THE COURT: That is a second stage. How do you get it in, on what ground? 10

MR. McMURRAY: On the ground that it is evidence of how they interpreted it.

THE COURT: It so happens in the course of a trial that it is most excellent evidence if it is only in. The point is how do you get this in?

MR. McMURRAY: Because Young was familiar with this letter, and continued his service with the company.

THE COURT: How does that put the letter in?

MR. McMURRAY: The whole question we are fighting here is the interpretation of this contract. 20

THE COURT: No, what we are dealing with at this moment is whether or not you can get the letter in. On what ground do you propose to put it in? I don't see any.

MR. McMURRAY: Simply on the ground—

THE COURT: That it might be useful.

MR. McMURRAY: That it is evidence in the case.

THE COURT: It is not in the case yet.

MR. McMURRAY: That it explained in what way the company proposed to treat Young while he was in their service.

THE COURT: If that is your principle there is no necessity 30

for rules of evidence. Just gather together anything you like and say it is useful and bring it in. You must bring it in under the rule.

MR. McMURRAY: I have tried to make it clear my interpretation of the rule. At any rate, I tender it to you.

THE COURT: That is what?

MR. McMURRAY: Exhibit "E" for Identification.

THE COURT: I cannot admit it. May I ask what is the reason this wasn't brought in with the other letters?

10 MR. LAIRD: It was argued.

MR. BERGMAN: It was not put in because you gave a narrow interpretation to Mr. Laird's letter, that we have not actually shown that it was mailed and received by the party to whom it was sent. I take it your lordship now takes the interpretation we put on the letter that the writing of it and the mailing of the letter was proved.

THE COURT: Oh, yes, I remember. The others came into the box and said "I received the original of this letter." The defence admits this is a copy. This is a letter to Russell.

20 MR. BERGMAN: Yes, and the witness Young showed that he saw it in Russell's possession.

THE COURT: I think probably Mr. Russell is the proper person to have told how he received that.

MR. BERGMAN: We submit that we have laid the foundation for its admission if Mr. Young saw it in Mr. Russell's possession.

THE COURT: I won't admit it.

MR. McMURRAY: That is the case for the plaintiff.

THE COURT: There was some reserved ruling on the de
30 bene esse evidence.

MR. LAIRD: So far as we are concerned the question was

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as to the cross-examination of the witness McKenna yesterday, and I think everything else has been disposed of.

THE COURT: I don't think you can enlarge upon the objections that have been made.

MR. LAIRD: May I just refresh your lordship's mind by referring to our rule. Our King's Bench rule under the Order so made is 478: "The Court or judge may, in any cause or matter where it appears necessary for the purposes of justice, make any order for the examination upon oath before an officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to the cause or matter to give such deposition in evidence therein, upon such terms, if any, as the court or judge may direct." I don't know that the learned Referee's order for this was put in.

THE COURT: No, it has not been put in.

MR. LAIRD: It ought to have been put in when my learned friend put in Mr. Dickie's evidence. All I want to say about it is that there is nothing of any terms of using the evidence at all. It is the order of the learned Referee, and it simply orders that Dickie and McKenna should appear before Mr. Ferguson at a certain time, viva voce, under oath, and produce certain books. I may say these men were to be examined in Montreal under commission, and in the meantime there was a convention held here and they had left Montreal. Would your lordship receive at this stage the order of the Referee?

MR. BERGMAN: I don't see what benefit there is in having it in, but I don't see any objection. It is to prove a negative. For example, an order might conceivably make certain restrictions.

30

THE COURT: I will receive it.

(Order of Referee dated 19th day of April, 1928, referred to produced and marked Exhibit 58.)

MR. LAIRD: That is the order. The rule says: "Give such deposition in evidence on such terms as the court or judge may direct." There is no direction of any kind in it.

THE COURT: Then I deal with it as it stands as it is presented to me. Wherever an objection is raised in the transcript of the evidence I may deal with it. I am not permitted to consider any other objections than those recorded.

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MR. LAIRD: That is the next point, there is nothing in that order on that. The next rule I beg to refer to is rule 517, and the subsequent rule. These refer to both commissions and examinations: "Any objection to the validity or regularity of any commission or examinations of any witness or party shall be taken
 10 by way of motion to suppress the commission or examination, and on such motion the court or judge shall make such order for suppressing the same, or returning it to be executed or taken again, or confirming the same, and on such terms as to costs, and otherwise, as may seem just. In the event of no such motion being made not later than one week after said commission has been opened or examination returned, as the case may be, then such examination shall be deemed to have been properly executed, taken and returned and no objection thereto shall afterwards
 20 be allowed to prevail, but nothing herein shall apply to any objection there may be to the admissibility of the evidence contained in such commission or examination, or any part thereof."

Then rule 518 continues, and refers specifically to leading questions. My argument is that where it refers to leading questions, and does not refer to immaterial questions, certain consideration of materiality is open for your lordship. "Where a party is present or represented by counsel at the examination under commission or otherwise such party shall not thereafter be allowed to object to any question put on such examination as leading unless he shall have made the objection at once upon the question
 30 having been put. In no case shall any objection to a question put upon examination under commission or otherwise as leading be taken, except upon motion made in the manner and within the time specified in the last preceding rule for objecting to the validity of commission or examination, and the objection shall only be allowed if it shall seem to the court or judge that the form and nature of the question were likely under the circumstances to prejudice the interests of the party objecting."

So rule 518 is limited solely to leading questions to which objection must be put, and any objection of it being material or not
 40 can be taken before your lordship. I have looked at the text books on the subject, and I find the same rule as ours in Ontario. I have looked at other books, and I do not find any direct authority on the point, and the conclusion appears to be clear that the objections will have to be dealt with by the learned trial judge. This

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Court is not to sit here hours or days to hear evidence that might be taken under an order that the Court considers entirely irrelevant and immaterial.

THE COURT: But that is to the whole book of evidence, but as to specific questions am I not confined to deal with it only if the objection was raised at the hearing?

MR. LAIRD: I don't think so. The rule says that counsel must object to a question as leading, and if he does not he can't object later.

THE COURT: You argue in other respects—

10

MR. LAIRD: He might keep silent.

THE COURT: And the Court could deal with it?

MR. LAIRD: And the Court could deal with it. Now, my lord, in the cross-examination by Mr. McMurray of Mr. McKenna there were objections taken to the cross-examination at question 235 relating to these conventions. "235. Q. I have no objection that. Now, you were present at the Sixth Annual Convention of Division No. 4? Answer: Yes. 236. And you heard the resolutions which were passed there wanting to put a definite interpretation on the word 'employees' or 'employee' where used so as to confine them (those words) strictly to employees who were members of Division No. 4? You heard that read by me to Mr. Dickie? Answer: Yes. MR. LAIRD: I object to your statement, Mr. McMurray. I don't want inaccurate statements made. BY MR. McMURRAY: 237. Q. You heard that resolution at the Convention No. 6 of your organization held March 22 to 27. 'Resolution No. 88—submitted by the Carmen's craft—' MR. LAIRD: I object. BY MR. McMURRAY: 238. Q—with reference to section dealing with the preamble amend to read: 'For the purpose of this agreement the word 'employee' or 'employees' where it may appear, shall mean a 'member' or 'members' of one of the organizations affiliated with Division No. 4.' Do you remember that resolution being brought in? Answer: Since it is in the record I take it for granted it was brought in."

And then questions 239 to 41 to 42 to 43 to 44 to 45 down to 249, they all relate to the proceedings at the convention, what is called the Sixth convention. I ask that those questions and answers be struck out.

Then, my lord, at question 258 my learned friend examined on agreement No. 1—or questions 258 to 276, which relate to 40

agreement No. 1. Agreement No. 1 is not before the Court, and I would ask that that group of questions be struck out, that is, they are immaterial on the ground that they refer to a document not before the Court, and are unintelligible. That is, an additional ground to the others. Your lordship has also reserved the objections to the resolutions in the examination of Mr. Dickie in regard to this Convention, and that has been discussed at considerable length before your lordship. I do not think I need to refer to it further.

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10 THE COURT: This group of questions now referred to are somewhat involved.

MR. LAIRD: Yes, the first group has the same. I think the court reporter has a note of the questions I objected to on that ground. I would direct your lordship's attention to the fact that you have reserved your ruling on those.

MR. BERGMAN: I just wish to address myself to the general principle. My submission is that there are two sets of rules under which evidence can be taken outside of the court. One is rule 478 dealing with de bene esse evidence, and the other is 498
20 of the succeeding rules dealing with commission evidence. The evidence in this case of McKenna and Dickie was taken under rule 478, de bene esse evidence, and the fact that my learned friend has not been able to produce any authority to show he is entitled to make any objection that they did not take at the time is pretty clear evidence that no such authority is to be found. Now the evidence of a witness, as I understand the practice, taken de bene esse is just the same as if taken in court with the exception that the trial judge is not there to make a ruling, but counsel
30 may take the objection there, and he is confined to those objections.

THE COURT: But may the trial judge then pass upon the objection raised?

MR. BERGMAN: I think all a counsel can do on the examination is to state his objection; he can't enlarge upon his objection at the trial.

THE COURT: I might go over those and pass upon each one of those objections?

MR. BERGMAN: Yes, and there is nothing to prevent your

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lordship dealing with it any more than evidence that is improper at the trial. Then I come to rule 498, and the rules that follow that, dealing with commission evidence. I call your attention to rule 517, the very rule my learned friend read. When you have any objections to a question as leading he is quite right, on commission evidence you must under rule 518 take it at the time or you are forever barred from raising it, but 517 says, dealing with commission evidence now, "Any objection to the validity or regularity of any commission or examination of any witness or party shall be taken by way of motion to suppress the commission or 10 examination, and on such motion the court or judge shall make such order for suppressing the same, or returning it to be executed or taken again, or confirming the same, and on such terms as to costs and otherwise as may seem just. In the event of no such motion being made not later than one week after said commission has been opened or examination returned, as the case may be, then such commission or examination shall be deemed to have been properly executed, taken, and returned, and no objection thereto shall afterwards be allowed to prevail, but nothing herein shall apply to any objection there may be to the admissibil- 20 ity of the evidence contained in such commission or examination, or any part thereof." You see there is something specific dealing with commission evidence.

MR. LAIRD: Do you contend that 517 is limited to commission?

MR. BERGMAN: Yes.

MR. LAIRD: We differ there.

THE COURT: Do you agree or disagree with the suggestion that I might go over the evidence and strike out those parts, or any parts that have been objected to, and eliminate them from 30 the record?

MR. BERGMAN: I don't think so.

THE COURT: That is the point I want to get, whether I must pass upon the objection.

MR. BERGMAN: The document is put in by my learned friend as an exhibit. You cannot alter the exhibit which is there, but you can rule that that evidence should not have gone in, and that you will not consider it.

THE COURT: Am I going to make a statement of how I pass on all these various objections?

MR. BERGMAN: Your lordship may not find it necessary in arriving at your judgment to pass upon it at all.

THE COURT: Of course, if it comes to embodying it in the judgment, I think it will be fair to say I won't, but it still leaves it.

MR. BERGMAN: I probably did not make myself clear. I don't think there is any doubt that your lordship can draw a line through it, to show you have disallowed those questions, but the
10 exhibit as a whole is in before the court. This is filed as an exhibit now, and must go in in that shape to the higher court if the issue goes to a higher court.

THE COURT: Very well, we will adjourn until tomorrow morning at 10:30.

MR. LAIRD: In connection with the examination of the plaintiff your lordship drew attention to the part that some of it was marked. I have looked at the original and find that the markings were made by the learned Referee when my learned friend and I were arguing as to answering certain questions. I am pre-
20 pared to have them recopied.

THE COURT: I think with the explanation you make it is quite all right.

MR. LAIRD: None of those questions were put in by me, and there is nothing under lined, most of them are ticks.

THE COURT: I saw that afterwards, that it was done by the court and you are not to blame for it.

MR. McMURRAY: There is a similar situation in connection with the examination for discovery of Mr. Tisdale. The copy that I got from your lordship the other day, I left it at my of-
30 fice or my house, I don't know which, but I had another original which was in my learned friend's brief and I made a copy of that and compared it carefully.

THE COURT: If you think any question might arise the original might be attached to the copy and put in, but the other was so badly marked up by counsel I did not think it was a proper document to file. Then the copy that was made I notice that the certificates are not complete.

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MR. McMURRAY: I may have to send it to Minnedosa for Mr. Hand to sign.

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MR. LAIRD: I will waive that.

MR. McMURRAY: Then Mr. Donovan can mark the new copy with the notes he has taken, and with the aid of the duplicate original we have.

(On 31st May, 1928, Mr. Bergman addressed the Court on behalf of the plaintiff, and on the 1st of June, 1928, Mr. Laird argued on behalf of the defendant, followed by Mr. Haffner on behalf of the defendant, and on the 2nd June, 1928, Mr. Berg-10 man replied on behalf of the plaintiff.)

10:30 a.m. November 10, 1928.

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MR. BERGMAN: Since the formal hearing was closed, my lord, I made a motion before your lordship to have exhibits 4, 5 and 6 which your lordship at the close of the plaintiff's case in chief ordered to be struck out restored to the record. The motion was argued before your lordship, and on the conclusion of the argument you made a ruling that these exhibits should be restored to the record. In order to have the record show precisely what took place I thought possibly your lordship might see fit to20 dictate a short statement to be incorporated in the formal record.

THE COURT: It would be probably well to do so in order that the connection may be seen. The exhibits referred to, 4, 5 and 6, were admitted in evidence in the early stages of the trial on the undertaking of counsel that they would be connected up with the plaintiff's period of employment. At the close of the case for the plaintiff I was satisfied from the evidence, and the testimony of the witnesses orally given that no connection had been shown, and therefore I excluded the exhibits on the application of the defendant. Later, however, in looking over the mate-30 rial I discovered several references in subsequent agreements to these very exhibits, which I thought might be of importance to a higher court if the case should ever go that far, and in order that all the evidence might be before any tribunal that might have to review this, I thought it advisable to have these exhibits restored to the record, and I was therefore partially responsible for the motion that you have just referred to. In admitting them back it is quite evident that perhaps the defence would want to cross-examine upon them, as doubtless they would have done had

the documents not been taken from these lists, and the purpose of the meeting this morning is to afford that opportunity to the defence.

MR. LAIRD: With deference to your lordship I beg to request that they be admitted subject to the defendant's objection.

THE COURT: Yes, I will do that; we are free to add that reservation. They will be restored subject to your objection, but subject to the objection it might be advisable for you to put in such evidence to meet them or to cross-examine upon them as you
10 may see fit. I merely emphasize this because the case is one of some magnitude as to material and importance, and it would be a pity if on any possible subsequent review of the case it should be found that some very vital evidence had not been admitted. It is better to have all the facts before the court for their review, and subject to your objection the documents are restored, with your right, Mr. Laird, to meet them as you wish.

MR. LAIRD: Then each document will be given the same number as before, exhibits 4, 5, and 6.

THE COURT: The same number, yes.
20 (Exhibits 4, 5, and 6 restored to the record.)

MR. LAIRD: I wish to call some evidence, and I hope to be very brief.

JAMES WALTER WILKIE, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

Q. Mr. Wilkie, in 1916 where were you living?

A. In Winnipeg.

Q. What were you doing? A. I was a machinist.

Q. Where were you working? A. I was working for the
30 Canadian Northern Railway Company in the Fort Rouge shops.

Q. As a machinist? A. Yes.

Q. I show you a book here which has gone in as exhibit No.

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5, headed "Federated Metal Trades—Agreement with Canadian Northern Railway System Lines West of Port Arthur." Had you anything to do with the negotiation of this document? A. I was present at the negotiations.

Q. You were present at the negotiations? A. Yes.

Q. Between whom? A. Between the officials of the Canadian Northern and the men.

Q. What men? A. Representing the various trades.

Q. How did you happen to be present? A. I was appointed by Fort Garry Lodge 189 to represent them on the negotiations. 10

Q. Fort Garry Lodge No. 189 was a lodge of what?

A. Of machinists.

Q. Working where? A. In Fort Rouge.

Q. Were you a member of that Lodge? A. Yes, sir.

Q. What affiliation had that Lodge? Had it any affiliation with any association or organization?

A. Yes, it was in affiliation, as part of the international association of machinists.

Q. It was a Lodge of the International Association of Machinists? A. Yes. 20

Q. Had you belonged to that Lodge for some time?

A. Yes, sir, I belonged to that Lodge since 1910.

THE COURT: Is the Fort Garry Lodge No. 189 mentioned in the agreement as being represented?

MR. LAIRD: I don't think so; the agreement says, "committee of machinists."

Q. Who appointed you to negotiate the agreement?

A. Machinist Lodge 189.

Q. Where did the appointment take place?

A. At a meeting held in the Trades Hall.

Q. Of the Lodge? A. Of the Lodge.

Q. At the time you were appointed was there any other person appointed along with you to represent the Lodge?

A. Yes, there was one, if I remember right, by the name of T. Hinds.

Q. Who was he appointed by? A. By the same Lodge.

Q. At the same time? A. At the same time.

10 Q. Was he a member of the Lodge? A. Yes, sir.

Q. Where was he working? A. He was working in the round-house.

Q. Do you distinguish the round-house from the shops?

A. Yes.

Q. You were in the shops and he was in the round-house?

A. Yes.

Q. I see on exhibit 5 under the heading of "Machinists, Specialists and Helpers" in addition to your name and Mr. Hinds' name, the name of W. Gibb. Do you know W. Gibb?

20 A. Yes.

Q. Where did he live? A. He lived in Winnipeg.

Q. Did he negotiate in this matter? A. He negotiated—he was known as chairman of the section.

Q. What is the section? A. There was section No. 1, No. 2 and No. 3. The Canadian Northern men were known, I think if I remember right, as No. 2.

Q. And he was chairman of the section of machinists?

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A. Yes.

THE COURT: Make that more specific.

BY MR. LAIRD:

Q. He was chairman of the Canadian Northern section of machinists? A. Yes.

BY THE COURT:

Q. And the other sections might be what?

A. C.P.R. and C.G.R., I think it was at that time.

BY MR. LAIRD: Q. And did Mr. Gibb belong to the International Association of Machinists? A. Yes, sir. 10

Q. Did he belong to your Lodge 189? A. Yes, sir.

Q. And he was chairman of the section? A. Yes.

Q. And then there is a name C. A. McKim?

THE COURT: Would you mind at this stage explaining what the International Association of Machinists is or was?

BY MR. LAIRD:

Q. What was the International Association of Machinists, Mr. Wilkie? A. The International Association of Machinists, as I understand it, was a band of men known as the International Association of Machinists. 20

Q. A union of machinists? A. Yes, a union of machinists.

Q. Is it operating in other countries than Canada?

A. Oh, yes.

Q. Where? A. In America.

Q. In the United States as well as in Canada?

A. Yes.

Q. And you have belonged to that from 1910?

A. Yes.

Q. Is it still carrying on business? A. Yes.

Q. And it is an organization, as you understand it, of machinists to further and protect the interests of their members?

A. Yes.

Q. Did you pay fees to the International Association of Machinists? A. Yes.

Q. Are you still a member? A. No, I am outside of it now.

10 Q. Is the International Association still existing?

A. Yes.

Q. Are you in a position to know that from your work or from your knowledge of it? A. From general observations the International Association of Machinists are still in existence.

Q. I believe you ceased to be a machinist and were promoted to a higher office, and then you dropped out of the labor organization? A. Yes.

MR. LAIRD: Your lordship may allow me to recall that the constitution of this body has gone in on the evidence of other
20 witnesses.

THE COURT: Of what body?

MR. LAIRD: The constitution of the International Association of Machinists.

THE COURT: Anything that is an exhibit you may of course refer to.

MR. LAIRD: Exhibit 35 is the constitution of Grand Lodge, district and local lodge, of the International Association of Machinists.

THE COURT: Perhaps that is not there. If you need it I
30 will send for it.

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MR. LAIRD: I do not think we do.

BY MR. LAIRD:

Q. I asked you about Mr. Gibb. The next name is C. A. Mc-Kim, where did he live? A. He lived in Edmonton.

Q. What was he? A. He was a machinist.

Q. Do you know whom he represented in those negotiations?

A. Yes, the machinists of Edmonton and district.

Q. Was he a member of the International organization?

A. Yes.

Q. The next name there is W. Baillie? A. Yes. 10

Q. Did you meet him in these negotiations? A. Yes.

Q. Do you know where he was from? A. Yes, he was from Saskatoon.

Q. Whom did he represent? A. Machinists.

Q. What machinists? A. The Machinists of Saskatoon, the Canadian Northern.

Q. The Canadian Northern machinists of Saskatoon?

A. Yes.

Q. Do you know who appointed him? A. Yes.

MR. BERGMAN: How would he know? 20

BY THE COURT:

Q. Do you know, that is were you present when he was appointed? A. No, I was not present.

BY MR. LAIRD:

Q. You met him in the negotiations, did you?

A. Yes.

Q. Had you known him previously? A. Yes.

Q. The next name is G. C. Willows, did you know him?

A. Yes, I knew Willows.

Q. Who was he? A. He was a machinist in the Fort Rouge shops.

Q. The same shops as you were in? A. Yes.

Q. What Lodge did he belong to? A. Fort Garry Lodge 189.

10 Q. Whom did he represent in the negotiations?

A. He represented the machinists.

Q. What machinists? A. I think if I remember at that time he was a member of the section.

Q. That is the section you have already referred to?

A. Yes, a member of the executive board.

Q. He was an executive board member of the section of your Lodge 189? A. Of the machinists of Western Canada.

Q. Belonging to that lodge and working for the Canadian Northern Railway? A. Yes.

20 Q. E. J. Booker, did you know him? A. Yes.

Q. Who was he? A. He was a member of the specialists lodge.

Q. That is, you had machinists and then you had another group called specialists? A. Yes.

Q. And then there is a third group called helpers?

A. Yes.

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Q. And Booker represented whom? A. The specialists lodge.

Q. They were in a separate lodge from the ordinary machinists, if I may call them so? A. Yes.

Q. Did the specialists do the same kind of work as the machinists? A. No.

Q. Then Booker represented the specialists lodge?

A. Yes.

Q. And you met him in the negotiations? A. Yes.

Q. L. G. Smith, did you meet him? A. Yes. 10

Q. You knew him? A. Yes.

Q. Whom did he represent? A. He represented the specialists lodge too.

Q. He and Booker represented the same lodge? A. Yes.

Q. Then there is another name W. Preston, whom did he represent? A. He represented the helpers lodge.

Q. That is, the helpers have a separate lodge from the machinists? A. At that time.

Q. At that time?

BY THE COURT: 20

Q. By helpers whom do you mean? A. Machinists' helpers.

BY MR. LAIRD:

Q. They had a separate lodge from your lodge and from the specialists lodge? A. Yes.

Q. Do you know the number of their lodge?

A. I don't remember.

Q. Was it or was it not a lodge of this organization?

A. A lodge in affiliation with them.

Q. One of their lodges, that is, of that body?

A. Yes.

Q. Now, those nine men whose names I have mentioned including your own met whom? A. Met the officials of the Canadian Northern Railway Company.

Q. And had negotiations about the matters covered in this document? A. Yes.

10 THE COURT: Before you leave that document, you have mentioned three lodges, the machinists, specialists and helpers.

MR. LAIRD: Yes.

THE COURT: What was the membership of the machinists, for instance, in the Fort Rouge shops, that is how many of the machinists were included, do you know, or were all the machinists included?

BY MR. LAIRD:

Q. Were all the machinists in the shops members of one or other of the machinists' lodges?

20 A. Every machinist in the lodge was a member of this organization.

Q. THE COURT: That is not quite the question.

A. Every machinist in the shop?

BY THE COURT:

Q. That is, were there to your knowledge non-members?

BY MR. LAIRD:

Q. Were there any machinists, specialists or helpers working in the shops who did not belong to your organization?

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A. No.

Q. That is, it was 100 per cent? A. 100 per cent organized.

Q. And all within the one organization. Later I believe that was changed? A. Yes, that changed.

Q. That changed after 1916? A. Yes.

Q. And supposing I went to work in the Canadian Northern shops and did not belong to your lodge or your international organization in 1916, what would happen or what would take place?

MR. BERGMAN: That is objected to.

Q. Well as a matter of fact, your recollection is that all the 10 machinists did belong to your lodge?

A. Yes, sir, 100 per cent.

Q. And all paid their fees, I suppose? A. Yes.

Q. In case they did not pay their fees, what happened?

A. I don't know of any that did not pay their fees. We used to have a few, but they always came through as a rule.

Q. Those names are under "machinists, specialists and helpers." There are other names under committees of the blacksmiths and helpers?

THE COURT: Would you be much interested in that? 20

MR. LAIRD: No.

Q. These other committees of blacksmiths and boilermakers, did you meet them in the negotiations?

A. Yes.

Q. The agreement was apparently signed for the allied Metal Trades by A. Smith, did you know him?

A. Yes.

Q. What position did A. Smith occupy?

A. He was chairman.

Q. Chairman of what? A. Of the allied trades at that time, the allied metal trades.

Q. Just what does that mean? A. In a case such as this when you go to meet the company in the negotiations at that time we met and we appointed a chairman.

Q. That is, the representatives of the different crafts, for example, the machinists, blacksmiths and boilermakers?

A. Yes, and moulders.

10 Q. They met and they appointed a chairman?

A. Yes.

Q. And Mr. Smith was the chairman? A. Yes.

Q. Where is Mr. Smith now? A. Mr. Smith is dead.

Q. How long has he been dead? A. I would imagine I think about nine months.

BY THE COURT: Mr. Smith was chosen chairman by these committees? A. Yes.

MR. LAIRD: By the committees appointed to negotiate this schedule.

20 BY THE COURT:

Q. I understand you to say that, is that correct?

A. Yes.

MR. LAIRD: Then the allied metal trades that he signed for is simply an alliance or union of those various trades in the shops doing work on metal, I suppose? A. Yes.

Q. I see on the outside it is called "Federated Metal Trades." Is there any difference between allied metal trades and federated metal trades to your knowledge?

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A. No, I don't think so.

Q. Sometimes they were called allied metal trades and other times federated metal trades? A. Yes.

Q. Then you had negotiations and the result of the negotiations you had were put in the agreement and signed on behalf of the company and on behalf of the trades by Mr. Smith?

A. Yes.

Q. And then they were printed in this book form, exhibit 5. Who printed this? A. The Wallingford Press, I think it was.

Q. For whom? A. For the men. 10

Q. That is, for the organizations? A. Yes.

Q. At whose expense was exhibit 5 printed?

A. The organization's.

Q. That is, the machinists and boilermakers and those that took part in the negotiations? A. Yes.

Q. And what would be done with exhibit 5, the copies of it?

A. Well, it was distributed throughout the shops.

Q. To the members of your organizations? A. Yes.

MR. LAIRD: I don't know, my lord, whether or not it is very important but this at the end is headed "Committee for" 20 so and so?

THE COURT: Yes, it has been puzzling to me.

MR. LAIRD: Whether the signatures were signed.

THE COURT: Yes, or what they signed for. The witness might explain that.

BY MR. LAIRD:

Q. Do you know, Mr. Wilkie, whether you, for example, actu-

ally put your signature to the document between the Railway Company and the organization? Did you sign your name?

A. So far as the negotiations were concerned?

Q. Yes? A. No.

Q. Do you know whether Mr. Smith signed?

A. Yes, Mr. Smith signed.

Q. Did anybody else sign on behalf of the men?

A. No

THE COURT: What is the reason these names are inserted?

10 BY MR. LAIRD:

Q. What is the reason these names appear on page 18 of exhibit 5? A. I don't know, I couldn't very well explain that any more than to give the information that these various men negotiated the schedule and were present.

BY THE COURT:

Q. But the original document, of which this purports to be a copy, was signed on behalf of the men by whom?

A. A. Smith.

Q. Any one else? A. No.

20 MR. LAIRD: As a matter of fact, we have the original document here and perhaps it would be well to put it in.

THE COURT: That was a puzzle to me and I could not understand why these names were there.

MR. LAIRD: This was apparently for the purpose of letting the organizations know who was responsible for it and they printed their names.

Q. You knew Mr. Smith personally? A. Yes.

Q. You knew his writing, did you? A. Yes, sir.

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MR. LAIRD: I do not think, my lord, it is for me to put in the document. The witness has explained that he did not sign the original and I will leave it at that.

Q. You continued as a machinist working at your trade for how long? A. From 1910, I think it was until 1921.

Q. In 1921 you were moved up from the actual work of the trade? A. Yes.

Q. Can you tell me whether the blacksmiths or boilermakers had trade organizations as well as the machinists in the shops at that time? A. Yes, sir, they all had organizations. 10

MR. LAIRD: I sent my learned friend copies of some letters I wish to put in. Do you admit them?

MR. BERGMAN: I do not wish to place any technical difficulties in my learned friend's way, but there are certain things I think should be explained, but I am not going to formally object.

BY MR. LAIRD:

Q. You have told me you knew Mr. Smith and knew his writing. Look at this letter of the 8th of March, is that his signature? A. Yes. 20

Q. This is a letter addressed by A. Smith, General Chairman, to Mr. Eager, Assistant Superintendent Rolling Stock, Western Lines, C.N.R.

MR. BERGMAN: The witness has been testifying to 1916. This is 1918.

BY MR. LAIRD:

Q. Were you in the organization of machinists in 1918?

A. Yes.

MR. LAIRD: This reads: "At the recent convention of the Federated Trades on the Canadian Northern Railway—" 30

THE COURT: Is there any objection to the admissibility of this?

MR. BERGMAN: If the witness can explain some things in the letter I have no objection to it going in. There is a reference to the Federated Trades and so on that should be explained. I think technically speaking this is not evidence, but it may throw some light.

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THE COURT: To meet that situation?

MR. BERGMAN: Possibly we can agree on that, what is meant by the reference to Federated Trades.

MR. LAIRD: There is also another letter addressed to the
 10 General Manager Mr. McLeod by Mr. A. Smith.

BY MR. LAIRD:

Q. This is Mr. Smith's letter of March 8th to Mr. H. McLeod, General Manager Western Lines C.N.R.?

A. Yes.

Q. You knew Mr. McLeod? A. Yes.

Q. He was acting as General Manager on the 8th of March to your knowledge? A. Yes.

Q. Do you know Mr. Charles Dickie? A. Yes.

Q. Do you know what position he occupies?

20 A. Just now?

Q. Yes? A. I think he is secretary-treasurer of Division No. 4.

MR. LAIRD: Perhaps you will admit that, Mr. Bergman?

MR. BERGMAN: I do not wish to admit it, but I do not formally object to it.

(Two letters dated March 8, 1918, A. Smith to A. H. Eager and H. McLeod, respectively, produced and marked **Exhibit 59.**)

BY THE COURT:

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Q. Do you know anything about the change in the organization referred to in those letters? A. Yes.

MR. LAIRD: I will ask him some questions with your lordship's permission.

Q. In 1916 this agreement, exhibit 5, is signed for the allied metal trades? A. Yes.

Q. And on the outside of the cover it reads, "Federated Metal Trades." In 1918 it refers to Federated Trades. Can you tell us briefly what changes had taken place in the organization between 1916 and 1918? 10

A. In 1916 this was the schedule that was negotiated, exhibit 5, but in 1918, if my memory serves me right, the first schedule was negotiated under Division No. 4.

Q. Of the American Federation of Labor?

A. Yes.

Q. That is, it came into existence between those times?

A. Yes.

BY THE COURT:

Q. What became then of the old organizations, these lodges you have been telling us about. 20

A. Your lordship, there was a new formation, and instead of negotiating the schedule for East and West, Division No. 4 was instituted whereby they could negotiate the schedules for all Canada.

BY MR. LAIRD:

Q. What became of your organization?

A. Our organization was still in existence, but they ceased to act as far as the negotiating of schedules.

Q. That is, your organization, your machinists' organization? A. Yes. 30

BY THE COURT:

Q. Your lodge? A. Yes.

BY MR. LAIRD:

Q. It continued in existence and functioned?

A. Yes.

Q. But it did not sign schedules with the company?

A. No.

Q. Did your lodge after 1918 appoint or elect any person to have anything to do with the negotiations of schedules? That is, you say schedules were negotiated by Division No. 4, but did your lodge express its views in any way?

A. I can't just recollect just now how that part was done, but I think it was the section chairman of the district lodge No. 2 was appointed, or who represented the machinists on negotiations, that is, so far as Division No. 4 was concerned, but I am hazy on that.

Q. What machinists did he represent?

A. He would represent on Division No. 4 the machinists of Canada from coast to coast on Division No. 4, the machinists in affiliation with the A. F. of L.

Q. That is, the American Federation of Labor?

A. Yes, Division No. 4.

Q. And was your lodge an affiliation with the American Federation of Labor, Division No. 4? A. Yes.

BY THE COURT:

Q. When did it become affiliated? A. I think your lordship, the actual affiliation was in 1918 when Division No. 4 was—I may be a little bit hazy on that too.

MR. BERGMAN: I think you are.

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BY MR. LAIRD:

Q. And then the evidence is Division No. 4 was formed in 1918? This refers to a recent convention of the Federated Trades. Do you know whether you were at that convention, Mr. Wilkie? This was in March, 1918.

MR. BERGMAN: I don't think he should refresh his memory from the letter.

MR. LAIRD: I don't think it is very material whether he was or not.

Q. Between 1916 and 1918 the word "metal" is dropped from this name. It was the Federated Metal Trades in 1916 and in 1918 it is the Federated Trades. Do you recall when that was done or when that change in name took place?

A. I think that change took place when the carmen and the metal trades negotiated their schedule as one.

Q. They negotiated the schedule as one? A. Yes.

Q. That is, at one stage the Metal Trades negotiated a schedule for their members, and the car trades negotiated a separate schedule? A. Yes.

Q. And they later united in their negotiations? 20

A. Yes.

Q. And then later still the American Federation of Labor, Division No. 4, came on the scene? A. Yes.

Q. And once Division No. 4, American Federation of Labor, was formed or organized, what happened to your organization of the federated trades?

A. Well, it became obsolete so far as negotiating schedules were concerned.

Q. The federated trades were representatives, as I understand it, of the various craft organizations in the shops on the Western Lines? A. Yes. 30

Q. While you were in the shops as a machinist who negotiated the schedules after 1918? A. After 1918, Division No. 4.

CROSS-EXAMINATION BY MR. BERGMAN:

Q. Mr. Wilkie, did I understand you to say that in 1916 all the machinists in the Fort Rouge shops belonged to your Fort Garry Lodge No. 189? A. Yes.

Q. No exceptions? A. No exceptions.

Q. If I produce a witness who will state that all of them did not belong, what do you say to that?

10 A. In 1916?

MR. LAIRD: I don't think that is a proper question.

THE COURT: It is a fair question. You may put it in a hypothetical form.

MR. BERGMAN: Yes, I did put it in a hypothetical form because my recollection is not clear.

BY MR. BERGMAN:

Q. I ask you if I produce a witness to say—I am not saying that he did—that all the machinists in the Fort Rouge shops did not belong to the international union in 1916, do you still say
20 they all did?

A. I would be inclined to say he is wrong.

Q. You said something to my learned friend, Mr. Laird, about some of them not paying their dues. Would they be suspended or dropped if they did not?

A. To my recollection I do not ever remember of one being dropped.

Q. But you did not have at that time in the Fort Rouge shops what we call the closed shop? A. It was practically a closed shop so far as the organization is concerned.

30 Q. You know what is meant by closed shop?

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A. Yes.

THE COURT: I don't know that anyone has ever explained that expression in evidence, closed shop?

MR. BERGMAN: I don't think anything turns on it so far as the case is concerned except to try to get this witness to make the admission I am trying to get him to make.

BY MR. BERGMAN:

Q. There was no agreement at that time between the union and the Canadian Northern that no one but a union man should be employed? A. No. 10

Q. So that it was possible at that time for a man to get employment in the Fort Rouge shops, of the Canadian Northern Railway, without being a member of the union?

A. Yes.

Q. In negotiating the wage agreement or schedule, exhibit No. 5, on whose behalf was that negotiated as you understand it?

A. The allied metal trades.

Q. All the men working in the Canadian Northern shops, isn't that right? It was negotiated on behalf of all the men working in the Canadian Northern shops? 20

A. All the crafts.

Q. Were there any men who did not fall under the classification of one or other of these crafts?

A. No.

Q. So in plain English, exhibit No. 5 was negotiated on behalf of all of the employees of the Canadian Northern in the shops? A. Well, yes, it was negotiated under all the employees of the shops, men who were in affiliation with the international association.

Q. There was no such distinction made, Mr. Wilkie. You 30 do not suggest that it was ever suggested in the negotiations or

in the agreement itself, that it did not cover all the men working in the shops?

A. It would be impossible to negotiate a schedule for men outside of the organization because they were all members of the organization.

Q. Weren't you negotiating a schedule that was to govern that shop? A. Yes.

Q. Without any reference to the question of union affiliation or absence of union affiliation?

10 MR. LAIRD: Well, it is what his authority was.

MR. BERGMAN: I think that is a fair question.

Q. Isn't that correct, witness? A. Yes.

Q. You said to my learned friend that Division No. 4 was organized in 1918, and that seems to be borne out by exhibit 59, but you also went on, witness, to say that Division No. 4 was affiliated with the American Federation of Labor from the time of its organization, if I understood your evidence correctly, did you say that?

A. Yes.

20 Q. Isn't it a fact, Mr. Wilkie, that at the time Division No. 4 was organized in 1918 it had a more extensive classification of employees than the American Federation of Labor had on the United States side, and that consequently it wasn't until 1920 that a formal affiliation between Division No. 4 and the American Federation of Labor took place, isn't that correct?

A. I believe it is, yes.

Q. Isn't it a fact that the American Federation of Labor divided employees of this class into six groups?

A. In 19—?

30 MR. LAIRD: In 19 what?

Q. I am not limiting it as to time. But I have particular reference to 1918, and from then on. I won't attempt to tie you down to the number.

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A. I am not just clear on that.

Q. My information is that in 1918 the American Federation of Labor classified employees in this line of work under six different classifications, while the Canadian Division No. 4 divided it into ten different groups, and for that reason affiliation with the American Federation of Labor was refused until that was changed, which was about 1920, isn't that substantially correct?

A. Yes.

Q. Then in 1916 you in conducting the negotiations which led up to exhibit 5 were negotiating as separate unions, were you not? That is, you had your representatives from the machinists' union, and were negotiating on behalf of the different trades?

A. Yes.

Q. You were then negotiating only on behalf of the employees on the Canadian Northern? A. Yes.

Q. In 1918 when this change took place, shown in exhibit 59, you ceased to negotiate at all on behalf of these various unions for any purpose? A. Yes.

Q. And the negotiations took place between all the railways on the one hand, and Division No. 4 on behalf of all the employees on the other?

A. Yes.

MR. LAIRD: He hadn't anything to do with these negotiations, I suppose?

BY THE COURT:

Q. Were you present at the subsequent negotiations you have just spoken of? A. Division No. 4, your lordship?

Q. Yes? A. No.

Q. From what source do you derive your knowledge that Division No. 4 negotiated on behalf of all of the men? A. I was a member of the organization at that time.

Q. Something may turn on that rather vitally. What knowledge have you as to the men for whom Division No. 4 negotiated?

A. When Division No. 4 was formed in 1918 they negotiated all the schedules for all the different crafts in Canada from coast to coast, and being a member of the organization at that time I was fully aware that Division No. 4 had negotiated the schedule.

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BY MR. BERGMAN:

Q. Then, Mr. Wilkie, isn't it a fact that the negotiations from 1918 on were to be comprehensive enough to cover all the men and were in addition to that not confined to any one railway, but included all the employees and all the railways?

MR. LAIRD: I object to that. He is asking him to interpret a written document.

THE COURT: Objection upheld.

MR. BERGMAN: I don't want to ask him to interpret the document, but I just want to get evidence that may be of help to your lordship.

BY MR. BERGMAN:

Q. Prior to 1918 the employees of the different railway companies had their own organization and negotiated with their particular company alone? Isn't that right? That is, the Canadian Northern employees negotiated with the Canadian Northern Railway, the C.P.R. employees with the C.P.R., the Grand Trunk with the Grand Trunk, and so on?

A. Yes.

Q. In 1918 they inaugurated the system of having the negotiations conducted which would lead to an agreement covering, on the same terms, all the employees of all the then railways in Canada?

MR. LAIRD: Objected to.

A. Yes.

RE-EXAMINATION BY MR. LAIRD:

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Q. Mr. Wilkie, in 1918 you were still a member of the organization, of the lodge? A. Yes, sir.

Q. In 1918 were there men in the shops who did not belong to the lodge, do you know? A. In 1918? No, there was none.

Q. To your knowledge had Division No. 4 authority from any non-union machinist to negotiate for him?

MR. BERGMAN: That is objected to, not proper re-examination.

MR. LAIRD: It rises directly out of your question.

BY MR. LAIRD:

10

Q. To your knowledge had Division No. 4 any authority from a non-member of your organization to negotiate for him?

A. No, sir.

Q. If I were working in the shops and did not belong to the international machinists or to your particular lodge, would Division No. 4 have any authority to act for me?

MR. BERGMAN: Objected to, question of law.

THE COURT: Objection upheld.

BY MR. LAIRD:

Q. In these negotiations relating to exhibit 5, where did you, ²⁰ whose name appears as one of the committees, where did you get your authority? A. I got my authority from Fort Garry Lodge 189 to attend the negotiations.

MR. LAIRD: That is all.

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Evidence
Harry
Kempster
Examination

HARRY KEMPSTER, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LAIRD:

Q. You live in Winnipeg, I believe, Mr. Kempster?

A. Yes.

Q. And you occupy an official position with the International Association of Machinists? A. Yes, my official position at the present time is secretary-treasurer of the district lodge No. 2 of the International Association of Machinists.

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(continued)

Q. District 2 covers what? A. District 2 embraces all the railway machinists in the Dominion of Canada.

Q. Who belong to your organization? A. Yes.

Q. And District 1, I suppose, is in the United States?

10 A. In the United States.

Q. So you are secretary-treasurer of the International Association of Machinists really for Canada?

A. Really for Canada insofar as railway membership.

Q. There are machinists who belong working in other work who are outside of your jurisdiction as secretary?

A. Men working in the contract shops are not members of our district.

Q. Do you know Charles Dickie? A. Perfectly well.

20 Q. He is what? A. He is secretary-treasurer of Division No. 4.

Q. Of what? A. Of the American Federation of Labor.

Q. Looking at these letters of 19th of March, 1918, is that Mr. Dickie's signature. A. Yes.

Q. Two of them, one is addressed to Mr. M. H. McLeod, and the other to Mr. A. H. Eager? A. Yes.

Q. It is his signature on both? A. It is his signature on both.

30 (Two letters dated March 19, 1918, from Charles Dickie to M. H. McLeod and A. H. Eager respectively produced and marked Exhibit No. 60.)

RECORD

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(continued)

Q. You have been connected with the organization of machinists in Western Canada for a number of years?

A. Yes.

Q. Going back how long? A. Back to 1903.

Q. At one stage the negotiations or schedules between the Canadian Northern Railway and the machinists were negotiated by a committee appointed by the lodge. Are you familiar with that stage? A. Yes, sir.

Q. And those various crafts working in the locomotive shops appointed committees and they in turn had a general chairman? 10

A. Yes.

Q. You knew Mr. A. Smith? A. Perfectly well.

Q. He was chairman of the committees for a time?

A. Yes.

Q. That was a position at what time, Mr. Kempster?

A. That condition existed for 5 or 6 years prior to 1918.

Q. What was the next stage in the development of these organizations? A. Prior to 1918 the separate craft organizations affiliated themselves together for the purpose of negotiating agreements into what were known as federations. 20

Q. And that is what we find here federated metal trades?

A. Yes.

Q. That is, all the shop crafts? A. Yes.

Q. Working on metal united—

A. Voluntarily federated themselves together.

Q. And sometimes it is called the Federated Metal Trades?

A. Yes.

Q. Then later I see the word "metal" is dropped out and the words "Federated" "Trades" appears?

A. At that time we brought in the Brotherhood of Railway Carmen of America, which embraces carmen and carpenters, and this kind of workers.

Q. Can you tell me when that was? A. In 1917, I think it was on the Canadian Northern.

Q. So the metal trades were united with the carmen, who were really workers in wood? A. Partially in wood and partially in iron.

Q. But they had up to that time separate organizations?

A. Yes.

Q. Then following the organization known as the Federated Trades what was the next step? A. Our next step was a condition due to war conditions practically. We then federated the respective federations. We had federations functioning on each railway. In 1918 due to war conditions we got together and formed what was known as Division No. 4, that is a division of the railway employees' department of the American Federation of Labor. That was in 1918, and from that time they became the negotiating body for all railways in Canada.

Q. That is, up to that time on each railway there was a body of men known as the federated trades?

A. Federated trades.

Q. And then there was one federation to include all the organizations? A. It was practically a federation of federations.

Q. I notice these letters were written by Mr. Dickie from the Labor Temple in Winnipeg. He was here at that time?

A. Mr. Dickie had an office in the Labor Temple from 1918 up to 1924.

Q. And then he moved to Montreal? A. And then he moved to Montreal.

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(continued)

Q. Your International Association of Machinists is affiliated or allied with Division No. 4? A. Yes.

Q. Division No. 4 is simply a kind of federation of various organizations? A. That is correct.

Q. Whom does your organization represent in negotiations?

A. Our organization represents the membership of the International Association of Machinists.

Q. That is, you being secretary-treasurer?

A. Yes.

Q. Prior to 1918 in connection with complaints or grievances in the shops, for example, on the part of a machinist—

MR. BERGMAN: What shops are you speaking of?

Q. Take the Canadian Northern shops, what was the procedure?

MR. BERGMAN: I object to that. This witness has not shown, and I am instructed he does not know, that he has ever been employed by the Canadian Northern. Unless the proper foundation for that evidence is laid I must object to it.

BY MR. LAIRD:

Q. Prior to 1918 this organization that is called the Federated Trades, and which has been referred to, Mr. Kempster, whom did they represent?

A. They represented the shop crafts comprising the machinists, boilermakers, blacksmiths, sheet metal worker, pipe fitters, and carmen.

Q. In what way did they represent them? A. By virtue of them agreeing to affiliate themselves together.

Q. How did they agree? Who agreed for them?

A. They agreed through their respective organizations.

Q. That is, each one of these crafts had its own organization? A. Had its own organization.

Q. Whom did each craft represent or act for?

A. They acted for their membership, the membership of that organization, working at that craft.

Q. In case there was a machinist or a blacksmith working in the shop who was not a member of the machinist or blacksmith organizations, had the organization any authority to act for him?

A. None whatever. We took no consideration whatever of that man.

Q. You took no consideration whatever? A. None what-
10 ever.

MR. LAIRD: That is all.

CROSS-EXAMINATION BY MR. BERGMAN:

Q. When did you first come to Winnipeg?

A. In the year 1900.

Q. I don't mean on a visit, when did you come here to work?

A. I came here finally to live in 1919.

Q. And you have never in your life worked for the Canadian Northern? A. No, sir.

Q. And prior to 1919 you were working for the Canadian
20 Pacific Railway at Revelstoke, B.C.? A. Part of the time, yes.

Q. And away from Winnipeg in any event?

A. I was in Winnipeg on organization work for 15 or 16 years prior to that, practically from—I was closely connected with the organization, from 1903 on.

Q. You never worked for the Canadian Northern Railway?

A. No.

Q. You were not a member of the Canadian Northern federation? A. Indirectly, not directly.

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 (continued).

Q. Mr. Kempster, isn't it a fact that up to 1916 the employees of the different railroads conducted their own negotiations direct with their own railway company?

A. Under the auspices of the organization, yes.

Q. Well, now, forget that for a moment. There were separate negotiations between the Canadian Northern and its employees, and separate negotiations between the Canadian Pacific and their employees, and separate negotiations between the Grand Trunk Pacific and their employees? A. That is correct, with a qualification. 10

Q. And those negotiations would lead to agreements between the railway company concerned and its employees.

A. And members, who they were negotiating for, men who they were negotiating for on their respective railways.

Q. Well, that is quite right. The agreement that was negotiated, for instance, between the Canadian Northern Railway Company and the federated trades would govern all the employees of the Canadian Northern coming within those classifications? A. Not necessarily.

Q. Not necessarily. But what I am getting at, Mr. Kempster, is this: Did you personally have any hand in the negotiations between the Canadian Northern and its employees?

A. Not any direct negotiation, but the organization functioned on all railways. We have a district lodge.

Q. Just answer my answer. You were not present at any of the meetings when negotiations were conducted?

A. No.

Q. You did not represent anybody in those negotiations?

A. No.

Q. And you did not sign any agreement that was arrived at? 30

A. No, not on the C.N.R.

Q. So all your knowledge in connection with that is pure

hearsay? A. No, not pure hearsay. As a matter of fact, I was meeting their committees at the time they were negotiating.

Q. But you were not present at any negotiations?

A. I was not actually in the office, no.

Q. Between the railways and their employees?

A. Not on the C.N.R.

Q. So any knowledge of what took place—

A. Was conveyed from their committee to me.

Q. —would be second hand? A. Yes.

10 MR. BERGMAN: I move, my lord, that the evidence of this witness be stricken from the record. It is all hearsay.

THE COURT: Some of it is not hearsay. It will have to be read in view of the statement he has made. He proved Mr. Dickie's signature.

MR. BERGMAN: That may be too drastic, but I would ask your lordship to weigh it.

THE COURT: I will have to keep that in mind as to the weight of it.

RE-EXAMINATION BY MR. LAIRD:

20 Q. My learned friend asked you a question and you said it was correct with a qualification, do you remember that?

A. Yes.

Q. What was the qualification? A. The qualification is this, while each railway negotiated their own agreement, the presentation was agreed to by the combined membership of the organizations functioning in Canada, that is to say, that the presentation presented to the Canadian Northern was the same presentation that was presented to the C.P.R., and was agreed to by the organization prior to either of them being presented.

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(continued).

Q. Prior to it being presented to the railway company?

A. Yes.

Q. And the organization of machinists, was it or was it not in close touch with the negotiations?

A. In absolute close touch, daily touch.

Q. And whom were you meeting? A. Meeting the committees during the negotiating.

Q. Do you know whether your organization as such met the officials of the railway company?

A. The members of our organization? 10

Q. Yes? A. Certainly we had committees meeting them all the time.

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MR. BERGMAN: Would you just permit one question, my lord?

THE COURT: Yes.

BY MR. BERGMAN:

Q. Isn't it a fact that until these negotiations were undertaken on behalf of all the employees of the various railroads jointly on the one hand, and all the railways jointly on the other, that the other employees on the other railways pretty well had to enter into their negotiations first, and completed them, and that the other employees on the other railroads pretty well had to accept what had been agreed between the C.P.R. and its employees? A. No.

Q. Isn't that substantially correct?

A. No, not substantially correct. I would state that we were negotiating usually at the same time. The C.P.R. might agree and sign up prior to the other people, and it might be vice versa.

Q. Isn't it a fact, Mr. Kempster, that practically speaking the negotiations between the Canadian Pacific Railway Company and its employees were undertaken and concluded first? 30

A. Prior to the others entering?

Q. Yes? A. No, not correct.

Q. Isn't it a fact and recognized as a fact—

MR. LAIRD: I don't know, my lord, where this is going to stop. My learned friend is going to the C.P.R.—

THE WITNESS: My point is that we were negotiating about the same time. We had a committee negotiating with the C.P.R. and a committee negotiating with the Canadian Northern at the same time.

10 BY MR. BERGMAN:

Q. What I am getting it, if I have not made myself plain, is this, that the reason for the change in 1918, when there were joint negotiations on behalf of the employees on the one hand, and all the railroads on the other, was because the employees on railroads other than the C.P.R. felt that the C.P.R. and its employees were pretty well dictating wages and labor conditions in Canada?

A. No, I would not agree to that. I could explain to you the reasons for—

20 THE COURT: We don't need any more explanations about that.

BY MR. BERGMAN:

Q. Mr. Kempster, I see in Mr. Dickie's letter, exhibit 60, there is a reference to a large number of railway companies? A. Yes.

Q The Canadian Northern Railway, the Canadian Pacific Railway, the Canadian Government Railways, the Grand Trunk Pacific, the Temiskaming and Northern Ontario, the Duluth, Winnipeg and Pacific, and so on. Isn't it a fact that the employees on several of the roads mentioned in exhibit 60 were not or-
30 ganized?

A. In 1916?

Q. In 1918? Take the Tamiskaming and Northern Ontario?

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A. I would say that road was practically one hundred per cent organized in 1918.

Q. Would you say that of all the others?

A. The Grand Trunk would be probably the worst organized, but they would have a high percentage of organization, but just what that percentage would be—

THE COURT: What about the Canadian Northern at that time?

A. My information as to the Canadian Northern was that they were practically one hundred per cent organized. 10

BY MR. BERGMAN:

Q. You will go so far as to say that some of the railways mentioned in exhibit 60 were not anywhere near fully organized?

MR. LAIRD: What do you mean by fully organized?

A. It depends on what you mean by anywhere near fully. I would agree that probably on the Grand Trunk there might have been men who were not members of the organization.

Q. That is as far as you will go? A. That is as far as I will go.

Q. You know that is not the case now that they are fully²⁰ organized? A. They are not fully organized since 1919, that is in Winnipeg. All other points practically yes.

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EXAMINED BY MR. LAIRD:

Q. What do you mean by "fully organized"?

A. One hundred per cent organized.

Q. What do you mean by "organized"?

A. Organized into respective craft unions.

Q. That is, in the case of the machinists—

A. They belong to the international association of machinists.

Q. —they belong to your organization? A. Yes.

Q. You mean, if they are organized they are members of your organization so far as the machinists are concerned?

A. Yes.

Q. That is, if I were working in the Grand Trunk, for example, in 1917, and did not belong to your organization, but belonged to another organization, you would not consider me as
10 an organized member, would you?

A. No, probably we would not look upon you as such, but as a matter of fact, that wasn't the situation. They did not belong.

Q. And in using the words "fully organized" you mean what? A. I mean internationally accredited organizations.

MR. LAIRD: That is all.

MR. BERGMAN: I have no evidence, my lord.

Decided March 9, 1929.

No. 33
Reasons for
Judgment of
Dysart, J.

IN THE KING'S BENCH

YOUNG v. CANADIAN NORTHERN RAILWAY COMPANY

20 Dysart, J.

In this action against his former employer, the plaintiff seeks reinstatement into the service from which he was indefinitely suspended; or, in the alternative, damages for wrongful dismissal.

The plaintiff is a machinist by trade, and as such had been employed by the defendant in its railway shops at Fort Rouge, Winnipeg, for several years, when on June 9th, 1927, while so employed, he was notified that his services would "not be required after 5 p.m., June 13th, 1927, on account of reduction of
30 staff." Thus compelled, he discontinued his employment on the

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 (continued).

day appointed, and has never since been restored to the force. His suspension is, for the purposes of this trial at least, considered by both litigants as tantamount to dismissal.

The hiring was arranged on June 9th, 1920. On that day the plaintiff applied in person to the foreman of the defendant's said shops for work as a machinist; reduced his application to writing, on a form supplied for the purpose; presented his credentials, which proved satisfactory; and was told to report for work the following morning. In reply to his direct question, he was informed that he would receive "the going rate" of wages. Nothing more was then said or done.

The written application, which is signed by the plaintiff but not by the defendant, adds nothing material to this statement. The plaintiff accordingly went to work on the following morning, and thereafter continued to work, though not always on full time, until his services were dispensed with, as already mentioned.

At the time this hiring was effected, there were in existence in writing certain rules and regulations embodied in what is called "Wage Agreement No. 4," governing the hours of labor, rates of wages, and general conditions of employment in the defendant's said shops. These were all well known to the shop foremen, who by using the phrase "the going rate," may have indirectly referred to that agreement. But to the plaintiff that phrase could not suggest the agreement, unless he already knew of it. He tells us, not at all convincingly however, that he had seen and read a copy of the agreement before he applied for work; but at an earlier stage in these proceedings, he told a story somewhat different. The probabilities are against his present version. He had just migrated to Winnipeg from England where he had shortly before completed his apprenticeship as a machinist in a private concern, and where no such wage agreement is disclosed in evidence to have been known to him. If, therefore, he had through the kind offices of a Winnipeg friend borrowed a copy of this wage agreement, it is more than likely that he would have looked up the rate of wages clearly set forth therein, and it is difficult to understand either the need of his enquiry as to wages, or his failure upon receiving the reply, to make some reference to the agreement itself. On the whole I have no doubt that he did not learn of that agreement till after he entered defendant's employ.

What, if anything, is to be inferred from this neglect or fail-

ure of these contracting parties to refer to said agreement? For the plaintiff, Mr. Bergman urges as an irresistible inference that if the wage agreement was made for the general management of the shops, it would become a part of the plaintiff's hiring contract, unless expressly **excluded**; for the defendant it is argued with equal confidence, by Mr. Laird, that unless expressly **included**, that agreement could not on any view of it become part of the hiring contract.

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This Wage Agreement No. 4 had (through the Canadian Rail-
 10 way War Board, which represented the defendant and other rail-
 ways in Canada) been negotiated with the defendant by a wide-
 spread labor union known as Division No. 4. It had been in force
 more than six months before the plaintiff hired. The plaintiff
 was not then, and never has been a member of any local union in
 affiliation with Division No. 4. Shortly after entering the de-
 fendant's employ, he joined up with the "One Big Union," and
 has ever since remained an ardent member, and sometimes an
 active official, of that organization. The One Big Union (the
 O.B.U. as it is shortly designated) was, and is, both in principal
 20 and in practice, antagonistic to Division No. 4, whose authority
 or right to negotiate wage agreements on behalf of all the work-
 men, especially non-members of Division No. 4, it has uniformly
 disputed and denied. With that attitude the plaintiff expressly
 associates himself. He scorns the suggestion that Division No. 4
 was in any way his agent or representative in negotiating that
 wage agreement; or, for that matter, any of the other wage
 agreements to which we may have to refer. Notwithstanding
 this repudiation, the plaintiff claims, as he is driven to claim, that
 Wage Agreement No. 4 was made by the defendant for all em-
 30 ployees—considered as a group, a continuing, though changing
 group—in the specified departments, irrespective of what, if any,
 union they belonged to; and that he, as one of the present mem-
 bers of that group, is entitled to the benefit of that agreement.
 This position he claims not only for Wage Agreement No. 4, but
 also for subsequent agreements, as well as for some of the earlier
 agreements.

In his statement of claim he alleges that the defendant hired
 him "as a machinist under the provisions and rules as to working
 conditions, hours of labor, wages to be paid, and provisions for
 40 the length of employment and method of dismissal as set forth
 and contained in Wage Agreement No. 4"; and, further, that
 he worked under the terms and conditions of that wage agree-
 ment and of the supplementals thereto, and of Wage Agreement
 No. 6.

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Wage Agreement No. 6 is nothing more than a consolidated of Wage Agreement No. 4 and the three supplemental agreements thereto, so it may be dismissed from further consideration. The three supplemental agreements just referred to were negotiated with the defendant by said Division No. 4 during the period of plaintiff's employment, but do not materially affect the issues raised herein.

Wage Agreement No. 4 on its title page sets out that it is an agreement made between the Canadian Railway War Board and Division No. 4, "governing rates of pay and rules of 10 service for Locomotive and Car Departments," on certain specified Canadian railroads of which defendant is one. Its opening paragraph states that it is an "Agreement . . . in respect to rates of pay, work hours and conditions of service for employees" in the departments just mentioned. The agreement contains no preamble. It mentions no employee by name. It consists exclusively of Rules—nearly two hundred of them—of which sixty are of general import, the remainder being of special significance to the various crafts concerned. The agreement is executed by the said War Board, through its officials, and by said Division No. 4 20 through its officers. This execution by Division No. 4 is to be noted,—it reads: "For the railway employees' department, Division No. 4, American Federation of Labor." Clearly, therefore, in this execution Division No. 4 did not assume to speak for non-members. Yet the agreement in its opening paragraph states that it was in fact made "for employees" in the two general departments of defendant's service.

In spite of this restrictive execution, counsel for the plaintiff strongly urge that the phrase "for employees" means **for all employees** in the said departments. This contention finds support 30 in many of the Rules. Rule No. 5 fixes the starting time for "each employee"; Rule No. 7 provides that "employees will be paid" for overtime; Rule No. 18 gives preference jobs to "the oldest employee in point of service"; Rule No. 23 stipulates for lighter jobs to "employees who have given long and faithful service"; Rule No. 25 sets the pay-day for "employees"; Rules 27, 28, 29 and 31 set forth Seniority Rights for "employees"; Rules 35 and 36 prescribe the course to be followed by "any employee who believes he has a just grievance"; Rules 37 and 38 declare that "an employee" who has been thirty days in the service shall not be 40 dismissed without an investigation; and Rule 56 provides that "no employee will be required to work under a locomotive or a car" without proper protection. These are general rules, and from them it must appear that there is no limitation of "employees" to those belonging to Division No. 4. Then follow the Spe-

cial Rules applicable to the respective crafts—boilermakers, blacksmiths, sheet metal workers, electrical workers, and carmen. A craftsman in each of these crafts is defined by these special Rules to be “any man who has served . . .” etc. There is no restriction to be found in that language. Then there are Miscellaneous Rules. Rule 183 by providing that, “should either the Canadian Railway War Board or the employees comprising Division No. 4 desire to revise these rules . . .”, suggests very strongly that there may be other employees than those belonging to Division No. 4 who might desire a revision of the Rules or who may be affected by them. These quoted portions of the Rules, in my opinion, lend very strong support to the plaintiff’s interpretation that the phrase “for employees” means for **all** employees.

If, however, any doubt remains as to the true construction of that phrase, the interpretation which the parties themselves placed upon a doubtful agreement may be resorted to: *Brandon v. Ham*, (1909) 19 M.R. 8, at p. 17. There is no doubt that the defendant, on its part, intended that these Working Rules should apply to **all** men in the departments affected. Letters and statements from high officials clearly show that. Moreover, the Rules have, as a matter of fact, been applied to all the craftsmen, at least in a general way. They have been applied almost uniformly to the plaintiff throughout his employment, and until his suspension there was no suggestion that the rules were not to be applied to him on the same footing as to all other employees. Then there is the attitude of Division No. 4 itself. While protesting that it entered into that agreement only for its own members, it displayed at a recent convention a strong feeling that the Agreement should be **expressly restricted** to the members of Division No. 4. The inference is that there was a doubt or fear in the minds of some members of that organization that the agreements did apply to all employees, and should be restricted in its benefits to members of the organization.

Notwithstanding all this, it is to be noted that the defendant did not publish Wage Agreement No. 4, nor in fact any other of the wage agreements. While it had copies printed and distributed among its own shop foremen and other officials for their guidance in dealing with men in these departments, it never distributed copies among the craftsmen, nor posted the agreements in the shops or elsewhere for them, nor in any way sought to bring the agreements to the notice of the men. So far as Division No. 4 was concerned, it had copies printed for its own use and distributed among its own members. It made no pretense of distributing

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agreements among other employees. At the same time, any employee, whether a member or non-member of Division No. 4, could secure a copy of the agreement on application to the defendant. There is nothing to show any effort on the part of the defendant or of Division No. 4 to keep the knowledge of the agreement from any non-member employee or organization.

The provisions of these wage agreements upon which the plaintiff particularly relies in this present action are Rules 27 and 31, which deal with "Seniority Rights." These so-called "rights" are preferences accorded to each employee, proportioned to his 10 respective seniority in the service. The longer in the service, the better his prospects for uninterrupted employment; and, in the case of interruption, the better his chance of taking alternative work; or, if laid off, the better his chance for quick restoration to the forces. The material parts of these two rules are as follows:

"Rule 27: When it becomes necessary to make a reduction in expenses at any point, the force at such point, or in any department or sub-division thereof, shall be reduced by dispensing with employees with less than six months' continuous service in such 20 department or sub-division thereof, after which the hours may be reduced to forty (40) per week before further reduction of forces is made. When the force is reduced seniority as per rule 31 will govern:

"In the restoration of forces, senior men laid off will be given preference of re-employment, if available, within a reasonable time, and shall be returned to their former position if it is to be filled; in reducing the force, the ratio of apprentices will be maintained except as may be otherwise mutually arranged." 30

"Rule 31.—Seniority of employees in each craft covered by this agreement shall be confined to the point at which employed.

"The seniority lists will be open to inspection and copy furnished the Committee."

Rule 27 had already been applied to the defendant's shops generally. At least two stages had been followed in making "a reduction in expenses." We find that when the plaintiff was laid off all men generally had been reduced to forty hours service per week. In the next step which should have been followed for further reduction there was a deviation, a discrimination against 40

the plaintiff. Instead of first suspending the men who were junior to him, the defendant retained those junior and suspended the plaintiff. In all about thirty men were thus retained to all of whom the plaintiff was senior in service. In the subsequent "restoration of forces," several apprentices were promoted into machinist jobs, all of whom were far below the plaintiff in the scale of seniority. Inasmuch as the plaintiff kept only one Seniority List, on which the names of all employees, members and non-members of Division No. 4, were posted, as at the date they respectively entered
 10 the service, it is quite clear that Rules 27 and 31 were violated by the plaintiff's suspension.

That suspension was brought about in this way. The head of the mechanical department, Mr. Eager, requested the shop superintendent "to reduce expenses." The superintendent drew up a list of ten or twelve men whose services he could dispense with. He has told us that the plaintiff was one of the first to occur to him as "a proper man to get rid of." The plaintiff was accordingly given the invidious honor of a place on the list. These names were considered at a conference of four men—the master mechanic and shop superintendent, representing the railway, and
 20 two committee men representing the "shop committees" of the two departments from which the names were drawn. The list was approved without change, and notice of suspension sent out.

The shop superintendent in assigning his reasons for wishing "to get rid of" the plaintiff, states that the plaintiff was never a satisfactory workman; that he was known to be idle and wasteful; that several complaints had been made against him for various shortcomings, and that he was a member of the O. B. U. and was active in trying to frustrate the policies of the defendant. There
 30 is some evidence to support these assigned reasons; but, on the other hand, no demerit marks were ever entered up against the plaintiff in the merit system maintained by the defendant. The transgressions complained of were really not serious, and they were all of long standing; and, I think on the whole, must have been condoned. The grounds suggested could hardly, in my opinion, warrant a dismissal of the plaintiff for cause, and so the defence under this head must fail.

The "shop committees" represented at these conferences are called into being under the Rules of Wage Agreement No. 4, and
 40 supplementals, and are composed not necessarily but actually of none but members of Division No. 4. The committee men who acted for the committees both belonged to Division No. 4, and very little attempt is made to conceal the fact that they were in-

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clined to discriminate in favor of members of Division No. 4, and against the members of the "One Big Union," to which the plaintiff and all or most of the suspended men belong. While officials representing the defendant had good reasons for favoring members of Division No. 4, there is no direct evidence that they exercised any favoritism on that ground in the present instance.

After receiving notice of suspension, the plaintiff tried to get redress under Rules 35 and 36. Rule 35 reads: "Should any employee subject to this agreement believe he has been unjustly dealt with, or that any provision of this agreement has been 10 violated (which he is unable to adjust direct) the case shall be taken to the Foreman, General Foreman, Shop Superintendent or Master Mechanic, each in their respective order, by the local committee or one or more duly authorized members thereof." There are further provisions in the succeeding Rule for carrying the matter still higher up the scale of officials to the highest assigned officials of the defendant and of Division No. 4 "for adjudication or final disposition." The plaintiff applied to the shop foreman to ascertain the ground of his suspension in violation of Seniority Rights, and was by him referred to the Shop Committee. He 20 went to the Shop Committee repeatedly but could get no satisfaction; he applied to several of the proper officials of the defendant but in some instances he was referred back to the Shop Committee and in others was unable to get a hearing. He did, I think, all that he could do under these rules to get redress along the lines therein contemplated, but the local committees, consisting exclusively of members of Division No. 4, displayed neither patience nor impartiality in their attitude towards him. Under these rules, therefore, the plaintiff found himself helpless to get redress, and because of this helplessness, coupled with the fact 30 that he did all that he could do, the defence based upon this failure to get the shop committees to take up his grievance, has little to commend it.

The plaintiff also complains that his dismissal is a violation of Rule 37. This Rule reads: "An employee who has been in the service of the railroad for over thirty days shall not be dismissed for incompetency nor be discharged for any cause without first being given an investigation." And Rule 38 follows with a provision for reinstatement in certain cases. No investigation was had here into the plaintiff's suspension or dismissal; and the 40 reason assigned is that the plaintiff was neither "dismissed" nor "discharged" but only suspended. This excuse is technically correct, but inasmuch as the plaintiff's suspension was for an indefinite time, and his name has been removed from the defendant's

pay roll, it really amounts to a dismissal, and is so treated by both parties. I think, therefore, that Rule 37 was violated, if not in letter at least in spirit.

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In view of the fact that the provisions which were generally applicable to the plaintiff were violated in his dismissal, we must now consider the question of what, if any, redress is plaintiff entitled to. The answer to this question depends upon whether Wage Agreement No. 4 is a contract; and, if so, whether it confers contractual rights upon the plaintiff.

10 The agreement, as must have been noted, is not in the ordinary form of contract. It contains no recitals. It contains no consideration, express or implied. If the plaintiff is correct in his contention, there is no mutuality to the contract, because he would have it that he is at liberty to continue in the employ for life, but is not bound to remain a day. Of course, if the employees work, and while they work, they are entitled to pay, but beyond that, the agreement is claimed to have been made entirely for their benefit, not for their burden.

20 The agreement was intended by the defendant to apply to, and to govern while it remained in force, all defendant's employees in the departments mentioned. The plaintiff was therefore within its purview. But he is not privy to it, and can have no right to call for its enforcement unless some special law gives him that right. He was not privy to it because (1) he was not in any sense represented in the negotiations leading up to it; and (2) he never adopted or ratified it.

30 He can not claim privity through the defendant, because the defendant was on the opposite side of the bargain. He cannot establish privity through Division No. 4, because he never was a member of that organization, never has had any right to look to it to represent him, and never did in fact look to it for that purpose. And Division No. 4, on its part, made no pretension of representing any but its own members, who by its constitution, were "confined to National, International and Brotherhood organizations of railway employees affiliated with the American Federation of Labor" (Sec. 2) employed on "railways in Canada having their greatest mileage north of the International Boundary line." (Sec. 11.)

40 This organization did not assume to make wage agreements binding upon even its own members, much less upon members of other or of no organization. In that same constitution one of the

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aims of the organization is set forth as follows: ***"To bring about a national agreement, as we believe this will mean a more permanent and stable condition, acceptable to employee, employer and general public alike."*** The portions of this quotation which I have here italicized, indicate no more than a purpose of bringing about working conditions which members might accept with reason and benefit to themselves. That statement impliedly negatives any intention to bind either employer or employee by such agreement.

Ratification or adoption of such an agreement might be made¹⁰ by members of Division No. 4 because there was some representative capacity in the Division to speak and act for its members in these negotiations. But on what principle a non-member, a violent anti-member (if I may use such a term) can claim the right to ratify or adopt, I confess I am unable to discover. Whatever may be the effect of the agreement, one thing is clear, that Division No. 4 in negotiating the agreement, never assumed to speak for plaintiff, nor for any class or groups to which he belonged. Consequently the plaintiff is not in a position to ratify. And then there is the outstanding fact that he not only made no attempt²⁰ to ratify, but positively denied authority in Division No. 4 to speak or act for him.

He takes the ground, however, that the wage agreement was made to govern the whole group of employees, considered as a continuing though changing group; and that when he became a member of that living group he became entitled to the benefits of that agreement. In the language of his counsel, Mr. Bergman, "The agreement was made for the job," and fixes the terms upon which the job is to be filled. This claim if effective would extend the agreement to all employees, but because Division No. 4 did³⁰ not at that time include in its membership **all** the employees, the plaintiff in the alternative falls back on some of the earlier wage agreements, particularly Wage Agreement No. 1, which he feels confident was really meant for all employees.

Looking at this Agreement No. 1, we see it was made between the defendant (acting through the same War Board) and the said Division No. 4. It became effective on May 1st, 1918, and was to "remain in effect until terminated by thirty days notice in writing." (Art. 13). This agreement has never been formally terminated by the notice contemplated, and the plaintiff claims that⁴⁰ notwithstanding that it has been superseded in a way by subsequent wage agreements, it has never ceased to be effective. He argues that this agreement was made for all em-

ployees, because Division No. 4 at that time actually represented in its own membership every single machinist and craftsman in the departments affected, and, therefore, the entire group of employees. Unanimity of representation is admitted by the defendant, but again the defendant and Division No. 4 cooperate in showing, both in fact and in law, that the union represented only its own members, **qua** members, and not **qua** employees. They declare that the percentage of members included within the membership is a mere accident of no determinative value in a question of this kind. This argument, I think, should prevail, and, I hold, therefore, that the plaintiff's position as a present member of the defendant's force, performing a given job, can be no stronger under Wage Agreement No. 1 than it is under Wage Agreement No. 4.

All these wage agreements are the fruit of collective bargaining conducted between the representatives of the defendant on the one hand, and the officers of Division No. 4 on the other. Division No. 4 may truly be said to represent its own members in that bargaining. Non-members of Division No. 4 were not represented at all. If they are included within the purview or scope of the agreement, that fact is due to the action of the defendant rather than of Division No. 4. There is no magic in the term "collective bargaining"; so that unless a person can show privity by representation, either authorized or adopted, or by statute, there is no principle that I know of by which he can claim it. We have seen the plaintiff was not privy by representation. No statute confers that benefit upon him; the Industrial Disputes Act, R.S.C. (1927) C. 112, does not pretend to go that far. The Industrial Conditions Act of Manitoba, Consolidated Amendments (1924), Chap. 92, is restricted by Sec. 2 (d) from applying to "railroads operated under the Railway Act of Canada."

Nor can the plaintiff claim that the agreement made by others created any benefit for him which he can force as a trust, because the subject matter of this contract is not property, and is therefore incapable of being the subject of trust.

There is very little English or Canadian authority directly on the points raised by this case.

In *Devonald v. Rosser & Sons* (1906) 2 K.B. 728, the plaintiff "was employed upon the terms of certain rules which were applicable to all departments of defendant's works." One of the rules provided that "No person regularly employed shall quit or be discharged from these works without giving or receiving

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twenty-eight days' notice in writing." The plaintiff was paid by piece-work. The works closed down for want of profitable orders, and thereafter the plaintiff was given twenty-eight days' notice. He sued for damages for breach of the implied covenant of the defendant to supply him with work during the period between the closing down of the works and the expiration of the notice. He succeeded at the trial and the verdict was upheld on appeal. On several points that case is to be compared to and contrasted with the case at bar. The Rules in that case were "posted up in the works" as notice to the employees of the terms 10 under which they were expected to work; here they were neither posted nor published. In that case the defendants did not deny—apparently they admitted—that the Rules did form part of the plaintiff's hiring contract; in this case the defendant strongly denies that the Rules were incorporated in the plaintiff's hiring. Consequently what was a matter of admission in that case, is here the chief bone of contention. In that case the question was whether the Court should imply a covenant in order to give mutuality to an otherwise one-sided bargain; here the question is whether we should imply terms which will destroy mutuality and 20 give the bargain one-sidedness.

In *Caven v. Canadian Pacific Railway* (1924) 3 W.W.R. 33, 725, a railway conductor sued in Alberta for wrongful dismissal. He claimed that an agreement which had been made by a Brotherhood of railway conductors, of which he was a member in good standing, formed part of the terms of his hiring contract, and his claim on this point was admitted by the defendant. One of the terms of that agreement provided for an investigation into any charge of misconduct against conductors. Charges having been laid for some misconduct an investigation was begun in 30 which he took part, but finding the decision adverse he abandoned further proceedings thereunder and resorted to the Courts. The trial judge found in his favor, but this judgment was reversed by the Court of Appeal, and the reversal was sustained by the Judicial Committee of the Privy Council, as reported in 1925, 3 W. W.R., p. 32. The only point of that decision which is really helpful to us is that it concedes that the terms of such an agreement may be embodied into the individual hiring by **admission**. What the Courts would have done in the absence of that admission we have no hint or means of ascertaining. 40

In the United States there are a few decisions almost directly in point. It was held in *West v. Baltimore &c., Rly.* by the Supreme Court of West Virginia, in 1927, 137 S.E.R. 654, that "the rule seems to be that individual members of a labor union are

not bound by contracts between the union and employers, unless such agreements are ratified by the members of the union as individuals, and that in the absence of evidence of such ratification by a member, no rights accrue to him which he can enforce against the employer." This proposition is supported by several American authorities of weight, including 24 Cyc. p. 824. There it laid down that: "A labor union ordinarily has no authority to make a contract with employers of its members in respect to the performance of work and the payment of it. In order to bind the individual members they must expressly assent to the terms of the contract. Such assent will not be implied from the fact that they have knowledge, at the time, of the contract."

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The latter portion of this quotation is, I think, qualified by the case of *Hudson v. Cincinnati &c. Rly.*, a decision of the Supreme Court of Kentucky, in 1913, 154 S.W.R., 47, where it is stated that if the employee "knew and assented to the provisions of the said agreement, or if they were so generally known among enginemen as to justify the presumption that he did know of them, and made no express contract in conflict with any of its provisions, the agreement in question became part of his contract—as if fully incorporated therein."

This suggests that the rules and regulations might constitute a custom or usage; but "a custom cannot be read into a written contract, unless, to use the language of Lord Denham, C.J., in *Reg. v. Stoke-upon-Trent*, (5 Q.B., 303), it is 'so universal that no workman could be supposed to have entered into the service without looking to it as part of the contract,' "per Lord Alverstone, C.J., in *Devonald v. Rosser & Sons*, at p. 741.

Seniority rights are not a custom or usage in the machinist trade in general. In the particular field of railway shops in Canada even if because of their generality or universality they could fairly be said to constitute a custom, the plaintiff, I have found, did not know of them, and so there can be no justification for presuming or supposing that he entered into his hiring having them in mind. What is true of the Rules relating to Seniority Rights, is equally true of all other Rules in those wage agreements.

Several other defences are raised, but these may be disposed of in short compass. It is said that the wage agreements are unenforceable for illegality—the Trade Unions which negotiated them having never been registered under the Trade Unions Act, R.S.C. (1927) c. 202. The want of registration is established. It is also claimed that the plaintiff must fail in this action because of

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maintenance. Beyond doubt this action has been promoted, managed and financed by the One Big Union, in the name of the plaintiff, who is a mere figurehead in it, but who, if he succeeds, is to retain any surplus over and above that required to reimburse the O.B.U. for all advances to him both in respect to wages and costs. It is also urged that the contract of hiring, assuming that plaintiff's contention as to its duration is correct, is for more than a year and should be in writing to be enforceable—see Master & Servants Act, R.S.M., 1913, ch. 124, s. 2. These and other defences are mentioned only to be dismissed from consideration because of the disposition which I make of the case on other grounds already indicated. ¹⁰

The plaintiff has submitted full evidence as to the loss he has suffered through several months of idleness consequent upon his suspension, as well as for his loss of the benefits he expected to accrue to him from continued employment in defendant's service. I refrain from making any present or conditional assessment of damages.

The plaintiff's action is dismissed. The defendant not insisting there will be no order as to costs. 20

(Signed) A. K. DYSART.

I HEREBY CERTIFY that the foregoing pages of typewritten matter, numbered 1 to 1092, both inclusive, contain a true and correct account of the evidence and proceedings taken by me in shorthand at the times and place first above written, and of the judgment subsequently rendered.

(Signed) J. L. DONOVAN,
 Sworn Court Reporter.

IN THE KING'S BENCH

The Honourable Mr. Justice Dysart

Between:

WILLIAM YOUNG,

Plaintiff,

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Defendant.

The 9th day of March, 1929.

10 This action coming on for trial on the 14th, 15th, 16th, 17th, 18th, 28th, 29th, 30th and 31st days of May, and the first and 2nd days of June, the 25th day of October and the 10th day of November, 1928, before this Court at the City of Winnipeg, in the presence of counsel for all parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment and the same coming on this day for judgment;

THIS COURT DOTH ORDER AND ADJUDGE that the action of the plaintiff as against the defendant be and the same is 20 hereby dismissed.

Judgment signed this 10th day of July, 1929.

(Signed) A. J. CHRISTIE,

Dep. Prothonotary.

Entered 11 July, 1929
Judgment and Order
Book 54, Folio 52
"J. A. Buchanan," F.C.

IN THE COURT OF APPEAL

Between:

30

WILLIAM YOUNG,

Appellant (Plaintiff)

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Respondent (Defendant).

TAKE NOTICE that the appellant (Plaintiff) has entered an

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appeal to the Court of Appeal from the decision or judgment of the Honorable Mr. Justice Dysart pronounced herein on the 7th day of June, A.D. 1929, and has this day filed his praecipe on appeal with the Registrar of this Court, a copy of which praecipe is hereunto annexed and herewith served upon you.

FURTHER TAKE NOTICE that upon the said appeal the Court will be asked to reverse and set aside the said decision or judgment of the Honourable Mr. Justice Dysart and to enter judgment in favor of the appellant (Plaintiff) with costs, or to order a new trial of this action, or to make such other or further 10 order as may seem proper on the grounds set out in the praecipe on appeal.

DATED this 14th day of September, A.D. 1929.

McMURRAY & McMURRAY,

Solicitors for the appellant (Plaintiff).

To

MESSRS. MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER &
 HOBKIRK, Solicitors for the respondents (Defendants).

IN THE COURT OF APPEAL

No. 42
 Praecipe of
 Appeal

Between:

20

WILLIAM YOUNG,

Appellant (Plaintiff)

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Respondent (Defendant).

REQUIRED this action to be set down and entered on the list of causes, matters, and proceedings for hearing before the Court of Appeal by way of appeal by the appellant (Plaintiff) from the decision or judgment of the Honorable Mr. Justice Dysart pronounced herein on the 7th day of June, A.D. 1929, and upon the 30 hearing of the said appeal the Court will be asked to reverse and set aside the said decision on judgment and to enter judgment in favor of the appellant (plaintiff) with costs, or to order a new trial of this action, or to make such other or further order as may seem proper, on the following among other grounds, namely:—

1. The said judgment is against law, the evidence and the weight of evidence.
2. The learned trial Judge erred in holding that the plaintiff did not learn of the wage agreement in force in the shops of the defendant until after he had entered the employ of the defendant.
3. The learned trial Judge erred in holding that the wage agreement in force at the time the plaintiff entered the employ of the defendant was not a part of the plaintiff's contract of hiring.
4. The learned trial Judge erred in holding that the plaintiff
10 was an ardent member, and sometimes an active official, of the One Big Union.
5. The learned trial Judge erred in holding that the One Big Union has uniformly disputed and denied the authority or right of Division No. 4 to negotiate wage agreements on behalf of all the workmen, and in holding that with that attitude the plaintiff expressly associates himself.
6. The learned trial Judge erred in holding that the defendant did not publish Wage Agreement No. 4, nor in fact any other of the wage agreements, and in holding that it never distributed
20 copies among the craftsmen, nor posted the agreements in the shops or elsewhere for them, nor in any way sought to bring the agreements to the notice of the men.
7. The learned trial Judge having found that rules 27, 31 and 37 were violated by the dismissal of the plaintiff erred in not holding that the defendant had wrongfully dismissed the plaintiff and that the plaintiff was entitled to the relief claimed for such wrongful dismissal.
8. The learned trial Judge having found that the wage agreement was intended by the defendant to apply to, and to govern
30 while it remained in force, all defendant's employees in the departments mentioned and that the plaintiff was, therefore, within its purview, erred in holding that the plaintiff had no right to call for its enforcement or to invoke its provisions in his favor.
9. The learned trial Judge erred in holding that the plaintiff could not establish privity through Division No. 4, and in holding that Division No. 4 made no pretension of representing any but its own members, and that Division No. 4 in negotiating the agree-

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ment never assume to speak for plaintiff, nor for any class or groups to which he belonged.

10. The learned trial Judge erred in holding (if his judgment is interpreted as holding) that the plaintiff did not at the time of entering into the employ of the defendant know of the existence of seniority rights as prescribed by the wage agreement or agreements in force at the time, or the other rules in those wage agreements, and did not enter into his hiring having them in mind.

11. That the learned trial Judge erred in not holding that on the evidence the plaintiff had proved the allegations contained in 10 his statement of claim and was entitled to the relief claimed for wrongful dismissal.

12. That the learned trial Judge erred in not holding that as part of his contract of employment the plaintiff was entitled to the seniority rights and all the other benefits and privileges set out in the wage agreement or agreements in force during the term of his employment.

13. And on such other grounds as may be disclosed in the evidence and in the material filed.

DATED this 14th day of September, A.D. 1929.

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McMURRAY & McMURRAY,
Solicitors for the Appellant (Plaintiff).

To

THE REGISTRAR OF THE COURT OF APPEAL.

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Reasons for
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Prendergast,
C. J. M.
Fullerton,
J. A.

PRENDERGAST, C. J. M., AGREES WITH
FULLERTON, J. A.

FULLERTON, J. A.

The plaintiff in this action sues for wrongful dismissal from the employment of the defendant and in his claim for relief asks:—

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(a) That an order do issue from this Honourable Court reinstating the plaintiff;

(b) Special damages in the sum of \$120.00;

(c) General damages in the sum of \$50,000.00;

(d) The costs of this action;

(e) That it be declared that the plaintiff was wrongfully deprived of his seniority rights and that his dismissal was in contravention of his agreement of hiring with the company.

The plaintiff is a machinist by trade. On the 9th of June, 1920, he applied to the foreman of the defendant's shops for work as a machinist. After examining his references the foreman told him he could start work the following morning. Plaintiff asked the foreman what wages he was to get and was told that he
10 would get the going rate. Plaintiff went to work the following morning and continued in the employ of the defendant until the 13th of June, 1927, when he was dismissed. During the period of his employment he was paid at a certain rate per hour and received his pay cheque every two weeks.

There was no express contract other than the one outlined above.

The plaintiff says that at the time he entered the employ of the defendant there was in existence a certain agreement known as Wage Agreement No. 4, containing provisions and rules as to
20 working conditions, hours of labor, wages to be paid, length of employment and method of dismissal, all of which were applicable to every employee of the defendant including the present plaintiff. These provisions, the plaintiff contends, were by implication incorporated in and became a part of his contract with the defendant. The plaintiff's whole case therefore depends on whether he can establish that the provisions and rules above referred to form part of a legal and enforceable contract between himself and the defendant. The learned trial Judge has found as a fact, and the evidence supports his finding, that the plaintiff knew nothing
30 of the agreement in question until after he had entered the defendant's employ. There is no evidence that the plaintiff ever assented to or agreed to be bound by the terms of the said agreement after he learned of its existence and moreover he was not a member of Division No. 4 on whose behalf the agreement had been made. Under these circumstances one has difficulty in discovering how a contract by implication can be said to arise.

The so-called Wage Agreement No. 4 purports to have been entered into between the Canadian Railway War Board and Division No. 4, Railway Employees' Department, American Federa-
40 tion of Labor, and was to be effective from the 1st December, 1919. Supplementary agreements were subsequently made and

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the whole embodied in an agreement known as Wage Agreement No. 6, effective December 1st, 1922. The provisions of Agreement No. 4 upon which the plaintiff bases his cause of action are the following:—

Rule 31, which provides for seniority list.

Rule 27, which deals with the procedure to be followed in case it becomes necessary to reduce forces. This in effect provides that in laying off men seniority shall govern and that in the restoration of forces senior men shall be given the preference of re-employment. 10

Rule 37, "An employee who has been in the service of the railroad over thirty days shall not be dismissed for incompetency, nor be discharged for any cause without being given an investigation."

Rules 35 and 36 provide for the redress of grievances by appeal to the officers of the company through committees of the employees.

It appears that when the agreement in question was made the great majority of the defendant's employees belonged to Division No. 4. There were, however, a number of employees belonging to a union known as the One Big Union, and to this Union the plaintiff belonged. 20

While the plaintiff was not a member of the union on behalf of which Wage Agreement No. 4 was negotiated he contends that the rules contained in that agreement were the only rules governing the rates of pay, work hours and conditions of service of machinists in the employ of the defendant, that he worked under these rules and that not only he but the officials of the defendant regarded these rules as applicable to him. Counsel for the plaintiff in the argument before us admitted that Agreement No. 4 was not a legally binding agreement as Division No. 4 was not a legal entity and consequently incapable of making a binding agreement. He also admitted that the alleged agreement when executed did not bind any individual member of Division No. 4. He consequently argued that any employee of the defendant has the same right to invoke the benefit of these rules as a member of Division No. 4. 30

As I understand the plaintiff's contention it is this: I worked under these rules, the defendant always looked upon these rules

as applicable to me, consequently they were incorporated in and became a part of my contract.

Plaintiff relies on the case of *Devonald v. Rosser*, 1906, 2 K.B. 728, and says that he is in the same position as the plaintiff in that case. There the plaintiff had been in the employ of the defendant for thirteen years and admittedly was employed upon the terms of certain printed rules which were posted up at the works. Two only of the rules are set out in the case. By Rule 1, no person regularly employed shall quit or be discharged from
 10 these works without giving or receiving twenty-eight days notice in writing, such notice to be given on the first Monday of any calendar month before 12 o'clock at noon. By Rule 11, "Every workman in the various departments of the works will when required by the manager or agent perform such duties as may be deemed necessary in case of emergency other than the special work he may be engaged in." The plaintiff was paid by piece work at so much per box of 112 tin plates. In July, 1903, the defendant found that, owing to the state of the trade, they could not keep their works running at a profit, and on July 20 they
 20 closed the works. On August 3, 1903, they gave the plaintiff notice under Rule 1 to terminate his employment on August 31st. The action was brought to recover damages for breach of an implied agreement by the defendant to provide him with work during the six weeks between July 20 and August 31. It was assumed in this case that the rules formed part of the plaintiff's contract with the defendant. The point really decided by the Court was that there was an implied undertaking by the defendant to provide the plaintiff with a reasonable amount of work so long as the employment lasted. This case does not help the plaintiff ex-
 30 cept to shew something that is quite obvious, namely, that rules may be laid down by an employer that, if assented to by the employee, will be binding equally upon him and the employer.

In the present case the rules were neither posted up on the defendant's premises nor distributed among the defendant's employees. Copies of the rules were printed by the defendant and distributed among their own officials and it is in evidence that any workman could obtain a copy of the rules on application to the defendant.

There is nothing in the evidence to show that the plaintiff
 40 agreed to work under the conditions fixed by the rules. When his contract of employment was made he did not know of their existence. At what time then can it be said that the rules became a part of his contract? Wage agreements were made from time

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 (continued)

to time between Division No. 4 and the defendant. Which particular agreement governed plaintiff's contract? Can it be said that every time a new wage agreement was made its rules automatically attached to his contract? All these considerations shew how impossible it is, in the absence of evidence of some active assent on plaintiff's part, to spell out for him a contract incorporating any of these rules.

It will be observed in the Devonald case that Rule 1 binds both parties to the contract and that Rule 11 places an obligation upon the employee. A perusal of the rules in the present case shews 10 that in no single instance does the workman bind himself to anything. There is nothing in the rules that binds an employee to work for the defendant a single day or a single hour. All the obligations are upon the defendant. In my view, if a special written contract had been drawn up between the plaintiff and the defendant incorporating all the rules contained in Wage Agreement No. 4, the result would be the creation of a unilateral obligation unenforcible for want of mutuality. The defendant binds itself to employ practically for life any workman who enters its employ while the workman is at liberty to leave at any time. 20

In Jenk's Digent of English Civil Law, at p. 87, under the heading "Formation of Contract," it is said: "There is no contract if it is left to one of the parties to determine the character or amount of the performance due from him."

In Lees v. Whitcomb, 5 Bing. 34, the defendant signed the following agreement: "I hereby agree to remain with Lees for two years from the date hereof, for the purpose of learning the business of a dressmaker." It was held that Lees could not maintain an action against the defendant for leaving his service before the expiration of the two years, as the agreement did not 30 shew any obligation on Lees to teach the defendant and there was, therefore, no consideration.

In Sykes v. Dixon, 9 A. & E. 693, B. signed an agreement to "work for and with S, manufacturer of powder flasks and other articles, at and in such work as he shall order and direct, and no other person whatsoever, from this day henceforth during and until the expiration of twelve months; and so from twelve months end to twelve months end, until I shall give the said S. twelve months notice in writing that I shall quit his service." The agreement was held void for want of mutuality, as S. was not bound to 40 employ B; and, therefore, it was held that S. could not maintain an action against the defendant for harboring B.

In 13 Corpus Juris, at p. 331, it is said: "Mutuality of contract consists in the obligation on each party to do, or permit something to be done, in consideration of the act or promise of the other . . . Mutuality of obligation is an essential element of every enforceable agreement. Mutuality is absent when one only of the contracting parties is bound to perform and the rights of the parties exist at the option of one only."

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What consideration can possibly be suggested in the present case for the promises of the defendant contained in the rules?
10 The usual consideration for such a contract, namely, a promise, is entirely absent in the present case.

If the plaintiff were a member of Division No. 4, I think under the evidence in the present case he would fail. In dealing with a similar agreement in Bancroft v. C.P.R., 30 M.R. 401, at p. 408, I expressed the following view:—"It would be hopeless to urge that an agreement between the Union and the defendant would enable every individual workman to attach the conditions of such an agreement to his own contract of service. The object of the agreement is, of course, to secure uniform working conditions
20 among the men and to provide means for the adjustment of disputes between them and the company and thereby prevent strikes." Nothing that I have heard in this argument has made me change the opinion there expressed. I am satisfied that so-called wage agreements entered into between workmen's unions and employers are never intended by the parties to be legally enforceable agreements. If employers do not live up to the terms of their agreements the workmen may apply for a Board of Investigation under The Industrial Disputes Act and failing a satisfactory adjustment may go on strike, but in my opinion they
30 cannot enforce the terms of such agreement through the Courts.

For the above reasons I would dismiss the appeal with costs.

DENNISTOUN, J.A., AGREES WITH FULLERTON, J.A.

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TRUEMAN, J. A.

This is an appeal by the plaintiff from the judgment of Mr. Justice Dysart ([1929] 38 M.R. 283), who dismissed the action. The plaintiff, who is a machinist, was employed by the defendants at their Fort Rouge shops, Winnipeg, on June 10, 1920, and continued in their service until June 13, 1927, when he was dismissed. He asks for reinstatement and claims both special
40 and general damages. The breach assigned is violation of alleged seniority rights, under which he was entitled to employ-

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ment until all machinists junior to him were let out. It is set up that seniority rights are given to him by certain wage agreements entered into by the company and other railways of Canada through their agent, in the first instance, the Canadian Railway War Board, and later, through the Railway Association of Canada, with the Railway Employees' Department, Division No. 4, American Federation of Labour, acting for certain federated crafts, including machinists. The plaintiff at no time has been a member of a craft union in affiliation with Division No. 4. A few weeks after entering the defendant's service he joined and has since been a member of the O.B.U., a rival trade union. In the alternative, the plaintiff claims seniority rights as a term of his contract with the defendant by implication, and through practice and usage.

Wage Agreement No. 4, made by the War Board for the defendant and other railways with Division No. 4, and effective from December 1, 1919, was in force at the date the plaintiff was hired. No terms of hiring were mentioned by the plaintiff and the shop foreman, who hired him, other than that he would be paid the going rate of wages.

Rule 27 of Agreement No. 4 provides that "When it becomes necessary to make a general reduction in expenses, the force at any point or in any department or sub-division thereof shall be reduced, seniority as per Rule 31 to govern; the men affected to take the rate of the job to which they were assigned.

Five days' notice will be given men before such a general reduction is made and lists will be furnished local committee.

In the restoration of forces, senior men laid off will be given preference of re-employment, if available, within a reasonable time, and shall be returned to their former position if it is to be filled; local committee will be furnished list of men to be restored to service; in reducing force, the ratio of apprentices will be maintained except as may be otherwise mutually arranged."

Rule 29 provides that if men are needed at any other point they will be given preference and transferred at expense of company with privilege of returning to home point when force is increased.

Rule 31 provides, inter alia, that "Seniority of employees in each craft covered by this agreement shall be confined to the

point at which employed," and that "the seniority lists will be open to inspection and copy furnished the committee."

Agreement No. 4 remained in force until December 1, 1922, when it was superseded by Wage Agreement No. 6, made by the Railway Association of Canada for the railways of Canada, including the defendant, with said Division No. 4. Rules 27, 28 and 31 of Agreement No. 4 are continued in the new agreement, rule 27 being amended to read as follows: "When it becomes necessary to make a reduction in expenses at any point, the force at
10 such point, or in any department or sub-division thereof, shall be reduced by dispensing with employees with less than six months' continuous service in such department or sub-division thereof, after which the hours may be reduced to forty (40) per week before further reduction in forces is made. When the force is reduced seniority as per Rule 31 will govern; the men affected to take the rate of the job to which they are assigned.

Forty-eight (48) hours' notice will be given before hours are reduced as provided for in the first paragraph of this rule. If the force is to be further reduced, four days' notice will be given
20 the men affected before reduction is made, and lists will be furnished the local committee.

This does not apply in laying off men who have been temporarily employed to meet special requirements.

In the restoration of forces, senior men laid off will be given preference of re-employment, if available, within a reasonable time, and shall be returned to their former position if it is to be filled; local committee will be furnished list of men to be restored to service; in reducing force the ratio of apprentices will be maintained except as may be otherwise mutually arranged."

30 A seniority list showing date of employment of all shop men, whether affiliated with Division No. 4 or not, is kept by Wedge, shop superintendent, and the local committee (referred to in the agreement) which is composed of members of crafts in affiliation with Division No. 4, has a copy.

Defendant's shops are open; that is, no attention is paid by the defendant in hiring men as to whether or not they are members of a craft or other trade union. Nor at the time of hiring or thereafter is an individual contract made. For upwards of twenty years agreements relating to wages, work hours, condi-

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tions of service, seniority rights, and other matters, have been negotiated by collective bargaining.

At the time the plaintiff was dismissed, with eight or ten others, there were 30 men at least junior to him, who were retained and thereafter continued at work. Notice of his dismissal was given to him by Wedge, shop superintendent, who has authority to hire and dismiss men, whether to reduce force or for other cause. The dismissals followed upon instructions by the management to Wedge to reduce expenses. The notice given by Wedge to the plaintiff states that his "services will not be re-10 quired after June 13, 1927, on account of reduction of staff." The plaintiff remonstrated, pointing out that men junior to him were not being laid off. Wedge replied that it was a matter he (the plaintiff) could take up with the local committee. The plaintiff was then ignorant that his name had been placed on the list for dismissal by Wedge, and later had been passed upon by the local committee. This committee, as has already been remarked, consisted of shop men belonging to craft unions affiliated with Division No. 4. As the plaintiff is an active member of a rival trade organization, it could not have been otherwise than acceptable to 20 the local committee that he should be dismissed instead of an employee in craft communion with them, whose interests they were alone concerned to protect. The plaintiff and other dismissed men, by letter of June 15, 1927, placed their grievance before the local committee with the request that their case be submitted to the officials of the company, a procedure called for by Wage Agreement No. 6. The committee declined to do so, and returned the letter. Appeals for redress and applications for conferences made to Wedge and other officials of the defendant were refused.

The reduced force was subsequently added to by the promo-30 tion of apprentices who were junior to the plaintiff.

Rule 35 of Agreement No. 6 provides that, "Should any employee subject to this agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated (which he is unable to adjust directly) the case shall be taken to the Foreman, General Foreman, Shop Superintendent, or Master Mechanic, each in their respective order, by the local committee or one or more duly authorized members thereof, and a decision will be rendered without any unnecessary delay. 40

If stenographic report of investigation is taken the committee shall be furnished copy.

If the result still be unsatisfactory, the General Committee, or one or more duly authorized members thereof, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application . . .”

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Rule 36 then provides that—

“Should the highest designated railway official or his duly authorized representative and the corresponding representatives of the employees fail to agree, the case shall then be jointly submitted in writing to the Railway Association of Canada and to
10 Division No. 4, Railway Employees Department, American Federation of Labor, for adjudication or final disposition.

Prior to the adjudication or final disposition of grievances by the highest designated authorities as herein provided, and while questions of grievances are pending, there will neither be a shut down by the employer nor a suspension of work by the employees.”

Rule 38 provides that if it is found that an employee has been unjustly discharged or dealt with, he shall be re-instated with
20 full pay for all time lost.

Rule 184 provides that “For the carrying out of this agreement the railways concerned, when acting collectively, will deal only with the duly authorized officers of Division No. 4, Railway Employees’ Department, American Federation of Labour. Grievances or the application or interpretation of the provisions of this agreement will be initially handled between the respective railways and committees of their employees comprising said Division and as herein provided.”

As the plaintiff’s case is that his dismissal violates the senior-
30 ity rights conferred in Agreement No. 6, and has deprived him of the degree of permanent employment thereby assured to a person with his seniority rank, he requires a decision that the agreement extends to employees not in affiliation with Division No. 4. The dismissal of the action followed upon the learned Judge’s conclusion that the plaintiff was outside the agreement, Division No. 4 not being his agent, and that the agreement did not apply to him by implication. With deference, I am unable to concur in this view.

The agreements consist of upwards of two hundred rules,

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covering a large number of matters, such as rates of pay, work hours, and conditions of service for employees in locomotive and car departments, including machinists, boiler-makers, blacksmiths, sheet metal workers, electricians, and carmen. The rules are not designed wholly in the interest of the men but are in many important respects useful, and one can think necessary, for the railways, by reason of standardizing the qualifications of workmen, and defining and adjusting questions which otherwise could be a source of misunderstanding and dispute between the men and the company. It is also apparent that as the railways have 10 open shops there could be nothing but discord and confusion instead of system and efficiency if the rules were confined in their application to a section of the men, or those in affiliation with Division No. 4. If this were their construction the defendant's policy of an open shop would soon have nothing but a theoretical existence. While Division No. 4 in negotiating Agreement No. 6 could speak only for its members, the railways required that the rules should apply to all employees, and the agreements are so drawn. Throughout the rules the reference is to "employees."

While the rules are expressed to be an agreement and establish a contractual relationship of a quasi or qualified kind between the railways and Division No. 4, the railways treat them, as they must, as the terms of contract upon which workmen are employed. I therefore cannot take the view that the plaintiff is a stranger to the agreement and that there is no mutuality of consideration. High officials of the defendant, in their evidence, freely admitted—no other position could have been taken or defended by them—that the rules apply to all employees. They also stated that in employing men the defendant does not consider or care whether they are trade union men or not, or what affiliations they have, if any. The seniority list kept by Wedge, Shop Superintendent, is of all employees. The four days' notice of dismissal given by him to the plaintiff complied with Rule 27. On the plaintiff complaining to him that the dismissal violated his seniority rights he directed him, as has been noticed, to take his grievance to the local committee—a step required by Rule 35, if redress was to be sought. The agreements were printed by both the Railway Association and Division No. 4 in booklet form and were freely distributed, and could readily be obtained by employees. Employees were familiar with their contents and acquainted with their rights and duties under them. The plaintiff had a copy either at the time he was hired or soon afterwards. 30 40

The learned Judge says: "The agreement was intended by the defendant to apply to, and to govern while it remained in

force, all defendant's employees in the departments mentioned. The plaintiff was therefore within its purview. But he is not privy to it, and can have no right to call for its enforcement unless some special law gives him that right."

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I have tried to express the contrary opinion. Collective bargaining for shop employees whether by a shop committee or by a committee representing craft organizations, long since took the place of individual contracting. As a craftsman and trade unionist, the plaintiff knew he could not ask for an individual agree-
10 ment in the terms of the rules. Had he asked Wedge what rules he was to work under, there can be no doubt he would have been referred to the rules in question. Neither he nor Wedge nor anybody else in authority would have thought for a moment that unless the plaintiff took this precaution he could not avail himself of or would not be subject to the rules. In *Devonald v. Rosser & Sons* (1906), 2 K.B. 728, certain printed rules containing terms of employment posted up in the works were enforced at the instance of a workman.

The plaintiff having, in my opinion, seniority rights which his
20 dismissal deprived him of, I come to the question whether a remedy by law is open to him.

Rule 35, already quoted, provides that should an employee subject to the agreement believe he has been unjustly dealt with, or that any of its provisions have been violated (which he is unable to adjust directly), his case shall be taken by the local committee to the foreman, general foreman, shop superintendent, or master mechanic, in order. If the result is unsatisfactory the general committee is given the right of appeal to higher officials designated to handle such matters in their respective order. Rule 36
30 provides that should the highest designated official and the representatives of the employees fail to agree, the case shall be jointly submitted to the Railway Association and Division No. 4, for adjudication or final disposition. By Rule 184, it is declared that grievances or the application or interpretation of the provisions of the agreement will be initially handled by the railway and committee of employees comprising Division No. 4.

The plaintiff is bound by these rules, though by them he put himself in the hands of an unfriendly committee. In the event, the rules proved useless to him as the local committee declined to
40 take up his case; presumably because of his connection with a rival trade union—a result probably foreseen by Wedge when he put plaintiff's name on the dismissal list. It may be that his

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rights are so plain and the bias of the committee so evident that he has a cause of action against them, if a legal duty to aid him could be held to exist. But he cannot dissociate himself from the committee and step outside the rules to deal with the defendant either independently or by action. Had the committee pressed his case it is altogether probable that his rights would have been restored. The committee, by the rules, are his agents, to whom exclusive control of proceedings on his behalf for relief is given. The principle upon which courts act in giving redress to a member of a trade association from the decision of a domestic committee or other tribunal constituted under the rules of the association arrived at in bad faith or contrary to obligations of natural justice, can have no application here. See *MacLean v. The Workers' Union* (1929), 1 Ch. 602; *Drennan v. Associated Iron-moulders of Scotland* (1921), S.C. 151; *Local No. 7 of Bricklayers' etc., Union v. Bowen* (1922), 278 Fed. 271.

There is a further view of these rules. Seniority rights, unlike the majority of matters covered by the agreement, affect the individual alone, and if he is wrongfully deprived of them, it would seem the Courts should be open to him, if the intermediate proceedings have resulted in a miscarriage of justice. Whether the agreement excludes this protection it is not necessary now to consider. The agreement is open to the view that it does not fix the parties with legal liability if a breach takes place but makes negotiation, ending, if need be, in final adjudication by the Railway Association and Division No. 4, the sole remedy. What is certain is that if the plaintiff has a remedy at law it cannot be invoked until the steps provided in the rules are exhausted. In *Caven v. Canadian Pacific Railway Co.* (1925), 3 W.W.R. 32, a railway conductor was dismissed following an investigation provided for in a union agreement between the railway company and its conductors and various other employees, which regulated their contracts of service. The investigation was conducted by an official of the company, and was attended by the conductor, who was assisted in stating his case by a member of the grievance committee of the union. The charges preferred against the conductor were upheld by the official. Under the agreement "if accused is not satisfied with the decision he will be given an opportunity of reviewing the evidence and may appeal through his representatives to the higher officials." He did not take this course, but brought an action for wrongful dismissal. The Judicial Committee held, dismissing his appeal from the Supreme Court of Alberta (1924) 3 W.W.R. 725, that the agreement was a binding contract between the plaintiff and the

company, and that as the investigation had been conducted with justice and propriety, there was no cause of action. In the judgment of the Judicial Committee, Lord Shaw says (p. 41): "The appellant, in fact, pleads that the agreement bound both parties, but that the respondents failed to obey its conditions by having a proper enquiry, and, in his own language, that the condition precedent to the right of dismissal had, therefore, not arisen. This is quite a correct statement of how the position stands, and had the conventional investigation been successfully attacked, then
10 a judicial investigation on the issue of wrongful dismissal might naturally follow."

I would dismiss the appeal with costs.

ROBSON, J. A.

In this case the plaintiff sets up that in June, 1920, defendant employed him as a machinist under the provisions and rules as to working conditions, hours of labour, wages to be paid and provisions for length of employment and method of dismissal set forth in what is called "Wage Agreement No. 4" made between the Canadian Railway War Board and Division No. 4, Railway
20 Employees Department; that the terms of that agreement constituted a part of the contract of hiring of the plaintiff by the defendant; that wage agreement No. 6 made between the defendant and said Division No. 4 came into effect on 1st December, 1922, and superseded Wage Agreement No. 4 and its supplementals and likewise was part of the plaintiff's contract; until the plaintiff was dismissed in June 1927; that the plaintiff worked under the provisions and rules as to hours of labour, working conditions and other terms of said Wage Agreement No. 6 and supplementals thereto and was bound by and conformed to said
30 Wage Agreement No. 6 and supplementals thereto; that these agreements provided for seniority in each craft and that in case of reduction of staff preference of employment was to be given to men who had been longest employed; that rules 27 and 31 of Wage Agreement No. 6 provided, inter alia, as follows:

40 Rule 27. "When it becomes necessary to make a reduction in expenses at any point, the force at such point, or in any department or subdivision thereof, shall be reduced by dispensing with employees with less than six months' continuous service in such department or subdivision thereof, after which the hours may be reduced to forty (40) per week before further reduction in forces is made. When the force is re-

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duced seniority as per rule 31 will govern; the men affected to take the rate of the job to which they are assigned;”

that rule 31 provided, inter alia, as follows:

Rule 31. “Seniority of employees in each craft covered by this agreement shall be confined to the point at which employed.

“Subdivisions of the carmen for seniority shall be as follows: Patternmakers, Upholsterers, Painters, Other Carmen.

“If, on account of falling off in work of a particular class, 10 on which ‘other carmen’ are engaged, it is necessary to displace them, they will, according to seniority, have the right to displace carmen junior to them performing other classes of work, if qualified to perform it, at the rate paid for such work.

“The seniority lists will be open to inspection and copy furnished the committee.

“NOTE:—When it becomes necessary to make a reduction in expenses as provided for in Rule 27, employees in any craft may, under this rule, exercise their seniority in any position 20 belonging to their craft, in shops, roundhouses, or train yards under the jurisdiction of the same general foreman or shop superintendent or other officials having like jurisdiction, provided that the exercise of seniority on a staff comprising both back shop and running work by change from one class of work to the other shall be conditional upon qualifications for the performance of the work in any individual case. If, however, an employee, from this or any other cause is transferred from one shop, roundhouse, or train yard to another in the same terminal, he will retain his original se-30 niority in the terminal in which employed;”

that on June 9, 1927, the defendant in violation of its contract of hiring of the plaintiff and contrary to the provisions of said Wage Agreement and supplementals, gave plaintiff notice of dismissal and thereby broke its contract with plaintiff; that at the time of the dismissal of the plaintiff there were many employees in the Craft to which plaintiff belonged who were junior to the plaintiff and who were employed by the defendant subsequent to

June 10, 1920. The plaintiff also sets up that Rule 35 of the Wage Agreement No. 6 provided, inter alia, as follows:

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10 Rule 35. Should any employee subject to this agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated (which he is unable to adjust directly) the case shall be taken to the Foreman, General Foreman, Shop Superintendent, or Master Mechanic, each in their respective order, by the local committee or one or more duly authorized members thereof, and a decision will be rendered without any unnecessary delay.

“If a stenographic report of investigation is taken the committee shall be furnished a copy.

“If the result still be unsatisfactory, the General Committee, or one or more duly authorized members thereof, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application.”

20 The plaintiff says that he acted upon this rule and immediately after dismissal applied directly to the officials of the defendant designated therein to be heard on the ground that he had been unjustly dealt with and that the provisions of the agreement had been violated by his improper dismissal; that said designated officials refused to hear the plaintiff; that the plaintiff then applied to the Local Committee to take his case to the officials designated in the rule and the Local Committee refused; that the plaintiff then, as provided in Agreement No. 6, applied to the General Committee to take such action as is set forth in said agreement for him and on his behalf but the General Committee refused to
30 act for him as provided for by the rules of Wage Agreement No. 6 and supplementals.

The plaintiff says that the defendant has considered grievances of employees and violations of contract solely through representatives and Committee of Division No. 4 and has refused to meet Committees of other employees on such subjects; that the plaintiff is not a member of Division No. 4 but has endeavored to comply with the terms of Wage Agreement No. 6 and supplementals by applying directly to the officials of the defendant and by securing the assistance of the Committee as provided for in

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Rule 35 and has been refused to be heard by the officials of the defendant and that the Committee to whom he applied refused to assist him; that officials of Division No. 4 arranged and agreed with the defendant and certain of its officials for dismissal of plaintiff in breach of said Wage Agreement No. 6 and supplementals. The plaintiff alleges great financial loss from the matters complained of. The plaintiff further alleges that from the time of his employment there were shop rules of the character described including one for seniority rights which became part of his contract; that agreements 4 and 6 applied to all machinists¹⁰ whether members of Division No. 4 or not. The plaintiff emphasizes agreements 4 and 6 as applying to him at the time of dismissal, and it is clear that it is with those that we are concerned.

It is evident that the plaintiff is setting up a contract of hiring entirely different from the ordinary contract for work and labor. The plaintiff's allegation in effect is that the defendant by binding contract gave up an employer's ordinary privilege of changing his servants and restricted its field of selection primarily to persons, in the particular craft, who had already attained certain priority of time in its service. 20

The plaintiff then puts his case on the basis that as the prescribed internal method of adjustment of grievances was not effective to secure his seniority status he has a cause of action against the Company for damages as if the alleged individual contract for employment according to seniority had been broken by the Company.

The plaintiff asserts rights equal to those of members of Division No. 4. It is in my view not necessary to examine this. I am assuming that the plaintiff is in as good a position as if he had been a member of Division No. 4. 30

The Company in these agreements evidently recognized a system of seniority, subject to practical considerations, to be administered in a specified way. I think it is clear from the very situation of the parties to the agreement and from the nature of the seniority system and the other considerations necessarily involved, such as comparative fitness and eligibility among available employees in a craft, that a practical and internal method of decision had to be adopted. The Company consenting to recognize the seniority system desired by the men could, with reason, require that the prescribed machinery be followed. Employees⁴⁰ who either expressly or impliedly are under such agreements get

the advantage of the efforts of the employees representative agencies thereunder but also are, in my view, bound by the action, or inaction, of those agencies where the result is negative or adverse. Although the plaintiff and his associates were not of Division No. 4, the plaintiff went to some pains to show that he and those associates came under the Wage Agreements. On that assumption the plaintiff was bound as against the defendant by the administration of those agreements carried out in manner provided by them. In the absence of fraud the Courts cannot
 10 inquire into that administration. The situation is analogous to that in *Mozley v. Alston*, 1 Ph. 790; *Lord v. Copper Miners Company*, 2 Ph. 740; *Foss v. Harbottle*, 2 Hare 461, and *Macdougall v. Gardiner*, L.R. 1 C.D. 13; *Cuthbert v. Commercial Travellers Association*, 39 U.C.Q.B. 578, 593.

The plaintiff contends that rule 35 is not exclusive and that he could exercise the alternative of proceeding at law for damages for the disregard of his seniority position. He likens Rule 35 to a permissive arbitration clause. There is a material difference between a cause of action of which the will and judgment
 20 of other persons are by contract to be an essential part and a cause of action complete in itself, but left to be worked out, say, by arbitration proceedings: *Scott v. Avery*, 5 H.L.C. 811, 25 L.J. Ex. 303; *Caven v. C.P.R.*, 95 L.J.P.C. 23, and *Board of Trade v. Cayzer Irvine & Co.*, 96 L.J.K.B. 872, clearly bring out this distinction.

It seems to me that the action could have been disposed of on the above view by objection in point of law to the statement of claim. There was, however, a trial at great length. Various defences were raised, some of them substantial in character, but
 30 I do not consider it necessary to discuss them.

Wage Agreement No. 6 was filed at the trial and shows a clause 36 reading in part as follows:

“Rule 36. Should the highest designated railroad official or his duly authorized representative and the corresponding representatives of the employees fail to agree, the case shall then be jointly submitted in writing to the Railway Association of Canada and to Division No. 4, Railway Employees’ Department, American Federation of Labor, for adjudication or final disposition.”

40 I have, in this opinion, been assuming that there was actually

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a legally recognizable contract for a priority right to employment between the plaintiff and the defendant. To find that there was such a contract would be a matter of difficulty. These Wage Agreements made from time to time seem to me to express a plan of working so as to obtain on the one hand various protective provisions for the men, including seniority status among themselves, and on the other hand to provide for the last possible effort in negotiation before friction between employer and employee should be allowed to reach a condition injurious to the welfare of both. The ultimate resort provided by the agreements is not to the Courts but by representatives of the men to the higher officials of the Company in their order, and then, if necessary, to the general railway and railway labor associations. This fact has, I think, great significance in indicating the character and purpose of the agreements. The agencies of intervention may, in their discretion, decline to take up a supposed grievance even of a member of Division No. 4. I do not think that grievances so discountenanced thereby become legal rights.

I would dismiss the appeal.

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The Honourable the Chief Justice of Manitoba
The Honourable C. P. Fullerton
The Honourable R. M. Dennistoun
The Honourable W. H. Trueman
The Honourable H. A. Robson

Judges of Appeal

Monday the 3rd day of February A.D. 1930

Between:

WILLIAM YOUNG,

Appellant (Plaintiff) 30

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Respondent (Defendant)

(SEAL)

The appeal of the above named Appellant (Plaintiff) from the judgment of the Honourable Mr. Justice Dysart, dated the

10th of July, 1929, dismissing the plaintiff's action, having come on to be heard before this Court on the 13th, 14th and 15th days of January, 1930, in the presence of counsel as well for the appellant (Plaintiff) as for the Respondent (Defendant) whereupon and upon reading the praecipe entering said appeal, the said judgment, the reasons therefore, the pleadings and proceedings in the said action, and the evidence adduced at the trial thereof, and upon hearing what was alleged by counsel aforesaid, this court was pleased to direct that the said appeal should stand
 10 over for judgment and the same coming on this day for judgment;

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 Judgment
 of Court
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 (continued)

THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was dismissed with costs to the respondent (Defendant).

CERTIFIED

"A. J. Christie"

Dep-REGISTRAR OF THE COURT OF APPEAL

Above costs have been taxed and allowed at \$453.05 as per taxing officer's certificate dated March 25th, 1930.

20

"A. J. Christie"

Dep-PROTHONOTARY.

Entered 4 February, 1930, Judgment and order Book 54, Folio 10/230. "Jnon. Gresham," F.C.

**APPLICATION FOR CONDITIONAL LEAVE TO APPEAL
 TO HIS MAJESTY IN COUNCIL.**

No. 45
 Application
 for
 Conditional
 Leave to
 Appeal

22nd February, 1930.

(Not Printed)

RECORD
 In the
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 Appeal
 —
 No. 46
 Reasons for
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 of Court
 of Appeal
 granting leave
 to Appeal to
 His Majesty
 in Council

**REASONS FOR JUDGMENT OF COURT OF APPEAL
 GRANTING CONDITIONAL LEAVE TO APPEAL
 TO HIS MAJESTY IN COUNCIL.**

The judgment of the Court was delivered by

PRENDERGAST, C. J. M.

This is an application by the plaintiff for leave to appeal per saltum to the Judicial Committee of the Privy Council, from the judgment of this Court dismissing his appeal from the dismissal of his action in the Court of King's Bench.

He sues for suspension amounting to dismissal from his employ¹⁰ as machinist in the defendant's yards, and consequent loss of wages and of seniority among his co-employees.

The action is wholly based on an agreement known as "Wage Agreement No. 4," which was negotiated by the Canadian War Board representing the defendants and other railways, with a widespread labor union known as "Division No. 4."

The plaintiff never belonged to Division No. 4, but found employment with the defendants by virtue of their shops being open shops and had been so employed for several years when suspended.

Agreement No. 4 is a body of rules governing hours of labor,²⁰ rates of wages and general conditions of employment in the railway shops.

The rule upon which the plaintiff particularly relies is as follows:

"Rule 27. When it becomes necessary to make a reduction in expenses . . . the force . . . shall be reduced by dispensing with employees with less than six months' continuous service . . .

"In the restoration of forces, senior men laid off will be given preference of re-employment. . ."

Rule 35 provides that should any employee subject to the agree-³⁰ment believe he has been unjustly dealt with, the case shall be taken to the Foreman, etc., by the local committee, which is a committee chosen by the men in the particular shop from among themselves.

The fact is that in this case, the local committee refused to take up the plaintiff's grievance and carry it higher up.

The learned trial Judge dismissed the action on the ground that as the plaintiff never was a member of Division No. 4, he is not privy to the agreement and so cannot claim any seniority or other rights under it.

In this Court, three judges constituting a majority, held that the agreement was unenforceable even by members of Division No. 4, on the ground of want of mutuality, as it imposes no obligation whatsoever upon the men. The two other members of the Court, while agreeing that the appeal be dismissed, did so on the ground that assuming the agreement to be enforceable and available to the plaintiff although he be not a member of Division No. 4, he must adopt it in its entirety and particularly with reference to Rule 35 by virtue of which his grievance was committed to the local committee who refused to carry it further.

Rule 2 of the Rules of the Judicial Committee of the Privy Council with respect to appeals from this Court reads as follows:

“(2) Subject to the provisions of these Rules, an Appeal shall
20 lie—

- (a) as of right, from any final judgment of the Court, where the matter in dispute on the Appeal amounts to or is of the value of £1,000 sterling or upwards, or where the Appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of £1,000 sterling or upwards; and
- (b) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the Appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.”

Besides the further fact that all the railways of Canada, including the two systems that span this vast country from ocean to ocean, are operated under Agreement No. 4, or similar agreements, it does not seem necessary to add anything to the statement of the case and the judgment of our highest Provincial Court that the latter is altogether unenforceable as above set forth, to

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conclude, with respect to the present application, that the matter involved in the proposed appeal is one of great general and public importance, as provided in the same Rule, and ought as such to be submitted to His Majesty in Council for decision.

It is perhaps also a relevant matter of consideration that a similar agreement was considered by their Lordships in *Caven v. C.P.R.*, (1925) 3 W.W.R. p. 32, which was decided upon the admission (p. 33) "that the contract of service . . . was regulated by this agreement."

Objections raised by the defendants on the ground of main-10 tenance and champerty by the labor union to which the plaintiff belongs, may be dismissed without further consideration.

The order of the Court is that the Appellant may have leave to appeal to His Majesty in Council after complying with the following conditions:

(1) That he enter within two months into good and sufficient security to the satisfaction of this Court, in the sum of £500 for the due prosecution of the appeal for which leave is asked, and for the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the said Appellant to pay the Respondent's costs of the appeal, as the case may be;

(2) that he take within three months the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England.

No costs are allowed on the present application.

IN THE COURT OF APPEAL

The Chief Justice of Manitoba,
 Honorable C. P. Fullerton,
 Honorable R. M. Dennistoun,
 Honorable W. H. Trueman,
 Honorable H. A. Robson,

Judges of Appeal.

Friday, the 21st day of March, A.D. 1930.

Between:
 10

WILLIAM YOUNG,

Appellant (Plaintiff),

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Respondent (Defendant).

UPON the application of the above named Appellant (Plaintiff) made to this Court on Monday, the 24th day of February, A.D. 1930, and Monday, the 3rd day of March, A.D. 1930, and upon hearing read the Order-in-Council of His Majesty in Council dated the 28th day of November, A.D. 1910, relating to appeals
 20 from this Honorable Court, and the notice of motion of the above named Appellant (Plaintiff), the affidavit of Edward James McMurray filed herein and his cross-examination thereon, and the pleadings and proceedings in this action, and the judgment, order or decision of this Court dated the 3rd day of February, A.D. 1930, and the affidavit of Donald Leslie Campbell in reply to the said motion, filed, and upon hearing counsel for the Appellant (Plaintiff) as well as for the Respondent (Defendant), this Court was pleased to direct that the said motion should stand
 30 over for judgment, and the same coming on this day for judgment:

1. THIS COURT DOTH ORDER that the above named Appellant (Plaintiff) have leave to appeal to His Majesty in Council from the said judgment, order or decision of this Court dated the 3rd day of February, A.D. 1930.

2. THIS COURT DOTH FURTHER ORDER that the said leave to appeal is granted on the following conditions:

(a) That the above named Appellant do give good and suffi-

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 Granting
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 Leave to
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cient security in the sum of Five Hundred Pounds sterling (£500) for the due prosecution of the said appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondent's costs of the said appeal (as the case may be).

(b) That such security shall be given by depositing with the Registrar of this Court a bond, to be approved of by the said Registrar, in the sum of Five Hundred Pounds sterling (£500),¹⁰ or, in the alternative, by payment of the sum of Five Hundred Pounds sterling (£500), or its equivalent in Canadian money, into Court, within two months from this date.

3. THIS COURT DOTH FURTHER ORDER that the Appellant shall have three months from this date within which to take the necessary steps for the purpose of procuring the preparation of the Record on said appeal and the dispatch thereof to England.

4. AND THIS COURT DOTH FURTHER ORDER that there be no costs of this application to either party.

"A. J. CHRISTIE," 20
 Deputy Registrar.

Seal of
 Court of Appeal
 Manitoba.

IN THE COURT OF APPEAL

The Chief Justice of Manitoba,
Honorable C. P. Fullerton,
Honorable R. M. Dennistoun,
Honorable W. H. Trueman,
Honorable H. A. Robson,

Judges of Appeal

Tuesday, the 13th day of May, A.D. 1930.

Between:

10

WILLIAM YOUNG,

Appellant (Plaintiff),

— and —

CANADIAN NORTHERN RAILWAY COMPANY,

Respondent (Defendant).

UPON the application of the above named Appellant (Plaintiff), upon hearing read the Order-in-Council of His Majesty in Council dated the 28th day of November, A.D. 1910, relating to appeals from this Honorable Court, the notice of motion of the above named Appellant (Plaintiff), the affidavit of Hjalmar
20 August Bergman filed herein, and the order of this Honorable Court made herein on the 21st day of March, A.D. 1930, giving conditional leave to the Appellant (Plaintiff) to appeal from the judgment, order or decision of this Honorable Court dated the 3rd day of February, A.D. 1930, and upon hearing counsel for the Appellant (Plaintiff) as well as for the Respondent (Defendant), and it appearing that since the making of the said order granting such conditional leave to appeal, the Appellant (Plaintiff) has complied with the conditions set out in such order:

1. THIS COURT DOTH ORDER that the above named Appellant (Plaintiff) be and he is hereby granted final leave to appeal
30 to His Majesty in Council from the said judgment, order or decision of this Honorable Court dated the 3rd day of February, A.D. 1930.

2. AND THIS COURT DOTH FURTHER ORDER that there be no costs of this application to either party.

(Signed) A. J. CHRISTIE,

Deputy Registrar.

Seal of
Court of
40 Appeal

RECORD
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Exhibits

PLAINTIFF'S EXHIBIT 5

FEDERATED METAL TRADES

Agreement

with

Canadian Northern Railway System

Lines West of Port Arthur

Mechanical and Electrical Departments

Effective

May 1st, 1916, to April 30th, 1917

10

Canadian Northern Railway System

Lines West of Port Arthur

Mechanical Department

On and after May 1, 1916, the following rules and rates will govern Machinists, Boilermakers, Blacksmiths, Patternmakers, Sheet Metal Workers, Tinsmiths, Coppersmiths and Steam Fitters, Moulders and the Apprentices, Specialists, Helpers of each of the above crafts in all Shops, Roundhouses and Repair Yards. The above will remain in force until May 1, 1917, and from year to year thereafter unless thirty days' notice in writing is given by either party concerned on or before May 1, in any year.

Note—The increase in rates will take effect July 1, 1916, and remain in force for twelve (12) months from that date.

ARTICLE 1.

Clause A.—Regular day hours in Back Shops will be from 7k to 12k and 13k to 17k Monday to Friday inclusive and from 7k to 12k on Saturdays.

Clause B.—Regular Night hours in Back Shops will be from 19k to 24-30k and from 1k to 6k five (5) nights per week, for which eleven and one-half (11½) hours per night will be allowed.

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Clause C.—In Roundhouses and Yards, nine (9) hours will constitute a regular day's work, hours to be worked between 7k and 18k.

Clause D.—Regular Night hours in Roundhouses and Yards shall be from 19k to 24:30k and from 1k to 6k, for which eleven (11) hours will be allowed.

10 **Clause E.**—The Back Shop and Roundhouse at Winnipeg shall be considered separate stations in respect to seniority.

ARTICLE 2

Clause A.—Overtime rates will be paid as follows: From the close of Regular Shop hours to 24k, time and one-half, after 24k, double time. Sundays and the following Dominion Holidays, viz.: New Years' Day, Good Friday, Victoria Day, Dominion Day, Labor Day, Thanksgiving Day and Christmas Day, will be paid at the rate of time and one-half. Should any of the above mentioned Holidays fall upon Sunday, the day observed by the Federal Gov-
20 ernment will be observed. Men will not be laid off during regular working hours to equalize overtime.

Clause B.—Hour between 12k and 13k will be considered overtime.

Clause C.—No call to work overtime will be paid less than five (5) hours unless otherwise specified in this schedule.

Men who, while working, are told to continue work after shop hours, or who are told to come back and work overtime, commencing not over one (1) hour after shop hours, will not be considered to have been called out.

30 **Clause D.**—Night men called during the day will receive the same consideration.

Clause E.—The regular overtime period for Relay and Regular Night Men in connection with Sundays and Specified Holidays commences at 7k on the Sunday or Holiday, and ends twenty-four (24) hours later.

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Clause F.—Where Relay men lay off for any other reason than sickness, and to suit their own convenience, men replacing them will be paid straight time during the first night, but if Relay Men are compelled to lay off as a result of the serious illness of themselves or members of their own family, men replacing them will be paid overtime rates for the first night, providing they have worked during the previous day.

Where men are unable to work on account of illness, they must make every effort possible to advise the Foreman in time, so he can arrange for relief. 10

Clause G.—Men working on Day or Night shift may exchange shifts periodically if they desire to do so, but the Company is not to incur any additional expense thereby, and Foreman to be notified before such changes become effective.

Clause H.—Men who have been in the service six (6) months, may on application, have choice of Day or Night shifts over new men engaged, but the Company shall incur no extra expense through men changing shifts on this account.

ARTICLE 3.

Employees called for wrecks will receive pay from the time²⁰ called for, or from the time of registration. Straight time to be allowed when travelling to or from wrecks except on Sundays and Specified Holidays, and time and one-half when working at wrecks or when in charge of wrecked engines. No time will be allowed when laid up for rest.

ARTICLE 4.

Clause A.—When employees are sent out on the road to work temporarily at points where there is no mechanical supervision, they will be paid shop rates for continuous time, day and night, during first twenty-four (24) hours, less one hour each for four³⁰ (4) meals, and continuous straight time day and night less regular meals hours as above thereafter, except on Sundays and Specified Holidays, when time and one-half will be allowed. **No expenses to be allowed.**

Clause B.—Men sent out to work temporarily at other stations under the supervision of the Foreman will be paid at shop rates while working at such station, and travelling time as per

Clause D. Reasonable expenses while travelling and working during a period not exceeding two weeks will be allowed.

Receipts to be attached to expense vouchers.

Clause C.—When it is necessary to transfer men to other shops they will be allowed travelling time as per Clause D, and reasonable expenses until they arrive at their destination.

Receipts to be attached to expense vouchers.

Clause D.—Travelling time in connection with Clauses B and C to be computed on a basis of straight time for the first nine
10 (9) hours of each twenty-four (24), commencing from the departure of train. On Sundays and Specified Holidays time and one-half will be allowed on the same basis.

Clause E.—Men transferred to other stations at their own request will be given transportation, but will not be paid either travelling time or expenses.

ARTICLE 5.

Clause A.—When reduction of expenses is necessary, the hours will be reduced to at least eight (8) hours per day, five (5)
20 days per week, in Back Shops before men are laid off. When force is reduced, men will be laid off according to their seniority at each station, unless a satisfactory local arrangement is made otherwise.

Clause B.—When force is again increased or vacancies occur, Local Chairman to be informed. Men who have been laid off will be given preference of employment according to their seniority if available.

Men laid off at one point may be transferred to another in preference to hiring new men.

No extra men to be hired until schedule hours are resumed,
30 except in cases of filling vacancies created after reduction of hours has been made. Local Chairman to be given forty-eight (48) hours' notice of any such vacancy.

Clause C.—Employees after thirty (30) days' service at the station employed, shall be considered permanent employees. This shall apply to all crafts with the exception of Steam Fitters employed in the Car Shop, when it shall read:

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“Men who have not been in the service six months shall be laid off before the hours are reduced.”

Clause D.—Whenever possible twenty-four (24) hours' notice of any change in regular working hours will be posted in all Shops, and a list of men to be laid off shall be furnished to Shop Committee, the Company not to incur any additional expense thereby.

ARTICLE 6.

Clause A.—Employees having grievances, either specific or of a general nature, may present the case to the proper officer. If 10 investigation is desired the aggrieved party or Local Committee representing him may, during working hours, arrange with his Foreman for same, investigation to be held within twenty-four (24) hours after such application, and in case a satisfactory adjustment cannot be made, the case may be referred to the next highest officer of the Department until the Manager is approached. If, after investigation, the employee is found to have been unjustly dealt with he will be paid for all time lost.

Clause B.—Leave of absence and free transportation will be granted to Committees to go before the Management, but in case 20 of grievances, application for transportation and a full statement concerning the matter to be discussed must be submitted to the officer in charge of the station at least one week before the meeting is desired.

Clause C.—Employees representing their fellow workmen will not be discriminated against.

ARTICLE 7.

Pay cheques will be issued to men leaving the service at Regina, Kamsack, Swan River, and points East thereof within sixty (60) hours, and points West thereof within ninety-six (96) hours 30 (Sundays and Specified Holidays not included). If cheques are not available, men will be entitled to nine (9) hours for each day they are compelled to wait beyond the above limits.

ARTICLE 8.

Employees will be granted leave of absence and transportation, or reduced rates, in accordance with the Current General

Regulations of the Company, such General Regulations to be posted in each Department.

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ARTICLE 9.

Employees in the service of the Company who have become unable to handle heavy work, may be given the preference of such light work that they may be able to perform.

ARTICLE 10.

Leading hands are those, who, while working themselves also direct and supervise the work of others, and are paid by the hour.

10 They will receive not less than two (2c) per hour above the minimum rate.

Their appointment to be bulletined in the usual manner.

ARTICLE 11.

Employees required to do superior work will be paid at the rate for such superior work for each day so employed, irrespective of whether such superior service is continuous or not, excepting that fractions of days at superior work will not be considered.

ARTICLE 12.

20 All gasoline and oil tank cars shall be thoroughly steamed and allowed to cool before employees are asked to work inside of same.

ARTICLE 13.

Clause A.—Apprentices when engaged must be between the ages of sixteen (16) and twenty-one (21) years, must serve not less than five years, must be able to read and write English, and know the first four rules of arithmetic.

Clause B.—The number of Apprentices shall be one for the Shop and one for every five Machinists, Moulders, Patternmak-
30 ers, and Sheet Metal Workers employed.

Clause C.—The combined number of Apprentices and Advanced Helpers, shall be one for the shop and one for every five

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(5) Boilermakers, Blacksmiths, and Steam Fitters employed.

Clause D.—Apprentices and Advanced Helpers will be instructed as thoroughly as possible in all branches of their trade during their Apprenticeship.

Clause E.—Apprentices will not be required to work overtime except in cases of emergency.

Clause F.—Apprentices out of their time will be paid the minimum rate for Journeymen if retained in the service.

Clause G.—Apprentices who have served one year, and in the opinion of the Shop Foreman, show no aptitude for acquiring their trade, will be transferred or dismissed and all obligations accepted by the Company will of necessity be forfeited.

Clause H.—After two (2) years' continuous service a Blacksmith's or Steam Fitter's Helper may be advanced to an Advanced Helper, provided there is a vacancy, and he shall agree to work for a term of four (4) years, and each year shall receive an advance of two (2c) per hour for the first and second years and three (3c) cents per hour for the third and fourth years, but not to exceed the minimum rate paid to Journeymen.

Clause I.—Approximately one-half of the Apprentices to the Boilermakers' trade may be taken from the ranks of Helpers, applicants to have two (2) years of employment as Boilermaker's Helpers, be able to pass the same Educational examination as ordinary Apprentices and must serve not less than four (4) years Apprenticeship. The senior man employed will be selected if properly qualified. Rates in Clause H. to apply.

Clause J.—After six (6) months' trial should Advanced Helpers prove incompetent, they may be reduced to Helpers.

Clause K.—The seniority of an Apprentice or Advanced Helper who has completed his Apprenticeship, will date from commencement of work as a Journeyman.

Clause L.—It will be compulsory for Roundhouse Apprentices to move to larger Shops for the purpose of acquiring wider experience after three years and are open to make application for such transfer after two years' service providing he is nineteen (19) years of age.

Clause M.—The seniority of Specialists promoted to Boilermakers will date from such promotion, and when reduction of staff is necessary they will be set back at Specialists until additional Boilermakers are required, and in like manner Specialists will be set back to Helpers, and junior Helpers laid off.

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ARTICLE 14.

When no Boilermakers are available or no Boilermakers applying for employment, the Company may promote Specialists to Boilermakers to fill vacancies. Only Specialists having four
10 years' experience as such will be promoted, if available. Seniority to govern such promotions, providing senior men are properly qualified as per Clause K, Article 13.

DEFINITION OF CRAFTS.

Machinists—A.—Men who have served an Apprenticeship, or who have had four (4) years' varied experience in the operation of Lathes, Boring Mill, Planing, Slotting, Milling, Shaping and Tyre Boring Machines, or machine tools, and are capable of fitting up, assembling and repairing the various parts or details of engines or locomotives, Stationary, Marine, or any other kind
20 of machine, or machine tools and vise work generally, shall be designated Machinists.

All work formerly done by Machinists previous to the adoption of Oxy-Acetylene, Thermit or Electric Welding processes, shall be considered Machinist's work.

B. All work appertaining to the Machinist's trade not specified as Specialist's work, including Boring and Facing by the use of Boring Bar and Facing Tool, on Drill Presses shall be done by Machinists or Apprentices.

Tender truck work shall be done by Machinist's Specialists or
30 Machinists in Back Shops and Roundhouses.

C. Helpers will not be advanced to the work of Machinists and when used in connection with Machinists' work, will work under the direction of the Machinist. Improvers will not be employed.

D. Locksmiths and Brass Burnishers will be considered Machinist Specialist's work, Winnipeg Shops only.

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E. The removal of main valves, pistons, crossheads, motion, and the drilling out of frame bolts shall be considered Machinist's work.

Boilermakers—A. Boilermakers and Apprentices shall do all such work as laying out, Marking off, Fitting up, Flanging, Chipping, Caulking, Rivetting, Patching, Cutting Apart, Front End Work, Operating Hydraulic and Air Pressure Rivetting Machines and Rolls, and all work pertaining to Air, Steam, Oil and Water Tight work on Locomotives and Stationary Boilers, or any other work which in the opinion of the Foreman may require Boilermakers. None other than Boilermakers will do the above work except as specified in the schedule. 10

B. Tube work will be done by Boilermakers and Helpers, working together, the Boilermaker to work upon the tubes at one end at the same time that the Helper is working upon the tubes at the other end, excepting when it is necessary for them both to work together owing to the nature of the operation.

C. Ash Pan Men may be employed to do all Ash Pan and Grate work in Back Shops. Specialists may be employed in all Back Shops to drill out stay bolts and radial stays, tap out stay bolt holes and screw in stay bolts, and tap crown stay holes where the diameter in each sheet is equal, also cut off stay bolts when a Clipper is used for the purpose. 20

D. All work pertaining to the Boilermakers and done by them previous to the adoption of Oxy-Acetylene or Electric Welding Processes shall be considered Boilermaker's work.

E. Boilermakers have no claim whatever upon Steel Car Work of any description providing it is not carried on within the walls of a Locomotive Shop.

Blacksmiths—Any man who has served an Apprenticeship of five years, or who has had four years' varied experience at the Blacksmith's trade, and who, by his skill and his experience, is qualified and capable of taking a piece of work, and with the use of drawings and blue prints can transmit such work to a successful completion within a reasonable time, shall be considered a Blacksmith. All work pertaining to the Blacksmith trade (including such work done by Thermit or Electric methods) previously done in the Blacksmith Shop, shall be done by Blacksmiths, or Apprentices paid the minimum rate where such are employed. 30

It is understood that employees at present engaged in Oxy-Acetylene, Thermit or Electric Welding methods, shall not be replaced.

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Steam Fitters, Plumbers and Coppersmiths—A.—Any man who has served an Apprenticeship of five years, or who has had four years' varied experience at the trade, and is capable of piping an engine, car (freight or passenger), or general pipe work, shall be considered a Steam Fitter, Plumber or Coppersmith.

B. All pipe work, whether new or repairs, shall be done by 10 Pipe Fitters, when there is sufficient work to employ Pipe Fitters.

C. No men shall be employed as Improvers, and no Helpers shall be advanced to the detriment of Pipe Fitters or Apprentices, excepting as per Clause H., Article 13.

D. Pipe Fitters employed at minimum rate will be advanced to the maximum rate paid in this Department after six (6) months continuous service, but thoroughly experienced men may qualify as Coppersmiths or Plumbers in less than six months on recommendation of Foreman.

Moulders—A. Men to be employed as Moulders must have 20 served an Apprenticeship term of five years, or had four years' varied experience in Moulding and Core Making, and capable of bringing to a successful conclusion any moulding or core making within a reasonable time and they shall receive the minimum rate.

B. Moulders shall be allowed to quit when they have completed their cast. Any Moulder working after the quitting hour to complete his cast shall not be allowed overtime rates if under thirty (30) minutes; after that overtime rates to apply.

Sheet Metal Workers and Tinsmiths—A. Men who have 30 served an Apprenticeship of five years or who have had four years' varied experience, and are competent to command a minimum wage in any of the branches, shall be designated as a Sheet Metal Worker or Tinsmith.

B. Sheet Metal Workers shall have the right to handle all sheet metals, copper, brass and zinc, or any sheet metal between the gauges of one (1%) per cent Tin and No. Gauge Black Iron. All Sheet Metal Jackets and sheet metal pipe work in con-

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 (Continued)

nection with locomotive and passenger equipment, and the right to manufacture and erect all sheet metal work.

Patternmakers—A. Men who have served an Apprenticeship of five years, or had four years' varied experience and who thoroughly understand blueprints, and are capable of making any kind of pattern or model from same, will be designated Patternmakers.

To the Allied Metal Trades:

In reference to Article 1, Clause C of the new schedule with the Allied Mechanical Trades, it is understood that this arrangement has been made to cover the movement of time-card trains and emergency work between the hours of 17k and 18k, and no more workmen than what are necessary to meet these requirements will be worked between the hours of 17k and 18k.

Yours truly,

A. H. EAGER,

Asst. Supt. Rolling Stock.

To the Allied Metal Trades:

It was agreed at the time of negotiating the different schedules that in connection with the Coppersmiths and Pipe Fitters' crafts that the application of an eight inch nipple and angle cock to a train line of one inch nipple in a crossover pipe, or the changing of dust collectors, may be handled by the Air Brake Tester in the Running Yard, and without any confliction in regards the definition of the above crafts. Yours truly,

A. H. EAGER,

Asst. Supt. Rolling Stock.

ARTICLE 15.

The minimum rates of pay shall be as follows:

| Class | Port Arthur to Humbolt, not inc. Humbolt | Humboldt to Kamloops, inc. Humbolt but not inc. Kamloops | Kamloops to Vancouver, including Kamloops |
|---|--|--|---|
| Blacksmiths— | | | |
| Leading Fire, Edmonton ..... | ..... | 50 | ..... |
| Leading Fire, Pt. Arthur | 48 | ..... | ..... |
| Leading Fire, Winnipeg | 51½ | ..... | ..... |
| Second Fire, Winnipeg | 49½ | ..... | ..... |
| Spring Fire, Winnipeg | 49½ | ..... | ..... |
| 10 Third & Motion Fire, Wpg. | 48½ | ..... | ..... |
| Blacksmiths, ordinary | 47½ | 49½ | 48½ |
| Helper, Large Fire, Wpg. | 32 | (One Helper only at this rate). | |
| “ Second and Third Fires | 31½ | 33½ | 32½ |
| “ Spring Fire | 31 | 33 | 32 |
| “ Ordinary Fire | 30 | 32 | 31 |
| “ Flue Shop, Wpg. only | 28½ | ..... | ..... |
| Bolt Machine | 31-34½ | 33-36½ | ..... |
| Bulldozer | 36½ | ..... | ..... |
| 20 Bulldozer Furnace | 30 | ..... | ..... |
| Brake Gear Repairer | 35½ | 37½ | 36½ |
| Coupler Rivetter | 34 | ..... | ..... |
| Flue Swedge Operator | 30 | 32 | 31 |
| Flue Ender and Piecer | 29 | 31 | 30 |
| Flue end Cutter | 29 | 31 | ..... |
| Forging Machine | 36½ | ..... | ..... |
| Forging Machine Fire | 30 | ..... | ..... |
| Hammer, Automatic | 45½ | ..... | ..... |
| Hammer, Large Steam | 27-29½ | 29-31½ | ..... |
| 30 Hammer, Small (if not run by Apprentice) | 27-29 | 29-31 | 28-30 |
| Heater, Bolt Furnace | 29 | 31 | 30 |
| Iron Chopper | 30½ | 32½ | 31½ |
| Nut Tapper | 30½ | | |
| Punch and Shears | 32½ | 34½ | 33½ |
| Spring Plate Operator | 35½ | 37½ | 36½ |

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Exhibits

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Federated
Metal Trades
Agreement,
1st May, 1916.
(Continued)

RECORD
 Exhibits
 P. 5
 Federated
 Metal Trades
 Agreement,
 1st May, 1916.
 (Continued)

| Class | Port Arthur to Humbolt, not inc. Humbolt | Humboldt to Kamloops, inc. Humbolt but not inc. Kamloops | Kamloops to Vancouver, in- cluding K'loops |
|--|--|---|--|
| Screwing Machines— | | | |
| Triple Head | 32 $\frac{1}{2}$ | 34 $\frac{1}{2}$ | 33 $\frac{1}{2}$ |
| Double Head | 31 $\frac{1}{2}$ | 33 $\frac{1}{2}$ | 32 $\frac{1}{2}$ |
| Single Head | 30 $\frac{1}{2}$ | 32 $\frac{1}{2}$ | 31 $\frac{1}{2}$ |
| Saw Operator, Wpg. only | 29 $\frac{1}{2}$ | ..... | ..... |
| Tube Welder— | | | |
| First | 40 | 42 | ..... |
| Second | 38 | 40 | ..... |
| Boilermakers— | | | |
| Ash Pan & Air Motor Man | 37 | 39 | 38 |
| Boilermakers | 47 | 49 | 48 |
| Boiler Washer | 31 $\frac{1}{2}$ | 33 $\frac{1}{2}$ | 32 $\frac{1}{2}$ |
| Flanger, Wpg. only | 49 $\frac{1}{2}$ | ..... | ..... |
| Flange Fire, Helper, Wpg. only | 33 | ..... | ..... |
| Helper, Boilermakers | 31 $\frac{1}{2}$ | 33 $\frac{1}{2}$ | 32 $\frac{1}{2}$ |
| Punch & Shears, Wpg. only | 35 $\frac{1}{2}$ | ..... | ..... |
| Stay Bolt, Screwing Machine | 32 $\frac{1}{2}$ | 34 $\frac{1}{2}$ | 33 $\frac{1}{2}$ |
| Moulders— | | | |
| Furnace man, Foundry, Winnipeg | 36 $\frac{1}{2}$ | ..... | ..... 20 |
| Furnace Man's Asst.; Foundry, Wpg..... | 29 $\frac{1}{2}$ | ..... | ..... |
| Moulder, Bench | 39 | 41 | ..... |
| Moulder, Floor | 44 $\frac{1}{2}$ | ..... | ..... |
| Moulder Machine | 33 | ..... | ..... |
| Machinists, Specialists and Helpers— | | | |
| Air Hose Repairer, Wpg. Loco. Shop only | 30 | ..... | ..... |
| Babbitter | 35 | 37 | 36 |
| Brass Cleaner, Wpg. Coach Shop | 30 | ..... | ..... |
| Car Axle Lathe | 34 | 36 | 35 30 |
| Car Wheel Borer | 34 | 36 | 35 |
| Crane Slinger | 30 | ..... | ..... |
| Coach Wheel Lathe Helper | 33 $\frac{1}{2}$ | ..... | ..... |
| Drills | 30 $\frac{1}{2}$ | 32 $\frac{1}{2}$ | 31 $\frac{1}{2}$ |

| Class | Port Arthur to Humbolt, not inc. Humbolt | Humboldt to Kamloops, inc. Humbolt but not inc. Kamloops | Kamloops to Vancouver, including Kamloops |
|--|--|--|---|
| Drill, Radial | 33 | 35 | 34 |
| “ Multiple, Boiler Shop, Wpg. only.. | 35½ | ..... | ..... |
| “ Multiple Blacksmith Shop, Wpg. only | 33 | ..... | ..... |
| Grinder, Tool | 38½ | ..... | ..... |
| Helper, Fitters | 29 | 31 | 30 |
| Locksmith | 37 | ..... | ..... |
| Machinist | 48 | 50 | 49 |
| 10 Pilot Man | 33½ | 35½ | 34½ |
| Screwing Machines— | | | |
| Triple Head | 32½ | 34½ | 33½ |
| Double Head | 31½ | 33½ | 32½ |
| Single Head | 30½ | 32½ | 31½ |
| Stripper | 33 | ..... | ..... |
| Shaft Oiler | 32 | 34 | ..... |
| Stud Machine, Automatic, Wpg..... | 33½ | ..... | ..... |
| Tender Truck Repairer | 33 | 35 | 34 |
| Tyre Setter | 32½ | 34½ | 33½ |
| 20 Wheel Press Man | 32½ | 34½ | 33½ |
| Pattern Makers— | | | |
| Pattern Maker | 46½ | ..... | ..... |
| Sheet Metal Workers— | | | |
| Helper, Tinsmiths | 26½ | 28½ | 27½ |
| Sheet Metal Worker, Wpg. Loco Shops only | 39½ | ..... | ..... |
| Tinsmith | 39½ | 41½ | ..... |
| Steam Fitters— | | | |
| Coppersmith | 42 | 44 | 43 |
| 30 Helper, Coppersmiths | 28 | 30 | 29 |
| Helper, Pipe Fitter | 28 | 30 | 29 |
| Pipe Fitter | 39 | 41 | 40 |
| Pipe Machine Man, Wpg. only | 31½ | | |
| Plumber | 42 | 44 | 43 |
| Miscellaneous— | | | |
| Oxy-Acetylene | 38 | 40 | |

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Federated
Metal Trades
Agreement,
1st May, 1916.
(Continued)

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P. 6
Federated
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Agreement,
1st May, 1916.
(Continued)

Apprentice Rates—

First year, 14; second year, 18; third year, 21; fourth year, 24;
fifth year, 27.

All lines in the same longitude will be governed by the above rates.

First class experienced Helpers and Specialists will receive the maximum rate of pay. New men inexperienced will be started two (2c) cents below the standard rate, be increased one (1c) cent in two months and raised to the maximum rate in three months.

Pipe Fitters will be advanced to the rate of Coppersmiths after 10 six months' continuous service. Thoroughly experienced men may qualify as Coppersmiths or Plumbers in less than six months on recommendation of their Foreman.

For the Company—

A. H. EAGER,
Asst. Supt. Rolling Stock.

For Allied Metal Trades—
A. SMITH.

Approved—

M. H. McLEOD,
General Manager.

Winnipeg, August, 1916.

Committee for Blacksmiths and Helpers

20

A. SMITH
J. W. HEATON

P. SHEARER
W. McINTYRE

Boilermakers and Helpers

D. NELSON
J. STOCKHAM
F. SNARE

J. RUSSELL
F. MUGFORD
J. ALDRIDGE

Machinists Specialists and Helpers.

W. GIBB
C. A. McKIM
W. BAILLIE
G. C. WILLOWS
J. W. WILKIE

T. HINDS
E. J. BOOKER
L. G. SMITH
W. PRESTON

30

Moulders

R. McALLISTER

W. McCALLUM

Patternmakers

W. H. FROST

Sheet Metal Workers

W. WRIGHT

H. DAVIS

SteamfittersJ. H. ROBERTS
P. CANN

A. LIVINGSTONE

10

PLAINTIFF'S EXHIBIT 6**EXTENSION AGREEMENT EXTENDING EXHIBIT 5****CANADIAN NORTHERN RAILWAY SYSTEM****Lines West of Port Arthur****ELECTRICAL DEPARTMENT**

On and after May 1st, 1916, the following rules and rates will govern Electrical Employees, including Journeymen Wiremen, Apprentices, and Cranemen in all Shops, Roundhouses and Repair Yards. The above will remain in force until May 1st, 1917, and from year to year thereafter unless thirty days' notice is
20 given in writing by either party concerned on or before May 1st, in any year.

The increase in rates will take effect July 1st, 1916, and remain in force for twelve months from that date.

ARTICLE NO. 1.

Clause A.—Regular Day Hours in Back Shops will be from 7k to 12k, and from 13k to 17k, Monday to Friday, inclusive, and from 7k to 12k on Saturday.

Clause B.—Regular Night Hours in Back Shops will be from

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 80th May,
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19k to 24-30k, and from 1k to 6k, five (5) nights per week, for which eleven-and-one-half (11½) hours will be allowed.

Clause C.—In Roundhouses and Yards, nine (9) hours will constitute a regular day's work, hours to be worked between 7k and 18k.

Clause D.—Regular Night Hours in Roundhouses and Yards shall be from 19k to 24.30k, and from 1k to 6k, for which eleven (11) hours will be allowed.

ARTICLE NO. 2.

Clause A.—Overtime rates will be paid as follows:—From the close of Regular Shop Hours to 24k, time and one-half; after 24k, double time for men assigned to Day Hours. Sundays and the following Dominion Holidays, viz.:—New Year's Day, Good Friday, Victoria Day, Dominion Day, Labor Day, Thanksgiving Day and Christmas Day, will be paid at the rate of time and one-half. Should any of the above mentioned holidays fall upon Sunday, the day observed by the Federal Government will be observed. Men will not be laid off during Regular Working Hours to equalize overtime.

Clause B.—Hour between 12k and 13k will be considered over-20 time.

Clause C.—No call to work overtime will be paid less than five (5) hours unless otherwise specified in the schedule, except Clause B.

Clause D.—Men who, while working, are told to continue work after Shop Hours, or who are told to come back and work overtime, commencing not over one (1) hour after Shop Hours, will not be considered to have been called out.

Clause E.—Night men called during the day will receive the same consideration. 30

Clause F.—Men working on Day or Night shift may exchange shifts periodically if they desire to do so, the Company not to incur any additional expense thereby, and the Foreman to be notified in due time before such changes become effective.

Clause G.—Men who have been in the service six (6) months, may, on application, have choice of Day or Night shifts over new

men engaged, but the Company shall incur no extra expense through men changing shifts on this account.

ARTICLE NO. 3.

Men sent out on the Road to work will be allowed one (1) day for each twenty-four (24) hours travelling, and reasonable expenses.

Receipts to be attached to expense vouchers.

ARTICLE NO. 4.

Clause A.—When it is necessary to transfer men to other shops they will be allowed travelling time as per Clause B, and reasonable expenses until they arrive at destination.

Receipts to be attached to expense vouchers.

Clause B.—Travelling time in connection with Clause A. to be computed on a basis of straight time for the first nine (9) hours of each twenty-four (24), commencing from the departure of the train. On Sundays and Specified Holidays time and one-half will be allowed on the same basis.

Clause C.—Men transferred to other Shops at their own request will be given transportation, but will not be paid either travelling time or expenses.

ARTICLE NO. 5.

Clause A.—When reduction of expenses is necessary, the hours will be reduced to at least eight (8) hours per day, five days per week, in Back Shops before men are laid off. When force is reduced, men will be laid off according to their seniority at each Shop unless a satisfactory local arrangement is made otherwise.

Clause B.—When force is again increased or vacancies occur, Local Committee to be informed. Men who have been laid off will be given preference of employment according to their seniority, if available.

Men laid off at one point may be transferred to another in preference to hiring new men.

No extra men to be hired until Schedule Hours are resumed,

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except in cases of filling vacancies after reduction of hours has been made. Local Committee to be given forty-eight (48) hours notice of any such vacancy.

Clause C.—Employees after sixty (60) days service at the Shop employed, shall be considered permanent Employees.

Clause D.—Whenever possible, twenty-four (24) hours notice of any change in regular working hours will be posted in all Shops, and a list of men to be laid off shall be furnished to Shop Committee. The Company not to incur any additional expense thereby.

10

ARTICLE NO. 6.

Clause A.—Employees having grievances, either specific or of a general nature may present the case to the proper officer. If investigation is desired, the aggrieved party or Local Committee representing him may, during working hours, arrange with his Foreman for same. Investigation to be held within twenty-four (24) hours after such application, and in case a satisfactory adjustment cannot be made, the case may be referred to the next highest officer of the Department until the General Manager is approached. If, after investigation, the Employee is found²⁰ to have been unjustly dealt with, he will be paid for all time lost.

Clause B.—Leave of absence and free transportation will be granted to Committee to go before the Management, but in cases of grievances, application for transportation and a full statement concerning the matter to be discussed must be submitted to the officer in charge of the Shop at least one week before the meeting is desired.

Clause C.—Employees representing their Fellow-Employees will not be discriminated against.

ARTICLE NO. 7.

30

Pay cheques will be issued to men leaving the service at Regina, Kamsack, Swan River, and points East thereof within sixty (60) hours, and points West thereof within ninety-six (96) hours (Sundays and Specified Holidays not included). If cheques are not available, men will be entitled to nine (9) hours for each day they are compelled to wait beyond the above limits.

ARTICLE NO. 8.

Employees will be granted leave of absence and transportation, or reduced rates, in accordance with the current General Regulations of the Company, such General Regulations to be posted in each Department.

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(continued)

ARTICLE NO. 9.

Employees in the Service of the Company who have become unable to handle heavy work may be given the preference of such light work as they may be able to perform.

10 DEFINITION OF ELECTRICAL EMPLOYEES

(a) Men who have served an Apprenticeship or who have had four years varied experience at armature and coil winding, power repairs, conduit and cleat work, light and power switchboards, car battery installation and maintenance, mercury and arc lighting, and electric light and power line work and maintenance, shall be designated Journeymen Electrical Employees.

(b) All work pertaining to Clause (a) on the Road and in Winnipeg Shops shall be done by Journeymen Electrical Employees and Apprentices as per this Agreement.

20 The electrification and maintenance of any railway lines will not come under this Agreement.

(c) If authorized cranemen (employed as such) are not available to operate cranes, Electrical Employees shall be called to operate same.

(d) A leading hand who works himself and directs the work of five others will be paid two (2) cents above the rate he is receiving.

(e) Electrical Apprentices when engaged must be between the ages of sixteen (16) and twenty-one (21) years, must serve 30 not less than five (5) years, must be able to read and write English, and know the first four rules of Arithmetic.

The number of Apprentices shall be one for the Shop, and one for every five Journeymen Electrical Employees.

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 P. 6
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 30th May,
 1927.
 (continued).

Apprentices will be instructed as thoroughly as possible in all branches of their trade during their Apprenticeship.

Apprentices will not be required to work overtime except in cases of emergency.

Apprentices out of their time will be paid the minimum rate for Journeymen Electrical Employees if retained in the service.

Seniority of an Apprentice dates from the time he starts as Journeyman Electrical Employee.

(f) The present Electrical Helpers shall be allowed to complete their time at the old rates, and, if retained in the service 10 thereafter, will be paid the minimum rate for Journeymen Electrical Employees.

Schedule of Rates

Apprentices—

| | | |
|-------------------|----|----------------|
| First Year | 14 | cents per hour |
| Second Year | 18 | “ “ “ |
| Third Year | 21 | “ “ “ |
| Fourth Year | 24 | “ “ “ |
| Fifth Year | 27 | “ “ “ |

Cranemen and Transfer Table Men—

20

| | | |
|----------------------------------|-----|----------------|
| First Year | 29 | cents per hour |
| Second Year and thereafter | 32½ | “ “ “ |

Journeymen Electrical Workers—

| | | |
|------------------------|----|----------------|
| First Six Months | 40 | cents per hour |
| Thereafter | 42 | “ “ “ |

This agreement covers only men paid by the hour.

For the Company,

H. McCONKEY,
 Superintendent Electrical Dept.

APPROVED:

M. H. McLEOD,
 General Manager.

For the Electrical Committee, 30
 A. SMITH,
 WALLACE COBURN,
 F. M. HOY.

To the Committee of Electrical Workers,
Canadian Northern Railway System
Lines West of Port Arthur.

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Extending
Exhibit 5,
30th May,
1927.

Dear Sirs:—

During deliberations on the schedule taking effect May 1st, 1916, it was agreed upon that, for various reasons set forth, certain men enumerated below would continue for a period of one year from the dates set opposite their respective names to receive Thirty-two-and-one-half (32½) cents per hour for time worked
10 as per conditions laid down in the schedule. And that, at the expiration of the above period, they would be given the maximum rate.

B. Torch, November 1st, 1915.
E. Dugan, December 15th, 1915.
F. Grimes, January 21st, 1916.
C. McQuade, April 10th, 1916.
H. Kitchen, February 1st, 1916.

Yours truly,

H. McCONKEY,
Superintendent.

20

We, the undersigned, agree to the above.

A. SMITH, F. M. HOY,
WALLACE COBURN,
Committee of Electrical Employees.

CANADIAN NORTHERN RAILWAY SYSTEM

Lines West of Port Arthur

Mechanical Department

It is hereby agreed that the Schedule governing the employment of Machinists, Boilermakers, Blacksmiths, Patternmakers,
30 Sheet Metal Workers, Tinsmiths, Coppersmiths, and Steam Fitters, Moulders, and the Apprentices, Specialists, and Helpers of each of the above Crafts, and the schedule governing the employment of Carmen, in all shops, roundhouses, and repair yards, both dated May 1st, 1916, will remain in force until April 30th, 1918, excepting that in the territory between Port Arthur and Humbolt (not including Humbolt) the rates of pay shown therein will be increased six (6) cents per hour, in the territory between

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(continued).

Humbolt and Kamloops (not including Kamloops) four (4) cents per hour, and in the territory between Kamloops and Vancouver five (5) cents per hour. Such increases in rates to be effective from June 1st, 1917 and the above mentioned Rules and Rates to remain in force until April 30th, 1918, and from year to year thereafter unless thirty days notice in writing is given by either party concerned on or before April 1st in any year.

From June 1st, 1917, the rates for Apprentices will be as follows:

| | | | | | |
|------------|-------------|------------|-------------|------------|----|
| First Year | Second Year | Third Year | Fourth Year | Fifth Year | 10 |
| 15 | 19 | 22 | 26 | 30 | |

FOR THE COMPANY:

(Sgd.) A. H. EAGER FOR THE FEDERATED TRADES:
Asst. Supt. Rolling Stock. (Sgd.) A. SMITH.

APPROVED:

(Sgd.) M. . McLEOD,
AEW,
General Manager.

WINNIPEG, May 30th, 1917.

DEFENDANT'S EXHIBIT 59

20

LETTER, A. SMITH TO A. H. EAGER
LETTER, A. SMITH TO H. McLEOD

Office of Secretary, 605 Maryland St.

CANADIAN NORTHERN RAILWAY SYSTEM
EMPLOYEES FEDERATION

WINNIPEG, Manitoba, March 8th, 1918.

Mr. A. H. Eager,
Asst. Sup't Rolling Stock, W. Lines, C.N.R.

Dear Sir:

At the recent Convention of the Federated Trades on the Canadian Northern R'ly, which was held in Winnipeg, I was instructed to advise you that they decided to open up the schedule for some amendments such amendments to be confined to the questions of hours, rates and the duration of Schedule.

The Convention further advises that they have made some alterations in their form of organization, and as a result the

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Letters
A. Smith to
A. H. Eager
and
H. McLeod,
8th March,
1918.

forthcoming negotiations will be conducted by a joint Committee from Division No. 4 Railroad Employees, which Division is composed of the Federated Trades on all Roads in Canada, and through which all future schedule negotiations will be conducted.

It is confidently expected that this method of conducting negotiations will be conducive to a much better understanding between your shop and other employees and the Officers of the Company.

Yours truly,

A. SMITH,
General Chairman.

10

Office of Secretary, 605 Maryland St.

**CANADIAN NORTHERN RAILWAY SYSTEM
EMPLOYEES FEDERATION**

WINNIPEG, Manitoba, March 8, 1918.

Mr. H. McLeod,
General Manager Western Lines, C.N.R.

Dear Sir:

At the recent Convention of the Federated Trades on the Canadian Northern R'y which was held in Winnipeg, I was instructed to advise you that they had decided to open up the schedule for some amendments. Such amendments to be confined to the question of hours, Rates, and the duration of Schedule.

The Convention further advises that they have made some alterations in their form of organization, and as a result the forthcoming schedule negotiations will be conducted by a joint Committee from Division No. 4 Railroad Employees. Which Division is composed of the Federated Trades on all Roads in Canada, and through which all future schedule negotiations will be conducted.

It is confidently expected that this method of conducting negotiations will be conducive to a much better understanding between your shop and other employees and the Officials of the Company.

Yours truly,

A. SMITH,
General Chairman.

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Letters
A. Smith to
A. H. Eager
and
H. McLeod,
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1918.
(continued).

DEFENDANT'S EXHIBIT 60

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Letters
Chas. Dickie to
M. H. McLeod
and A. H.
Eager, 19th
March, 1918.

LETTER, CHAS. DICKIE TO M. H. McLEOD
LETTER, CHAS. DICKIE TO A. H. EAGER

RAILWAY EMPLOYEES' DEPARTMENT**Division No. 4**

CHAS. DICKIE, Comprising all Railroads
in Canada
Secretary.
Headquarters: 14 Labor Temple, Winnipeg, Man.
March 19th, 1918.

Mr. M. H. McLeod,
Genl. Manager Western Lines,
Can. Northern Rly.

10

Dear Sir:—

I am advised by the Officers of the Federated Trades of the Canadian Northern Rly. that formal notice has been forwarded to your office as per Article 1 of the current agreement, informing you of their desire to amend that portion of agreement concerning Working Hours, Rates of Pay and Duration of Schedule.

You have also been advised of a change in their form of organization, such change being due to a consolidation of the various System Federations of the Dominion, to be known as Division No. 4 of the Railway Employees Department of the American Federation of Labor, and it is intended through their organization that negotiations be of a joint character, and as early as possible after reception of this notice.

These various System Federations mentioned, are those representing Loco-Car and other employees on lines operated by the Canadian Northern Rly., Canadian Pacific Rly., Canadian Government Rlys., Grand Trunk Pacific, Temiskaming and Northern Ontario, Duluth Winnipeg and Pacific, Edmonton Dunvegan and B.C. and Kettle Valley Rlys. and in order to facilitate matters, I am instructed to suggest that Managements of roads mentioned, organize a joint committee representing their interests to confer with joint committee representing Division No. 4.

I would be pleased if you will inform me as early as possible of time and place, considered by the joint managements to be suitable for negotiations.

Yours truly,
CHAS. DICKIE,
Secy.-Treasurer Division No. 4, 40
Railway Employees Dept.

RAILWAY EMPLOYEES' DEPARTMENT

Division No. 4

CHAS. DICKIE,
Secretary.

Comprising all Railroads
in Canada

Headquarters: 14 Labor Temple, Winnipeg, Man.

March 19th, 1918.

Mr. A. H. Eager,
Asst. Supt. of Rolling Stock,
Canadian Northern Rly.
Winnipeg, Man.

10

Dear Sir:—

I am advised by the Officers of the Federated Trades of the Canadian Northern Rly. that formal notice has been forwarded to your office as per Article 1 of the current agreement, informing you of their desire to amend that portion of agreement concerning Working Hours, Rates of Pay and Duration of Schedule.

You have also been advised of a change in their form of organization, such change being due to a consolidation of the various System Federations of the Dominion, to be known as Division No. 4 of the Railway Employees Department of the American Federation of Labor, and it is intended through their organization that negotiations be of a joint character, and as early as possible after reception of this notice.

These various System Federations mentioned, are those representing Loco-Car and other employees on lines operated by the Canadian Northern Rly., Canadian Pacific Rly., Canadian Government Rlys., Grand Trunk Pacific, Temiskaming and Northern Ontario, Duluth Winnipeg and Pacific, Edmonton Dunvegan and B.C. and Kettle Valley Rlys. and in order to facilitate matters, I am instructed to suggest that Managements of roads mentioned, organize a joint committee representing their interests to confer with a joint committee representing Division No. 4.

I would be pleased if you will inform me as early as possible of time and place, considered by the joint managements to be suitable for negotiations.

Yours truly,

CHAS. DICKIE,
Secy.-Treasurer Division No. 4,
Railway Employees Dept.

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Letters
Chas. Dickie to
M. H. McLeod
and A. H.
Eager, 19th
March, 1918.
(continued).

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Wage Agree-
ment No. 1 and
Supplement A,
2nd Sept., 1918,
25th Oct., 1918.

PLAINTIFF'S EXHIBIT 4

WAGE AGREEMENT No. 1 AND SUPPLEMENT A

CANADIAN RAILWAY WAR BOARD

Wage Agreement No. 1

Preamble

Agreement between the Canadian Railway War Board and Division No. 4, Railway Employees' Department, American Federation of Labor, in respect to rates of pay, work hours, and certain conditions of service, for employees in the Locomotive and Car Departments of the several Railways mentioned herein. 10

Railways Affected

1. This agreement shall be effective on the following rail-ways:—

Canadian Government Railways,
Canadian Northern Railway,
Canadian Pacific Railway,
Dominion Atlantic Railway,
Edmonton, Dunvegan & British Columbia Railway,
Esquimalt & Nanaimo Railway,
Grand Trunk Railway, 20
Grand Trunk Pacific Railway,
Halifax & Southwestern Railway,
Kettle Valley Railway,
Quebec Central Railway,
Temiskaming & Northern Ontario Railway.

Date Effective

2. This agreement shall be effective from May 1st, 1918, for Locomotive and Car Department employees covered by expired agreements or who have not an existing agreement. For other Locomotive and Car Department employees this agreement shall³⁰ become effective on the date of expiry of existing agreements, but not later than August 1st, 1918.

Work Hours

3. Work hours for shop work are as follows:

(a) **For day work**, except Saturdays and Sundays:

7.30 to 12 and 13 to 17 o'clock: Saturdays 7.30 to 12 o'clock.

For night work, unless otherwise mutually arranged, 20 to 24.30 and 1 to 6 o'clock, for which 10 hours pay will be allowed, five nights per week.

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(b) **Work hours for running work** are as follows:—

Where three 8 hour shifts per day are worked the hours for commencing duty shall be between 7 and 8 o'clock, 15 and 16 o'clock, and 23 and 24 o'clock. Twenty minutes will be allowed on each shift for lunch beginning during the fifth hour without deduction in pay.

10 Where one or two shifts per 24 hours are worked:

Day work—8 hours between 7 and 17 o'clock, with one hour for lunch between 12 and 13 o'clock, without pay for meal hour.

Night work—8 hours between 19 and 6 o'clock with an allowance of twenty minutes for lunch beginning during the fifth hour without deduction in pay.

(c) The starting time for any portion of the staff at any point may be arranged to commence within the limits named.

20 (d) Starting time for each employee shall be fixed and shall not be changed without at least 48 hours notice.

(e) Carmen stationed at points requiring only one employee on day or night shift, or day and night shift, shall be allowed the equivalent of 240 hours per month at not less than the hourly rate provided herein.

(f) Mechanics regularly assigned to perform road work and paid on a monthly basis shall be allowed the equivalent of 240 hours per month at not less than the hourly rate provided herein.

30

Reduction of Expense

4. When reduction of expenses is necessary it may be effected either by reduction of working hours or by reduction of staff. Where staff is reduced the conditions outlined in existing, or immediately preceding, schedules governing preference shall continue in effect. Where work hours are reduced starting time designated in Article 3 shall govern.

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Overtime

5. (a) Time and one-half shall be paid for all time worked over the working hours specified in Article 3 and on Sundays and the following Dominion Holidays: New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day. Should any of the above mentioned Holidays fall on Sunday, the day substituted by the Federal Government will be observed.

(b) The overtime provision established in Paragraph (a) of this Article shall be effective as of August 1st, 1918, provided, 10 however, that in computing overtime to determine back pay due under this agreement, overtime will be paid at a pro-rata rate for all overtime worked in excess of the hours constituting the recognized day or night shift, except where higher overtime rate basis exists, or has been applied, in which event the more favorable condition shall be the basis of computing back pay accruing under this agreement.

Travelling

6. (a) Employees, except monthly salaried employees, coming within the scope of this agreement, sent out on the road for emer-20 gency service, shall receive continuous time from the time called until they return as follows: Overtime rates for all overtime hours whether working, waiting, or travelling, except that after the first twenty-four hours, if the work is completed or they are relieved for five hours or more, such time shall not be paid for, provided that in no case shall an employee be paid for less than eight hours on week days and eight hours at one and one-half time for Sundays and Holidays for each calendar day. Where meals and lodgings are not provided by the railroad an allowance will be made for each meal or lodging. Employees will receive 30 allowance for expenses not later than the time when they are paid for the service rendered.

(b) Employees specified herein when sent from home point to temporarily fill vacancy or perform work at outside division points, will be paid straight and overtime rate as per shop rules, including going and returning trip in addition to which they will be paid pro-rata at the rate of two dollars per day for meals and lodging.

Classification and Rates of Pay

7. The classification of employees and minimum rates of pay 40 shall be as follows:

Machinists

(a) Employees skilled in the laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling, and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery; ratchet and other skilled drilling, and reaming, tool and die making, tool grinding and machine grinding, axle, wheel and tire turning and boring; engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on super-heaters, oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus, and all other work generally recognized as machinists' work.

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Machinist Apprentices

Include regular and helper apprentices in connection with the above work.

Machinist Helpers

Employees assigned to help machinists and apprentices. Operators of all drill presses and bolt threaders not equipped with a facing, boring or turning head or milling apparatus, bolt pointing and centering machines, wheel presses, bolt threaders, nut tappers and facers; cranesmen helpers, tool room attendants, machinery oilers, box packers and oilers; the applying of couplings between engines and tenders.

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| Old Classi- fication | New Classi- fication | RATES (Cents per hour) | | | | |
|--|-------------------------|------------------------|-------------|-------------|-------------|-------------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Machinist | Machinist | 68 | — | — | — | — |
| Marker Off | " | | | | | |
| Millwright | " | | | | | |
| Airmotor man (Gen- eral and erecting) | " | 68 | 62 | 57 | 53 | 50 |
| Lathe Operator (Tur- ret, Stud & Bolt) | " | | | | | |
| Lathe Operator (Truck, wheels and axles) | " | | | | | |
| Car Wheel Borer | " | | | | | |
| Bolt Turning Machine Operators (Lassiter) | " | | | | | |
| Lapping Machine Op- erators | " | | | | | |
| Plate Edge Planer Op- erator | " | | | | | |
| Superheater Bender & Surfacer | " | | | | | |
| Grinders (Tool and Twist Drill, forged tools) | " | | | | | |
| Grinder (General and Guide Bar) | " | | | | | |
| Stripper (Locomotive) | " | | | | | |
| Engine Truck Fitters.. | " | | | | | |
| Tyre Setters (Driving Wheel and engine truck) Note A..... | " | | | | | |
| Cylinder Chipper | " | | | | | |
| Welders (oxy-acety- lene, thermit & elec- tric) | " | | | | | |
| Brass Filers & Assem- blers (not including trimming) | " | | | | | |

NOTE A—Machinists will shim tires unless removed from truck and dealt with in conjunction with car or tender wheels when carmen's rate will apply. 40

| | Old Classification | New Classification | RATES (Cents per hour) | | | | | RECORD Exhibits |
|----|---|--------------------|------------------------|----------|----------|----------|----------|---|
| | | | 5th year | 4th year | 3rd year | 2nd year | 1st year | |
| | Machinists' Helpers..... (all classes) | Machinist Helper | | | | | | P. 4 Wage Agreement No. 1 and Supplement A. 2nd Sept., 1918. 25th Oct., 1918. (Continued) |
| 10 | Drill Press Operators (except when boring, facing or turning tool or milling at- tachment is em- ployed) | " | | | | | | |
| | Bolt Threader (includ- ing stay bolt) | " | | | | | | |
| | Nut Tapper | " | | | | | | |
| | Beltman | " | | | | | | |
| | Motor Truck Opera- tors | " | | | | | | |
| | Tool Room Attendants | " | | | | | | |
| 20 | Loco Trimmer—(pack- ing engine and ten- der cellars, throttle and other glands only) | " | | | 45 | | | |
| | Shaft and Machinery Oilers | " | | | | | | |
| | Supply Men (Material Carriers) | " | | | | | | |
| | Wheel Press Operators | " | | | | | | |
| | Nut Facers | " | | | | | | |
| 30 | Bolt Pointer | " | | | | | | |
| | Centering Machine Op- erator | " | | | | | | |
| | Laggers (other than wood) | " | | | | | | |

Boilermakers

(b) Employees skilled in laying out, cutting apart, building or repairing boilers, tanks and drums, inspecting, patching, rivetting, chipping, caulking, flanging and flue work; building, repairing, removing and applying steel cabs and running boards; 40 laying out and fitting up any sheet iron or sheet steel work made of 16 gauge or heavier, including fronts and doors; grate and grate rigging, ashpans, front and netting and diaphragm work; engine tender steel underframe and steel tender truck frames,

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except where other mechanics perform this work; removing and applying all staybolts, radials, flexible caps, sleeves, crown bolts, stay rods and braces in boilers, tanks and drums, applying and removing arch pipes; operating punches and shears for shaping and forming, pneumatic staybolt breakers, air rams and hammers; bull, jam and yoke rivetters; boilermakers' work in connection with the building and repairing of steamshovels, derricks, booms, housings, circles and coal buggies; eye-beam, channel iron, angle iron and tee iron work; all drilling, cutting and tapping, and operating rolls in connection with boilermakers' work; oxy-acetylene thermit and electric welding, on work generally recognized as boilermakers' work; and all other work generally recognized as boilermakers' work. 10

Boilermaker Apprentices

Include regular and helper apprentices in connection with the above.

Boilermaker Helpers

Employees assigned to help boilermakers and their apprentices. Operators of drill presses and bolt cutters in the boiler shop, punch and shear operators (cutting only bar stock and scrap). 20

| Old Classification | New Classification | RATES (Cents per hour) | | | | |
|--|--------------------|------------------------|----------|----------|----------|----------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Boilermakers | Boilermaker | 68 | — | — | — | 30 |
| Markers Off and Layers Out (16 gauge & over) | " | | | | | |
| Welders, Acetylene & Electric | " | | | | | |
| Flangers | " | | | | | |
| Rivettters | " | | | | | |
| Caulkers & Chippers.... | " | 68 | 62 | 57 | 53 | 50 |
| Tubers | " | | | | | |
| Grate & Grate Rigging Men | " | | | | | |
| Ashpan Men | " | | | | | |
| Steel Tender Frame Men | " | | | | | |

| Old Classification | New Classification | RATES (Cents per hour) | | | | | RECORD Exhibits P. 4 Wage Agreement No. 1 and Supplement A, 2nd Sept., 1918, 25th Oct., 1918. (Continued) |
|--|----------------------|------------------------|----------|----------|----------|----------|--|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year | |
| Front End Netting and Plate Men | " | | | | | | } |
| Staybolt Men (except Rivetting) | " | | | | | | |
| Punch & Shear Operators (except on Bar Stock) | " | | | | | | |
| 10 Staybolt Breaker Operators | " | 68 | 62 | 57 | 53 | 50 | |
| Rivetting Machine Operators | " | | | | | | |
| Airmotor Men | " | | | | | | |
| Tappers | " | | | | | | |
| Roll Operators | " | | | | | | |
| | Boilermaker's Helper | | | | | | } |
| 20 Washer Out | " | | | | | | |
| Drill Press Men | " | | | | | | |
| Bolt Threaders | " | | | | | 45 | |
| Punch & Shear Operators (Bar Stock and Scrap only) | " | | | | | | |
| Helpers (All Classes) .. | " | | | | | | |
| Rivet Boys (under 18 years) | Rivet Boy | | | | | 25 | |

Blacksmiths

(c) Employees skilled in welding, forging, shaping, and bending of metal; tool dressing and tempering; spring making, tempering and repairing; potashing, case and bichloride hardening; flue welding under blacksmith foreman; operating furnaces, bulldozer forging machines, drop-forging machines, bolt machines and Bradley hammers; hammersmiths, drop-hammer men, trimmers, rolling mill operators, operating punches and shears doing shaping and forming in connection with blacksmiths' work; oxy-acetylene, thermit and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work.

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Blacksmith Apprentices

Include regular and helper apprentices in connection with the above.

Blacksmith Helpers

Employees assigned to helping blacksmiths and apprentices; heaters, hammer operators, machine helpers, drill press and bolt-cutter operators, punch and shear operators (cutting only bar stock and scrap), in connection with blacksmiths' work.

| Old Classification | New Classification | RATES (Cents per hour) | | | | |
|---|--------------------|------------------------|----------|----------|----------|----------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Forgemen | Forgemen | | | | | |
| Heavy Blacksmiths | Blacksmith | 68 | — | — | — | — |
| Fire | | | | | | |
| Double Helpers' Fire.... | | | | | | |
| Tool Fire | | | | | | |
| All other Blacksmiths' Fires | " | | | | | |
| Spring Maker | " | | | | | |
| Automatic Hammer Men | " | | | | | 20 |
| Bulldozer Operators | " | | | | | |
| Drop Hammer Men | " | | | | | |
| Forging Machine Operators | " | | | | | |
| Spring Plate Operators (except Shearing & Punching Cold) | " | 68 | 62 | 57 | 53 | 50 |
| Bolt & Nut Maker | " | | | | | |
| Punch & Shears Operator (e x c e p t Bar Stock and Scrap) | " | | | | | 30 |
| Bending Machine Men | " | | | | | |
| Flue Welders | " | | | | | |
| Flue Swedge Operator (5 inches and over).. | " | | | | | |
| Car brake gear repairer | " | | | | | |

| Old Classification | New Classification | RATES (Cents per hour) | | | | |
|--|---------------------|------------------------|----------|----------|----------|----------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| | Blacksmith's Helper | | | | | |
| Flue End Piecer | " | | | | | |
| Flue End Cutter | " | | | | | |
| Flue Saw Operator | " | | | | | |
| Cold Saw Operator (Rails and Bar Stock only) | " | | | 45 | | |
| 10 Iron straightener (scrap, dock or yard) | " | | | | | |
| Iron Chopper | " | | | | | |
| Helpers (all classes).... | " | | | | | |
| Hammer Boys (under 18 years) | Hammer Boy | | | 25 | | |

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Sheet Metal Workers

(d) Sheet Metal Workers shall include tanners, copper-smiths and pipe fitters employed in shop yards and buildings and on passenger coaches and engines of all kinds, skilled in the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead and black planished and pickled iron of less than 16 gauge, including brazing, soldering, tinning, leading and babbiting; the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of babbitt fires and pipe threading machines; oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work.

Sheet Metal Worker Apprentices

Include regular and helper apprentices in connection with the above.

Sheet Metal Worker Helpers

Employees regularly assigned as helpers to assist sheet metal workers and apprentices.

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Sheet Metal Workers

| Old Classification | New Classification | RATES (Cents per hour) | | | | |
|---------------------------------------|-------------------------|------------------------|----------|----------|----------|----------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Pipe Fitter | Pipe Fitter | 68 | — | — | — | 10 |
| Coppersmith (Pipe Work) | “ “ | | | | | |
| Plumber | “ “ | | | | | |
| Steamfitter | “ “ | | | | | |
| Superheater Pipe Fitter | “ “ | 68 | 62 | 57 | 53 | 50 |
| Gas Fitter | “ “ | | | | | |
| Pipe Threader | “ “ | 58 | 54½ | 52½ | 50½ | 48 |
| Freight Car Pipe Fitter | Freight Car Pipe Fitter | | | | | |
| Helpers (all classes).... | Helper | | | 45 | | |
| Tinsmith | Sheet Metal Worker | 68 | — | — | — | 20 |
| Coppersmith | “ | | | | | |
| Silversmith | “ | | | | | |
| Lead Burner | “ | 68 | 62 | 57 | 53 | 50 |
| Babbitter (Not Scrap Reclaimer) | “ | | | | | |
| Sheet Metal Workers Specialist | (or to be abolished) | | | | | |
| Helpers (all classes).. | Helpers | | | | | |

Electrical Workers

(e) **First Class**—Employees skilled in repairing, re-building, installing, inspecting and maintaining the electric wiring of generators, switch-boards, motors and control, rheostat and control, static and rotary transformers, motor generators, electric head-lights and head-light generators; electric welding machines, storage batteries and axle lighting equipment; pole lines and supports for service wires and cables, catenary and monorail conductors and feed wires, overhead and underground; winding armatures, fields, magnet coils, rotors, stators, transformers and starting compensators; all outside and inside wiring in shops, yards, and on steam and electric locomotives, passenger train and

motor cars, and include wiremen, armature winders, switchboard operators, generators attendants, motor attendants, substation attendants, electric crane operators for cranes of forty tons capacity or over; cable splicers, linemen and ground men, signal men and signal maintainers, where handling wires and apparatus carrying 240 volts or over, or in dense traffic zones, and all other work properly recognized as first class electrical workers work.

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Second Class—Operators of electric cranes of less than forty 10 tons capacity; linemen and ground men, signal men and signal maintainers, where handling wires and apparatus carrying less than 240 volts, and in normal traffic zones, and all other work properly recognized as second class electrical workers' work.

Electrical Workers Apprentices

Include regular and helper apprentices in connection with the above.

Electrical Workers Helpers

Employees regularly assigned as helpers to assist electrical workers and apprentices, including electric lamp trimmers who 20 do no mechanical work.

| | Old Classification | New Classification | RATES (Cents per hour) | | | | |
|----|---|-----------------------------------|------------------------|----------|----------|----------|----------|
| | | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| | Electrician (General).. Armature Winders | 1st Class Electrical Worker | 68 | — | — | — | — |
| | Wiremen | " | 68 | 62 | 57 | 53 | 50 |
| | Motor Attendants (not oilers or starters).... | " | | | | | |
| 30 | Sub-station Attendants | " | | | | | |
| | Electric Crane Opera- tors (40 tons or over) | " | | | | | |
| | Electric Cable Splicers | " | | | | | |
| | Linemen (240 volts or over) | " | | | | | |
| | Groundmen (240 volts or over) | " | | | | | |
| | Switchboard O p e r a - tors | " | | | | | |
| 40 | Storage Battery Men.... | " | | | | | |

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| Old Classi- fication | New Classi- fication | RATES (Cents per hour) | | | | | |
|--|--|------------------------|-------------|-------------|-------------|-------------|----|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year | |
| Electric Crane Opera- tors (Less than 40 tons) | 2nd Class Electrical Worker " " " " " | 58 | 54½ | 52½ | 50½ | 48½ | 10 |
| Transfer Table Opera- tors | | | | | | | |
| Linemen (Less than 240 volts) | | | | | | | |
| Ground Men (less than 240 volts) | | | | | | | |
| Electrician (Coach Yard—not shop) | | | | | | | |
| Telephone repair men.. | | | | | | | |
| Crane Slinger | Electrical Workers Helper " " | 45 | | | | | 20 |
| Transfer Table Cable Men | | | | | | | |
| Helpers (all classes).... | | | | | | | |

Carmen

(f) Employees skilled in the handling, maintaining, dismantling, painting, upholstering, and inspecting of all passenger and freight train cars, both wood and steel; planing mill, cabinet and bench carpenter work, pattern and flask making, and all other carpenter work in shop and yard; carmen's work in building and repairing motor cars, lever cars, handcars, and station trucks; building, repairing, removing, and applying locomotive cabs, pilots, pilot beams, running boards, foot and head-light boards, tender frames and trucks; pipe and inspection work in connection with airbrake equipment on freight cars; applying patented metal roofing; repairing steam-heat hose for locomotives and cars; operating punches and shears, doing shaping and forming, hand forges and heating torches, in connection with carmen's work; painting, varnishing, surfacing, lettering, decorating, cutting of stencils and removing paint; all other work generally recognized as painters work under the supervision of the locomotive and car departments; joint car inspectors, car inspectors, safety appliance, and train car repairers, wrecking derrick engineers, and wheel record keepers; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work, and all other work generally recognized as carmen's work.

Carmen Apprentices

Include regular and helper apprentices in connection with the above.

Carmen Helpers

Employees regularly assigned to help carmen and apprentices; car oilers and packers, material carriers, and rivet heaters; operators of bolt threaders, nut tappers, drill presses, and punch and shear operators (cutting only bar stock and scrap).

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| | Old Classification | New Classification | RATES (Cents per hour) | | | | | |
|----|--|------------------------------------|------------------------|----------|----------|----------|----------|------|
| | | | 5th year | 4th year | 3rd year | 2nd year | 1st year | |
| 10 | Cabinet makers and carvers | Cabinet makers | } | | | | | |
| | Carpenters (Coach, Loco. and Bench) | Carpenters, Coach, Loco. and Bench | | | | | | |
| | Painters, Varnishers—(Coach and Loco.).... | Coach & Loco. Painters | | | | | | |
| | Decorators, Letterers.. | " | | | | | | |
| 20 | Polisher | " | | | | | | |
| | Colour Mixer | Colour Mixer | | 58 | .... | .... | .... | .... |
| | Upholsterer:— | Upholsterer | | | | | | |
| | 1st class upholsterers on sleepers, parlor, dining and official cars | | | | | | | |
| | 2nd class upholsterers on first, second, colonist and baggage cars | Upholsterer | | | | | | |
| 30 | 3rd class upholsterers i.e. cutters, and curtain mounters | | | | | | | |
| | Stencil Cutter (Metal) | Stencil Cutter (Metal) | 68 | .... | .... | .... | .... |  |
| | Stencil Cutter (Other material) | Stencil Cutter (Other Material) | 58 | .... | .... | .... | .... |  |
| | Plush Dyer | Plush Dyer | | | | | | |
| 40 | Template Maker. (Metal) | Template maker (Metal) | 68 | | | | | |
| | Template Maker. (Wood) | Template maker (Wood) | 58 | | | | | |
| | Saw Filer | Saw Filer | | | | | | |

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| Old Classi- fication | New Classi- fication | RATES (Cents per hour) | | | | |
|--|--|------------------------|-------------|-------------|-------------|-------------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Wood Machinist | Wood Ma- chinist | | | | | |
| Saw and Borer | " " | | | | | |
| Morticer | " " | | | | | |
| Planer | " " | | | | | |
| Matcher | " " | | | | | |
| Shaper | " " | | | | | 10 |
| Carpenter (General).... | Carpenter (Freight) | | | | | |
| Carpenter (Freight).... | " | | | | | |
| Stripper | Stripper | | | | | |
| Coach Trimming Fitter | Coach Trim- ming Fitter | | | | | |
| Trimmer | Trimmer | | | | | |
| Painter (Freight) | Painter (Freight) | 58 | 54½ | 52½ | 50½ | 48½ |
| Stenciller (Freight) | Stenciller (Freight) | | | | | 20 |
| Car Inspector | Carman | | | | | |
| Wheel Inspector | " | | | | | |
| Air Brake Inspector | " | | | | | |
| Air Brake Tester | " | | | | | |
| Air Brake Adjuster | " | | | | | |
| Air Brake Cleaner | " | | | | | |
| Triple Tester | " | | | | | |
| Car Repairer | " | | | | | |
| Car Repairer (Steel).... | " | | | | | 30 |
| Tender Truck Repairer | " | | | | | |
| Coach Truck Repairer.. | " | | | | | |
| Hose Bag Fitter | " | | | | | |
| Wrecking and other portable Crane En- gineers. | Crane Engineers | | | | | |
| Pilot Man (Including Steel Pilots) | Pilot Man | | | | | |
| Locksmith | Locksmith | 58 | 54½ | 52½ | 50½ | 48½ |
| Silver and Brass Buf- fers and Polishers.... | Silver & Brass Buffers and Polishers | | | | | 40 |
| Burnisher and Plater.. | Burnisher and Plater | | | | | |

| | Old Classification | New Classification | RATES (Cents per hour) | | | | |
|----|---------------------------------------|------------------------------|------------------------|----------|----------|----------|----------|
| | | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| | Oxidizer | Oxidizer | | | | | |
| | Dipper | Dipper (Acid) | | | | | |
| | Stove Fitter | Stove Fitter | | | | | |
| | Coupler Rivetter | Coupler Rivetter | | | | | |
| | Spring Tester | Spring Tester | | | | | |
| 10 | Mirror Silverer | Mirror Silverer | | | | | |
| | Beveller | Glass Beveller | | | | | |
| | Glass Cutter and Embosser | Glass Cutter and Embosser | | | | | |
| | Marker (Drilling and Steel car) | Marker, drilling & steel car | | | | | |
| | Rivetter | Steel car man | | | | | |
| | Reamer | " " " | 58 | 54 1/2 | 52 1/2 | 50 1/2 | 48 1/2 |
| | Punch Operator | " " " | | | | | |
| 20 | Rotary Edge Planer | " " " | | | | | |
| | Plate Edge Planer | " " " | | | | | |
| | Cold Saw Operator | " " " | | | | | |
| | Metal Band Saw Operator | " " " | | | | | |
| | Plate Rolls Operator | " " " | | | | | |
| | Shear Man | " " " | | | | | |
| | Bolt Threader | " " " | | | | | |
| | Marker | " " " | | | | | |
| | Rivetting Machine Operator | " " " | | | | | |
| 30 | Truck Builder | " " " | | | | | |
| | Assembler | " " " | | | | | |
| | Painter's Helper | Carmen's Helper | | | | | |
| | Triple Cleaner | " | | | | | |
| | Car Oiler | " | | | | | |
| | Cleaner for painter | " | | | | | |
| | Dip Tank man | " | | | | | |
| | Supply & Material Man | " | | | | | |
| 40 | Brass Cleaner | " | | | | | |
| | Wood Machine Helper | " | | | | | |
| | Upholsterer's Helper | " | | | | | |
| | Car Heater & Ice Man | " | | | | | |
| | Coach Washer (Shop work) | " | | | | | |

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| Old Classi- fication | New Classi- fication | RATES (Cents per hour) | | | | |
|---|---|--------------------------|-------------|-------------|-------------|-------------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Gas Filler | Carmen's Helper Seamstress Carmen's Helper " } } | | | 45 | | |
| Tool Room Attendant.. | | | | | | 10 |
| Seamstress | | | | | | |
| Helpers (All classes).... | | | | | | |
| Driller | " } } | | | | | |
| Rivet Heater (Over 18 years) | | | | | | 10 |
| Rivet Heater (Under 18 years) | Rivet Boy } } | | | 25 | | |
| Car cleaners (for sleep- ers & diners or when watching engines).... | " } } | General Order 27 Applies | | | | |
| Car and Lamp Cleaners (Ordinary) | | | | | | |
| Core-Maker | | | | | | |
| Pattern Makers | | | | | | 20 |
| (g) Pattern Maker | Pattern Maker } } | 68 | .... | .... | .... | .... |

Moulders

(h) Include moulders, cupola tenders and core-makers.

Moulder Apprentices

Include regular and helper apprentices in connection with the above.

Moulder Helper

Employees regularly assigned to help moulders, cupola tenders, core-makers and their apprentices. 30

| Old Classi- fication | New Classi- fication | RATES (Cents per hour) | | | | |
|-------------------------|-------------------------|------------------------|-------------|-------------|-------------|-------------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Cylinder Moulder | Moulder " } } | | | | | |
| Floor Moulder | | | | | | |
| Bench Moulder | | | | | | |
| Cylinder Core-Maker .. | | | 68 | .... | .... | .... |

| Old Classification | New Classification | RATES (Cents per hour) | | | | | RECORD Exhibits P. 4 Wage Agreement No. 1 and Supplement A, 2nd Sept., 1918, 25th Oct., 1918. (Continued) |
|---------------------------------|--------------------|------------------------|----------|----------|----------|----------|--|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year | |
| Core Maker | Moulder | 68 | 62 | 57 | 53 | 50 | |
| Moulding Machine Operator | " | | | | | | |
| Core Makers' Specialist | " | | | | | | |
| Wheel Core-Maker | " | | | | | | |
| Wheel Moulder | " | | | | | | |
| 10 Cupola Attendant | " | | | | | | |
| Chipper | Moulder's Helper | | | 45 | | | |
| Helpers (All classes).... | " | | | | | | |

Unclassified

| | | | | | | | |
|---------------------------------------|------------------------|----|-----|-----|-----|-----|--|
| (i) | | | | | | | |
| Frog Fitter | Frog and Switch Fitter | 58 | 54½ | 52½ | 50½ | 48½ | |
| Switch Stand Fitter | " " | | | | | | |
| 20 Rail Saw | Friction Saw Operator | | | | | | |
| Rail Bender | Rail Bender | | | | | | |
| Burner (scrap in dock and yard) | Helper | | | 45 | | | |
| Hydrant Inspector | " | | | | | | |
| Scrap Cutter | " | | | | | | |

(j) For the above classes of employees (except carmen, second class electrical workers, and all apprentices and helpers) who have had four or more years experience and who were on May 1st, 1918, (or later up to August 1st, 1918, under unexpired agreements) receiving less than 55 cents per hour, a basic minimum rate of 55 cents per hour will be established, and to this basic minimum rate and all other hourly rates of 55 cents per hour and above, in effect as mentioned, an increase of 13 cents per hour will be applied.

(k) For carmen and second class electrical workers who have had four or more years experience and who were on May 1st, 1918, (or later up to August 1st, 1918, under unexpired agreements) receiving less than 45 cents per hour, a basic minimum rate of 45 cents per hour will be established, and to this basic minimum rate and all other hourly rates of 45 cents and above,

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in effect as mentioned, an increase of 13 cents per hour will be applied.

(l) Gang foremen and leading hands paid on an hourly basis will receive 5 cents per hour above the rates provided for their respective crafts.

(m) The above classes of employees (except carmen, second class electrical workers, and all apprentices and helpers) who have had less than four years experience in the work of their trade will be paid as follows:

(a) One year's experience or less, 50 cents per hour. 10

(b) Over one year and under two years experience, 53 cents per hour.

(c) Over two years and under three years experience, 57 cents per hour.

(d) Over three years and under four years experience, 62 cents per hour.

(n) Carmen and second class electrical workers who have had less than four years experience in the work of their trade will be paid as follows:

(a) One year's experience or less, 48½ cents per hour. 20

(b) Over one year and under two years experience, 50½ cents per hour.

(c) Over two years and under three years experience, 52½ cents per hour.

(d) Over three years and under four years experience, 54½ cents per hour.

(o) At the expiration of the four year period the employees mentioned in Clauses (m) and (n) of this Article shall receive the respective minimum of their craft.

(p) The sliding scale of rates shall not apply to tradesmen,³⁰ according to definitions outlined in previous agreements, in basic trades in which an apprenticeship period has usually been served,

namely, machinists, boilermakers, blacksmiths, tinsmiths, pipe-fitters, general electricians, armature winders, moulders, pattern-makers; coach bench and locomotive carpenters; coach and locomotive painters; upholsterers, but the sliding scale of rates shall apply to all classes of specialists and others who under the terms of this agreement shall henceforth be included in the above basic trades, and also to others for whom the sliding scale of rates is provided in this agreement. The sliding scale of rates provided herein for those classes of employees who were not previously
 10 but under the terms of this agreement will henceforth be included in the basic trades as defined in Clauses (a) to (h) inclusive, of this Article shall only apply where the class of work concerned has up to the present time been performed by specialists.

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(q) Where men are required to fill positions as tradesmen as outlined in Clauses (a) to (h) inclusive, of this Article, and tradesmen are not available after one week's notification to the Committee, such men as are available having the greatest experience and necessary qualifications will be promoted or employed, and paid the minimum rate of the craft.

20 (r) When filling vacancies which occur in connection with those classes of employment which were not previously, but under the terms of this agreement will hereafter be included in the basic trades as defined in Clauses (a) to (i) inclusive, of this Article, preference shall be given available men having the greatest experience providing they possess the necessary qualifications in other respects.

(s) The sliding scale shall apply temporarily to those men who were on August 31st, 1918, working in the basic trades, who have had less than four years experience as specialists now to be
 30 included in classifications of tradesmen, (two years service as helper to count as one year's service as specialist) until such time as these men secure the four years' experience to entitle them to the minimum rate of their crafts. Under this Clause the minimum rate for the sliding scale shall be 55 cents per hour.

Apprentices

8. (a) Regular apprentices between the ages of 16 and 21, engaging to serve a four year or five year apprenticeship, shall be paid as follows: starting out rate and for the first six months, 25 cents per hour, with an increase of $2\frac{1}{2}$ cents per hour for each
 40 six months thereafter up to and including the first three years; 5 cents per hour increase for the first six months of the fourth

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year and 7½ cents per hour for the last six months of the fourth year, 7½ cents per hour for the first six months of the fifth year and 7½ cents per hour for the last six months of the fifth year, provided, however, that the basic minimum rate per hour for their respective crafts shall not be exceeded.

(b) If retained in the service after the expiration of their apprenticeship, apprentices in their respective trades shall receive not less than the minimum rate established for their craft.

(c) Helper apprentices will receive the minimum helper rate for the first six months, with an increase of 2 cents per hour for 10 every six months thereafter until they have served three years.

(d) Fifty per cent of the apprentices may consist of helpers who have had not less than two consecutive years' experience, if available, or otherwise with less, in their respective trades in the shop or the division where advanced. In the machinist, sheet metal workers, electric and moulder trades, the age limit for advancement will be 25 years; in the boilermaker, blacksmith, and carmen trades, 30 years.

Calls

9. Men assigned to either shop or running work, if called one hour or less before commencement of their regular day, will receive a minimum of two hours pay; otherwise prevailing schedule conditions with respect to calls to work after work hours continue in effect.

Back Pay

10. As promptly as possible the amount due in back pay in accordance with the provisions of this agreement will be computed and payments made to employees, including those who may have left or have been discharged from the service.

Scope of Agreement

30

11. The provisions of this agreement shall supersede any provision in existing or immediately preceding schedules which conflict therewith.

Amendments and Interpretations

12. It is agreed that the Canadian Railway War Board and the Executive Committee of the Railway Employees' Department, Division No. 4, will confer promptly upon notice from either

party to the other, regarding the incorporation into this agreement of any amendments or interpretations which may be issued by the Director General, United States Railroad Administration, to his General Order No. 27 and Supplement No. 4 thereof, affecting employees in the Locomotive and Car Departments, as a result of the negotiations now in progress, and also with respect to any question which may arise regarding the interpretation of this agreement.

Duration

1013. Existing schedules as hereby amended will remain in effect until terminated by thirty days' notice in writing.

For the Railway Employees'
Department, Division No. 4,
American Federation of Labor

R. J. TALLON,
President

FRANK McKENNA,
Vice-President

CHARLES DICKIE,
Secretary

For the Canadian Railway
War Board

U. E. GILLEN,
Chairman Adminis-
trative Committee

W. M. NEAL,
General Secretary

20

Montreal, September 2nd, 1918.

CANADIAN RAILWAY WAR BOARD

Wage Agreement No. 1

SUPPLEMENT "A"

Preamble.

Wage Agreement No. 1, dated September 2nd, 1918, between The Canadian Railway War Board and Division No. 4, Railway Employees' Department, American Federation of Labour, is amended by changes and additions effective from September 1st, 30 1918, as follows:—

Carmen.

14. (a) For Coach Cleaners who were on January 1st, 1918, prior to the application of any increase effective that date, receiving less than sixteen (16) cents per hour, a basic minimum rate of

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sixteen (16) cents per hour will be established and to this basic minimum rate and all hourly rates of sixteen (16) cents and above in effect as of January 1st, 1918, twelve (12) cents per hour shall be added, establishing a minimum rate of twenty-eight (28) cents per hour, provided that the maximum shall not exceed forty (40) cents per hour. The rate thus established at each point on each railway shall be the minimum rates for Coach Cleaners at such points on such railways.

(b) All Coach Cleaners shall be paid on the hourly basis.

(c) Work hours for Coach Cleaners shall be in accordance with Wage Agreement No. 1, Article 3.

(d) Overtime for Coach Cleaners shall be paid in accordance with Wage Agreement No. 1, Article 5 (a), except that for the ninth and tenth hours of continuous service pro rata time shall apply on the actual minute basis, and thereafter at the rate of time and one half; provided, however, that in the event of the Director General, United States Railroad Administration, issuing any supplement or interpretation specifying some other basis for the payment of overtime for Coach Cleaners such other basis shall be made effective in the same manner and from the same date as made effective on the United States Railways.

15. For helpers in the basic trades as specified in Wage Agreement No. 1, who were on January 1st, 1918, prior to the application of any increase effective that date, receiving less than thirty-two (32) cents per hour, a basic minimum rate of thirty-two (32) cents will be established, and to this basic minimum rate of thirty-two (32) cents, and all hourly rates of thirty-two (32) cents and above in effect as of January 1st, 1918, thirteen (13) cents per hour shall be added, establishing a minimum rate of forty-five (45) cents per hour. The rates thus established at each point on each railway shall be the minimum rates for helpers in the basic trades as specified at such points on such railways.

16. Classification and rates of pay as specified in Wage Agreement No. 1, are amended as follows:

| | | Boilermakers | | | | |
|--|--|-------------------------------|------|------|------|------|
| Old | New | RATES (Cents per hour) | | | | |
| Classification | Classification | 5th | 4th | 3rd | 2nd | 1st |
| | | year | year | year | year | year |
| Marker off and Layer out (16 gauge & over).... | Marker off and Layer out (16 gauge & over) | } 70½ | — | — | — | — |
| Flanger | Flanger | | | | | |
| | | | | | | 40 |

Old Classi- New Classi- RATES (Cents per hour)
fication fication 5th 4th 3rd 2nd 1st
year year year year year

Blacksmiths

| | | | | | | | |
|-------------------|-----------------|---|-----|---|---|---|---|
| Forgeman | Hammersmith | } | 70½ | — | — | — | — |
| | (heavy furnace) | | | | | | |
| Blacksmith | Blacksmith | | | | | | |
| (Frame fire)..... | (Frame fire) | | | | | | |

Carmen.

| | | | | | | | | |
|----|---|---|---|----|-----|-----|-----|-----|
| 10 | Cabinet Maker & Carver | Cabinet Maker | } | 58 | — | — | — | — |
| | Carpenter (Coach, Loco. and Bench) | Carpenter (Coach, Loco., and Bench) | | | | | | |
| | Upholsterer | Upholsterer | | | | | | |
| | Painter, Varnisher (Coach and Loco.) | Painter, Varnisher (Coach and Loco.) (performing varnishing, surfacing, lettering or decorating). | | | | | | |
| 20 | Welder (Oxy-Ace-tylene, thermit and electric) | Welder (Oxy-Ace-tylene, thermit electric) | } | 68 | 62 | 57 | 53 | 50 |
| | Wood Machinist | Wood Machinist | | | | | | |
| | Saw and Borer | " " | | | | | | |
| | Morticer | " " | | | | | | |
| | Planer | " " | | | | | | |
| | Matcher | " " | | | | | | |
| | Shaper | " " | | | | | | |
| 30 | — | Passenger Train | | | | | | |
| | — | Steel Car Body Builders and Repairers | | | | | | |
| | Triple Tester | Triple Tester (Rackman) | | | | | | |
| | — | Platers and Buffers (Silver and Nickel) | | | | | | |
| 40 | | Freight Train Steel Car Body Builders and Repairers | | 63 | 59½ | 57½ | 55½ | 53½ |

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| Old Classi- fication | New Classi- fication | RATES (Cents per hour) | | | | |
|----------------------------------|----------------------------|------------------------|-------------|-------------|-------------|-------------|
| | | 5th year | 4th year | 3rd year | 2nd year | 1st year |
| Bolt Threader (Steel Car man) | Carmen's Helper | | | | | 45 |
| Stock Keeper | " " | | | | | 45 |
| Electrical Workers. | | | | | | |
| Transfer Table Operator | Transfer Table Operator | | | | | 45 |

17. The provisions of this supplementary agreement shall super-
 sede any provision in Wage Agreement No. 1 or in existing or
 immediately preceding schedules which conflict therewith.

For the Railway Employees'
 Department, Division No. 4,
 American Federation of Labor.

For the Canadian Railway
 War Board.

R. J. TALLON,
 President

GRANT HALL,
 Chairman Adminis-
 trative Committee

FRANK McKENNA,
 Vice-President

W. M. NEAL,
 General Secretary

CHAS. DICKIE,
 Secretary.

20

PLAINTIFF'S EXHIBIT 25

WAGE AGREEMENT No. 4

CANADIAN RAILWAY WAR BOARD

Preamble

Agreement between the Canadian Railway War Board and
 Division No. 4, Railway Employees' Department, American
 Federation of Labor, in respect to rates of pay, work hours, and

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conditions of service, for employees in the Locomotive and Car Department of the several Railways as specified herein.

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Railways Affected

This agreement shall be effective on the following Railways:

Canadian National Railways,
Canadian Pacific Railway,
Dominion Atlantic Railway,
Esquimault & Nanaimo Railway,
Grand Trunk Railway,
10 Grand Trunk Pacific Railway,
Halifax and Southwestern Railway,
Kettle Valley Railway,
Quebec Central Railway,
Temiskaming & Northern Ontario Railway,
Winnipeg Joint Terminals, and
Conditional as to application of increased rates of pay from
August 1st, 1919,
Toronto, Hamilton & Buffalo Railway.

Hours of Service

20 **Rule 1**—Eight hours shall constitute a day's work. All Employees coming under the provisions of this schedule, except as provided for in Rule 15, shall be paid on the hourly basis.

Rule 2—Work hours for shop work shall be as follows:

- (a) Where one shift is employed, except Saturdays and Sundays, 8 to 12 and 13 to 17 o'clock; Saturdays 8 to 12 o'clock.
- (b) Where two shifts are employed, the starting time of the second shift shall be 17 o'clock or 20 o'clock unless otherwise mutually arranged, working 9 consecutive hours
30 five nights per week, including an allowance of 20 minutes for lunch within the limits of the fifth hour.
- (c) When three shifts are employed, the work hours shall be as may be mutually arranged.

Rule 3—Work hours for running work shall be as follows:

- (a) Where three 8 hour shifts are worked, the hours for commencing duty shall be between 7 and 8 o'clock, 15 and

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16 o'clock, and 23 and 24 o'clock. 20 minutes will be allowed on each shift for lunch, beginning during the fifth hour, without deduction in pay.

(b) Where one or two shifts per 24 hours are worked:

Day Work—8 hours between 7 and 17 o'clock, with one hour for lunch between 12 and 13 o'clock, without pay for meal hour.

Night Work—8 hours between 19 and 6 o'clock with an allowance of 20 minutes for lunch, beginning during the fifth hour, without deduction in pay. 10

Rule 4—The starting time for any portion of the staff at any point may be arranged to commence within the limits named.

Where three shifts are worked on running repairs, the spread of each shift for all employees engaged on such work shall consist of eight consecutive hours, including an allowance of 20 minutes for lunch, beginning during the fifth hour, without deduction in pay.

Rule 5—The starting time for each employee shall be fixed and shall not be changed without at least 48 hours' notice.

Rule 6—All overtime, except as the provisions of Rules 7, 9, 20 10 and 15 apply, outside of bulletin hours, up to and including the sixteenth hour of service in any one twenty-four hour period, computed from the starting time of the employee's regular shift, shall be paid for at the rate of time and one-half and thereafter at the rate of double time, up to the starting time of the employees' regular shift.

This shall apply to work performed on Sundays and the following holidays: New Year's Day, Good Friday, Victoria Day, Dominion Day, Thanksgiving Day and Christmas Day.

Should any of the above mentioned holidays fall on Sunday 30 the day substituted by the Federal Government will be observed.

Rule 7—For continuous service after regular working hours, employees will be paid one hour for forty minutes service or less, and shall not be required to work more than one hour without being permitted to go to meals.

Employees called or required to return to work (otherwise than as provided in first paragraph of this rule), will be allowed

five hours for three hours and twenty minutes' service or less, and except that if called for one hour or less before commencement of their regular day they will receive a minimum of two hours' pay.

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They shall be required to do only such work as held or called for.

Rule 8—Employees regularly assigned to work on Sundays and the holidays specified in Rule 6, or those called to take the place of such employees, will be allowed to complete the balance
10 of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known.

Rule 9—Employees required to work during meal period shall receive pay at the rate of time and one half on the minute basis, but will be relieved the necessary time (without pay) to procure meal.

This does not apply where employees are allowed the twenty minutes for lunch without deduction therefor.

Overtime Emergency Service Road Work

20 **Rule 10**—Employees, except as the provisions of Rules 12 and 15 apply, sent out on the road for emergency service, shall receive continuous time from the time called until their return as follows:

30 Overtime rate for all overtime hours and straight time for the recognized straight time hours at home station, whether working, waiting or travelling, except that after the first 24 hours, if relieved from duty for five or more hours, they will not be allowed time for such hours provided that in no case shall an employee be paid for less than 8 hours on week days, and 8 hours at one and a half time for Sundays and the holidays specified in Rule 6, for each calendar day. Where meals and lodging are not provided by the Railroad, actual expenses will be allowed. Employees will receive all allowance for expenses not later than the time when they are paid for the service rendered. Employees will be called as nearly as possible, one hour before leaving time, and on their return will deliver tools at point designated.

Distribution of Overtime

Rule 11—When it becomes necessary for employees to work

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overtime, they shall not be laid off during regular working hours to equalize the time.

At points where sufficient number of employees are employed, employees shall not work two consecutive Sundays (holidays to be considered as Sundays).

Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

Temporary Vacancies

Rule 12—When necessary to fill temporary vacancies at outlying points, employees, excluding those specified in Rules 14 and 15, will be sent out and will be paid for this service as follows:

Continuous time from time called up to time of reporting at point to which sent, overtime rates for all overtime hours, and straight time for the recognized straight time hours at home station, whether waiting or travelling, (the same provisions to apply for return trip). While at such point they will be paid straight time and overtime in accordance with practice (not necessarily the same hours) at home point with a guarantee of not less than 8 hours' pay, at the established rate for each calendar day, including Sundays and the holidays specified in Rule 6, at overtime rates. Where meals and lodgings are not provided by the railroad, actual expenses will be allowed.

Overtime Changing Shifts

Rule 13—Employees changing from one shift to another, will be paid overtime rates for the first shift at each change. Employees working two shifts or more on a new shift shall be considered transferred. This will not, however, involve the payment of punitive overtime rates to employees changing off where employees work alternately on stated shifts, nor to employees changing positions under the exercise of their seniority rights.

Overtime Regular Assigned Road Work

Rule 14—Employees regularly assigned to road work and who leave and return to home station daily (a boarding car to be considered a home station), shall be paid continuous time from the time of leaving the home station to the time they return, whether working, waiting or travelling, exclusive of the meal period, at straight time for the regular hours, and overtime rates for all overtime hours as per overtime rules.

The starting time to be not earlier than 6 a.m. nor later than 8 a.m. Where two or more shifts are worked the starting time of each following shift will be regulated accordingly.

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When such men do not return daily to their home station or boarding car, they will be paid for all overtime actually worked as per Rule 6, and in such cases where meals and lodgings are not furnished by the Railroad, employees will be paid actual expenses. If lodging is not available at point where work is performed, employees will be paid according to Rule 10 until they reach lodging, home station or boarding car.

Road car repair men sent out on the Road after having worked at terminal during day, will receive pay at straight time for travelling from time called until they reach the first point at which they have to work and will be compensated for any additional expense they necessarily incur.

Rule 15—Employees regularly assigned to perform road work and paid on a monthly basis shall be paid not less than the minimum hourly rate established for the corresponding class of employees coming under the provisions of this schedule, on the basis of 365 eight-hour days per calendar year, with pay at the rate of time and one-half time for Sundays and holidays designated herein; otherwise, overtime will not be paid. Where meals and lodging are not furnished by the railroad, or when the service requirements make the purchase of meals and lodging necessary while away from home point, employees will be paid actual expenses. This service is distinct and separate from that performed by any other class of employees coming under the provisions of this schedule and is not to be confused therewith; the employees assigned to it shall not be assigned to or used to perform the construction, repair and emergency work assigned to other employees under the provisions of the general and special rules of this schedule. NOTE: The following is an example to be followed in arriving at the monthly rates:

| | Hours |
|--|--------------|
| 365 days multiplied by 8 equals | 2,920 |
| 59 Sundays and holidays at one half time will be 59 multiplied by 4, equalling | 236 |
| | 3,156 |
| Total hours to be paid for | 3,156 |

The monthly salary is arrived at by dividing the total earnings of 3,156 hours by 12; no overtime is allowed for time worked

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in excess of eight hours per day; on the other hand, no time is to be deducted unless the employee lays off of his own accord.

The operation of this rule shall not prevent continuing the practice of granting holidays with pay to employees paid on a monthly basis with proper allowance therefor from the number of hours specified above.

Filling Vacancies

Rule 16—When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate, but if required to fill, temporarily, the place of another employee receiving a lower rate, his rate will not be changed.

Rule 17—Employees serving on night shifts, desiring day work (or vice versa) shall have preference when vacancies occur, according to their seniority.

Rule 18—When new jobs are created or vacancies occur in preference jobs in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. 20

Rule 19—Mechanics in service will be considered for promotion to positions as shop foremen.

When vacancies occur in positions of gang foremen (leading hands supervising the work of a gang) men from the respective crafts will have preference in promotion.

Rule 20—Employees who transfer from one point to another with a view of accepting a permanent transfer, will, after thirty days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern, such transfers to be made without expense to the Company. Employees will not be compelled to accept a permanent transfer to another point. 30

Rule 21—When the requirements of the service will permit, employees, on request, will be granted leave of absence for a limited time, with privilege of renewal.

The arbitrary refusal of a reasonable amount of leave of em-

ployees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be handled as unjust treatment under this agreement.

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Absence from Work

Rule 22—In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause must, if possible, advise the foreman in time so he can arrange for relief, and in all cases men will make arrangements with the foreman to lay off.

Faithful Service

Rule 23—Employees who have given long and faithful service in the employ of the Company and who have become unable to handle heavy work to advantage will be given preference of such light work in their line as they are able to handle (subject to pension regulation age limits).

Attending Court

Rule 24—When attending Court as witnesses for the Railroad, employees will receive pay for all time lost at home station, with a minimum of 8 hours' time each week day and 8 hours at rate and one half for Sundays and holidays, either at home station, away from home, or travelling. Time and one half will be paid for travelling, during overtime hours where employees are unable to secure sleeping car accommodation. Actual expenses will be allowed when away from home station, and necessary expenses will be allowed when at home. When necessary the Company will furnish transportation, and will be entitled to certificate for witness fees in all cases.

Paying Off

Rule 25—Employees will be paid off during regular working hours, semi-monthly.

Should the regular pay day fall on a holiday or days when the shops are closed down, men will be paid on the preceding day.

When there is a shortage equal to one day's pay or more in the pay of an employee, a voucher will be issued to cover the shortage.

Employees leaving the service of the company will be furnished with a time voucher covering all time due within 24 hours

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at points where discharge checks are issued, and within 48 hours at other points, or earlier when possible. The time specified shall be exclusive of Sundays and holidays.

Rule 26—During inclement weather provision will be made where buildings are available to pay employees under shelter.

General Reduction of Forces

Rule 27—When it becomes necessary to make a general reduction in expenses, the force at any point or in any department or subdivision thereof shall be reduced, seniority as per Rule 31 to govern; the men affected to take the rate of the job to which they are assigned.

Five days' notice will be given men before such a general reduction is made, and lists will be furnished local committee.

This does not apply in laying off men who have been temporarily employed to meet special requirements.

In the restoration of forces, senior men laid off will be given preference of re-employment, if available, within a reasonable time, and shall be returned to their former position if it is to be filled; local committee will be furnished list of men to be restored to service; in reducing force, the ratio of apprentices will be maintained except as may be otherwise mutually arranged.

Reduction of Forces

Rule 28—Employees laid off on account of reduction in force, who desire to secure employment elsewhere, will, upon application, be furnished with a pass to any point on his General Superintendent's territory if over one year in the service, and to any point on his General Manager's territory if over three years in the service.

Rule 29—When reducing forces, if men are needed at any other point they will (if suitable for work required) be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company. Seniority to govern all cases.

Rule 30—Employees required to work when shops are closed down, due to breakdown in machinery, floods, fires, and the like, will receive straight time for regular hours, and overtime for overtime hours.

Seniority

Rule 31—Seniority of Employees in each craft covered by this agreement shall be confined to the point at which employed.

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Sub-divisions of the Carmen for seniority shall be as follows:

Patternmakers
Upholsterers
Painters
Other Carmen.

If on account of falling off in work of a particular class on which "other Carmen" are engaged it is necessary to displace them, they will, according to seniority, have the right to displace carmen junior to them performing other classes of work, if qualified to perform it, at the rate paid for such work.

The seniority lists will be open to inspection and copy furnished the committee.

Assignment Work

Rule 32—Mechanics or apprentices regularly employed as such shall do mechanics work as per special rules of each craft.

Electric and Oxy-Acetylene Welders

Rule 33—Employees engaged on electric or oxy-acetylene process will be taken from the craft that would have handled the work had it been done by former methods, and will be confined to work pertaining to their trade when there is sufficient of this work to keep them employed. At outside points where there is not sufficient work to require a man from each craft, the Foreman shall select a man from the Metal Trades Craft to perform all the work to be done by these processes.

Foremanship Filling Temporarily

Rule 34—Should an employee be required temporarily to fill the place of a shop foreman he will be paid his own rate, straight time for straight time hours and overtime for overtime hours, if greater than the foreman's rate. If it is not he will get the foreman's rate.

Grievances

Rule 35—Should any employee subject to this agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated, (which he is unable to adjust directly) the case shall be taken to the Foreman, Gen-

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eral Foreman, Shop Superintendent, or Master Mechanic, each in their respective order, by the local committee or one or more duly authorized members thereof.

If stenographic report of investigation is taken, the committee shall be furnished a copy.

If the result still be unsatisfactory, the General Committee, or one or more duly authorized members thereof, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application. 10

All conferences between shop officials and shop committees to be held by appointment during regular working hours without loss of time to committeemen.

Rule 36—Should the highest designated railroad official or his duly authorized representative and the corresponding representatives of the employees fail to agree, the case shall then be jointly submitted in writing to the Canadian Railway War Board and to Division No. 4, Railway Employees Department, American Federation of Labor, for adjudication or final disposition.

Prior to the adjudication or final disposition of grievances by 20 the highest designated authorities as herein provided, and while questions of grievances are pending, there will neither be a shut down by the employer nor a suspension of work by the employees.

To the extent that these rules may remain in force if and when the Canadian Railway War Board may cease to exist, the methods of procedure will thereafter be such as may be agreed to by the representatives of the railroads affected and the representatives of the employees herein specified.

Rule 37—An employee who has been in the service of the railroad over thirty days shall not be dismissed for incompetency, 30 nor be discharged for any cause without first being given an investigation.

Rule 38—If it is found that an employee has been unjustly discharged, or dealt with, such employee shall be reinstated with full pay for all time lost. In the event of an employee being otherwise employed pending settlement of his case by reinstatement any pay earned shall be credited against time lost.

Committees

Rule 39—The Company will not discriminate against any employees who, as Committeemen, from time to time, represent other employees and will grant them leave of absence and free transportation over the Company's lines when delegated to represent other employees.

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Apprentices

Rule 40—All apprentices must be able to speak, read and write the English language (or French in the Province of Quebec),
10 and understand at least the first four rules of Arithmetic.

Applicants for regular apprenticeship shall be between 16 and 21 years of age, and if accepted, shall serve five years of 290 days each calendar year. If retained in the service at the expiration of their apprenticeship they shall be paid not less than the minimum rate established for journeymen mechanics of their respective crafts.

In selecting helper apprentices, seniority will govern; otherwise selections will be made in conjunction with the respective shop committees.

20 **NOTE:** See special rules of each craft for additional apprentice rules.

Rule 41—All apprentices must be indentured and shall be furnished with a duplicate of Indenture by the Company. The form of Indenture will not contain provisions in conflict with the terms of this agreement.

The Company will furnish every opportunity possible for the apprentice to secure a complete knowledge of the trade.

30 Apprentices will not be maintained at points where there are not adequate facilities for learning the trade, beyond the time that can be properly applied on their apprenticeship. It will be compulsory for mechanical apprentices to move to larger shops for the purpose of acquiring wider experience after three years' service.

Rule 42—The ratio of apprentices in their respective crafts, shall not be more than one to every five mechanics.

NOTE: This will not require any reduction in the number

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of apprentices at present employed under previously existing schedule agreements.

Two apprentices will not be worked together as partners.

NOTE: This will apply only when the ratio of apprentices provided herein has been established by the number of apprentices being reduced by those at present indentured completing their apprenticeship at shops where a higher ratio has previously been maintained.

The distribution of apprentices amongst shops where general repairs are made on the division shall be as nearly as possible in 10 proportion to the mechanics in the respective trades employed therein.

In computing the number of apprentices that may be employed in a trade on a division (a General Superintendent's territory) the total number of mechanics of that trade employed on the division will be considered.

If, within six months, an apprentice shows no aptitude to learn the trade, he will not be retained as an apprentice.

An apprentice shall not be dismissed or leave the service of his own accord, except for just and sufficient cause before com-20 pleting his apprenticeship.

An apprentice shall not be assigned to work on night shifts, nor be allowed to work overtime during the first two years of his apprenticeship.

If an apprentice is retained in the service upon completing the apprenticeship, his seniority rights as a mechanic will date from the time of completion of apprenticeship.

Rates of Pay

Rule 43—The rate for all mechanics who were receiving 68 cents per hour or more under Wage Agreement No. 1 and Sup-30 plements thereto, except those provided for in Rule 45, will be increased 4 cents per hour, effective May 1st, 1919.

Steel Car Workers and other mechanics in the car department who were receiving the rate of 63 cents per hour under Wage Agreement No. 1 and supplements thereto will be increased 4 cents per hour, effective May 1st, 1919.

Other mechanics in the car department, and other unclassified mechanics, who were receiving 58 cents per hour under Wage Agreement No. 1 and supplements thereto, will be increased 9 cents per hour, making a rate of 67 cents per hour, effective May 1st, 1919.

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Rule 44—Apprentices, helpers, and other classes of workmen covered by Wage Agreement No. 1 and supplements thereto, except those provided for in Rule 45, will be increased 4 cents per hour above the present rate, effective May 1st, 1919. This increase to apply also to men paid on the step rates provided for in paragraphs (m) and (n), Clause 7, Wage Agreement No. 1, except those provided for in Rule 45, effective May 1st, 1919.

The step rates will not, however, be applied to men entering the service on and after the date of this agreement, except if transferred from another railway employees will carry with them the step rate paid them on such other railway.

Regular apprentices between the ages of 16 and 21, engaging to serve a five year apprenticeship, shall be paid as follows:

| | | | |
|----|--|------|----------|
| | Starting out rate and for the first six months | 29c | per hour |
| 20 | Second six months | 31½c | “ “ |
| | Second Year—First six months | 34c | “ “ |
| | Last six months | 36½c | “ “ |
| | Third Year —First six months | 39c | “ “ |
| | Last six months | 41½c | “ “ |
| | Fourth Year—First six months | 46½c | “ “ |
| | Last six months | 54c | “ “ |
| | Fifth Year— First six months | 61½c | “ “ |
| | Last six months | 69c | “ “ |

provided, however, that the basic minimum rate for their respective crafts shall not be exceeded.

Rule 45—Linemen and others covered by Rule 141 shall receive 68 cents per hour, effective May 1st, 1919.

Groundmen covered by Rule 142 shall receive 62 cents per hour, effective May 1st, 1919.

Coal pier elevator operators and coal pier electric hoist operators as covered by Rule 143 shall receive 55 cents per hour, effective May 1st, 1919.

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Rule 47—Good drinking water and ice when required will be furnished. Sanitary drinking fountains will be provided where necessary. Pits and floors, lockers, toilet and wash rooms will be kept in good repair and in a clean, dry and sanitary condition.

Shops, locker rooms and wash rooms will be lighted and heated in the best manner possible consistent with the source of heat and light available at the point in question.

Personal Injuries

Rule 48—Employees injured while at work will not be required to make accident reports before they are given medical attention, if required, but will make them as soon as practicable thereafter. Proper medical attention will be given at the earliest possible moment.

Notices

Rule 49—A place will be provided at all shops and round-houses where proper notices of interest to employees may be posted.

Shop Trains

Rule 50—Existing conditions in regard to shop trains will be maintained unless changed by mutual agreement, or until other reasonable facilities are available. The Company will endeavor to keep shop trains on schedule time, properly heated and lighted, and in a safe, clean and sanitary condition. This not to apply to temporary service provided in case of emergency.

Free Transportation

Rule 51—Employees covered by this agreement, and those dependent upon them for support, will be given the same consideration in granting free transportation as is granted other employees in service. 30

NOTE: This does not refer to special free transportation which may be issued to employees in train service on account of the necessary requirements of that service.

General Committees representing employees covered by this agreement to be granted same consideration as is granted General Committees representing employees in other branches of the service.

Protection of Employees

Rule 52—Employees will not be required to work on engines or cars outside of shops during inclement weather, if shop room and pits are available. This does not apply to work in engine cabs or emergency work on engines or cars set out for or attached to trains.

When it is necessary to make repairs parts of engines, boilers, tanks and tank cars shall be cleaned before mechanics are required to work on same. This will also apply to cars undergoing general repairs.

Employees will not be required to expose themselves to sand blast and paint blowers while in operation.

All acetylene or electric welding or cutting will be protected by a suitable screen when its use is required.

Emery Wheels and Grind Stones

Rule 53—Emery wheels and grind stones installed in the shop will be kept true and in order.

Help To Be Furnished

Rule 54—Craftsmen and apprentices will be furnished sufficient competent help, when needed to handle the work, if available. When experienced helpers are available, they will be employed in preference to inexperienced men.

Miscellaneous

Rule 55—When dismantling or scrapping engines, boilers, tanks, cars (except wood cars) or other equipment or machinery for serviceable parts, this work will be done by mechanics of their respective crafts. Sufficient help will be furnished.

When wood cars are dismantled for scrapping (at point where carmen are employed) parts to be removed (other than scrap) before car is burned or destroyed, will be removed by carmen.

Rule 56—No employees will be required to work under a locomotive or car (outside of shops) without being protected by proper signals. Where the nature of the work to be done requires it, locomotives or passenger cars will be placed over a pit, if available.

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Rule 57—In shops and roundhouses not now equipped with connections for taking the steam from engines, arrangements will be made to equip them so that steam from locomotives will not be blown off inside the house.

Rule 58—All engines will be placed under smoke jacks in roundhouses where practicable, when being fired up.

Rule 59—At shops and roundhouses equipped with electricity electric light globes and extensions will be kept in tool rooms available for use.

Rule 60—When employees (regularly employed) are required to check in and out on their own time, they will be paid one hour extra at the close of each week's service, regardless of the number of hours worked during the week.

MACHINISTS' SPECIAL RULES

Qualifications

Rule 61—Any man who has served an apprenticeship or who has had four years' experience at the machinists' trade, and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, turning, shaping, boring, planing, grinding, finishing, or adjusting the metal parts of any machine or locomotive whatsoever, shall constitute a machinist.

Classification of Work

Rule 62—Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery; ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding; axle truing, axle, wheel and tire turning and boring, engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting, and breaking of all joints on super-heaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders, us-

ing a facing, boring or turning head or milling apparatus, and all other work generally recognized as machinists' work.

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NOTE: Engine inspecting mentioned above does not refer to inspection of running engines for defects on arrival at roundhouses or subsequent inspection to ensure proper tools and supplies being on engines.

Machinist Apprentices

Rule 63—Include regular and helper apprentices in connection with the work defined by Rule 62.

10

Machinist Helpers

Rule 64—Employees assigned to help machinists and apprentices, operators of drill presses and bolt threaders not equipped with a facing, boring or turning head or milling apparatus, bolt pointing and centering machines, wheel presses, bolt threaders, nut tappers and facers; crane men helpers, tool room attendants, machinery oilers, box packers, grease cup fillers and oilers, and applying all couplings between engine and tenders.

Assignment to Running Repairs

Rule 65—Machinists assigned to running repairs, shall not be required to do work on back shop work at points where back shop forces are maintained.

Back Shop and Running Repair Forces

Rule 67—Back shop forces will not be assigned to perform running repair work, except when the regularly assigned running repair forces are unable to get engines out in time to prevent delay in train movement.

Work at Wrecks

Rule 68—In case of wrecks where engines are disabled, machinist, and helper if required (more if necessary), shall accompany the wrecker. They will work under the direction of the wreck foreman.

Apprentices Classification of Work

Rule 69—Apprentices shall be instructed in all branches of the machinists' trade. They will serve three years on machines and special jobs. Apprentices will not be required to work more than four months on any one machine or special job. During

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the last two years of their apprenticeship they will work on the floor. Apprentices shall not work on oxy-acetylene, thermit, electric or other welding processes until they are in their last two years.

Helper Apprentices

Rule 70—Helpers who have had not less than two consecutive years' experience as a machinist helper in the company's employ at the time application for apprenticeship is made may become a helper apprentice. When assigned as a helper apprentice they must not be over twenty-five years of age. 10

Rule 71—Helper apprentices shall serve three years, a minimum of 290 days each calendar year, and shall be governed by the same regulations and rules as govern regular apprentices.

Rule 72—The number of helper apprentices must not at any time exceed 50 per cent of the combined number of regular and helper apprentices assigned.

Rule 73—Helper apprentices shall receive the minimum helper rate for the first six months, with an increase of two cents per hour for every six months thereafter until they have served three years. 20

Helpers

Rule 74—A helper, when used in any way in connection with machinists' work, shall in all cases work under the orders of the machinist, both under the direction of the foreman.

Rule 75—When vacancies occur under classification of machinist helper (temporarily or permanent) machinist helpers in the service will be given preference in promotion to position paying either same or higher rate at shop employed, seniority to govern.

Rule 76—Laborers, or similar class of workmen, shall not be permitted to do helpers' work as outlined in Rule 64 if regular machinist helpers are available. 30

BOILERMAKERS' SPECIAL RULES

Qualifications

Rule 78—Any man who has served an apprenticeship, or who has had four years' experience at the trade, who can with the aid of tools, with or without drawings, and is competent to

either lay out, build or repair boilers, tanks, and details thereof, and complete same in a mechanical manner shall constitute a boilermaker.

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Classification of Work

Rule 79—Boilermakers' work shall consist of laying out, cutting apart, building or repairing boilers, tanks and drums; inspecting, patching, rivetting, chipping, caulking, flanging, and flue work; building, repairing, removing and applying steel cabs and running boards; laying out and fitting up any sheet iron or sheet
10 steel work of 16 gauge or heavier (present practice between boilermakers and sheet metal workers on railroads to continue relative to gauge of iron), including fronts and floors; grate and grate rigging, ash pans, front end netting and diaphragm work; engine tender steel underframe and steel tender truck frames, except where other mechanics perform this work; removing and applying all stay bolts, radials, flexible caps, sleeves, crown bolts, stay rods, and braces in boilers, tanks and drums, applying and removing arch pipes; operating punches and shears for shaping
20 and forming, pneumatic stay bolt breakers, air rams, and hammers; bull, jam, and yoke rivetters; boilermakers' work in connection with the building and repairing of steam shovels, derricks, booms, housing, circles and coal buggies; eye beam, channel iron, angle iron, and tee iron work; all drilling, cutting and tapping and operating rolls in connection with boilermakers' work; oxy-acetylene, thermit and electric welding, on work generally recognized as boilermakers' work, and all other work generally recognized as boilermakers' work. It is understood that present practice in the performance of work between boilermakers and carmen will continue.

30

Boilermaker Apprentices

Rule 80—Include regular and helper apprentices in connection with the work as defined by Rule 79.

Boilermaker Helpers

Rule 81—Employees assigned to help boilermakers and their apprentices, operators of drill presses, and bolt cutters in the boiler shop, boiler washers, flue cleaners, punch and shear operators (cutting only bar stock and scrap).

Running Repair Work

Rule 82—Running repair work for boilermakers shall consist
40 of such boilermakers' work as is necessary to fit locomotives to

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make a successful trip. It shall include stay bolt inspection, ordinary repairs to ash pan and front end nettings, caulking and repairing leaks in fire boxes and exterior of boilers or tanks. The application of stay bolts, patches, and flues, will be done by back shop forces, but at points where no back shop forces are employed, the roundhouse men will be expected to do such work.

Special Services

Rule 83—Flange turners, layer outs, and fitter ups shall be assigned in back shops where flue sheets and half side sheets or fire boxes are flanged, removed and applied. One man may perform all these operations where the service does not require more than one man. 10

Protection for Employees

Rule 84—Boilermakers, apprentices, and helpers will not be required to work on boilers or tanks while electric or other welding processes are in use or when tires are being heated, unless proper protection is provided.

Protection of Employees

Rule 85—Not more than one oxy-acetylene welding or cutting operator or electric operator will be required to work in fire box or shell of boiler at the same time unless proper protection is provided. 20

Rule 86—Oxy-acetylene welding or cutting operator or electric operator will be furnished with helper when necessary or when it is essential for personal safety.

Rule 87—Should it become necessary to send oxy-acetylene welder or cutter or electric operator out of the shop in cold weather, he will be given ample time to dry off before being sent out.

Rule 88—When it is necessary to renew, remove, or replace flue, door, side or crown sheets, by means of oxy-acetylene or other cutting and welding processes, such portion of the ash pan wings and grates as interfere with the operator, will be removed. Dome caps will be removed and front ends opened up if required for proper ventilation. 30

Rule 89—Boilers will have steam reduced or blown off and be sufficiently cooled before boilermakers or apprentices are re-

quired to work in them; blowers will be furnished when possible to do so.

Fire boxes, front ends and ash pans will be properly cleaned out before boilermakers or apprentices are required to work in them.

Front ends and fire boxes of engines held in for other than running repairs will be cleaned out before boilermakers or apprentices are required to work in them. Firebrick unduly interfering with the work to be performed will be removed.

- 10 **Rule 90**—In back shops at least one boilermaker and a competent apprentice with at least two years' experience will be used to operate a long stroke hammer in continuous operation; that is, an air hammer capable of driving stay bolts or rivets $\frac{5}{8}$ " diameter or larger.

When rolling or expanding superheater flues with pneumatic tools (not including beading), a boilermaker and a competent apprentice with at least two years' experience, will be used.

- 20 At points where there are not sufficient boilermakers or apprentices available, a helper will be used to assist boilermaker to do such work.

Rule 91—No tapping or reaming will be done in fire boxes when same is near enough to endanger the men working on inside of fire box. A space of ten rows of stay bolts will be considered sufficient, it being understood that the helper will protect the men with a sleeve over a tap when tapping is being done.

Removal of Flues

- 30 **Rule 94**—When flues (other than burst flues) are to be removed, the front end will be opened and such parts of the draft appliances as unduly interfere with the boilermaker will be removed. Centre arch pipes in engine, other than those equipped with combustion chambers, which unduly interfere with boilermakers in the performance of their work, will be removed.

Helpers on Flange Fires

Rule 96—Helpers on flange fires will not be asked to go outside of shop, to handle fuel, during cold weather, before being given an opportunity to cool off.

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Rule 97—As far as practicable, regularly assigned helpers will be used on flange fires.

Helpers

Rule 99—Classified boilermakers' helpers will attend tool room in boiler shop where regular attendant is employed.

Rule 100—Holding on all stay bolts and rivets, striking chisel bars, side sets, and backing out punches; scaling boilers, heating rivets (except when performed by apprentices), will be considered boilermakers' helpers' work. Rivet boys under eighteen years of age now in service at special rate may be retained as 10 such until they reach the age of eighteen.

Helper Apprentices

Rule 105—Fifty per cent of the apprentices may consist of boilermaker helpers who have had not less than two consecutive years' experience as boilermaker helper at the point where employed at the time application for apprenticeship is made.

Helper apprentices shall be between the ages of 21 and 30 years and shall serve three years, a minimum of 290 days each calendar year. The age limit of 30 years may be exceeded in specific cases under special arrangement between company's officials 20 and shop committees.

Helper apprentices shall be governed by the same regulations and rules as regular apprentices.

Apprentices shall not work on oxy-acetylene, thermit, electric, or other welding processes until they are in their last two years.

Helper apprentices shall receive the minimum helpers' rate for the first six months, with an increase of two cents per hour for every six months thereafter until they have served their apprenticeship.

Schedule of Work Regular Apprentices

30

Rule 106—The following schedule for regular apprentices, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit:

- 6 months—Heating rivets and helping boilermakers.
- 6 months—Tank repairing and sheet iron work.

- 6 months—Rolling flues; ashpan work.
- 6 months—Stay bolts and setting flues.
- 27 months—General boiler work.
- 3 months—Electric or oxy-acetylene welding.
- 6 months—Laying out and flanging.

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Rule 107—The following schedule for helper apprentices showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit:

- 10 6 months—Tank repairing and sheet iron work.
- 6 months—Rolling flues; ashpan work.
- 6 months—Stay bolts and setting flues.
- 9 months—General boiler work.
- 3 months—Electric or oxy-acetylene welding.
- 6 months—Laying out and flanging.

Differentials for Boilermakers

Rule 108—Boilermakers assigned as flangers and layers out, shall receive five cents per hour above the minimum rate paid boilermakers at the point employed.

- 20 **Rule 109**—Helpers on flange fires shall receive five cents per hour above the helpers' rate at point employed.

BLACKSMITHS' SPECIAL RULES

Qualifications

Rule 110—Any man who has served an apprenticeship or has had four years varied experience at the blacksmiths' trade shall be considered a blacksmith. He must be able to take a piece of work pertaining to his class, and with or without the aid of drawings, bring it to a successful completion within a reasonable length of time.

- 30 **Classification of Work**

Rule 111—Blacksmiths' work shall consist of welding, forging, heating, shaping and bending of metal; tool dressing and tempering; springmaking, tempering and repairing, potashing, case and bichloride hardening; flue welding, under blacksmith foreman; operating furnaces, bulldozers, forging machines, drop forging machines, bolt machines and Bradley hammers; hammer-smiths, drop hammermen, trimmers, rolling mill operators; operating punches and shears, doing shaping and forming in connec-

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tion with blacksmiths' work; oxy-acetylene, thermit, and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work.

Blacksmith Apprentices

Rule 112—Include regular and helper apprentices in connection with the work as defined by Rule 111.

Blacksmith Helpers

Rule 113—Employees assigned to helping blacksmiths and apprentices; heaters, hammer operators, machine helpers, drill press and boltcutter operators, punch and shear operators (cut- 10
ting only bar stock and scrap) in connection with blacksmiths' work.

Helper Apprentices

Rule 114—Fifty per cent of the apprentices may consist of helpers who have had not less than two consecutive years' experience in the shop on the division (General Superintendent's territory) where advanced.

Seniority shall prevail in the selection of helper apprentices; those selected to be not over thirty years of age.

Helper apprentices selected from helpers shall serve three²⁰ years, a minimum of 290 days each calendar year. When started as a helper apprentice they shall receive the minimum helpers' rate of pay for the first six months; at the end of that time they shall receive two cents per hour increase and two cents per hour increase each succeeding six months while serving their apprenticeship.

Helper apprentices shall be governed by the same regulations and rules as regular apprentices.

If after the first three months they show no aptitude to learn the trade, they shall be set back to helping and retain their for-30
mer seniority as a helper. After completing their apprenticeship, they shall receive prevailing rate paid blacksmiths, if retained in the service.

Apprentices Miscellaneous

Rule 115—Apprentices shall be given an opportunity to learn all branches of the trade, and will not be kept on any one class of

work longer than four months. Apprentices shall not work on oxy-acetylene, thermit, electric or other welding processes until they are in their last two years.

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Rates To Be Maintained

Rule 116—When the performance of a certain class of work is transferred and performed by a different process the rate established under this agreement for the work being transferred shall be paid for the time occupied in the performance of the work under the new process.

10 Rates Helpers Building Fires

Rule 117—Blacksmith helpers required to prepare heavy furnaces or build fires on their own time shall be paid time and one-half on a minute basis with a daily minimum of twenty minutes on that basis.

Furnace Operators and Heaters

Rule 119—Furnace Operators (Heaters) will be assigned to operate furnaces making or working material the equivalent of six inches square or over and heating it for hammersmiths.

Heaters will be assigned to operate furnaces used in connection with forging machines 4 inches and over, or to heat any material the equivalent of 4 inches square and over to be forged.

Heaters will also be assigned to heavy blacksmith fires.

When heaters are required on other furnaces helpers will be used.

Hammer Drivers

Rule 121—Competent steam hammer drivers will be furnished.

Road Work

Rule 122—Blacksmiths sent out on the road to do Blacksmiths' work will be accompanied by a helper when such work requires a helper.

Differentials for Blacksmiths

Rule 124—Blacksmiths regularly (not necessarily continuously) working or making material the equivalent of six inches square or over shall be classified as hammersmiths and shall re-

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ceive ten cents per hour above the minimum rate paid blacksmiths at the point employed.

Blacksmiths regularly (not necessarily continuously) working material the equivalent of 4 inches square or over shall be classified as heavy fire blacksmiths and shall receive five cents per hour above the minimum rate paid blacksmiths at the point employed.

Heaters on heavy blacksmiths fires shall receive ten cents per hour above the minimum rate paid helpers at point employed.

Hammer Operators and helpers working with hammersmiths or heavy fire blacksmiths shall receive five cents per hour above 10 the minimum rate paid helpers at the point employed.

NOTE: Hammer boys under 18 years of age now in service at special rate, may be retained as such until they reach the age of 18.

Furnace Operators (heaters) operating furnaces for hammersmiths shall receive the minimum rate paid blacksmiths at the point employed.

SHEET METAL WORKERS' SPECIAL RULES

Qualifications

Rule 125—Any man who has served an apprenticeship or has 20 had four or more years' experience in the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc., whether it be tin, sheet iron, or sheet copper, and capable of bending, fitting and brazing of pipe, shall constitute a sheet metal worker.

Classification of Work

Rule 126—Sheet metal workers shall include tanners, copper-smiths and pipe fitters, employed in shop yards and buildings and on passenger coaches and engines of all kinds, skilled in the build-30 ing, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter (present practice between sheet metal workers, pipefitters and boilermakers on railroads to continue relative to classification of work) including brazing, soldering, tinning, leading and babbiting; the bending, fitting, cutting, threading, brazing,

connecting and disconnecting of air, water, gas, oil, and steam pipes; the operation of babbitt fires and pipe threading machines; oxy-acetylene, thermit, and electric welding on work generally recognized as Sheet Metal Workers' Work, and all other work generally recognized as Sheet Metal Workers' Work.

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Sheet Metal Workers Apprentices

Rule 127—Include regular and helper apprentices in connection with work as defined by Rule 126.

Sheet Metal Worker Helpers

10 Rule 128—Employees regularly assigned as helpers to assist sheet metal workers and apprentices in their various classifications of work.

Road Work

Rule 130—Sheet Metal Workers will be sent out on line of road and to outlying points, when their services are required, but not for small, unimportant running repair jobs.

Assignment of Running Repair Force to Dead Work

Rule 131—The assignment of running repair sheet metal workers to back shop work, shall not be the recognized practice; **20** but at points where no back shop sheet metal workers are employed, they may be so assigned if the needs of the service require it.

Assignment of Dead Work Force to Running Repairs

Rule 132—Back shop forces will not be assigned to perform running repair work, except when the regularly assigned running repair forces are unable to get engines out in time to prevent delay to train movement.

Helper Apprentices

30 Rule 134—Fifty per cent of the apprentices may be selected from helpers of this craft who have had not less than two consecutive years' experience as a Sheet Metal Worker Helper at the point where employed, and shall not be more than thirty years of age; such apprentice shall serve three calendar years, a minimum of 290 days each calendar year, seniority to govern.

Rule 135—Helper apprentices will receive the minimum helpers' rate for the first six months, with an increase of two cents per

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hour for every six months thereafter until they have served three years.

Helpers

Rule 136—Labourers, or similar class of workmen shall not be permitted to do helpers' work as outlined in Rule 128 if regular Sheet Metal Worker Helpers are available.

Schedule of Work, Regular Apprentices

Rule 137—Regular apprentices' Schedules and Division of

Time:

- 6 months—Helping. 10
- 6 months—Light pipe work.
- 12 months—Tinning, babbitting and brazing, laying out and forming.
- 12 months—Engine and Car Work.
- 24 months—General Work, including one month's experience with the oxy-acetylene torch.

ELECTRIC WORKERS' SPECIAL RULES

Qualifications

Rule 139—Any man who has served an apprenticeship or who has had four years' practical experience in electrical work and 20 is competent to execute same to a successful conclusion will be rated as an electrical worker.

Classification of Electricians

Rule 140—Electricians' work shall consist of repairing, rebuilding, installing, inspecting, and maintaining the electric wiring of generators, switchboards, motors and control, rheostats and control, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, and axle lighting equipment; winding armatures, fields, magnet coils, rotors, transformers, and start-30 ing compensators. Inside wiring in shops and on steam and electric locomotives, passenger train and motor cars; include electrical cable splicers, wiremen, armature winders, electric crane operators for crane of 40 ton capacity or over, and all other work properly recognized as electricians' work.

Classification of Linemen, etc.

Rule 141—Linemen's work shall consist of building, repairing

and maintaining pole lines and supports for service wires and cables, catenary and monorail conductors and feed wires, overhead and underground, and all outside wiring in yards. Signal maintainers who, for 50 per cent or more of their time, perform work as defined in Rules 140 and 141 of this agreement.

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NOTE: This does not apply to the erection of poles and pole supports for any purpose or the construction or maintenance of telephone or telegraph lines.

Men employed as motor attendants, generator attendants, and
10 substation attendants who start, stop and oil and keep their equip-
ment clean and change and adjust brushes for the proper running
of their equipment, electric switchboard operators, shop tele-
phone repair men, coal pier car dumpers and coal pier conveyor
car operators, in connection with loading and unloading vessels.

Electric crane operators for cranes of less than 40 ton ca-
pacity.

Classification of Groundmen, etc.

Rule 142—Groundmen's work shall consist of assisting line-
men in their duties when said work is performed on the ground.

20 **Rule 143**—Electric transfer table operators, coal pier elevator
operators and coal pier electric hoists operators in connection with
loading and unloading vessels.

Apprentices Electrical Workers

Rule 144—Include regular and helper apprentices in connec-
tion with electrical workers.

Electrical Worker Helpers

Rule 145—Employees regularly assigned as helpers to assist
electrical workers and apprentices, including electric lamp trim-
mers who do no mechanical work.

30 **Helper Apprentices**

Rule 146—Fifty per cent of the apprentices may consist of
electrical workers' helpers who have had two years' continuous
service at the point where employed. When assigned as helper
apprentices, they must not be over 30 years of age, and shall
serve three years, a minimum of 290 days each calendar year.

Regular Apprentice Schedule of Work

Rule 147—The following schedule for regular apprentices,

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showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as possible:

- 12 months—Inside wiring and electrical repairing
- 6 months—Outside line work
- 6 months—Locomotive headlight work
- 6 months—Car lighting Department
- 6 months—Armature winding
- 24 months—General Electrical work.

Helper Apprentices Schedule of Work

Rule 148—Helper apprentices will receive the minimum help-10
 ers' rate for the first six months, with an increase of two cents
 per hour for every six months thereafter until their apprentice-
 ship is completed. If within six months they show no ability
 to acquire the trade, they will be set back to helping and retain
 their former seniority as a helper. After completing their ap-
 prenticeship they shall receive the minimum rate paid for the
 work to which they are assigned, if retained in the service.

Rule 149—The following schedule for helper apprentice, show-
 ing the division of time on the various classes of work is designed
 as a guide and will be followed as closely as possible: 20

- 6 months—Inside wiring and electrical repairing
- 6 months—Outside line work
- 6 months—Locomotive headlight work
- 6 months—Car lighting Department
- 6 months—Armature winding
- 6 months—General Electric work.

Miscellaneous

Rule 150—Laborers or similar class or workmen shall not
 be permitted to do helpers' work as outlined in Rule 145 if regular
 electrical worker helpers are available. 30

Rule 151—Men engaged in the handling of storage batteries
 and mixing acid must be provided with acid-proof rubber gloves,
 hip boots and aprons.

CARMEN'S SPECIAL RULES

Qualifications

Rule 153—Any man who has served an apprenticeship or
 who has had four years practical experience at car work, and

who, with the aid of tools, with or without drawings, can lay out, build or perform the work of his craft or occupation in a mechanical manner shall constitute a carman.

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Classification of Work

Rule 154—Carmen's work shall consist of building, maintain-
ing, dismantling, painting, upholstering and inspecting all pas-
senger and freight cars, both wood and steel, planing mill, cabinet
and bench carpenter work, pattern and flask making, and all
other carpenter work in shop and yards; carmen's work in build-
10 ing and repairing motor cars, lever cars, hand cars and station
trucks; building, repairing and removing and applying locomotive
cabs, pilots, pilot beams, running boards, foot and headlight
boards, tender frames and trucks; pipe and inspection work in
connection with air brake equipment on freight cars; applying
patented metal roofing; repairing steam heat hose for locomotives
and cars; operating punches and shears, doing shaping and
forming, hand forges and heating torches in connection with
carmen's work; painting, varnishing, surfacing, lettering, deco-
rating, cutting of stencils, and removing paint; all other work
20 generally recognized as painters' work under the supervision of
the locomotive and car departments; joint car inspectors, car
inspectors, safety appliance and train car repairers, wrecking
derrick engineers, and wheel record keepers; oxy-acetylene, ther-
mit, and electric welding on work generally recognized as car-
men's work, and all other work generally recognized as car-
men's work.

It is understood that present practice in the performance of work between the carmen and boilermakers will continue.

Carmen Apprentices

30 **Rule 155**—Include regular and helper apprentices in connection with the work as defined in Rule 154.

Carmen Helpers

Rule 156—Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches, preparatory to painting, car oilers, and packers, stock keepers (Car Department.), material carriers, rivet heaters, (except when performed by apprentices,) operators of bolt threaders, nut tappers, drill presses and punch and shear operators (cutting only bar stock and
40 scrap,) holding on rivets, striking chisel bars, side sets, and back-

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ing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, cleaning journals, assist carmen in erecting scaffolds and all other work generally recognized as carmen helpers' work.

Wrecking Crews

Rule 157—Carmen assigned to wrecking crews, including cranemen shall be paid for such service as per General Rules, from time called until return to their home station. Meals and lodging will be provided by the Company while crews are on duty in wrecking service. 10

Inspectors

Rule 159—Men assigned to inspecting must have the necessary knowledge of the M.C.B. rules and safety appliance laws, and be able to make the necessary reports in connection with interchange work.

Safety Appliance Men

Rule 161—As far as practicable men assigned to follow inspectors in yards to make safety appliance and light running repairs, shall not be required to work on cars taken from trains to repair tracks. 20

Protection for Repair Men

Rule 162—Switches of repair tracks will be kept locked with special locks, and men working on such tracks shall be notified before any switching is done. A competent person will be regularly assigned to perform this duty and held responsible for seeing it is performed properly.

Rule 163—Trains or cars while being inspected or worked on by train yard men will be protected by blue flag by day and blue light by night, which will not be removed except by men who place same. Carmen concerned will be required to place such 30 protection.

One Man Points

Rule 164—A "one man point" is an outlying point where there is employed one carman, day, and one, night, or where there is only one carman employed.

Carmen stationed at one man points shall be allowed the equivalent of 240 hours per month at not less than the hourly rate provided herein.

Where Car Inspectors or Car Repairers at one man points are required by order to work a total of more than 240 hours per month, they shall be paid for all time worked in excess of 240 hours at overtime rates. The work hours shall be mutually arranged to suit conditions, and less than eight hours may be specified for certain days.

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Other Carmen working under the provisions of this Article performing work such as the combined duties of Car Cleaners and Engine Watchmen, and who are required to be on duty on
10 Sundays as well as week days, shall be allowed an additional 40 hours per month, or a total of 280 hours per month.

Miscellaneous

Rule 165—Air hammers, jacks, and all other power driven machinery and tools, operated by carmen or their apprentices will be furnished by the company and maintained in safe working condition.

Rule 166—Crayons, soapstone, marking pencils, tool handles, saw-files, motor bits, augers, cold chisels, bars, steel wrenches, steel sledges, hammers (not claw hammers), reamers, drills, taps,
20 dies, lettering and striping pencils and brushes will be furnished by the company.

Miscellaneous Painters

Rule 167—The application of blacking to fireboxes and smoke boxes of locomotives in roundhouses, will not be considered painters' work.

Rule 168—When necessary to repair or inspect cars on the road or away from the shops, carmen will be sent out to perform such work. Two carmen will, where necessary, be sent to perform such work as putting in couplers, draft rods, draft timbers, arch
30 bars, centre pins, putting cars on centre, truss rods, and wheels, and work of similar character.

When regularly assigned to Road repair work, carmen will be paid under the provisions of Rule 14.

Apprentices

Rule 170—Regular apprenticeships will be established in all branches of the trade. Apprentices shall be governed by the general rules covering apprentices.

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Rule 171—Apprentices shall not work on any oxy-acetylene, thermit, electric or other welding processes until they are in their last two years.

Helper Apprentices

Rule 172—Fifty per cent of the apprentices may be helper apprentices who have had not less than two years' experience at carmen's helpers' work, at the time application for apprenticeship is made.

Helper apprentices shall not be over thirty years of age and will serve three years, a minimum of 290 days each calendar year. 10

Helper apprentices shall be governed by the same regulations and rules as regular apprentices.

Helper apprentices shall receive the minimum helper's rate for the first six months, with an increase of two cents per hour each succeeding six months until they have served three years. At the completion of their apprenticeship period if retained in the service, they shall receive the mechanics' rate of pay.

Painter Apprentices, Regular

Rule 173—Regular apprentices—Division of Time for Painter apprentices: 20

The following schedule for regular apprentices, painter, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit.

- 6 months—Freight Car painting.
- 6 months—Color room, mixing paint.
- 6 months—General locomotive painting.
- 12 months—Brush work, passenger equipment.
- 30 months—Lettering, striping, varnishing, laying out, designing and general work. 30

Schedule of Work Painter Helper Apprentices

Rule 174—Helper apprentices, Division of Time for painter apprentices:

The following schedule for helper apprentices, painter, showing the division of time on the various classes of work, is designed

as a guide and will be followed as closely as the conditions will permit:

- 4 months—Freight Car painting.
- 4 months—Color room, mixing paints.
- 4 months—General locomotive painting.
- 10 months—Brush work, passenger equipment.
- 14 months—Lettering, striping, varnishing, and such laying-out and designing as the shop affords.

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Regular Apprentices Carmen Schedule of Work

10 **Rule 175**—The following schedule for regular apprentices, showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit. Where sufficient passenger car department work is not available without exceeding the regular ratio of apprentices, in the passenger car department, apprentices will complete their apprenticeship in the freight car department.

- 24 months—General freight work, wood and steel.
- 6 months—Air brake work.
- 6 months—Mill machine work.
- 20 24 months—General coach work, wood and steel.

Helper Apprentices Carmen Schedule of Work

Rule 176—The following schedule for helper apprentices showing the division of time on the various classes of work, is designed as a guide and will be followed as closely as the conditions will permit. Where sufficient passenger car department work is not available without exceeding the regular ratio of apprentices in the passenger car department, apprentices will complete their apprenticeship in the freight car department.

- 12 months—General freight work, wood and steel.
- 30 6 months—Air brake work.
- 6 months—Mill machine work.
- 12 months—General coach work, wood and steel.

Rule 177—In the event of not being able to employ carmen with four years' experience and the regular helper apprentice schedule not providing men enough to do the work, the force may be increased in the following manner:

Regular apprentices who have served two years and helper

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apprentices who have served two years, may be promoted to mechanics at point employed and will be paid the minimum rate for carmen, seniority to govern.

Helpers who have had four or more years' experience at point employed, may be promoted to mechanics, they to receive the minimum rate for carmen and be given an opportunity to learn the trade, seniority to govern.

The duly authorized committee in each shop covered by this agreement will be consulted and mutual understanding arrived at in promoting helpers in such cases. The ratio of helpers to be promoted, to the number of mechanics in any one shop, shall not exceed twenty per cent.

The General Chairman on each railroad affected shall be furnished a complete record of the men promoted.

When a reduction is made in force of mechanics, promoted helpers and advanced apprentices, shall be set back in accordance with their seniority. No mechanics to be laid off until all such promoted helpers and advanced apprentices have been set back.

Rates of Pay and Rules for Coach Cleaners

Rule 179—Coach cleaners will be paid a minimum of 45 cents per hour, effective May 1st, 1919. Overtime and other conditions of this agreement will apply to coach cleaners from effective date hereof.

M I S C E L L A N E O U S

Scope of General and Special Rules

Rule 180—Except as provided for under the special rules of each craft, the general rules shall govern in all cases.

Effect on Existing Agreements

Rule 181—In consideration of the standardization of hours of service and rules governing working conditions hereby established on all railroads coming within the scope of this agreement, the General and Special Rules of this Agreement shall supersede and be substituted for the general and special rules of existing agreements.

Duration of Agreement

Rule 182—These general and special rules and regulations shall

remain in force and effect, unless superseded or amended as herein provided.

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Revision of Agreement

Rule 183—Should either the Canadian Railway War Board or the employees comprising Division No. 4, Railway Employees' Department, American Federation of Labor, desire to revise these rules, a written statement containing the proposed changes shall be given and conference held within thirty days.

Rule 184—For the carrying out of this agreement the Railways
10 concerned, when acting collectively, will deal only with the duly authorized officers of Division No. 4, Railway Employees' Department, American Federation of Labor. Grievances or the application or interpretation of the provisions of this agreement will be initially handled between the respective railways and Committees of their employees comprising said Division and as herein provided.

Effective Date

Rule 185—This agreement shall become effective December 1st, 1919.

Rule 186—Differentials provided for in this agreement for highly
20 skilled employees shall become effective as of May 1st, 1919.

Moulders

Rule 187—Employees coming under the classification of moulders as provided for in Wage Agreement No. 1 will receive the increase in rates of pay as provided for in the first paragraphs of Rules 43 and 44, respectively, of this agreement and the general rules shall be applied to them, except that mutual arrangements shall be made with a view to continuing present practice in relation to any special local conditions.

30 Employees Returning Home from Military and Naval Service

Rule 188—The provisions of Article 22, Wage Agreement No. 1, Supplement B, with reference to employees returning from Military and Naval Service, continue in effect.

For the Railway Employees'
Department, Division No. 4,
American Federation of Labor.

R. J. TALLON
President.

FRANK McKENNA
Vice President.

40

Montreal, November 12th, 1919.

CHAS. DICKIE
Secretary.

For The Canadian Railway
War Board.

GRANT HALL
Chairman, Administrative
Committee.

W. M. NEAL
General Secretary.

PLAINTIFF'S EXHIBIT 26

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SUPPLEMENT A TO WAGE AGREEMENT No. 4

THE RAILWAY ASSOCIATION OF CANADA

WAGE AGREEMENT NO. 4

Supplement 'A'

Wage Agreement No. 4, dated November 12th, 1919, between the Railway Association of Canada (Canadian Railway War Board) and Division No. 4, Railway Employees Department, American Federation of Labor, is — effective May 1st, 1920, amended as follows:— 10

Rule 43. The rate for all mechanics who were receiving sixty eight (68c) cents or more per hour under Wage Agreement No. 1 and Supplements thereto except those provided for in Rule 45, and which under this Rule was increased four (4c) cents per hour, will be further increased by thirteen (13c) cents per hour, thus establishing for such mechanics a minimum rate of eighty-five (85c) cents per hour.

Steel car workers and other mechanics in the Car Department who were receiving the rate of sixty three (63c) cents per hour under Wage Agreement No. 1 and Supplements thereto, and who ²⁰ under this rule were increased four (4c) cents per hour, will be further increased by thirteen (13c) cents per hour, thus establishing for such mechanics a minimum rate of eighty (80c) cents per hour.

Other mechanics in the Car Department, and other unclassified mechanics, who were receiving fifty-eight (58c) cents per hour under Wage Agreement No. 1 and Supplements thereto, and who under this rule were increased Nine (9c) cents per hour, will be further increased by thirteen (13c) cents per hour, thus establishing for such mechanics a minimum rate of eighty (80c) ³⁰ cents per hour.

Rule 44. Apprentices, helpers and other classes of workmen covered by Wage Agreement No. 1 and Supplements thereto, except those provided for in Rule 45, and who under this rule were increased four (4c) cents per hour, will be further increased by thirteen cents (13c) cents per hour. A minimum rate of sixty-

two (62c) cents per hour is thus established for Helpers. This increase of thirteen (13c) cents per hour shall be also applied to men paid on the step rates provided in paragraphs (m) and (n), Clause 7, Wage Agreement No. 1 except those provided for in Rule 45.

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The step rates will not, however, be applied to men entering the service on and after December 1st, 1919, except if transferred from another railway employees will carry with them the step rate paid on such other railway.

- 10 Regular apprentices between the ages of 16 and 21, engaging to serve a five year apprenticeship, shall be paid as follows:

| | Per Hour |
|---|-----------------|
| Starting out rate and for first six months..... | 42 cents |
| Second six months | 44½ " |
| Second year, First Six months | 47 " |
| Last Six Months | 49½ " |
| Third Year, First Six months | 52 " |
| Last Six Months..... | 54½ " |
| Fourth Year, First Six months | 59½ " |
| Last Six Months | 67 " |
| Fifth Year, First Six months | 74½ " |
| Last Six Months | 82 " |

provided, however, that the basic minimum rate for their respective crafts shall not be exceeded.

Rule 45. Linemen and others covered by Rule 141 shall receive eighty-one (81c) cents per hour.

Groundmen covered by Rule 142 shall receive seventy-five (75c) cents per hour.

- 30 Electric transfer table operators, coal pier elevator operators and coal pier electric hoist operators as covered by Rule 143 shall receive sixty-eight (68c) cents per hour.

Rule 179. Coach cleaners will be paid a minimum of fifty (50c) cents per hour. Overtime and other conditions of this agreement will apply to coach cleaners.

General. Gang foremen and leading hands paid on an hourly basis will receive five (5c) cents per hour above the rates provided for their respective crafts.

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Employees covered by this agreement shall be paid not less than the minimum rates established for their respective classes at each point by application of the increases named in the clauses referred to herein for such classes, provided, however, that this understanding is subject to revision by negotiation on 30 days notice in the event of it developing that this is not the understanding of similar clauses under the application of Decision No. 2, of the United States Railroad Labor Board on the United States railways.

For the Railway Employees
Department, Division No. 4,
American Federation of Labor.

R. J. TALLON
President.

FRANK McKENNA
Vice-President.

Montreal, August 24th, 1920.

CHAS. DICKIE 10
Secretary.

For the Railway Association
of Canada.

GRANT HALL
Chairman, Operating
Committee.

C. P. RIDDELL
General Secretary.

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PLAINTIFF'S EXHIBIT 27

20

SUPPLEMENT B TO WAGE AGREEMENT No. 4

**THE RAILWAY ASSOCIATION OF CANADA
WAGE AGREEMENT NO. 4
SUPPLEMENT B**

**The Railway Association of Canada
Wage Agreement No. 4
Supplement B**

Effective May 22nd, 1922, Wage Agreement No. 4 is amended as follows:

Railways Affected

30

This Agreement shall be effective on the following Railways:

Canadian National Railways,
Canadian Pacific Railway,
Dominion Atlantic Railway,
Esquimault and Nanaimo Railway,
Grand Trunk Railway,
Grand Trunk Pacific Railway,
Kettle Valley Railway,
Quebec Central Railway,

Temiskaming and Northern Ontario Railway,
 Winnipeg Joint Terminals,
 Toronto, Hamilton and Buffalo Railway,
 Edmonton, Dunvegan and British Columbia Railway.

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Rule 1—Except as otherwise provided herein, eight hours shall constitute a day's work. All employees coming under the provisions of this schedule, except as provided for in Rule 15, shall be paid on the hourly basis.

Rule 2—Work hours for shop work shall be as follows:

- 10 (a) Where one shift is employed, except Saturdays and Sundays, 8 to 12 and 13 to 17 o'clock, Saturdays 8 to 12 o'clock.
- (b) Where two shifts are employed, the starting time of the second shift shall be 17 o'clock or 20 o'clock, unless otherwise mutually arranged, working nine consecutive hours five nights per week.
- (c) When three shifts are employed, the work hours shall be as mutually arranged.

Rule 3—Work hours for running work shall be as follows:

- 20 (a) Where three eight hour shifts are worked, the hours for commencing duty shall be between 7 and 8 o'clock, 15 and 16 o'clock, and 23 and 24 o'clock.
- (b) Where one or two shifts per twenty-four hours are worked:

Day work—8 hours between 7 and 17 o'clock.

Night work—8 hours between 19 and 7 o'clock.

Rule 4—The starting time for any portion of the staff at any point may be arranged to commence within the limits named.

Rule 4½—Except as otherwise provided herein, where one 30 shift is worked during day hours a meal period of not more than one hour without pay may be allowed commencing between 12 and 13 o'clock, but where not so allowed a meal period of twenty minutes will be allowed without deduction in pay. Where more than one shift is worked a meal period may be similarly allowed

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on the first shift but on each of the other shifts a meal period of twenty minutes will be allowed commencing during the fifth hour of duty without deduction in pay.

Rule 5—The starting time for each employee shall be fixed and shall not be changed without at least twenty-four hours' notice.

Rule 6—All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

Work performed on Sundays and the following legal holidays, 10 namely: New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day (provided when any of the above holidays fall on a Sunday the day substituted by the Federal Government will be observed,) will be paid for at the rate of time and one-half, except as follows:

- (a) Employees necessary to the operation of power houses, millwright gangs, heat treating plants, pipe line maintenance gangs, train yards, running repair and inspection forces, will be paid time and one half time if required to work on the following holidays: New Year's 20 Day, Labour Day and Christmas Day, and straight time for other specified holidays unless such holidays fall on regularly assigned seventh day off duty.
- (b) Employees necessary to the operation of train yards, running repair and inspection forces will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regular assigned seventh day off duty will be paid at the rate of time and one-half time, and where such assigned day off duty is not Sunday, work on Sunday will be paid for at straight 30 time rate.
- (c) Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railways.

Rule 7—For continuous service after regular working hours, employees will be paid time and one-half time on the actual minute basis with a minimum of one hour at straight time rates for any such service performed.

Employees shall not be required to work more than two hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes at straight time rates.

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Employees called or required to report for work and reporting but not used will be paid a minimum of four hours at straight time rates.

Employees called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement.

Employees required to attend passenger trains for inspecting, icing, watering, cleaning and putting on supplies, outside of regularly assigned working hours, will be allowed a minimum of two hours at straight time rates, except that when called between 22 o'clock and 6 o'clock a minimum of four (4) hours at straight time rates will be allowed.

Employees will be allowed for services performed continuously in advance of the regular working period a minimum of two hours at straight time rates—the advance period to be not more than one hour.

Except as otherwise provided for in this rule, all overtime beyond sixteen hours' service in any twenty-four hour period, computed from starting time of employees' regular shift, shall be paid for at the rate of double time.

Rule 10—An employee regularly assigned to work at a shop, engine house, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station and straight time rate for all time waiting or travelling.

If during the time on the road a man is relieved from duty and permitted to go to bed for five (5) hours or more, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day,

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when such irregular service prevents the employee from making his regular daily hours at home station. Where meals and lodging are not provided by railway, actual necessary expenses will be allowed.

Employees will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at points designated.

If required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight time rate.

Wrecking service employees will be paid under this rule, except that all time working, waiting or travelling on Sundays and holidays will be paid for at rate of time and one-half, and all time working, waiting or travelling on week days after the recognized straight-time hours at home station will also be paid for at the rate of time and one-half.

Wrecking service will commence at time called.

Rule 11—When it becomes necessary for employees to work overtime they shall not be laid off during regular working hours to equalize the time.

At points where sufficient number of employees are employed, 20 employees shall not (except as provided for in Rule 6) work two consecutive Sundays or regularly assigned seventh days off duty (holidays to be considered as Sundays).

Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

Rule 12—Employees sent out to temporarily fill vacancies at an outlying point or shop, or sent out on a temporary transfer to an outlying point or shop, will be paid continuous time from time ordered to leave home point to time of reporting at point to which sent, straight-time rates to be paid for straight time hours³⁰ at home station and for all other time, whether waiting or travelling. If on arrival at the outlying point there is an opportunity to go to bed for five (5) hours or more before starting work, time will not be allowed for such hours.

While at such outside point they will be paid straight time and overtime in accordance with the bulletin hours at that point, and will be guaranteed not less than eight (8) hours for each day.

Where meals and lodging are not provided by the company, actual necessary expenses will be allowed.

On the return trip to the home point, straight time for waiting or travelling will be allowed up to the time of arrival at the home point.

If required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight time rate.

Rule 13—Employees changing from one shift to another, will be paid overtime rates for the first shift at each change. Employees working two shifts or more on a new shift shall be considered transferred. This will not, however, involve the payment of punitive overtime rates to employees changing off where employees work alternately on stated shifts, to employees changing positions under the exercise of their seniority rights, nor to employees in regular relief service.

Rule 14—Employees regularly assigned to road work whose tour of duty is regular and who leave and return to home station daily (a boarding car to be considered a home station) shall be paid continuous time from the time of leaving the home station to the time they return, whether working, waiting or travelling, exclusive of the meal period, as follows:

Straight time for all hours travelling and waiting, straight time for work performed during regular hours, and overtime rates for work performed during overtime hours. If relieved from duty and permitted to go to bed for five (5) hours or more, they will not be allowed pay for such hours. Where meals and lodging are not provided by the company when away from home station, actual necessary expenses will be allowed.

The starting time to be not earlier than 6 a.m. nor later than 308 a.m.

Where two or more shifts are worked, the starting time will be regulated accordingly.

EXCEPTION:—In case where the schedule of trains interferes with the starting time an agreement may be entered into by the superintendent of the department affected and the general chairman of the craft affected.

When such men do not return daily to their home station or

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boarding car, they will be paid for all overtime actually worked as per Rule 6, and in such cases where meals and lodging are not furnished by the Railway, employees will be paid actual expenses. If lodging is not available at point where work is performed, employees will be paid according to Rule 10 until they reach lodging, home station or boarding car.

Road car repair men sent out on the Road will receive pay at straight time for travelling from time called until they reach the first point at which they have to work and will be compensated for any additional expenses they necessarily incur. 10

Rule 15—Employees regularly assigned to perform road work and paid on a monthly basis shall be paid not less than the minimum hourly rate established for the corresponding class of employees coming under the provisions of this schedule on the basis of 365 eight-hour days per calendar year. The monthly salary is arrived at by dividing the total earnings of 2,920 hours by 12; no overtime is allowed for time worked in excess of eight (8) hours per day; on the other hand, no time is to be deducted unless the employee lays off of his own accord.

The regularly assigned road men under the provisions of this 20 rule may be used, when at home point, to perform shop work in connection with the work of their regular assignments.

Where meals and lodgings are not furnished by the railway, or when the service requirements make the purchase of meals and lodging necessary while away from home point, employees will be paid necessary expenses.

If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salaries for these positions may be taken up for adjustment. 30

Rule 20—Employees who transfer from one point to another with a view of accepting a permanent transfer, will, after ninety days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern, such transfer to be made without expense to the company. Employees will not be compelled to accept a permanent transfer to another point.

Employees at outside points where no foreman is located shall be placed on the seniority lists and retain their seniority at the

point where foreman is located who has jurisdiction over such outside points. If not working under the jurisdiction of a foreman they shall retain seniority at station sent from.

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Rule 27—When it becomes necessary to make a reduction in expenses at any point, the force at such point, or in any department or sub-division thereof, shall be reduced by dispensing with employees with less than six months' continuous service in such department or sub-division thereof, after which the hours may be reduced to forty (40) per week before further reduction in 10 forces is made. When the force is reduced seniority as per rule 31 will govern; the men affected to take the rate of the job to which they are assigned.

Forty-eight (48) hours' notice will be given before hours are reduced as provided for in the first paragraph of this rule. If the force is to be further reduced, four days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee.

This does not apply in laying off men who have been temporarily employed to meet special requirements.

20 In the restoration of forces, senior men laid off will be given preference of re-employment, if available, within a reasonable time, and shall be returned to their former position if it is to be filled; local committee will be furnished list of men to be restored to service; in reducing force the ratio of apprentices will be maintained except as may be otherwise mutually arranged.

Rule 31—Seniority of employees in each craft covered by this agreement shall be confined to the point at which employed.

Sub-divisions of the Carmen for seniority shall be as follows:

30 Patternmakers
 Upholsterers,
 Painters,
 Other Carmen.

If on account of falling off in work of a particular class, on which "other Carmen" are engaged, it is necessary to displace them, they will, according to seniority, have the right to displace carmen junior to them performing other classes of work, if qualified to perform it, at the rate paid for such work.

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The seniority lists will be open to inspection and copy furnished the committee.

NOTE:—When it becomes necessary to make a reduction in expenses as provided for in Rule 27, Employees in any craft may, under this rule, exercise their seniority in any position belonging to their craft, in shops, roundhouses, or train yards under the jurisdiction of the same general foreman or shop superintendent or other official having like jurisdiction, provided that the exercise of seniority on a staff comprising both back shop and running work by change from one class of work to the other shall be conditional upon qualifications for the performance of the work in any individual case. If, however, an employee, from this or any other cause, is transferred from one shop, roundhouse, or train yard to another in the same terminal, he will retain his original seniority in the terminal in which employed.

Rule 34—Should an employee undertake temporarily to fill the place of a shop foreman he will be paid the rate and work under the conditions applying to the position.

Rule 35—Should any employee subject to this agreement believe he has been unjustly dealt with, or that any of the provisions of this agreement have been violated (which he is unable to adjust directly) the case shall be taken to the Foreman, General Foreman, Shop Superintendent, or Master Mechanic, each in their respective order, by the local committee or one or more duly authorized members thereof, and a decision will be rendered without any unnecessary delay.

If stenographic report of investigation is taken the committee shall be furnished a copy.

If the result still be unsatisfactory, the General Committee, or one or more duly authorized members thereof, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted within ten days of application.

All conferences between shop officials and shop committees to be held by appointment during regular working hours without loss of time to committeemen.

Rule 40—All apprentices must be able to speak, read and write the English language (or French in the Province of Quebec) and understand at least the first four rules of arithmetic.

Rule 40—Applicants for regular apprenticeship shall be between 16 and 21 years of age, and if accepted, shall serve five years of 290 days each calendar year. At the expiration of their apprenticeship they shall be paid not less than the minimum rate established for journeymen mechanics of their respective crafts.

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Time lost through closing down of shops will not be deducted from apprentice's time, but all such time lost will be made up at the rate payable for the last period of apprenticeship.

In selecting helper apprentices, seniority will govern; other-
wise selections will be made in conjunction with the respective
shop committees.

NOTE:—See special rules of each craft for additional apprentice rules.

Rule 42—The ratio of apprentices, in their respective crafts, shall not be more than one to every five mechanics.

NOTE:—This will not require any reduction in the number of apprentices at present employed under previous existing schedule agreements.

Two apprentices will not be worked together as partners.

²⁰**NOTE**:—This will apply only when the ratio of apprentices provided herein has been established by the number of apprentices being reduced by those at present indentured completing their apprenticeship at shops where a higher ratio has previously been maintained.

The distribution of apprentices amongst shops where general repairs are made on the division shall be as nearly as possible in proportion to the mechanics in the respective trades employed therein.

In computing the number of apprentices that may be em-
ployed in a trade on a division (A General Superintendent's ter-
ritory) the total number of mechanics of that trade employed
on the division will be considered.

If, within six months, an apprentice shows no aptitude to learn the trade, he will not be retained as an apprentice.

An apprentice shall not be dismissed or leave the service of

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his own accord, except for just and sufficient cause before completing his apprenticeship.

An apprentice shall not be assigned to work on night shifts, nor be allowed to work overtime during the first two years of his apprenticeship.

Regular and helper apprentices shall be credited with two years seniority as mechanics upon the completion of their apprenticeship, provided that apprentices in the service at the effective date of this agreement who have less than two years of their term of apprenticeship to serve shall accumulate seniority only from the effective date of this agreement with a maximum of two years seniority. Seniority shall be confined to the point at which the majority of apprenticeship time was served. In applying this rule, seniority will prevail in the order in which apprentices complete their apprenticeships.

Rule 43—The rate for all mechanics who were receiving eighty-five (85c) cents or more per hour under Supplement "A" to Wage Agreement No. 4, has been decreased eight (8c) cents per hour effective July 16th, 1921, thus establishing for such mechanics a minimum rate of seventy-seven (77c) cents per hour.

Other mechanics in the Car Department, and other unclassified mechanics, who were receiving eighty (80c) cents per hour under Supplement "A" to Wage Agreement No. 4, have been decreased eight (8c) cents per hour, effective July 16th, 1921, thus establishing for such mechanics a minimum rate of seventy-two (72c) cents per hour.

Rule 44—Apprentices, helpers and other classes of workmen covered by Wage Agreement No. 4, and Supplement "A" thereto, have been decreased eight (8c) cents per hour, effective July 16th, 1921. A minimum rate of fifty-four (54c) cents per hour is thus established for Helpers. This decrease of eight (8c) cents per hour is also applicable to men paid on step rates provided in paragraphs (M) and (N), Clause 7, Wage Agreement No. 1, except those provided for in Rule 45.

The step rates will not, however, be applied to men entering the service on and after December 1st, 1919, except, if transferred from another railway, employees will carry with them the step rate paid on such railway.

The step rates will expire December 1st, 1922, and from that date men affected will receive the minimum rate of their craft.

Regular apprentices between the ages of 16 and 21, engaging to serve a five years' apprenticeship, shall be paid as follows:

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| | | Per Hour |
|----|---|--------------------|
| | Starting out rate and for first six months..... | 34 cents |
| | Second six months | 36 $\frac{1}{2}$ " |
| | Second year—First six months | 39 " |
| | Last six months | 41 $\frac{1}{2}$ " |
| | Third year—First six months | 44 " |
| | Last six months | 46 $\frac{1}{2}$ " |
| 10 | Fourth year—First six months | 51 $\frac{1}{2}$ " |
| | Last six months | 59 " |
| | Fifth year—First six months | 66 $\frac{1}{2}$ " |
| | Last six months | 74 " |

provided, however, that the basic minimum rate for their respective crafts shall not be exceeded.

Rule 45—Linemen and others covered by Rule 141 shall receive seventy-three (73c) cents per hour.

Groundmen covered by Rule 142 shall receive sixty-seven (67c) cents per hour.

20 Electric transfer table operators, coal pier elevator operators and coal pier electric hoist operators as covered by Rule 143 shall receive sixty (60c) cents per hour.

Rule 49—A place will be provided at all shops and round-houses where proper notices of direct interest to employees may be posted by shop committees.

Rule 54—Craftsmen and apprentices will be furnished sufficient competent help, when needed to handle the work, if available. When experienced helpers are available they will be employed in preference to inexperienced men.

30 Material carriers responsible for the selection of special materials for mechanics' use will be classified as helpers and receive minimum helpers' rate at point employed.

Rule 55—Work of scrapping engines, boilers, tanks and cars or other machinery will be done by crews under the direction of a mechanic. Torch work as now performed by mechanics shall continue to be so performed.

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Rule 60—At the close of each week one minute for each hour actually worked during the week will be allowed employees for checking in and out and making out service cards on their own time.

Rule 62—Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling, and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery; ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring, engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders, using a facing, boring or turning head or milling apparatus, and all other work generally recognized as machinists' work.

Rule 64—Helpers' work shall consist of helping machinists and apprentices, operating drill presses and bolt threaders not using facing, boring or turning head or milling apparatus, wheel presses (on car, engine truck and tender truck wheels), nut tappers and facers, bolt pointing and centering machines; cranemen helpers on locomotive and car work; attending tool room, machinery oiling, locomotive oiling, box packing, assisting in dismantling locomotives and engines, applying all couplings between engine and tender; locomotive tender and draft rigging work, except when performed by carmen, and all other work generally recognized as helpers' work.

NOTE: In assisting in dismantling locomotives and tenders the helper will actually dismantle along with the mechanic with whom he is working. This does not mean re-instituting gangs of strippers without further negotiation.

Rule 76½—Machinists assigned as Markers Off shall receive five (5c) cents per hour above the machinists' rate at the point employed.

Rule 79—Boilermakers' work shall consist of laying-out, cut-

ting apart, building or repairing boilers, tanks and drums; inspecting, patching, rivetting, shipping, caulking, flanging and flue work; building, repairing, removing and applying steel cabs and running boards; laying out and fitting up any sheet iron or sheet steel work made of 16 gauge or heavier (present practice between boiler-makers and sheet steel workers on railroads to continue relative to gauge of iron); including fronts and doors; grates and grate rigging except in ashpans, ash pans, front end netting and diaphragm work; engine tender, steel underframe and steel tender truck frames, except where other mechanics perform this work; removing and applying all stay bolts, radials, flexible caps, sleeves, crown bolts, stay rods, and braces in boilers, tanks and drums, applying and removing arch pipes; operating punches, and shears for shaping and forming, pneumatic stay bolt breakers, air rams, and hammers; bull, jam and yoke rivetters; boiler-makers' work in connection with the building and repairing of steam shovels, derricks, booms, housing, circles and coal buggies; eye beam, channel iron, angle iron, and tee iron work; all drilling, cutting and tapping and operating rolls in connection with boiler-makers' work; oxy-acetylene, thermit and electric welding, on work generally recognized as boiler-makers' work, and all other work generally recognized as boiler-makers' work. It is understood that present practice in the performance of work between boiler-makers and carmen will continue.

Rule 81—Employees assigned to help boiler-makers and their apprentices, operators of drill presses and bolt cutters in the boiler shop, boiler washers, punch and shear operators, (cutting only bar stock and scrap) and employees removing and applying grates and grate rigging in ash pans, flue cleaners and all other work properly recognized as boiler-makers' helpers' work.

Rule 82—Boiler-makers assigned to running repairs may be used to perform other boiler work.

Boiler-makers assigned to locomotive general repair work may be used to perform running repair work when the regular assigned running repair forces are unable to get engines out to meet service requirements.

Boiler-makers who have been working on hot work will not be required to work on cold work until given sufficient time to cool off.

Rule 100—Holding on all stay bolts and rivets, striking chisel bars, side sets and backing out punches, scaling boilers and heat-

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ing rivets (except when performed by apprentices) will be considered boilermakers' helpers' work.

Rule 105—Fifty percent of the ratio of apprentices may consist of boilermakers' helpers who have had not less than two consecutive years' experience as boilermaker helper at the point where employed at the time application for apprenticeship is made.

Helper apprentices shall be between the ages of 21 and 30 years and shall serve three years, a minimum of 290 days each calendar year. The age limit of thirty years may be exceeded ¹⁰ in specific cases under special arrangement between company's officials and shop committees.

Helper apprentices shall be governed by the same regulations and rules as regular apprentices.

Apprentices shall not work on oxy-acetylene, thermit, electric or other welding processes until they are in their last two years.

Helper apprentices shall receive the minimum helpers' rate for the first six months, with an increase of two cents per hour for every six months thereafter until they have served their apprenticeship. ²⁰

Rule 113—Employees assigned to helping blacksmiths and apprentices; heaters, hammer operators, machine helpers, drill press and bolt cutter operators, punch and shear operators, (cutting only bar stock and scrap) in connection with blacksmith work, and all other work generally recognized as blacksmiths' helpers' work.

Rule 114—Fifty per cent of the ratio of apprentices may consist of helpers who have had not less than two consecutive years' experience in the shop on the division (General Superintendent's territory) where advanced. ³⁰

Seniority shall prevail in the selection of helper apprentices; those selected to be not over thirty years of age.

Helper apprentices selected from helpers shall serve three years, a minimum of 290 days each calendar year. When started as a helper apprentice they shall receive the minimum helpers' rate of pay for the first six months; at the end of that time they shall receive two cents per hour increase and two cents per hour

increase each succeeding six months while serving their apprenticeship. The age limit of thirty years may be exceeded in specific cases under special arrangement between company's officials and shop committees.

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Helper apprentices shall be governed by the same regulations and rules as regular apprentices.

If, after the first three months, they show no aptitude to learn the trade, they shall be set back to helping and retain their former seniority as a helper. After completing their apprenticeship they shall receive prevailing rate paid blacksmiths.

Rule 119—Furnace operators (Heaters) will be assigned to operate furnaces making or working material the equivalent of six inches square or over and heating it for hammersmiths.

Heaters will be assigned to operate furnaces used in connection with forging machines 4 inches and over, or to heat any material the equivalent of 4 inches square and over to be forged.

Heaters will be assigned to heavy blacksmith fires and drop hammer furnaces.

When heaters are required on other furnaces helpers will be used.

Rule 124—Blacksmiths regularly (not necessarily continuously) working or making material the equivalent of six inches square or over shall be classified as hammersmiths and shall receive ten cents per hour above the minimum rate paid blacksmiths at the point employed.

Blacksmiths regularly (not necessarily continuously) working material the equivalent of four inches square or over shall be classified as heavy fire blacksmiths and shall receive five cents per hour above the minimum rate paid blacksmiths at the point employed.

Heaters on heavy blacksmiths fires and drop hammer furnaces shall receive ten cents per hour above the minimum rate paid helpers at point employed.

Hammer operators and helpers working with hammersmiths or heavy fire blacksmiths shall receive five cents per hour above the minimum rate paid helpers at the point employed.

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Furnace operators (heaters) operating furnaces for hammer-smiths shall receive the minimum rate paid blacksmiths at the point employed.

SHEET METAL WORKERS AND PIPEFITTERS SPECIAL RULES

Rule 126—Sheet metal workers' work shall consist of tinning, coppersmithing, and pipefitting in shops, yards, building, on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling (for repairs only,) and maintaining parts made of sheet copper, brass, tin, zinc, white metal, 10 lead, black, planished, pickled and galvanized iron of 10 gauge and lighter (present practice between sheet-metal workers and boilermakers to continue relative to gauge of iron) including brazing, soldering, tinning, leading, and babbiting (except car and tender truck journal bearings,) the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of babbit fires (in connection with sheet metal workers' work;) oxy-acetylene, thermit and electric welding on work generally recognized as sheet-metal workers' work, and all other work generally recognized as sheet 20 metal workers' work.

Rule 140—Electricians' work shall consist of repairing, rebuilding, installing, inspecting, and maintaining the electric wiring of generators, switchboards, motors, and control, rheostats and control, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries (work to be divided between electricians and helpers as may be agreed upon locally) and axle lighting equipment; welding armateurs, fields, magnet coils, rotors, transformers and starting compensators, inside wiring 30 in shops and on steam and electric locomotives, passenger train and motor cars, include electrical cable splicers, wiremen, armature cinders, electric crane operators for crane of 40 ton capacity or over, and all other work properly recognized as electricians' work.

Rule 145—Employees regularly assigned as helpers to assist electrical workers and apprentices, including electric lamp trimmers who do no mechanical work, also to perform such battery work as may be agreed upon locally as being helpers' work.

Rule 154—Carmen's work shall consist of building, maintain- 40 ing, dismantling (except all-wood freight-train cars), painting,

upholstering, and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks, building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars, repairing and assembling car and
10 coach triple valves, applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats;) all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of black-
ing to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliances and train
20 car repairers, steam derrick engineers, oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work.

It is understood that present practice in the performance of work between the carmen and boilermakers will continue.

Rule 156—Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint on other than passenger cars preparatory to painting, car oilers and packers, stock keepers (car department,) operators of bolt threads, nut tappers, rivet heaters, drill presses,
30 and punch and shear operators (cutting only bar stock and scrap,) holding on rivets, striking chisel bars, side sets and backing out punches, using backing hammer and sledges in assisting carmen in straightening metal parts of cars, rebrassing of cars in connection with oilers' duties, cleaning journals, repairing steam and air hose, assisting carmen in erecting scaffolds, and all other work generally recognized as carmen's helpers' work, shall be classed as helpers.

Rule 159—Men assigned to inspecting must have the necessary knowledge of the A.R.A. rules and safety appliance laws,
40 and be able to make the necessary reports in connection with interchange work.

RECORD

Exhibits

P. 27
 Supplement B
 to Wage Agree-
 ment No. 4,
 22nd May, 1922.
 (Continued)

Rule 167—Eliminate.

Rule 168—When necessary to repair cars on the road or away from the shops, carman and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, truss rods, and wheels, and work of similar character.

Rule 172—Fifty per cent of the ratio of apprentices may be helper apprentices who have had not less than two years' experience at carmen's helpers' work, at the time application is made.

10

Helper apprentices shall not be over thirty years of age and will serve three years, a minimum of 290 days each calendar year. The age limit of thirty years may be exceeded in specific cases under special arrangement between company's officials and shop committees.

Helper apprentices shall be governed by the same regulations and rules as regular apprentices.

Helper apprentices shall receive the minimum helpers' rate for the first six months, with an increase of two cents per hour each succeeding six months until they have served three years. At the completion of their apprenticeship period, they shall receive the mechanics' rate of pay.

Rule 179—Coach cleaners will be paid a minimum of forty-two cents (42c) per hour. Overtime and other conditions of this agreement will apply to Coach Cleaners. Coach Cleaners at outlying points may be worked eight (8) hours within a period of ten (10) consecutive hours. They may be assigned to any other unskilled work during their eight hour period of service.

An outlying point is a point where not more than three coach cleaners are employed.

30

Rule 181—Eliminate.

Rule 183—Should either The Railway Association of Canada or the employees comprising Division No. 4, Railway Employees' Department, American Federation of Labour, desire to revise these rules, a written statement containing the proposed changes shall be given and conference held within thirty days.

Rule 185—This Supplement to Wage Agreement No. 4 shall become effective May 22nd, 1922.

All rules in Wage Agreement No. 4 of December 1st, 1919, not dealt with in this Supplement will remain unchanged.

RECORD
Exhibits
P. 27
Supplement B
to Wage Agree-
ment No. 4,
22nd May, 1922.
(Continued)

Rule 186—Eliminate.

Rule 187—Employees coming under the classification of Moulders as provided for in Wage Agreement No. 1 will receive the decrease in rates of pay as provided for in the first paragraphs of Rules 43 and 44, respectively, of this agreement, and the general rules shall be applied to them, except that mutual arrangements shall be made with a view to continuing present practice in relation to any special local conditions.

FOR THE RAILWAY EMPLOYEES' DEPARTMENT,
DIVISION NO. 4, AMERICAN
FEDERATION OF LABOUR.

CHAS. DICKIE,
Secretary.

FOR THE RAILWAY ASSOCIATION OF CANADA.

R. J. TALLON,
President.

GRANT HALL,
Chairman,
Operating Committee.

FRANK McKENNA,
Vice-President.

C. P. RIDDELL,
General Secretary.

MONTREAL, MAY 22nd, 1922.

DEFENDANT'S EXHIBIT 44

TELEGRAM, THOS. MACE TO C. P. RIDDELL

D. 44
Telegram
Thos. Mace to
C. P. Riddell,
14/15 July,
1922.

COPY

CANADIAN PACIFIC R'Y CO'S TELEGRAPH
TELEGRAM

D75WN O 109 NL

WINNIPEG, MAN., JLY 14/15-22

C. P. RIDDELL,

RAILROAD ASSOCIATION OF CANADA, 263 ST. JAMES
ST., MONTREAL, Q.

WESTERN SHOPMENS COMMITTEE REPRESENTING
SHOPMEN ON RAILROADS WEST OF AND INCLUDING
PORT ARTHUR BY BALLOT VOTE REFUSE TO BE BOUND
BY ANY AGREEMENT ENTERED INTO BETWEEN YOUR
ASSOCIATION AND DIVISION FOUR RAILROAD DEPART-

RECORD
Exhibits
D. 44
Telegram
Thos. Mace to
C. P. Riddell,
14/15 July,
1922.
(Continued)

MENT A F OF L AS THE DIVISION ONLY REPRESENTS
A MINORITY OF THE SHOP EMPLOYEES ON WESTERN
LINES THIS COMMITTEE REQUESTS THAT YOUR ASSO-
CIATION MEET REPRESENTATIVES OF WESTERN
SHOPMEN AS EMPLOYEES REGARDLESS OF AFFILI-
ATION IF ANY FAILING THIS THEY WILL BE COM-
PELLED TO ASK FOR A BOARD OF ARBITRATION AT
ONCE THIS COMMITTEE REQUESTS THAT THE PRO-
POSED WAGE CUT BE POSTPONED PENDING SETTLE-
MENT BY NEGOTIATION OR ARBITRATION. 10

SECRETARY WESTERN RAILROAD SHOPMENS
COMMITTEE, 56 ADELAIDE ST., WINNIPEG.
THOS MACE,

708 A.M.

DEFENDANT'S EXHIBIT 45

D. 45
Letter
T. Mace to
C. P. Riddell,
15th July, 1922.

LETTER, T. MACE TO C. P. RIDDELL

C O P Y

WESTERN RAILROAD SHOPMEN'S COMMITTEE

Winnipeg, Man.
July 15th, 1922. 20

C. P. Riddell,
General Secretary,
Railway Association of Canada,
263 St. James St.,
Montreal, Que.

Sir:

The undersigned has been authorized by a ballot cast by Rail-
road Shopmen employed on the following Railroads in Western
Canada:

Canadian Pacific Railway, 30
Canadian National Railway,
Esquimalt & Naniamo Railway,
Winnipeg Joint Terminals.

to get in touch with your association and notify it that the Rail-
road Shopmen of Western Canada, represented by this Commit-
tee, refuse to be any longer bound by any agreement you might
make with the representatives of Division No. 4, Railroad Depart-

ment, of the American Federation of Labor. We hereby request you to make arrangements to meet a committee of Western Shop Employees selected by the Employees on Western lines in order that we can discuss the question of our right to representation to adjust grievances that arise from time to time, which cannot be done at present.

RECORD
Exhibits
D. 45
Letter
T. Mace to
C. P. Riddell,
15th July, 1922.
(cont. next)

Furthermore, we herewith submit our protest against the actions of your Association in posting up notices in the various shops notifying us that our wages will be cut on and after Sunday, July 10 16th, and request you to refrain from putting same into effect until such times as you have met the committee above mentioned, and arrived at a satisfactory settlement with them.

We, as already stated, refuse to be bound by any arrangements you have made or may make with Division 4, as they do not represent the majority of shop Employees on the Railroads of Western Canada.

An early satisfactory reply to our request is asked for. Failure to grant us same will cause us to take the matter up with the Department of Labor by requesting a Board of Arbitration to act 20 immediately, but we hope you will realize the necessity of granting this legitimate request.

On behalf of the Western R.R. Shopmen's
Committee.

T. MACE, Secretary.

DEFENDANT'S EXHIBIT 46

APPLICATION FOR BOARD OF CONCILIATION

D. 46
Application for
Board of
Conciliation,
25th July, 1922.

I hereby certify that the document hereto annexed is a true copy of a document belonging to and deposited in the Department of Labour.

30 Given under my hand and the seal of the Department of Labour this twelfth day of May, A.D. 1928.

(Signed) H. H. WARD,

Deputy Minister of Labour and Registrar
of Boards of Conciliation and
Investigation.

(SEAL)

RECORD
Exhibits
D. 46
Application for
Board of
Conciliation,
25th July, 1922.
(Continued)

Reference No.....

DEPARTMENT OF LABOUR, CANADA.

The Industrial Disputes Investigation Act, 1907.

**Form of Application for Appointment of a Board of
Conciliation and Investigation.**

Winnipeg, 56 Adelaide St.,

July 25, 1922.

To the Registrar

Boards of Conciliation and Investigation,
Department of Labour,
Ottawa.

10

The undersigned hereby make application to the Minister of Labour for the appointment of a Board of Conciliation and Investigation under the Industrial Disputes Investigation Act, 1907, to which a dispute between the parties named in the accompanying statement may be referred under the provisions of the said Act, and submit the statement and statutory declaration prescribed under the Act as necessary in making such application.*

(a) STATEMENT

20

Locality of dispute—Western Canada, West of and including Port Arthur, Ont.

Trade or industry—Railroad shops and roundhouses.

The Parties to the Dispute

(i) Employer (The applicants should state here the name and address of each individual or company involved, also, for the convenience of the Registrar in conducting procedure, the name and address of the person to whom a copy of the application has been mailed.) Canadian National Railways, Canadian Pacific Railways, Esquimalt and Nanaimo Railways, Winnipeg Joint Terminals, as represented by the Canadian Railway Association.

(ii) Employees (Designate in general terms the employees involved, by classes of employment, for example, if members of a union give name of union.) Some of whom are in The International Association of Machinists Union, International Brotherhood of Blacksmiths and Helpers, International Brotherhood of Boilermakers and Iron Ship Builders of America, Amalgamated Sheet Metal Workers, International Alliance, One Big Union,

Canadian Association of Railroad Shopmen, and numbers of un-organized men.

RECORD
Exhibits

D. 46
Application for
Board of
Conciliation,
25th July, 1922.
(continued)

Approximate estimate of number of employees affected or likely to be affected:

| | Directly | Indirectly |
|------------------------------|---------------|---------------|
| Males 21 years or over | 10,000 | 25,000 |
| " under 21 years ..... | ..... | ..... |
| Females ..... | ..... | ..... |
| Total | 10,000 | 25,000 |

10 (*) "The application shall be made in writing in the prescribed form, and shall be in substance a request to the Minister to appoint a Board to which the existing dispute may be referred under the provisions of this Act.

"The application shall be accompanied by a statement setting forth (1) the parties to the dispute; (2) the nature and cause of the dispute, including any claims or demands made by either party upon the other, to which exception is taken; (3) an approximate estimate of the number of persons affected or likely to be affected by the dispute; (4) the efforts made by the parties themselves to adjust the disputes." SECTION 15, SUB-SECS. 1 AND 2 (a).

20 "In every case where an application is made for the appointment of a Board the party making application shall, at the time of transmitting it to the Registrar, also transmit by registered letter to the other party to the dispute, or by personal delivery, a copy of the application and of the accompanying statement and declaration." (SECTION 18.)

(2)

Nature and cause of dispute, including claims and demands by either party upon the other to which exception is taken:* Employer refuses to allow employees the right to representation on committees for the purpose of adjusting grievances and negotiating wages and conditions. Employer insists upon putting wage cut into effect ranging from 5 cents to 9 cents per hour. Employees decline to recognize any justification for such at-tempted decrease and request the right to elect their own re-
30 presentatives from among the Western Shop Employees to adjust grievances and negotiate agreements of conditions and wages.

Outline of efforts made by parties concerned to adjust the dispute: Wired to C. P. Riddell, Secretary of the Canadian Rail-
way Association. Also wrote him protesting against the wage
reduction and asking his association to meet and negotiate with
a committee from the western shop employees. We received a
40 wire in reply refusing this request.

*If space allotted is insufficient, details of this statement may be continued on a supplementary sheet.

RECORD
 Exhibits
 D. 46
 Application for
 Board of
 Conciliation,
 25th July, 1922.
 (Cont.nued)

(3)

Person recommended as member on Board of Conciliation and Investigation: (*)

Name in full—James Stewart Woodsworth, M.P.

Address—Gibsons Landing, B.C., or 54 Adelaide St., Winnipeg.

This application is made on behalf of the (Designate whether on behalf of employer or employee.) Employees.

Signatures of parties making application: (**)

(When the signatures are those of officers of a trades union, the nature of the offices respectively held should be stated.) 10

Name—John Glendinning.

Address—221 Jefferson Avenue, West Kildonan, Man.

Name—John Garry.

Address—1819 Midmar Ave., Brooklands, Man.

Authority (State where, by whom, and when authority was given for making this application, also wherein conditions of Section 16, quoted below (**)) have been complied with.) In compliance with clause 4 of section 16 quoted below the meetings of the employees were called by the joint committee of shopmen for the purpose of discussing the difficulties hereinbefore mentioned 20 and were held on the 11th, 27th and 30th of June and on the 14th, 19th and 23rd of July where it was decided what action should be taken in connection therewith. And it was unanimously decided to strike rather than accept the reduction, or continue under the present conditions, whereas already set out the overwhelming majority of shopmen are refused the right of representation on grievances and negotiating committees. It was also decided by a ballot cast, which was taken all over western lines that we apply at once for a Board of Conciliation and it was also decided by ballot, that the matter of making such application be left in 30 the hands of the undersigned committee who were authorized to sign the application for a Board.

(*) "Each party to the dispute may at the time of making application, or within five days after being requested so to do by the Minister, recommend the name of one person who is willing and ready to act as a member of the Board, and the Minister shall appoint such person a member of the Board.

"If either of the parties fails or neglects to duly make any recommendation within the said period, or such extension thereof as the Minister, on cause shown, grants, the Minister shall, as soon thereafter as possible, appoint a fit person to be a member of the Board, and such members shall be deemed to be appointed on the recommendation of the said party." (SECTION 8, SUB-SECS. 1 AND 2.)

RECORD
Exhibits
D. 46
Application for
Board of
Conciliation,
25th July, 1922.
(continued)

**"The application and the declaration accompanying it:

- (1) "If made by an employer, an incorporated company or corporation, shall be signed by some one of its duly authorized managers or other principal executive officers;
- (2) "If made by an employer other than an incorporated company or corporation, shall be signed by the employer himself in case he is an individual, or a majority of the partners or members in case of a partnership firm or association;
- (3) "If made by employees members of a trade union, shall be signed by two of its officers duly authorized by a majority vote of the members of the union, or by a vote taken by ballot of the members of the union present at a meeting called on not less than three days' notice for the purpose of discussing the question; or, where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorized to carry on negotiations in disputes between employers and employees, and so recognized by the employer, may be signed by the chairman or president and by the secretary of the said committee.
- (4) "If made by employees some or all of whom are not members of a trade union, shall be signed by two of their number duly authorized by a majority vote taken by ballot of the employees present at a meeting called on not less than three days' notice for the purpose of discussing the question. (SECTION 16, SUB-SECS. 1-4.)

(b) STATUTORY DECLARATION*

| | | |
|--|---|--|
| CANADA: Province of Manitoba County of To Wit: (if more than one declarant) | } | I, John Garry of the village of Brooklands in the Province of Manitoba and I, John Glendinning of the Municipality of West Kildonan in the Province of Manitoba |
|--|---|--|

(where necessary fill in the blank spaces as indicated)

do severally solemnly declare as follows, that is to say:—
(each of us for himself declares) that, to the best of our knowledge and belief, failing an adjustment of the dispute herein referred to, or a reference thereof by the Minister of Labor to a Board of Conciliation and Investigation under the Industrial Disputes Investigation Act, 1907, a strike will be declared, and that the necessary authority to declare such strike has been obtained; or (*) that the dispute has been the subject of negotiations between the committee and the employer, that all efforts to obtain a

RECORD
 Exhibits
 D. 46
 Application for
 Board of
 Conciliation,
 25th July, 1922.
 (continued).

satisfactory settlement have failed and that there is no reasonable hope of securing a settlement by further negotiations.

And we make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

Signatures { John Glendinning
 John Garry

Declared by the said
 John Glendinning
 and
 John Garry

10

before me at Winnipeg in the
 Province of Manitoba this 25th
 day of July A.D. 1922.

(Seal) N. T. MacMillan,
 Notary Public
 for Manitoba.

(To be declared before a Commissioner for taking affidavits or any other functionary authorized by law to administer an oath).

NOTE.—The attention of the PARTY MAKING THIS APPLICATION is directed to the following sections of the Act:—

“Every application for the oppointment of a Board shall be transmitted by post by Registered Letter addressed to the Registrar of Boards of Conciliation and Investigation, Department of Labour, Ottawa, and the date of the receipt of such Registered Letter at the Department shall be regarded as the date of the receipt of such application. (SECTION 17.)

“In every case where an application is made for the appointment of a Board the party making application shall, at the time of transmitting it to the Registrar, also *transmit by Registered Letter to the other party to the dispute, or by personal delivery, a copy of the application, and of the accompanying statement and declaration.* (SECTION 18.) 30

“Copies of applications or statements in reply thereto, to be transmitted to the other party under any of the preceding sections where the other party is—

- (1) an employer, an incorporated company or corporation, shall be sent to the manager or other principal executive officer of the company or corporation;
- (2) an emplyer other than an incorporated company or corporation, shall be sent to the employer himself or to the employer in the name of the business or firm as commonly known;
- (3) composed of employees, members of a trade union, shall be sent to the president and secretary of such union;
- (4) composed of employees some or all of whom are not members of a trade union— 40

- (a) Where some of the employees are members of a trade union, shall be sent to the president and secretary of the union as representing the employees belonging to the union: also.
- (b) Where some of the employees are not members of a trade union and there are no persons authorized to represent such employees shall be sent to ten of their number;
- (c) Where, under paragraph (4) of section sixteen, two persons have been authorized to make an application, shall be sent to such two persons." (SECTION 20.)

RECORD
Exhibits

D. 46
Application for
Board of
Conciliation,
25th July, 1922.
(continued)

10 The attention of THE PARTY RECEIVING A COPY OF THIS APPLICATION is directed to the following section of the Act:—

"Upon receipt by either party to a dispute of a copy of the application for the appointment of a Board, such party shall, without delay, *prepare a statement in reply to the application and transmit it by Registered Letter, or personal delivery to the Registrar and to the party making the application.*" (SECTION 19.)

(See also SECTION 20 quoted above.)

(*) "The application shall be accompanied by a statutory declaration setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a Board of Conciliation and Investigation under the Act, to the best of the knowledge and belief of the declarant, a lockout or strike, as the case may be, will be declared, and that the necessary authority to declare such lockout or strike has been obtained; or, where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorized to carry on negotiations in disputes between employers and employees and so recognized by the employer, a statutory declaration by the chairman or president and by the secretary of such committee setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a Board, to the best of the knowledge and belief of the declarants a strike will be declared, that the dispute has been the subject of negotiations between the committee and the employer, that all efforts to obtain a satisfactory settlement have failed, and that there is no reasonable hope of securing a settlement by further negotiations.

30 "3. The application may mention the name of a person who is willing and ready and desires to act as a member of the Board representing the party or parties making the application." (SECTION 15).

PLAINTIFF'S EXHIBIT 28

P. 28
Supplement C
to Wage Agree-
ment No. 4,
8th Dec., 1922.

SUPPLEMENT C TO WAGE AGREEMENT No. 4

It is agreed between the following Railways:—

40 Canadian National Railways,
Canadian Pacific Railway,
Dominion Atlantic Railway,
Esquimault and Nanaimo Railway,
Grand Trunk Railway,
Grand Trunk Pacific Railway,
Kettle Valley Railway,
Quebec Central Railway,
Temiskaming and Northern Ontario Railway,

RECORD
 Exhibits
 P. 28
 Supplement C
 to Wage Agree-
 ment No. 4,
 8th Dec., 1922.
 (continued).

Winnipeg Joint Terminals,
 Toronto, Hamilton and Buffalo Railway,
 Edmonton, Dunvegan and British Columbia Railway.

represented for the purpose of this Agreement by the Railway Association of Canada, and the Railway Employees' Department, Division No. 4, American Federation of Labor:—

That effective December 1st, 1922, (the rates as paid by the Railways between July 16th and November 30th, 1922, being hereby confirmed) Wage Agreement No. 4 and Supplements "A" and "B" are further amended as follows:— 10

RULE 43

Rates for Mechanics

The rate for all mechanics who were receiving seventy-seven (77c) cents or more per hour under Supplement "B" to Wage Agreement No. 4, has been decreased seven (7c) cents per hour, thus establishing for such mechanics a minimum rate of seventy (70c) cents per hour.

Other mechanics in the Car Department, and other unclassified mechanics, who were receiving seventy-two (72c) cents per hour, under Supplement "B" to Wage Agreement No. 4, have²⁰ been decreased nine (9c) cents per hour, thus establishing for such mechanics minimum rate of sixty-three (63c) cents per hour.

RULE 44

Rates for Apprentices

Apprentices, helpers and other classes of workmen covered by Wage Agreement No. 4, and Supplements "A" and "B" thereto, have been decreased seven (7c) cents per hour. A minimum rate of forty-seven (47c) cents per hour is thus established for Helpers. This decrease of seven (7c) cents per hour is also ap-³⁰ plicable to men paid on step rates provided in paragraphs (M) and (N), Clause 7, Wage Agreement No. 1, except those provided for in Rule 45.

The step rates will not, however, be applied to men entering the service on and after December 1st, 1919, except, if transferred from another railway, employees, will carry with them the step rate paid on such railway.

The step rates will expire December 1st, 1922, and from that date men affected will receive the minimum rate of their craft.

RECORD
Exhibits
P. 28
Supplement C
to Wage Agree-
ment No. 4,
8th Dec., 1922.
(continued).

Regular apprentices between the ages of 16 and 21, engaging to serve a five year's apprenticeship, shall be paid as follows:

| | Per Hour |
|---|----------|
| Starting out rate and for first six months..... | 27 cents |
| Second six months | 29½ " |
| Second year—First six months | 32 " |
| Last six months | 34½ " |
| 10 Third year—First six months | 37 " |
| Last six months | 39½ " |
| Fourth year—First six months | 44½ " |
| Last six months | 52 " |
| Fifth year—First six months | 59½ " |
| Last six months | 67 " |

provided, however, that the basic minimum rate for their respective crafts shall not be exceeded.

RULE 45

Rates for Linemen, Groundmen, etc.

20 Linemen and others covered by Rule 141 shall receive sixty-six (66c) cents per hour.

Groundmen covered by Rule 142 shall receive sixty (60c) cents per hour.

Electric transfer table operators, coal pier elevator operators and coal pier electric hoist operators as covered by Rule 143 shall receive fifty-three (53c) cents per hour.

RULE 179

Coach Cleaners

30 Coach cleaners will be paid a minimum of thirty-eight (38c) cents per hour. Overtime and other conditions of this Agreement will apply to Coach Cleaners. Coach Cleaners at outlying points may be worked eight (8) hours within a period of ten (10) consecutive hours. They may be assigned to any other unskilled work during their eight hour period of service.

An outlying point is a point where not more than three coach cleaners are employed.

RECORD
Exhibits
P. 28
Supplement C
to Wage Agree-
ment No. 4,
8th Dec., 1922.
(Continued)

For the Railway Employees'
Department, Division No. 4,
American Federation of Labor.

R. J. TALLON
President.

FRANK McKENNA
Vice-President.

CHAS. DICKIE
Secretary.

Montreal, December 8th, 1922.

For the Railway Association
of Canada:

GRANT HALL
Chairman, Operating
Committee.

C. P. RIDDELL,
General Secretary.

10

PLAINTIFF'S EXHIBIT 3

(Cover)

WAGE AGREEMENT No. 6

CANADIAN NATIONAL RAILWAYS
Lines in Canada

Rates of Pay and Rules
Governing Services of
Employees in
Motive Power and Car
Departments

20

Federated Trades
Effective December 1st, 1922

(Title Page)

THE RAILWAY ASSOCIATION OF CANADA
WAGE AGREEMENT NO. 6

Governing
RATES OF PAY

— and —

RULES OF SERVICE

For Locomotive and Car Departments

30

Effective December 1st, 1922

(Page Three)

(NOTE—This Agreement is a consolidation of Wage Agreement
No 4 and supplements "A," "B" and "C.")

(Pages 66 and 67)

**MEMORANDUM OF UNDERSTANDINGS CONCERNING
VARIOUS CLAUSES OF WAGE AGREEMENT NO. 6**RECORD
Exhibits
P. 3
Wage Agree-
ment No. 6.
(continued).**1.—Rules 6 and 27:**

(a) The regular millwright gang assigned to shop maintenance should be considered as a sub-division of a department and may be worked as such on maintenance work during periods when shops are closed down, at straight time rates for straight time hours, and overtime rates for overtime hours.

10 (b) It is recognized that car inspectors and carmen in the same train yard should work the same number of hours per week.

(c) In roundhouses where there is only one employee in a craft on a shift, it will be permitted to work such employee 48 hours per week at straight time rates for straight time hours during periods when shop hours are reduced to 40 hours per week.

2.—Rule 10:

Paragraph 5, Rule 10, does not provide for double time to be paid in wrecking service.

20 Paragraph 2, Rule 10, provides for deduction of time while wrecking crews are tied up for rest, except that all time waiting or travelling is to be paid for at straight time rates for straight time hours and overtime rates for overtime hours.

3.—Rules 154 and 168:

It is agreed that when it is necessary to send a man out on the road to change a brass, a carman will be used, except, when oiling and preparing cars in storage on the road, the helper oiling may change the brass.

4.—Rule 14:

30 When a carman is sent out on road repair work on his assigned day off duty, he will be paid overtime rates for working, and straight time for travelling with a minimum of 8 hours at time and one half.

**5.—Wage Agreement No. 1, Supplement "A," Clause 16. Also
Wage Agreement No. 6, Rules 33 and 154:**

RECORD
Exhibits
P. 3
Wage Agree-
ment No. 6.
(Continued)

The rate of seventy cents per hour should be paid men who are actually welding on freight car work.

6.—Rule 64:

Packing of cab mountings and glands is machinists' work.

7.—Rule 43:

The reduction of 9 cents per hour made to coach truck repair men employed in coach yards was made in accordance with decision made to apply reductions as intended by the Labor Board, which, in effect, was that the 9 cent reduction would be made to employees in the Car Department who were getting the freight 10 carmen's rate and this was the general application.
Montreal, March 1st, 1923.

P. 12
Letter
A. E. Warren
to M. H. Davy,
31st Jan, 1923.

PLAINTIFF'S EXHIBIT 12

LETTER, A. E. WARREN TO M. H. DAVY

(Copy)

CANADIAN NATIONAL RAILWAYS

Winnipeg, Man.
January 31st, 1923.

Mr. M. H. Davy,
465 Brandon Avenue,
Winnipeg, Man.

20

Dear Sir:

Referring to your letter of the 23rd instant; I note from your communication that your chief grievance, as you put it, is that owing to the large majority of the shopmen on Western Lines not being members of the organization known as Division No. 4, they are not in possession of the contents of agreements signed by outsiders who only represent a minority of shop employees on Western Lines, etc.

I am rather surprised that the statement is made that the con- 30
tents of the Agreement between certain Canadian Railways, of which this Company is one, and the Shop Trades as represented by Division No. 4, is not known to all men working in the shops of this Company. If such be the case (and I must candidly confess

that I cannot think it is), then I would advise that whatever information the individual man may require can be most easily obtained on request from his Foreman or Assistant Foreman. The question of representation is a matter that has already been settled and no deviation can be made in that respect. The agreement with Division No. 4 was not made on the allotment of any certain proportion in any particular region of the Canadian National Rlys., but for the railway as a whole as pertains to the mechanical trades.

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P. 12
Letter
A. E. Warren
to M. H. Davy,
31st Jan. 1923.
(Continued)

- 10 Your remarks in connection with R. J. Torrance, R. Troughton, J. Lavery, D. Linds and J. Gibson, have been noted, and, allowing your contention that these men have something that Division No. 4 would not put before the management, it must be remembered that the individual in all cases may put the same before the proper officers of the Company and he certainly will be given every consideration. I notice on tracing up the records that Joseph Gibson and J. Lavery both resigned from the service; that R. Troughton was dismissed on December 15, 1920, for not attending to his work and quarrelling with the Foreman; that R. J. Torrance (only Torrance we can locate), whom you say is a machinist's helper but our records show as carman, is still in the service. We cannot trace any record whatever of a man by the name of D. Linds.

The agreement made on behalf of this Company with Division No. 4 will be faithfully carried out, and in consequence I cannot recognize any other Committee in the handling of matters pertaining to the Agreement, etc., than that duly appointed by Division No. 4.

Yours truly,
(Signed) A. E. WARREN.

30

PLAINTIFF'S EXHIBIT 13

LETTER, A. E. WARREN TO M. H. DAVY

(Copy)

CANADIAN NATIONAL RAILWAYS
WESTERN LINES

Winnipeg, Man.

At Seattle, Wash. - February 20th, 1923.

Mr. M. H. Davy,
465 Brandon Ave.,
Winnipeg, Man.

40 Dear Sir:

Referring to your letter of the 6th instant.

P. 13
Letter
A. E. Warren
to M. H. Davy,
20th Feb., 1923.

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P. 13
Letter
A. E. Warren
to M. H. Davy,
20th Feb., 1923.
(Continued)

As stated to you in my letter of January 31st, the question of representation is a matter that has been settled, and we are not prepared to give notice of any change to Division No. 4, as you suggest.

In order to overcome the difficulties you mention regarding certain men being unable to learn the contents of the agreement with Division No. 4, arrangements are being made to re-print the agreement, and either have it posted up in the Shops or distribute it to men, who may desire a copy. These arrangements are now in hand and will be completed within a short time.

10

Yours truly,

(Signed) A. E. WARREN.

PLAINTIFF'S EXHIBIT 14

P. 14
Letter H. W.
Thornton to
W. H. Davy,
10th April,
1923.

LETTER, H. W. THORNTON TO W. H. DAVY

CANADIAN NATIONAL RAILWAYS

Office of the Chairman and President

Sir Henry Worth Thornton, K.B.E.

Chairman of the Boards of Directors and President.

Montreal, April 10th, 1923.

W. H. Davy, Esq.,
465 Brandon Avenue,
WINNIPEG, MAN.

20

Dear Sir,

With reference to your communication of March 19th, some time necessarily elapsed after the receipt of your letter of February 26th in order that further investigations of the subject might be made.

I regret that a reply was delayed so long. I am unable to express any other opinion on this subject than that contained in my letter of January 2nd to Mr. R. P. Russell, of Winnipeg, with which you are doubtless familiar.

Yours faithfully,

H. W. THORNTON,
President.

PLAINTIFF'S EXHIBIT 29

SUPPLEMENT A TO WAGE AGREEMENT No. 6

THE RAILWAY ASSOCIATION OF CANADA
WAGE AGREEMENT NO. 6
SUPPLEMENT "A"RECORD
Exhibits
P. 29
Supplement A
to Wage Agree-
ment No. 6.
26th Nov., 1923.

Effective December 1st, 1923, Wage Agreement No. 6 is amended as follows:

Rule 4½—Except as otherwise provided herein, where one shift is worked during day hours a meal period of not more than
10 thirty minutes without pay may be allowed commencing between 12 and 13 o'clock, but where not so allowed a meal period of twenty minutes will be allowed without deduction in pay; by agreements between representatives of the railways and the recognized representatives of the employees it may be arranged, at such points as circumstances may justify it, to allow without pay a meal period not to exceed one hour commencing within the same time limits. Where more than one shift is worked a meal period may be similarly allowed on the first shift but on each of the other
20 shifts a meal period of twenty minutes will be allowed commencing during the fifth hour of duty without deduction in pay.

Rule 6—All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

Work performed on Sundays and the following legal holidays, namely: New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day (provided when any of the above holidays fall on a Sunday the day substituted by the Federal Government will be observed), will be paid for at the rate of time and one-half, except as follows:

- 30 (a) Employees necessary to the operation of train yards, running repair and inspection forces will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regular assigned seventh day off duty will be paid at the rate of time and one-half, and where such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.

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 Supplement A
 to Wage Agree-
 ment No. 6,
 26th Nov., 1923.
 (Continued)

(b) Sunday and holiday work will be required only when absolutely essential to the continuous operation of the rail-ways.

Rule 7—For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis with a minimum of one hour at straight time rates for any such service performed.

Employees shall not be required to work more than two hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid 10 for up to thirty (30) minutes at straight time rates.

Employees called or required to report for work and report- ing but not used will be paid a minimum of four hours at straight time rates.

Employees called or required to report for work and report- ing will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement. 20

Carmen and their helpers, including coach cleaners, required to attend passenger trains for inspecting, icing, watering, clean- ing and putting on supplies, outside of regularly assigned work- ing hours, will be allowed a minimum of two hours at straight time rates, except that when called between 22 o'clock and 6 o'clock a minimum of four (4) hours at straight time rates will be allowed.

Employees will be allowed for services performed continu- ously in advance of the regular working period a minimum of two hours at straight time rates—the advance period to be not more 30 than one hour.

Except as otherwise provided for in this rule, all overtime be- yond sixteen hours' service in any twenty-four-hour period, com- puted from starting time of employees' regular shift, shall be paid for at the rate of double time.

Rule 18—When new jobs are created or vacancies occur in preference jobs in the respective crafts, the oldest employee in

point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. Notice of vacancies in mutually recognized preference positions will be bulletined.

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(Continued)

Rule 20—Employees who transfer from one point to another with a view of accepting a permanent transfer, will, after ninety days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern, such transfer to be made without expense
10 to the company. Employees will not be compelled to accept a permanent transfer to another point.

Employees at outside points where no foreman is located shall be placed on the seniority lists and retain their seniority at the point where foreman is located who has jurisdiction over such outside points. If not working under the jurisdiction of a foreman they shall retain seniority at station sent from.

When through any unusual development it becomes necessary to transfer work from one point to another not more than a sufficient number of men to take care of such work will be given the
20 opportunity to transfer, carrying their seniority rights with them.

Rule 21—When the requirements of the service will permit, employees, on request, will be granted leave of absence for a limited time, with privilege of renewal. Committee will on request be advised of all leave of absence granted employees over 90 days.

The arbitrary refusal of a reasonable amount of leave to employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be han-
30 dled as unjust treatment under this agreement.

Rule 27—When it becomes necessary to make a reduction in expenses at any point, the force at such point, or in any department or sub-division thereof, shall be reduced by dispensing with employees with less than six months' continuous service in such department or sub-division thereof, after which the hours may be reduced to forty (40) per week before further reduction in forces is made. When the force is reduced seniority as per rule
31 will govern; the men affected to take the rate of the job to which they are assigned.

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Forty-eight (48) hours' notice will be given before hours are reduced as provided for in the first paragraph of this rule. If the force is to be further reduced, four days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee.

This does not apply in laying off men who have been temporarily employed to meet special requirements.

In the restoration of forces, senior men laid off will be given preference of re-employment, if available within a reasonable time, and shall be returned to their former position if it is to be filled; local committee will be furnished list of men to be restored to service; in reducing force the ratio of apprentices will be maintained.

Rule 43—The rate for all mechanics who were receiving seventy-seven (77c) cents or more per hour under Supplement "B" to Wage Agreement No. 4, has been decreased seven (7c) cents per hour, thus establishing for such mechanics a minimum rate of seventy (70c) cents per hour.

Other mechanics in the car department, and other unclassified mechanics, who were receiving seventy-two (72c) cents per 20 hour, under Supplement "B" to Wage Agreement No. 4, have been decreased nine (9c) cents per hour, thus establishing for such mechanics a minimum rate of sixty-three (63c) cents per hour.

Wrecking crane operators will be paid mechanics' rate when operating wrecking cranes.

Wheel pressers and belt men will be increased two (2c) cents per hour over rates effective under Wage Agreement No. 6.

Rule 44—Apprentices, helpers and other classes of workmen covered by Wage Agreement No. 4, and Supplements "A" and "B" thereto, have been decreased seven (7c) cents per hour. A 30 minimum rate of forty-seven (47c) cents per hour is thus established for helpers.

Regular apprentices between the ages of 16 and 21, engaging to serve a five years' apprenticeship, shall be paid as follows:

| | Per Hour |
|---|----------|
| Starting out rate and for first six months..... | 27 cents |
| Second six months | 29½ " |

| | | | |
|------------------------------------|-----|---|---|
| Second year—First six months | 32 | “ | RECORD Exhibits P. 29 Supplement A to Wage Agree- ment No. 6, 26th Nov., 1923. (Continued) |
| Last six months | 34½ | “ | |
| Third year —First six months | 37 | “ | |
| Last six months | 39½ | “ | |
| Fourth year—First six months | 44½ | “ | |
| Last six months | 52 | “ | |
| Fifth year —First six months | 59½ | “ | |
| Last six months | 67 | “ | |

provided, however, that the basic minimum rate for their respec-
10 tive crafts shall not be exceeded.

Rule 63—Include regular and helper apprentices in connection with work defined by Rule 62, except that helper apprentices will not be employed in main shops.

Rule 68—In case of wrecks where engines are disabled, machinist, and helper if required (more if necessary), shall accompany the wrecker. They will work under the direction of the wreck foreman. They will be paid as per Rule 10 while working at wrecks or in charge of wrecked engines.

Rule 111—Blacksmiths' work shall consist of welding, forg-
20 ing, heating, shaping and bending of metal; tool dressing and tempering; springmaking, tempering and repairing, potashing, annealing, case and bichloride hardening; flue welding, under blacksmith foreman; operating furnaces, bulldozers, forging machines, drop forging machines, bolt machines and Bradley hammers; hammersmiths, drop hammermen, trimmers, rolling mill operators; operating punches and shears; doing shaping and forging in connection with blacksmith's work; oxy-acetylene, thermit, and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as
30 blacksmiths' work.

Rule 164.—A “one man point” is an outlying point where there is employed one carman, day, and one, night, or where there is only one carman employed.

Carmen stationed at one man points shall be allowed the equivalent of 240 hours per month at not less than the hourly rate provided herein.

Where car inspectors, including work train inspectors, or car

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repairers at one man points are required by order to work a total of more than 240 hours per month, they shall be paid for all time worked in excess of 240 hours at overtime rates. The work hours shall be mutually arranged to suit conditions, and less than eight hours may be specified for certain days.

Rule 164—Other carmen working under the provisions of this Article performing work such as the combined duties of car cleaners and engine watchmen, and who are required to be on duty on Sundays as well as week days, shall be allowed an additional 40 hours per month, or a total of 280 hours per month. 10

New Rule 167—Paint sprayers will be paid carmen's rates.

All rules in Wage Agreement No. 6 of December 1st, 1922, not dealt with in this Supplement will remain unchanged.

FOR THE RAILWAY EM-
PLOYEES' DEPARTMENT,
DIVISION NO. 4, AMERI-
CAN FEDERATION OF LA-
BOUR:

R. J. TALLON,
President.

FRANK McKENNA,
Vice-President.

CHAS. DICKIE,
Secretary.

FOR THE RAILWAYS CON-
CERNED:

THE RAILWAY ASSOCIA-
TION OF CANADA,

GRANT HALL,
Chairman, 20

Operating Committee.

C. P. RIDDELL,
General Secretary.

Montreal, November 26th, 1923.

PLAINTIFF'S EXHIBIT 30

SUPPLEMENT B TO WAGE AGREEMENT No. 6

THE RAILWAY ASSOCIATION OF CANADA

WAGE AGREEMENT NO. 6

Supplement "B"

30

Effective January 1st, 1927, Wage Agreement No. 6 and Supplement "A" thereto are amended, as follows:

Preamble—Agreement between the following Railways:

Canadian National Railways,
 Canadian Pacific Railway,
 Dominion Atlantic Railway,
 Esquimalt and Nanaimo Railway,
 Kettle Valley Railway,
 Quebec Central Railway,
 Temiskaming and Northern Ontario, Railway,
 Toronto, Hamilton and Buffalo Railway,
 10 Winnipeg Joint Terminals,

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represented for the purposes of this Agreement by The Railway Association of Canada, and The Railway Employees' Department, Division No. 4, American Federation of Labour, in respect to rates of pay, work hours, and conditions of service, for employees in the Locomotive and Car Departments of the several Railways specified.

Rule 6—All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

20 Work performed on Sundays, and the following legal holidays, namely: New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day (provided when any of the above holidays fall on a Sunday, the day substituted by the Federal Government will be observed), will be paid for at the rate of time and one-half except as follows:

(a) Employees necessary to the operation of train yards, running repair and inspection forces will be assigned one regular day off duty in seven, Sunday if possible, and if required to work
 30 on such regular assigned seventh day off duty will be paid at the rate of time and one-half, and where such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.

(b) Sunday and holiday work will be required only when absolutely essential to the continuous operation of the railways.

The recognized overtime period for Sundays and holidays will be a 24 hour period commencing at the regularly assigned starting hour of employees on the first day shift.

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Rule 14—Employees regularly assigned to road work whose tour of duty is regular and who leave and return to home station daily (a boarding car to be considered a home station) shall be paid continuous time from the time of leaving the home station to the time they return, whether working, waiting or travelling, exclusive of the meal period, as follows:

Straight time for all hours travelling and waiting, straight time for work performed during regular hours, and overtime rates for work performed during overtime hours. If relieved from duty and permitted to go to bed for five (5) hours or more, they will not be allowed pay for such hours. Where meals and lodging are not provided by the company when away from home station, actual necessary expenses will be allowed.

The starting time to be not earlier than 6 a.m. nor later than 8 a.m.

Where two or more shifts are worked, the starting time will be regulated accordingly.

EXCEPTION:—In case where the schedule of trains interferes with the starting time an agreement may be entered into by the Superintendent of the department affected and the general chairman of the craft affected.

When such men do not return daily to their home station or boarding car, they will be paid for all overtime actually worked as per Rule 6, and in such cases where meals and lodging are not furnished by the railway, employees will be paid actual expenses. If lodging is not available at point where work is performed, employees will be paid according to Rule 10 until they reach lodging, home station or boarding car.

Road car repair men sent out on the road will receive pay at straight time for travelling from time called until they reach the first point at which they have to work and will be compensated for any additional expenses they necessarily incur.

Employees sent out on road repair work under this rule on regularly assigned day off duty or on holidays, will be paid overtime rates for working and straight time for travelling with a minimum of 8 hours at time and one half.

Rule 18—When new jobs are created, or vacancies occur in preference jobs in the respective crafts, senior employees at point

at which vacancies occur shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. Notice of vacancies is mutually recognized preference positions will be bulletined.

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Rule 19—Mechanics in service will be considered for promotion to positions as shop foremen. When vacancies occur in positions of gang foremen (leading hands supervising the work of a gang) men from the respective crafts will be promoted.

Rule 21—When the requirements of the service will permit,
10 employees will be granted leave of absence, not to exceed 90 days, with the privilege of renewal by consent of the shop management and shop committee.

Any employee engaging in other employment whilst on leave, except with consent of shop management and shop committees, shall be considered out of the service.

The arbitrary refusal of a reasonable amount of leave to employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be
20 handled as unjust treatment under this Agreement.

Rule 31—Seniority of employees in each craft covered by this Agreement shall be confined to the point at which employed and to the date on which they entered classification.

Sub-divisions of the carmen for seniority shall be as follows:

Patternmakers,
Upholsterers,
Painters,
Other Carmen.

If on account of falling off in work of a particular class, on
30 which "other carmen" are engaged, it is necessary to displace them, they will, according to seniority, have the right to displace carmen junior to them performing other classes of work, if qualified to perform it, at the rate paid for such work.

The seniority lists will be open to inspection and copy furnished the committee.

NOTE:—When it becomes necessary to make a reduction in

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expenses as provided for in Rule 27, employees in any craft may, under this rule, exercise their seniority in any position belonging to their craft, in shops, roundhouses, or train yards under the jurisdiction of the same general foreman or shop superintendent or other officials having like jurisdiction, provided that the exercise of seniority on a staff comprising both back shop and running work by change from one class of work to the other shall be conditional upon qualifications for the performance of the work in any individual case. If, however, an employee, from this or any other cause, is transferred from one shop, round-¹⁰house, or train yard to another in the same terminal, he will retain his original seniority in the terminal in which employed.

Rule 40—All apprentices must be able to speak, read and write the English language (or French in the Province of Quebec) and understand at least the first four rules of arithmetic.

Applicants for regular apprenticeship shall be between 16 and 21 years of age, and if accepted, shall serve five years of 290 days each calendar year. At the expiration of their apprenticeship they shall be paid not less than the minimum rate established for journeymen mechanics of their respective crafts. In²⁰ the selection of apprentices, sons of employees shall be given special consideration.

Time lost through closing down of shops will not be deducted from apprentice's time, but all such time lost will be made up at the rate payable for the last period of apprenticeship.

In selecting helper apprentices, seniority will govern; otherwise selections will be made in conjunction with the respective shop committees.

NOTE:—See special rules of each craft for additional apprentice rules. 30

Rule 42—The ratio of apprentices, in their respective crafts, shall not be more than one to every five mechanics.

Two apprentices will not be worked together as partners.

The distribution of apprentices amongst shops where general repairs are made on the division shall be as nearly as possible in proportion to the mechanics in the respective trades employed therein.

In computing the number of apprentices that may be em-

ployed in a trade on a division (a General Superintendent's territory), the total number of mechanics of that trade employed on the division will be considered.

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If, within six months, an apprentice shows no aptitude to learn the trade, he will not be retained as an apprentice.

An apprentice shall not be dismissed or leave the service of his own accord, except for just and sufficient cause, before completing his apprenticeship.

An apprentice shall not be assigned to work on night shifts,
10 nor be allowed to work overtime during the first two years of his apprenticeship.

Regular and helper apprentices shall be credited with two years' seniority as mechanics upon the completion of their apprenticeship, provided that apprentices in the service at the effective date of this agreement who have less than two years of their term of apprenticeship to serve shall accumulate seniority only from the effective date of this Agreement with a maximum of two years' seniority. Seniority shall be confined to the point at which the majority of apprenticeship time was served. In ap-
20 plying this rule, seniority will prevail in the order in which apprentices complete their apprenticeships.

Rule 43—The rate for all mechanics who were receiving seventy (70c) cents or more per hour under Supplement "A" to Wage Agreement No. 6, has been increased four (4c) cents per hour, thus establishing for such mechanics a minimum rate of seventy-four (74c) cents per hour.

Other mechanics in the car department, and other unclassified mechanics, who were receiving sixty-three (63c) cents per hour, under Supplement "A" to Wage Agreement No. 6, have
30 been increased four (4c) cents per hour, thus establishing for such mechanics a minimum rate of sixty-seven (67c) cents per hour.

Wrecking crane operators will be paid mechanics' rate when operating wrecking cranes.

Wheel pressers and belt men will be increased four (4c) cents per hour over rates effective under Supplement "A" to Wage Agreement No. 6.

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Rule 44—Helpers and other classes of workmen covered by Wage Agreement No. 6 and Supplement "A" thereto, have been increased four (4c) cents per hour. A minimum rate of fifty-one (51c) cents per hour is thus established for helpers.

Regular apprentices between the ages of 16 and 21, engaging to serve a five years' apprenticeship, shall be paid as follows:

| | Per Hour | |
|---|------------------|-------|
| Starting out rate and for first six months..... | 29 | cents |
| Second six months | 31 $\frac{1}{2}$ | " |
| Second year—First six months | 34 | " 10 |
| Second year—Last six months | 36 $\frac{1}{2}$ | " |
| Third year—First six months | 39 | " |
| Third year—Last six months | 41 $\frac{1}{2}$ | " |
| Fourth year—First six months | 46 $\frac{1}{2}$ | " |
| Fourth year—Last six months | 54 | " |
| Fifth year—First six months | 61 $\frac{1}{2}$ | " |
| Fifth year—Last six months | 69 | " |

provided, however, that the basic minimum rate for their respective crafts shall not be exceeded.

Rule 45—Linemen and others covered by Rule 141 shall receive seventy (70c) cents per hour. 20

Groundmen covered by Rule 142 shall receive sixty-four (64c) cents per hour.

Electric transfer table operators, coal pier elevator operators and coal pier electric hoist operators as covered by Rule 143 shall receive fifty-seven (57c) cents per hour.

Rule 52—Employees will not be required to work on engines or cars outside of shops during inclement weather, if shop room and pits are available. This does not apply to work in engine cabs or emergency work on engines or cars set out for or attached to trains. 30

When it is necessary to make repairs, parts of engines, boilers, tanks and tank cars shall be cleaned before mechanics are required to work on same. This will also apply to cars undergoing general repairs.

Employees will not be required to expose themselves to sand

blast and paint blowers while in operation. Employees operating these machines will be supplied with masks and goggles.

All acetylene or electric welding or cutting will be protected by a suitable screen when its use is required.

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Rule 63—Include regular apprentices in connection with the work defined by Rule 62.

Rule 70—Eliminate.

Rule 71—Eliminate.

Rule 72—Eliminate.

10 **Rule 73**—Eliminate.

Rule 76—Labourers, or similar class of workmen, shall not be permitted to do helpers' work as outlined in Rule 64 if regular machinist helpers are available, but if so used for one day or more they shall be paid regular helpers' rate.

Rule 92—When necessary, boilermakers shall be furnished with experienced helpers when sent out on the road or called in to work.

Rule 106—The following schedule for regular apprentices, showing the division of time on the various classes of work, is 20 designed as a guide and will be followed as closely as the conditions will permit:

6 months heating rivets and helping boilermakers.
6 months tank repairing and sheet iron work,
6 months rolling flues; ashpan work,
6 months staybolts and setting flues,
20 months general boiler work,
3 months general boiler work in roundhouse,
6 months electric or oxy-acetylene welding,
1 month oxy-acetylene cutting,
30 6 months laying out and flanging.

Rule 124—Blacksmiths regularly (not necessarily continuously) working or making material the equivalent of six inches square or over shall be classified as hammersmiths and shall receive ten cents per hour above the minimum rate paid blacksmiths at the point employed.

Blacksmiths regularly (not necessarily continuously) work-

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ing material the equivalent of four inches square or over shall be classified as heavy fire blacksmiths and shall receive five cents per hour above the minimum rate paid blacksmiths at the point employed.

Hammersmiths' helpers (working with blacksmiths referred to in Paragraph 1 of this Rule) and heaters on heavy blacksmiths' fires and drop hammer furnaces shall receive ten (10c) cents per hour above the minimum rate paid helpers at point employed.

Hammer operators and helpers working with hammersmiths¹⁰ or heavy fire blacksmiths shall receive five (5c) cents per hour above the minimum rate paid helpers at the point employed.

Furnace operators (heaters) operating furnaces for hammersmiths shall receive the minimum rate paid blacksmiths at the point employed.

Rule 144—Include regular apprentices in connection with Electrical workers.

Rule 146—The present electrical helper apprentices shall be allowed to complete their time at the old rates, and, if retained in the service thereafter will be paid the minimum rate for 20 journeymen, electrical workers.

Rule 148—Eliminate.

Rule 149—Eliminate.

Rule 170—Regular apprenticeships will be established in all branches of the trade. Apprentices shall be governed by the general rules covering apprentices. The proper proportion of apprentices shall be engaged each year.

Rule 172—Fifty per cent of the ratio of apprentices may be helper apprentices who have had not less than two years' experience at carmen's helpers' work, at the time application is³⁰ made.

The proper proportion of the ratio of helper apprentices shall be engaged each year.

Helper apprentices shall not be over thirty years of age and will serve three years, a minimum of 290 days each calendar

year. The age limit of thirty years may be exceeded in specific cases under special arrangement between company's officials and shop committees.

RECORD

Exhibits

P. 30
 Supplement B
 to Wage Agree-
 ment No. 6,
 25th Jan., 1927.
 (Continued)

Helper apprentices shall be governed by the same regulations and rules as regular apprentices.

Helper apprentices shall receive the minimum helpers' rate for the first six months, with an increase of two cents per hour each succeeding six months until they have served three years. At the completion of their apprenticeship period they shall receive the mechanics' rate of pay.

Rule 177—In the event of not being able to employ carmen with four years' experience and the regular helper apprentice schedule not providing men enough to do the work, the force may be increased in the following manner:

Regular apprentices who have served two years and helper apprentices who have served two years, may be promoted to mechanics at point employed and will be paid the minimum rate for carmen, seniority to govern.

Helpers who have had four or more years' experience at point employed, may be promoted to mechanics, they to receive the minimum rate for carmen and be given an opportunity to learn the trade, seniority to govern.

Helpers who are promoted to mechanics' positions and who remain as mechanics exceeding a period of 90 days, shall lose their seniority as helpers from the date of their promotion.

The duly authorized committee in each shop covered by this agreement will be consulted and mutual understanding arrived at in promoting helpers in such cases. The ratio of helpers to be promoted, to the number of mechanics in any one shop, shall not exceed twenty per cent.

The General Chairman on each railway affected shall be furnished a complete record of the men promoted.

When a reduction is made in force of mechanics, promoted helpers and advanced apprentices, shall be set back in accordance with their seniority. No mechanics to be laid off until all such promoted helpers and advanced apprentices have been set back.

RECORD

Exhibits

P. 30
Supplement B
to Wage Agree-
ment No. 6,
25th Jan., 1927.
(Continued)

Rule 179—Coach cleaners will be paid a minimum of forty-two (42c) cents per hour. Overtime and other conditions of this Agreement will apply to coach cleaners. Coach cleaners at outlying points may be worked eight (8) hours within a period of ten (10) consecutive hours. They may be assigned to any other unskilled work during their eight hour period of service.

An outlying point is a point where not more than three coach cleaners are employed.

Rule 187—Employees coming under the classification of moulders as provided for in Wage Agreement No. 1 will receive the increase in rates of pay as provided for in the first paragraphs of Rules 43 and 44, respectively, of this Agreement, and the general rules shall be applied to them, except that mutual arrangements shall be made with a view to continuing present practice in relation to any special local conditions.

All rules in Wage Agreement No. 6 and Supplement "A" there- to not dealt with in this Supplement will remain unchanged.

FOR THE RAILWAY EM-
PLOYEES' DEPARTMENT,
DIVISION NO. 4, AMERI-
CAN FEDERATION OF LA-
BOUR:

R. J. TALLON,
President.

FRANK McKENNA,
Vice-President.

MONTREAL, JANUARY 25TH, 1927.

CHAS. DICKIE,
Secretary.

FOR THE RAILWAY ASSO-
CIATION OF CANADA:

GRANT HALL,
Chairman,
Operating Committee.

C. P. RIDDELL,
General Secretary.

P. 9
Plaintiff's
Application
for Employ-
ment, 10th
June, 1920.

PLAINTIFF'S EXHIBIT 9

PLAINTIFF'S APPLICATION FOR EMPLOYMENT

CANADIAN NATIONAL RAILWAYS

30

Application for Employment

Leave this space blank

NOTE:—This form must be filled out in applicant's handwriting.

The applicant will not be deemed to be in the service of these Railways until his application shall have been fully approved, except that he will be paid for actual work done, whether application is approved or not.

| | | | | | | | | | |
|--------------|-------------|-----------|----------|---------------------|------|-------------------|--|----------|--------|
| | | | Age last | Exact Date of Birth | | | | | RECORD |
| Name in Full | Nationality | Birth Day | Day | Month | Year | Married or Single | | Exhibits | |
| WM. YOUNG | English | 26 | 25 | Oct. | 1894 | Married | | P. 9 | |

Have you ever been in the service of these Railways before, or of any Railway, Hotel, or Steamboat now owned or operated by the Canadian National Railways, in any capacity? If so, give record in following spaces. If not, write "no."

Plaintiff's Application for Employment, 10th June, 1920.
(Continued)

| Dates of Service | | | | | |
|------------------|-------|-------|-------|--------|--------------------|
| Occupation | Place | From | To | Salary | Reason for Leaving |
| 10 | | | | | |
| | | | | | |

| | | | | | |
|-------------------|-------|------|--------------------------|-------|--|
| Present Address | | | Nearest Relative Address | | |
| Street and Number | Place | Name | Street and Number | Place | |
| 459 Langside St. | | Wife | Same Address | | |

Give below particulars of all employment other than above during the last three years, or if not employed during any portion of this period, give reasons therefor, with names and addresses of responsible persons to whom you can refer.

| | | | | | |
|----|------------------------|-----------------|------------------|----------------------------|--------------------|
| 20 | Name of Employer | Business | Address | Capacity in which employed | Between what dates |
| | Clayton & Shuttleworth | Stamp end Works | Lincoln, England | Mach. | 1919 - 1920 |

Sufficient signed copies of Form 2 should be attached to enable testimonials to be obtained by Staff Record Office, or if applicant holds testimonials, or they can be obtained by him locally, certified copies must be attached.

I understand that when I leave the service for any reason, all right to occupy any of the Railway's premises ceases forthwith.

Date, June 9, 1920. WM. YOUNG, Signature of Applicant

(Back)

| | | | | | | | |
|------------------------------|---|--------------------|----------|------------|---------------------|----------------------------|--------------|
| Name of Applicant, WM. YOUNG | | | | | | | |
| 80 | (Following space for Office use only) | | | | | | |
| | Occupation | Department | Place | Salary Non | Date to Take Effect | If Temporary, State Period | |
| To Be | Machinist | Machine Mechanical | Winnipeg | 72 | June 10th 1920 | | |
| | Reason for Leaving | | | Non | Date of Leaving | If on Leave, State Period | |
| | Name in Full (If on leave of absence with or without pay) | | | Schedule | Schedule | Leaving | State Period |
| Succeeding | Norman. | 6.25 | Deserted | | 72 | June 9th, 1920 | |

40 If following examinations necessary, has applicant passed satisfactorily? General Train and Interlocking Rules.....Color sense.....Sight.....Hearing.....

If a new position or increased expense give full reason therefor. (If increase in station expense attach statement of business during twenty-four previous months)

If predecessor is leaving were services satisfactory? Yes.

If dismissed give briefly cause thereof:

| | | |
|--------------------|----------|----------|
| Recommended by | Approved | Approved |
| L. WEDGE | G.H.H. | H.W.E |
| Supt. Loco. Shops. | | |

RECORD
Exhibits
P. 22
Plaintiff's
Service Card.

PLAINTIFF'S EXHIBIT 22

PLAINTIFF'S SERVICE CARD

S.R.B.—149254—Leeds, English, Oct. 25, 1894, 303 Ferry Road,
St. James.

Canadian National Railways—Staff Register

Name, *YOUNG, WILLIAM* Age 27 Entered Service *June 10, 1920* At *Winnipeg*
As *Machinist* In *Mech. Dept.* Rate \$ *85c* Per *Hr.*
Height *5-4.* Weight *125.* Complexion, *Dark.* Hair *D. Brown* Eyes *Brown*

| Date | Alterations in Occupation | Occupations in Place | Salary | Passed Examination in Sense, Sight, Hearing and Physical | Color |
|----------------------|---------------------------|----------------------|-----------------------------|--|-------|
| | Revised | | Rate | Per Passed Exam. in Transportation Rules | |
| <i>July 16, 1921</i> | ✓ | ✓ | <i>77c</i> | <i>Hr. Revised</i> | |
| <i>Aug. 16, 1922</i> | ✓ | ✓ | <i>70c</i> | <i>Hr. Revised</i> | |
| <i>Jan. 1, 1927</i> | ✓ | ✓ | <i>74</i> | <i>Hr.</i> | |
| <i>June 14, 1927</i> | ✓ | ✓ | <i>Laid off—Redu. Staff</i> | | |

P. 21
Seniority List,
1st June, 1927.

PLAINTIFF'S EXHIBIT 21

SENIORITY LIST

SENIORITY LIST

Fort Rouge Loco. Shops

As at June 1st, 1927 20

Fort Rouge Machinists

June 1st, 1927

| No. | Name | Month, Date, Year | Remarks: |
|-----|-----------------|-------------------|---|
| 1. | Lister, E. W. | June 1, 1901 | Pensioned June 1st, 1927 |
| 2. | Morgan, R. J. | June 1, 1903 | Layout |
| 3. | Watkins, A. | Aug. 19, 1903 | |
| 4. | Moore, A. E. | June 1, 1904 | |
| 5. | Pratt, F. | June 28, 1904 | |
| 6. | Lynde, F. W. | July 21, 1904 | Pensioned June 30, 1927 |
| 7. | Thompson, W. C. | May 21, 1906 | |
| 8. | Clarke, W. | May 1907 | Inspector of Material, 30 Jan. 9th, 1928 |
| 9. | Lord, R. | July 19, 1907 | |
| 10. | Rolland, T. | Sept. 11, 1908 | |
| 11. | McIvor, A. | Jan. 6, 1909 | |
| 12. | Tuttle, T. | Jan. 20, 1909 | Age Limit June 13, 1927 |
| 13. | Cann, L. O. | Mar. 11, 1909 | Leading Hand |

| No. | Name | Month, Date, Year | Remarks: |
|-----|----------------------------|-------------------|----------------------------------|
| | 14. Heaton, G. D. | Mar. 16, 1909 | |
| | 15. Templeton, J. R. | May 17, 1909 | |
| | 16. Turner, A. M. | May 20, 1909 | |
| | 17. Connell, J. H. | May 25, 1909 | |
| | 18. Sheppherd, H. | May 31, 1909 | |
| | 19. Thurlbeck, W. J. | June 21, 1909 | |
| | 20. Logan, W. H. | July 12, 1909 | |
| | 21. Rhead, F. | Aug. 8, 1909 | |
| 10 | 22. Sutherland, J. A. | Aug. 1909 | |
| | 23. Young, W. B. | Aug. 1909 | |
| | 24. Cameron, S. A. | Oct. 21, 1909 | |
| | 25. Stafford, A. | Oct. 21, 1909 | Age Limit, June 13, 1927 |
| | 26. Sproule, J. A. | Feb. 5, 1910 | |
| | 27. Petrie, G. C. | Feb. 9, 1910 | |
| | 28. Thompson, T. | Mar. 26, 1910 | |
| | 29. Baisch, J. | Mar. 29, 1910 | |
| | 30. Shorey, E. | June 8, 1910 | |
| | 31. Copeland, J. F. | June 27, 1910 | |
| 20 | 32. Troughton, J. | July 11, 1910 | |
| | 33. Hattie, T. | July 12, 1910 | |
| | Mohr, P. | Sept. 3, 1910 | Released, Pension, Jan. 30, 1927 |
| | 34. Tiefendack, A. | Oct. 18, 1910 | |
| | 35. Brown, T. | Oct. 27, 1910 | |
| | 36. McCurdy, J. A. | Jan. 11, 1911 | |
| | 37. Grant, D. | Mar. 7, 1911 | |
| | 38. Dressler, H. | Mar. 9, 1911 | |
| | 39. Gaffney, J. W. | Mar. 16, 1911 | |
| | 40. Collier, A. | Mar. 20, 1911 | |
| 30 | 41. Woods, W. | Mar. 21, 1911 | |
| | 42. Willis, F. | Mar. 27, 1911 | |
| | 43. Marsh, A. | Apr. 3, 1911 | |
| | 44. Buckley, J. | Apr. 6, 1911 | |
| | 45. Harris, G. F. | Apr. 7, 1911 | |
| | 46. Boyd, J. | Apr. 21, 1911 | |
| | 47. Preston, R. | May 17, 1911 | |
| | 48. Barkwell, R. | July 3, 1911 | |
| | 49. Richardson, W. H. | July 17, 1911 | |
| | 50. Lewis, G. A. | Aug. 8, 1911 | Leading Hand |
| 40 | 51. Beggs, J. W. | Sept. 5, 1911 | |
| | 52. Boyle, A. | Sept. 16, 1911 | Age Limit, June 13, 1927 |
| | 53. Tough, J. A. | Nov. 6, 1911 | |
| | 54. Bond, C. H. | Jan. 23, 1912 | |
| | 55. Coard, R. | Feb. 2, 1912 | |
| | 56. Bears, W. | Feb. 13, 1912 | |

RECORD

Exhibits

P. 21

Seniority List.
1st June, 1927.
(continued)

| RECORD Exhibits | No. | Name | Month, Date, Year | Remarks: |
|--|------|---------------------|-------------------|------------------------|
| P. 21 Seniority List, 1st June, 1927. (Continued) | 57. | Masterman, J. H. | Feb. 15, 1912 | |
| | 58. | Cassidy, L. | Mar. 13, 1912 | |
| | 59. | Brown, L. | Apr. 15, 1912 | |
| | 60. | Finnie, H. B. | May 1, 1912 | |
| | 61. | Cuthbert, W. J. | June 6, 1912 | |
| | 62. | Cowan, W. | Jan. 13, 1913 | Leading Hand |
| | 63. | Clark, E. | Jan. 20, 1913 | |
| | 64. | Charlesbois, C. | Jan. 28, 1913 | |
| | 65. | Shepherd, H. | Feb. 19, 1913 | 10 |
| | 66. | Hutchison, W. | Feb. 20, 1913 | |
| | 67. | Crawford, W. J. | Feb. 21, 1913 | |
| | 68. | Nelson, W. J. | Mar. 12, 1913 | |
| | 69. | Striowski, E. | Mar. 13, 1913 | |
| | 70. | McPherson, W. | July 7, 1913 | |
| | 71. | Farquhar, A. | July 10, 1913 | |
| | 72. | McIntosh, A. | Nov. 20, 1913 | |
| | 73. | Robertson, P. S. H. | Jan. 12, 1914 | |
| | 74. | Murdock, R. | Mar. 22, 1914 | |
| | 75. | Innes, W. | July 22, 1915 | 20 |
| | 76. | Chalmers, D. | Aug. 23, 1915 | |
| | 77. | Morrison, F. G. | Aug. 25, 1915 | |
| | 78. | Tetlock, W. R. | Sept. 1, 1915 | |
| | 79. | Masters, R. E. | Sept. 1, 1915 | |
| | 80. | Rigby, T. | Sept. 7, 1915 | |
| | 81. | Tully, O. | Sept. 14, 1915 | Deceased June 22, 1927 |
| | 82. | Bradley, E. | Sept. 20, 1915 | |
| | 83. | Heath, G. | Sept. 20, 1915 | |
| | 84. | Relf, W. A. | Sept. 20, 1915 | |
| | 85. | Thurlbeck, A. E. | Sept. 27, 1915 | 30 |
| | 86. | Currie, G. | Sept. 27, 1915 | |
| | 87. | DeWolfe, W. | Nov. 3, 1915 | |
| | 88. | McKenzie, A. | Nov. 3, 1915 | |
| | 89. | Tinker, H. | Nov. 18, 1915 | |
| | 90. | Young, J. G. | Nov. 25, 1915 | |
| | 91. | Chasteauneuf, A. | Mar. 1, 1916 | |
| | 92. | Young, L. | Mar. 20, 1916 | |
| | 93. | Gannon, H. | Mar. 20, 1916 | |
| | 94. | McIvor, J. | Apr. 1, 1916 | |
| | 95. | Fletcher, C. J. | Apr. 13, 1916 | 40 |
| | 96. | Cooke, R. | May 5, 1916 | |
| | 97. | Dunn, J. | May 11, 1916 | |
| | 98. | Schwanda, J. | June 22, 1916 | |
| | 99. | Jackson, E. L. | July 1, 1916 | |
| | 100. | Reed, A. H. | July 6, 1916 | |
| | 101. | Connery, D. | Aug. 2, 1916 | |

| No. | Name | Month, Date, Year | Remarks: |
|-----|------------------------|-------------------|---------------------------|
| | 102. Soar, T. H. | Aug. 11, 1916 | |
| | 103. Flock, H. L. | Aug. 14, 1916 | |
| | 104. Sherritt, S. V. | Aug. 15, 1916 | |
| | 105. Taylor, S. | Aug. 16, 1916 | Reduction of Staff, |
| | 106. Larkins, W. A. | Sept. 5, 1916 | June 13, 1927 |
| | 107. Swalheim, E. | Sept. 18, 1916 | |
| | 108. Pink, E. T. | Oct. 4, 1916 | |
| | 109. Allen, W. | Dec. 20, 1916 | |
| 10 | 110. Greenhalgh, J. | Dec. 20, 1916 | |
| | 111. Dvorak, F. | Jan. 10, 1917 | |
| | 112. McKenzie, E. S. | Feb. 12, 1917 | |
| | 113. McGrath, H. | Mar. 12, 1917 | |
| | 114. Peters, W. D. | Mar. 18, 1917 | |
| | 115. Thurlbeck, J. H. | Apr. 2, 1917 | |
| | 116. Stokvis, J. | May 4, 1917 | |
| | 117. Clement, F. J. | May 9, 1917 | |
| | 118. Patrick, W. H. | May 9, 1917 | |
| | 119. Elridge, J. T. | May 9, 1917 | |
| 20 | 120. Cunningham, R. S. | May 10, 1917 | Age Limit, June 13, |
| | 121. Frahs, G. | May 10, 1917 | 1927 |
| | 122. Houldsworth, J. | May 10, 1917 | |
| | 123. Gerband, J. P. | May 22, 1917 | |
| | 124. Maxwell, W. | May 25, 1917 | |
| | 125. James, H. I. | June 4, 1917 | Deceased Jan. 18, 1927 |
| | 126. Kwalheim, S. | June 12, 1917 | |
| | 127. Morrison, S. C. | Aug. 1, 1917 | |
| | 128. Agnew, H. L. | Aug. 15, 1917 | |
| | 129. Graham, J. | Oct. 30, 1917 | |
| 30 | 130. Pink, F. G. | Nov. 13, 1917 | |
| | 131. Guest, J. | Dec. 3, 1917 | |
| | 132. Green, J. P. | Dec. 3, 1917 | |
| | 133. Fritze, E. | Jan. 3, 1918 | |
| | 134. Luff, F. C. | Feb. 12, 1918 | |
| | 135. Koponice, J. | May 1, 1918 | |
| | 136. Bibe, J. | May 1, 1918 | |
| | 137. Zakopa, N. | May 1, 1918 | |
| | 138. Taylor, J. W. | May 1, 1918 | |
| | 139. Barron, J. | May 1, 1918 | |
| 40 | 140. Jones, C. E. | May 1, 1918 | |
| | 141. Holden, R. | May 1, 1918 | |
| | 142. Sutherland, J. | May 1, 1918 | Age limit July 14th, 1927 |
| | 143. Auld, C. W. | May 1, 1918 | |
| | 144. Collins, J. A. | May 1, 1918 | |
| | 145. Ambrose, J. T. | May 1, 1918 | |
| | 146. Sheaff, E. T. | May 1, 1918 | |

RECORD
Exhibits
P. 21
Seniority List.
1st June, 1927.
(continued)

| RECORD | No. | Name | Month, Date, Year | Remarks: |
|------------------------------------|------|------------------|-------------------|---------------------------------------|
| Exhibits | 147. | Borecky, W. | May 1, 1918 | |
| P. 21 | 148. | Jones, W. H. | May 1, 1918 | |
| Seniority List, 1st June, 1927. | 149. | Bunney, A. B. | May 1, 1918 | |
| (Continued) | 150. | Michalsky, A. | May 1, 1918 | |
| | 151. | Powell, H. | May 1, 1918 | Reduction of Staff, |
| | 152. | Hnatuk, S. | May 1, 1918 | June 13, 1927. |
| | 153. | Yekel, H. | May 1, 1918 | |
| | 154. | Harmon, G. | May 1, 1918 | |
| | 155. | Tetrault, F. | July 8, 1918 | 10 |
| | 156. | Turner, S. M. | July 10, 1918 | |
| | 157. | Walsh, E. | July 23, 1918 | |
| | 158. | Mohr, B. | Aug. 8, 1918 | Pensioned July 1st, 1927 |
| | 159. | Leus, W. L. | Aug. 24, 1918 | |
| | 160. | Webb, B. R. | Oct. 2, 1918 | |
| | 161. | Teminson, N. | Oct. 3, 1918 | |
| | 162. | Hannes, T. | Oct. 4, 1918 | |
| | 163. | Ogden, R. | Oct. 9, 1918 | |
| | 164. | Smith, A. | Oct. 15, 1918 | |
| | 165. | Read, A. | Oct. 21, 1918 | 20 |
| | 166. | Rigby, E. | Nov. 1, 1918 | |
| | 167. | Templeton, A. P. | Nov. 1, 1918 | |
| | 168. | Buchanan, W. | Nov. 4, 1918 | |
| | 169. | Anderson, G. B. | Jan. 2, 1919 | |
| | 170. | Davy, M. H. | Jan. 3, 1919 | Reduction of Staff, June |
| | 171. | Harrower, G. | Jan. 20, 1919 | 13, 1927. |
| | 172. | MacBeath, J. | Jan. 27, 1919 | |
| | 173. | Smith, A. Y. | Jan. 31, 1919 | |
| | 174. | Gray, T. B. | Feb. 4, 1919 | |
| | 176. | Willis, R. | Mar. 6, 1919 | 30 |
| | 177. | Anderson, F. B. | Mar. 26, 1919 | |
| | 178. | Lamb, N. | Apr. 1, 1919 | |
| | 179. | Tree, L. E. | Sept. 3, 1919 | |
| | 180. | McArthur, J. R. | Sept. 4, 1919 | |
| | 181. | Lewis, W. J. | Oct. 7, 1919 | |
| | 182. | Thompson, G. | Nov. 25, 1919 | |
| | 183. | Fraser, E. C. | Dec. 1, 1919 | |
| | 184. | Palmer, W. | Dec. 22, 1920 | |
| | 185. | Wilson, G. | Feb. 7, 1920 | |
| | 186. | Wilson, R. G. | Feb. 24, 1920 | 40 |
| | 187. | Wilson, J. | Mar. 30, 1920 | |
| | 188. | Forrester, C. C. | May 7, 1920 | |
| | 189. | Graham, J. | May 10, 1920 | Reduction of Staff, |
| | 190. | Campbell, J. | May 14, 1920 | June 13, 1927. |
| | 191. | Poppele, P. | May 26, 1920 | |
| | 192. | Young, W. | June 10, 1920 | Reduction of Staff, June 13, 1927. |

| No. | Name | Month, Date, Year | Remarks: |
|-----|--------------------------|-------------------|--------------------------|
| | 193. Philips, A. | June 14, 1920 | |
| | 194. Morgan, W. | June 1920 | |
| | 195. Adams, S. C. | July 1, 1920 | |
| | 196. Urquhart, R. D. | July 12, 1920 | Resigned Aug. 23, 1927. |
| | 197. Whyte, L. A. | Aug. 22, 1920 | |
| | 198. Beattie, W. | Sept. 22, 1920 | |
| | 199. Dawson, H. G. | Sept. 27, 1920 | |
| | 198. Wooley, G. H. | Oct. 6, 1920 | |
| 10 | 199. Penston, W. R. | Oct. 16, 1920 | |
| | 200. Hawkhead, B. | Oct. 25, 1920 | |
| | 201. Nicholson, E. | Nov. 8, 1920 | |
| | 202. Norman, F. R. | Nov. 10, 1920 | |
| | 203. Bentley, C. | Nov. 16, 1920 | |
| | 204. Wragg, C. W. | Feb. 14, 1921 | |
| | 205. Martyn, F. D. | Feb. 20, 1921 | |
| | 206. Wilson, C. H. | Feb. 23, 1921 | |
| | 207. Stewart, C. W. | Aug. 18, 1921 | |
| | 208. Penston, H. G. | Sept. 3, 1921 | |
| 20 | 209. Mckinnon, P. R. | Sept. 7, 1921 | |
| | 210. Buckley, F. | Sept. 9, 1921 | |
| | 211. Anderson, R. | Sept. 29, 1921 | |
| | 212. Ferguson, R. | Oct. 7, 1921 | |
| | 213. Dalby, A. T. | Nov. 8, 1921 | Deserted. |
| | 214. Feather, B. | Nov. 8, 1921 | Transferred to Toronto. |
| | 215. Cameron, H. H. | Nov. 21, 1921 | |
| | 216. Barker, E. G. | May 22, 1922 | |
| | 217. Maguire, F. | Oct. 8, 1922 | |
| | 218. George, R. | June 20, 1923 | |
| 30 | 219. Allen, J. W. | Sept. 1, 1923 | Deceased, June 21, 1927. |
| | 220. Fraser, A. D. | Nov. 19, 1923 | |
| | 221. Gardiner, P. | May 16, 1924 | |
| | 222. May, H. | Jan. 16, 1924 | |
| | 223. Millward, J. | Apr. 1, 1924 | |
| | 224. Jones, R. | Apr. 16, 1924 | |
| | 225. Howard, G. | May 1, 1924 | |
| | 226. Scarr, P. | June 16, 1924 | |
| | 227. Murton, G. | Dec. 16, 1924 | |
| | 228. Verner, F. | Mar. 1, 1925 | |
| 40 | 229. Dougall, F. | Mar. 8, 1925 | |
| | 230. Pink, F. | Mar. 16, 1925 | |
| | 231. Higgenbotham, J. H. | Apr. 6, 1925 | |
| | Hacking, R. | Oct. 1, 1925 | Apprentice. |
| | Hodges, V. G. | Oct. 8, 1925 | Apprentice. |

RECORD
Exhibits
P. 21
Seniority List,
1st June, 1927.
(continued)

RECORD
Exhibits
P. 8
List of Men
to be Laid Off,
9th June, 1927.

PLAINTIFF'S EXHIBIT 8

LIST OF MEN TO BE LAID OFF

**Statement showing Employees to be laid off reduction of expenses
at Fort Rouge Locomotive Shop, as agreed by the Committee
Meeting held in Mr. Eager's office June 9th, 1927.**

MACHINISTS

H. Powell, S. Taylor, M. H. Davy, J. Graham, W. Young.

MACHINISTS' HELPERS

J. Schaumloffel, F. Schorah

BOILERMAKERS

10

L. Schmidt, J. M. Low, W. Cribb, W. L. Ritchie.

BOILERMAKER HELPERS

D. Oneschuk, J. Orr.

(Signed) CHAS. ED. SHAW,
" A. B. PAGE,
" L. WEDGE,
" G. H. HEDGE.

P. 7
Notice of
Dismissal to
Plaintiff,
9th June, 1927.

PLAINTIFF'S EXHIBIT 7

NOTICE OF DISMISSAL TO PLAINTIFF

CANADIAN NATIONAL RAILWAYS

20

Be Brief **RAILWAY SERVICE TELEGRAM**

Fort Rouge, June 9th, 1927.

Mr. William Young:

Your services will not be required after 5-00 p.m. June 13th,
1927, on account of reduction of staff.

(Signed) L. WEDGE,
Supt. Motive Power Shops.

1015

PLAINTIFF'S EXHIBIT 20

LETTER, G. B. ANDERSON TO L. WEDGE

C o p y

INTERNATIONAL ASSOCIATION OF MACHINISTS

Fort Garry Lodge, No. 189

Winnipeg, Man., January 6th, 1927.

Mr. L. Wedge,
Supt. Loco. Shops,
Fort Rouge, Man.

10 Dear Sir:

The following are the names of the Machinists Shop Committee for the insuing year, viz.: for the Erecting Shop No. 1 gang, D. Peters, No. 2 Gang, B. R. Webb, No. 3 Gang, G. B. Anderson, Tendershop, Moore, Box and Rod Gang Teminson, Car Dept. Wheel Shop Friedman, Air Shop Rigby, Millwright Gang, Urquhart, Machine Shop Pratt, Brass Shop Lamb, Roundhouse, Elcombe.

Note: B. R. Webb is Chairman of the above Committee.

Yours faithfully,

20

(SGD.) G. B. Anderson,
Rec. Secretary.

PLAINTIFF'S EXHIBIT 10

LETTER, PLAINTIFF TO GEO. ANDERSON

Winnipeg, Man., June 15, 1927.

Mr. Geo. Anderson,
Chairman of Local Committee,
Fort Rouge Shops,
Canadian National Railways,
Fort Rouge, Man.

30 Dear Sir:

On June 9th, 1927, I was advised by letter as follows:

“Fort Rouge, June 9th, 1927.

Your services will not be required after 5:00 p.m. June 13th, 1927, on account of reduction of staff.

L. WEDGE,
Supt. Motive Power Shops.

RECORD

Exhibits

P. 20

Letter
Letter G. B.
Anderson to
L. Wedge,
6th June, 1927.

P. 10

Letter
Plaintiff to
Geo. Anderson,
15th June,
1927.

RECORD
Exhibits
P. 10
Letter
Plaintiff to
Geo. Anderson,
15th June,
1927.
(continued).

I have 7 years' seniority and my dismissal is in contravention of Wage Agreement No. 6 and Supplemental Agreements there-to, as provided by Rule No. 35.

I make application to the Local Committee through you, of which you are Chairman, to take this case to the officials described in Rule 35 until reinstatement is had. I ask the opportunity of attending upon the Committee in order to state my case.

Kindly advise me when your Committee would hear me and also whether you will take the steps provided for in Rule 35, Wage Agreement No. 6, between the Railway Association of Canada and 10 Railway Employees Department.

Yours very truly,
WM. YOUNG.

P. 16
Envelope.

PLAINTIFF'S EXHIBIT 16

**ENVELOPE FORWARDING EXHIBIT 10 FROM
G. B. ANDERSON TO H. POWELL**

RETURN IN TEN DAYS TO
G. B. ANDERSON
386 WOODLAWN STREET
DEER LODGE

MR. H. POWELL,
571 Walker Ave.,
Fort Rouge,
Winnipeg, Man.

20

R. Winnipeg, Man., Sub. No. 25
Original No. 114

PLAINTIFF'S EXHIBIT 15

**LETTER, PLAINTIFF TO A. W. GIBSON AND
CHARLES E. SHAW**

Winnipeg, Man., July 6, 1927. 30

To A. W. Gibson, President,
and Charles E. Shaw, Secretary, 364 Stella Ave.,
Railway Employees Dept., Western Division,
Division No. 4, American Federation of Labor,
General Committee,
Winnipeg, Man.

Dear Sirs:

On the 9th day of June, 1927, I was dismissed from my posi-

P. 15
Letter
Plaintiff to
A. W. Gibson
and C. E.
Shaw, 6th
July, 1927.

tion as a machinist in the Fort Rouge Shops, the dismissal being as follows:

“Canadian National Railways Railway Service
Telegram

Fort Rouge, June 9th, '27.

“Your services will not be required after 5:00 p.m. June 13th, 1927, on account of reduction of staff.

L. Wedge,
Supt. Motive Power Shops.”

10 I was a machinist in the Fort Rouge Shops of the Canadian National Railways and had 7 years continuous service and the seniority rights accompanying such.

I claim that my dismissal is a breach of Wage Agreement No. 6 and refer to Rules 27, 28, 29, 30 and 31, also to reduction clauses and seniority rights in Schedules A. and B.

At the time of my dismissal, and at the present time, there are many men working in the Fort Rouge Shops in my craft who are junior to me in length of service.

As provided under Rule 35 of the said Wage Agreement, I endeavored to take up my case directly with the officials referred to therein, and was refused a hearing. I then made application, as therein provided, to the Local Committee and the Local Committee declined to take up my case. I am now making application to the General Committee, as provided in Rule 35 to appeal, on my behalf, to the higher officials designated to handle such matters in their respective order.

I make the request that I shall be privileged to appear before the General Committee and state my case to them in order that they may have full advice and knowledge of my case when they present the same to the officials of the Railroad.

I would also like to have the privilege of appearing at the conference between the Committee and the designated officials.

I was released from work on the 13th day of June, 1927, and am suffering severely as a consequence thereof, and would ask that the matter be taken up with dispatch.

Kindly advise me what course the Committee will adopt.

Yours very truly,

WILLIAM YOUNG.

RECORD

Exhibits

P. 15

Letter
Plaintiff to
A. W. Gibson
and C. E.
Shaw, 6th
July, 1927.
(continued).

PLAINTIFF'S EXHIBIT 39

RECORD
Exhibits
P. 39
Letter
C. P. Riddell
to Plaintiff,
3rd, Oct., 1927.

LETTER, C. P. RIDDELL TO PLAINTIFF

THE RAILWAY ASSOCIATION OF CANADA
Office General Secretary
263 St. James Street

C. P. Riddell, MONTREAL, QUE., October 3, 1927.
General Secretary. File 29.

Mr. Wm. Young,
410 Electric Railway Chambers,
Winnipeg, Man.

10

Dear Sir:

Referring to your letter of September 7th, in regard to your release from service at Fort Rouge shops of the Canadian National Railways on account of the reduction of staff.

While the Railway Association of Canada represented certain Railways in negotiating Wage Agreement No. 6, you will note in the preamble of the agreement that it is between the Railways named therein and the Railway Employees' Department, Division No. 4, American Federation of Labour. Further the Association has no authority to deal with grievances unless such grievances²⁰ are submitted to it jointly in accordance with Rule 36 of the Agreement.

You will understand, therefore, that the Association is not in a position to deal with your complaint.

Yours truly,

THE RAILWAY ASSOCIATION OF CANADA.

(Signed) C. P. Riddell,
General Secretary.

PLAINTIFF'S EXHIBIT 37

**THREE LETTERS, DEFENDANT'S SOLICITORS TO
PLAINTIFF'S SOLICITORS**

RECORD
Exhibits
P. 37
Three Letters
Defendant's
Solicitors to
Plaintiff's
Solicitors, 9th
Feb., 11th Feb.
and 19th
March, 1928.

**MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK
MUNSON, ALLAN, PATTON, MACINNES & MILNE**

Barristers, Solicitors, Etc.

G. W. Allan, K.C., D. H. Laird, K.C., G. H. Davis, K.C.,
E. F. Haffner, A. A. Hobkirk, K. L. Patton,
R. B. MacInnes, J. J. Milne.

10 Victory Building, 333 Main Street, Winnipeg, Canada
Refer to No. 22511 Cable Address—"Munsons"
9th February, 1928.

Young v. Canadian Northern Railway Company

Dear Sirs:—

Your letter of the 6th inst. with reference to Wage Schedules
4 and 6 received. We have considered your request, and for the
purpose of the trial of this action only, we are prepared to admit
that the printed copies of Wage Schedule No. 4 and Supplements
A. B and C thereto, and Wage Schedule No. 6 and Supplements
20 A and B thereto produced and marked upon the examination of
Mr. Tisdale are true copies of the original documents of which
they purport to be copies, and that the said original documents
were signed by the persons by whom they purport to be signed
and that such persons were respectively the officers of the Board
or Associations which they purported to be. We contend that the
original documents, produced and proved, would not be admissible
in evidence, and this letter and any admission in respect of these
copies save and reserve all just exceptions to the admissibility of
the originals or said copies as evidence in this action.

30 Yours truly,
MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK,
Per D. H. L.

Messrs. McMurray & McMurray,
Barristers,
Winnipeg.

RECORD
Exhibits
P. 37
Three Letters
Defendant's
Solicitors to
Plaintiff's
Solicitors. 9th
Feb., 11th Feb.
and 19th
March, 1928.
(Continued)

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK
MUNSON, ALLAN, PATTON, MACINNES & MILNE

Barristers, Solicitors, Etc.

G. W. Allan, K.C., D. H. Laird, K.C., G. H. Davis, K.C.,
E. F. Haffner, A. A. Hobkirk, K. L. Patton,
R. B. MacInnes, J. J. Milne.

Victory Building, 333 Main Street, Winnipeg, Canada

Refer to No. 22511

Cable Address—"Munsons"

11th February, 1928.

Young v. Canadian Northern Railway Company

10

Dear Sirs:—

Your letter of the 10th inst. with reference to admissions received. We have gone as far in our letter as we are prepared to go. If the terms of it are not satisfactory, you will require to proceed as you see fit.

Yours truly,

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK,
Per D. H. L.

Messrs. McMurray & McMurray,
Barristers,
Winnipeg.

20

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK
MUNSON, ALLAN, PATTON, MACINNES & MILNE

Barristers, Solicitors, Etc.

G. W. Allan, K.C., D. H. Laird, K.C., G. H. Davis, K.C.,
E. F. Haffner, A. A. Hobkirk, K. L. Patton,
R. B. MacInnes, J. J. Milne.

Victory Building, 333 Main Street, Winnipeg, Canada

Refer to No. 22511

Cable Address—"Munsons"

March 19th, 1928.

30

Re Young v. Canadian Northern

Dear Sirs:

We have considered the request of your letter of the 14th inst., with reference to wage agreement No. 1 of the 2nd Sept., 1918, and supplement A thereto of the 25th of October, 1918. We are

prepared to make the same admission as to this agreement and supplement as we did with respect to wage agreements Nos. 4 and 6 in our letter to you of the 9th February, 1928, and upon the same terms.

Yours truly,

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK,
Per D. H. L.

Messrs. McMurray & McMurray,
Barristers,
410 Electric Railway Chambers,
Winnipeg.

10

PLAINTIFF'S EXHIBIT 38

**LETTER, DEFENDANT'S SOLICITORS TO
PLAINTIFF'S SOLICITORS**

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK
MUNSON, ALLAN, PATTON, MACINNES & MILNE

Barristers, Solicitors, Etc.

G. W. Allan, K.C., D. H. Laird, K.C., G. H. Davis, K.C.,
E. F. Haffner, A. A. Hobkirk, K. L. Patton,
R. B. MacInnes, J. J. Milne.

20

Victory Building, 333 Main Street, Winnipeg, Canada

Refer to No. 22511

Cable Address—"Munsons"

March 19th, 1928.

Re Young v. Canadian Northern

Dear Sirs:

We have now considered your letter of the 14th inst., asking us to make admissions as to certain letters and also your motion for commissions. We are prepared either to produce at the trial originals of the letters addressed by M. H. Davey to Sir Henry Thornton, or to Mr. Warren of 6th Feb., 26th Feb., 28th Feb., 19th March, 1923, or failing that, to admit that the documents Nos. 21, 23, 24 and 25 in the first schedule of the plaintiff's affidavit on production of Jan. 19th, 1928, are respectfully true copies of such letters, and that such copies may be treated as originals. We are also prepared to admit that Sir Henry Thornton and Mr. Warren wrote and signed letters of the 2nd Jan., 31st Jan., 2nd Feb., 20th Feb., and 10th of April, 1923, to R. B. Russell or M. H. Davey, and that the copies you have produced as No. 16, 18, 20 and 22 in said

30

RECORD

Exhibits

P. 37

Three Letters
Defendant's
Solicitors to
Plaintiff's
Solicitors, 9th
Feb., 11th Feb.
and 19th
March, 1928.
(Continued)

P. 38

Letter
Defendant's
Solicitors to
Plaintiff's
Solicitors.
19th March,
1928.

RECORD
Exhibits
P. 38
Letter
Solicitors to
Plaintiff's
Solicitors,
19th March,
1928.
(Continued)

schedule, are true copies of the first four of such letters, and that the document No. 17 in said schedule is the letter of the 10th April, 1923. We also are prepared to admit that Sir Henry Thornton was President of the defendant and that Mr. Warren was General Manager of its Western Division at the dates covered by these letters.

So far as we can see this is all that Sir Henry Thornton or Mr. Warren could prove in respect of these letters and we trust it will be satisfactory for your purpose. We do not admit that the original letters are evidence in this action and this admission saves and 10 reserves all just exceptions to the admissibility of the documents.

Yours truly,

MUNSON, ALLAN, LAIRD, DAVIS, HAFFNER & HOBKIRK,

Per D. H. L.

Messrs. McMurray & McMurray,
Barristers,
410 Electric Railway Chambers,
Winnipeg.

DEFENDANT'S EXHIBIT 54

D. 54
Certificate of
Non-Registra-
tion, 13th
April, 1928.

**CERTIFICATE OF NON-REGISTRATION OF DIVISION No. 4 20
AND ONE BIG UNION**

DEPARTMENT OF THE SECRETARY OF STATE
OF CANADA

Registrar's Branch

Ottawa, April 13th, 1928.

I do hereby certify that no registration has been made with the Registrar General on behalf of or relating to any of the following Trade Unions:

- (1) The American Federation of Labor.
- (2) Division No. 4, Railway Employees' Department of the 30 American Federation of Labor.

- (3) Division No. 4, Railway Employees' Department of the American Federation of Labor, composed of the following crafts: Machinists, Boilermakers, Blacksmiths, Railway Carmen, Sheet Metal Workers, Electrical Workers and any other crafts that may become affiliated with the Railway Employees' Department of the American Federation of Labor, together with their respective Helpers and Apprentices.
- 10 (4) The Railway Employees' Department, Division No. 4, American Federation of Labor.
- (5) The Railway Employees' Department of the American Federation of Labor.
- (6) "O.B.U." or "One Big Union." under the provisions of the Trade Unions Act, being Revised Statutes of Canada, 1927, Chapter 202, or any similar Act.

(SEAL)

G. R. SHIBLEY,

Act. Dep. Registrar General of Canada.

DEFENDANT'S EXHIBIT 43

D. 43
Resolution
13th July.
20 RESOLUTION OF FORT ROUGE RAILWAY WORKERS

At the regular meeting of the Ft. Rouge Unit, held July 13th, it was moved by Com. H. Davy, seconded by Com. Wheeler, that any money being paid by the O.B.U. to the men who were discriminated against by being dismissed from the employ of the Can. Nat. Railways, be considered as a loan, to be repaid in the event of these men being reinstated in their employment with full pay for time lost; or, in the event of becoming members of any Union affiliated with the American Federation of Labor. Until the case is settled.

30

J. AIRD, Secy.

RECORD
Exhibits
D. 42
Loan Agreement
15th July, 1927.

DEFENDANT'S EXHIBIT 42

**LOAN AGREEMENT BETWEEN FORT ROUGE RAILWAY
WORKERS AND PLAINTIFF AND OTHERS**

FORT ROUGE RAILWAY WORKERS UNIT
of the
ONE BIG UNION

Winnipeg, July 15th, '27.

To:

The Chairman and Secretary of the Fort Rouge Railway
Workers Unit of the One Big Union: 10

I, the undersigned, hereby promise to pay back in full all monies loaned me by above organization in the event of me being reinstated to my former position in the shops of the Canadian National Railways at Fort Rouge, Winnipeg.

I further promise to pay back in full, monies loaned me if I would join up in any Labor Organization affiliated with the American Federation of Labor until this case has been settled to the satisfaction of Fort Rouge Railway Unit of the One Big Union.

This latter portion is solemnly promised in order to guarantee to my fellow workers discriminated against with me, that I will go right through this fight with them until a settlement satisfactory to the above unit is arrived at, and that this document will have the same force and effect as if sworn to before a Notary Public or Commissioner in B.R. 20

Signature:

M. H. DAVY
JOHN M. LOW
W. L. RITCHIE
WM. YOUNG
H. POWELL 30
S. TAYLOR
L. SCHMIDT

DEFENDANT'S EXHIBIT 11

RECORD
Exhibits
D. 11
Statement
of Monies
received by
Plaintiff.

STATEMENT OF MONIES RECEIVED BY PLAINTIFF
FROM FORT ROUGE RAILWAY WORKERS

| | |
|---|------------|
| June 30, 1927 | \$ 78.25 |
| July 15, 1927 | 60.22 |
| July 31, 1927 | 60.22 |
| August 15, 1927 | 66.22 |
| August 31, 1927 | 72.24 |
| September 15, 1927 | 60.24 |
| 10 September 30, 1927 | 66.24 |
| October 15, 1927 | 60.24 |
| October 31, 1927 | 66.18 |
| November 15, 1927 | 60.16 |
| November 30, 1927 | 66.24 |
| December 15, 1927 | 66.24 |
| <hr/> | |
| Total, 6 Months | \$ 782.69 |
| | |
| December 31, 1927 | \$ 60.17 |
| January 15, 1928 | 54.12 |
| January 31, 1928 | 72.30 |
| 20 February 15, 1928 | 66.18 |
| February 29, 1928 | 60.18 |
| March 15, 1928 | 66.18 |
| March 15, 1928 | 6.06 |
| March 31, 1928 | 75.00 |
| April 14, 1928 | 60.16 |
| April 19, 1928 | 24.00 |
| <hr/> | |
| | \$1,307.04 |
| May 15, 1928 | \$ 9.00 |
| <hr/> | |
| | \$1,316.04 |
| <hr/> | |
| 30 Received from C.N.R. Back time to June 13th, 1927..... | \$54.12 |

RECORD

Exhibits

D. 35
Constitution
of I.A. of M.**DEFENDANT'S EXHIBIT 35****CONSTITUTION OF THE INTERNATIONAL ASSOCIATION
OF MACHINISTS**

CONSTITUTION OF THE GRAND LODGE, DISTRICT AND LOCAL LODGES OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, REVISED BY COMMITTEE ON LAWS AS RECOMMENDED BY THE SEVENTEENTH CONVENTION OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS HELD IN THE CITY OF DETROIT, MICHIGAN, SEPTEMBER 15 TO SEPTEMBER 27, 1924, AND THEREAFTER ADOPTED BY REFERENDUM VOTE IN THE MONTH OF NOVEMBER, 1924. EFFECTIVE APRIL 1, 1925, AND AMENDED BY REFERENDUM VOTE, JULY, 1926, SAID AMENDMENTS EFFECTIVE JANUARY 1, 1927. 10

ORDER OF BUSINESS OF GRAND LODGE

1. Report of Committee on Credentials.
2. Roll call of members.
3. Reading of the minutes.
4. Reports of Officers, commencing with I. P. 20
5. Reports and petitions of Local Unions.
6. Reports of special committees.
7. Receiving communications and bills.
8. Unfinished business.
9. New business.
10. Good and welfare.

PREAMBLE

Believing that the right of those who toil to enjoy to the full extent the wealth created by their labor is a natural right and realizing that under the changing industrial conditions incident to the enormous growth of syndicates and other aggregations of capital it is impossible for those who toil to obtain the full reward of their labor other than through united action; and recognizing the fact that those who toil should use their rights of citizenship intelligently, through organizations founded upon the class struggle and acting along co-operative, economic and political lines, using the natural resources, means of production and 30

distribution for the benefit of all the people, with the view of restoring the commonwealth to all those performing useful service to society;

RECORD
Exhibits
D. 35
Constitution
of I.A. of M.
(Continued)

Now, Therefore; We, The International Association of Machinists, pledge ourselves to labor unitedly in behalf of the principles herein set forth, to perpetuate our Association on the basis of solidarity and justice, to expound its objects, to labor for the general adoption of its principles, to consistently endeavor to bring about a higher standard of living among the toiling masses.

10

PLATFORM

The Grand Lodge of The International Association of Machinists aims:

1. To bring within the organization all employees, male and female, who are actively engaged in, or connected with, the machinists' trade.
2. To adopt and put into active operation an effective plan for securing the continuous employment of all members of the organization.
3. To secure the establishment of a legal apprenticeship system of four (4) years.
4. To impress upon all employers the necessity of paying the full current wages weekly, giving preference in employment to members of organized labor, and abolishing personal record, physical examination, and old age limits imposed by employers.
5. To settle all disputes not defined in the Constitution of this organization, and arising between employees and employers, by arbitration.
6. To shorten the hours of labor to forty-four (44) hours per week, consisting of eight (8) hours per week day, except on Saturday, which shall be a half holiday, thereby allowing the members of this organization time and opportunity for self-improvement and social enjoyment.
7. To adopt and advocate a plan of co-operation with other kindred crafts, with the ultimate object of amalgamating all closely related metal trades, thereby eliminating strikes of one organization at a time and by concerted action making it possible

RECORD
 Exhibits
 D. 35
 Constitution
 of I. A. of M.
 (Continued)

for all to reap the full benefit of their labor. This shall not be construed to favor the theory of industrial unionism.

8. To stimulate the political education of the members to understand their political rights and use the ballot intelligently, to the end that the Government may be a government for, of and by the people, and not to be used as a tool to further the ends of combinations of capital for its own aggrandizement.

9. To urge the membership to vote only for and support candidates who are in favor of this platform and the following political demands: Initiative, Referendum and Recall, National In-
 come Tax Law, National Inheritance Tax Law, National and
 State Employers' Liability Law; all judges, without exception,
 to be elected by vote of the people; national law granting pensions
 for old age or total disability and accident benefits; public owner-
 ship of all public utilities; woman suffrage; change of the Con-
 stitution of the United States or any country under our jurisdic-
 tion which now declares these subjects or questions to be uncon-
 stitutional; self-government of cities; abolition of contract sys-
 tem on all public work — city, county, state or national — such
 work to be done on the day labor plan at union wages. 20

10. That no inferior Federal judge shall set aside a law of Congress on the ground that it is unconstitutional. That if the Supreme Court assumes to decide any law of Congress unconsti-
 tutional or by interpretation undertakes to assert a public pol-
 icy at variance with the statutory declaration of Congress, which
 alone under our system is authorized to determine the public pol-
 icies of government, the Congress may by repassing the law
 nullify the action of the court. Thereafter the law to remain in
 full force and effect precisely the same as though the court had
 never held it to be unconstitutional. 30

11. The labor of a human being not being property, we demand the abolition of the use of injunctions in labor disputes on the grounds that it is a judicial usurpation of the constitutional rights of our citizens.

CONSTITUTION OF THE GRAND LODGE

of the

International Association of Machinists.

ARTICLE I.

Name and Location.

1 Section 1. This organization shall be known by the 40

2 title and name of "THE GRAND LODGE OF THE
3 INTERNATIONAL ASSOCIATION OF MACHINISTS,"
4 and its principal office and headquarters shall be perma-
5 nently located in the city of Washington, D.C.

RECORD
Exhibits
D. 35
Constitution
of I.A. of M.
(Continued)

Membership and Jurisdiction.

6 Sec. 2. The Grand Lodge of The International Asso-
7 ciation of Machinists shall consist of an Executive
8 Council (including the International President and
9 General Secretary-Treasurer) and the representatives of
10 local lodges who are duly elected, qualified and seated as
11 delegates in the quadrennial and special conventions pro-
12 vided for in Article X of this constitution. It shall
13 have power to grant charters for the purpose of organ-
14 izing, supervising, controlling, and generally directing
15 district and local lodges in any State, territory or de-
16 pendency of the United States of America, Mexico and
17 the Dominion of Canada.

Government

18 Sec. 3. The government and superintendence of all
19 district and local lodges shall be vested in this Grand
20 Lodge as the supreme head of all such lodges under its
21 jurisdiction. To it shall belong the authority to deter-
22 mine the customs and usages in regard to all matters re-
23 lating to the craft.

Government Between Conventions.

24 Sec. 4. Between conventions all Executive and Ju-
25 dicial Powers of the Grand Lodge shall be vested in
26 the Executive Council, which shall be composed of the
27 International President, the General Secretary-Treas-
28 urer, and 7 General Vice-Presidents.

ARTICLE III.

International President.

19 Section 1. The International President shall preside at
20 all meetings of the Grand Lodge. He shall serve as
21 chairman and as a member of the Executive Council.
22 He shall preserve order, and in all cases where the
23 vote is equally divided in a convention or a meeting of
24 the Executive Council he shall cast the deciding vote.
25 He shall enforce the laws of the International As-

RECORD 26
 Exhibits 27
 D. 35 28
 Constitution 29
 of I.A. of M.
 (Continued)

sociation of Machinists; decide all questions of order and usage and all constitutional questions, subject, however, to an appeal as provided in Section 6, Article XXII of this Constitution.

Chief Organizer

30 Sec. 2. The International President shall be the chief
 31 organizer of the Grand Lodge and shall have full control
 32 of all Grand Lodge representatives and of all organizing.
 33 He shall provide suitable literature for organizing
 34 purposes and have the authority when conditions 10
 1 warrant to appoint Grand Lodge representatives and assign
 2 them to such localities and for such particular terms
 3 and duties as shall be for the best interests of the organization.
 4 All of which shall be subject to the approval of
 5 the Executive Council.

Signing Orders

6 Sec. 3. The International President shall counter-
 7 sign all orders for the payment of money by the Grand
 8 Lodge and for the withdrawing of money on deposit to
 9 its account. 20

Officers pro tem and Committees.

10 Sec. 4. The International President shall appoint all
 11 officers pro tem, all committees not otherwise provided
 12 for, and may deputize other members of the organization
 13 in good standing to perform any of the duties of his
 14 office, except that during his absence from Grand Lodge
 15 headquarters he shall, if he deems it necessary, designate
 16 one of the elective Grand Lodge officers to exercise
 17 the authority of his office.

Supervision of District and Local Lodges.

18 Sec. 5. The International President shall have the
 19 direction and supervision of all district and local lodges,
 20 with full authority to suspend individual members, or district
 21 or local lodges, for incompetency, negligence, insubordination,
 22 or other failure to properly perform their duties as members
 23 of this organization and for violation of the provisions of the
 24 constitution of the Grand Lodge or the constitution of local
 25 lodges. With the approval of the Executive Council he may
 26 revoke 30

27 the charter of any district or local lodge found guilty
 28 by the Executive Council of a violation of the con-
 29 stitution of the Grand Lodge, or the constitution for
 30 local lodges of the International Association of Ma-
 31 chinists.

RECORD
 Exhibits
 D. 35
 Constitution
 of I.A. of M.
 (Continued)

International President's Annual Report.

1 Sec. 6. The International President shall keep a
 2 record of his official acts and make a detailed report
 3 thereof in January of each year in circular form, which
 10 4 circular shall also contain such recommendations as he
 5 deems advisable for the welfare of the organization, and
 6 shall mail a copy thereof to each local lodge.

7 All important decisions rendered by the International
 8 President shall be published concurrently in the minutes of
 9 the meetings of the Executive Council.

Visiting Lodges.

10 Sec. 7. Should any district or local lodge be involved in
 11 trouble, and in all cases when a grievance is submitted to
 12 the Executive Council, the International President shall
 20 13 visit said district or local lodge in person or by deputy.

Report to Executive Council.

14 Sec. 8. Whenever the International President sub-
 15 mits, through correspondence, any question to the mem-
 16 bers of the Executive Council for their decision, he shall
 17 notify the members of such Council, and all other parties
 18 in interest, of the decision of the Executive Council, im-
 19 mediately upon receipt thereof.

Salary of International President.

20 Sec. 9. For the faithful performance of his duties,
 30 21 the International President shall receive an annual salary
 22 of \$7,500 payable in 52 equal weekly installments.

ARTICLE IV.

Executive Council.

Membership and Meetings.

23 Section 1. The Executive Council shall consist of the
 1 International President, the General Secretary-Treasurer

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2 and the General Vice-Presidents. The International
 3 President shall be the Chairman and the General Secretary-Treasurer shall be the Secretary of the Executive
 4 Council. Meetings shall be called by the Chairman from
 5 time to time as the affairs of the Association require
 6 consideration by the Council, and meetings must be
 7 called by him upon request from a majority of the officers
 8 composing the Council.
 9

Powers

10 Sec. 2. Between Conventions all Executive and Ju-10
 11 dicial powers of the Grand Lodge shall be exercised
 12 by the Executive Council, sessions of which shall have
 13 the same authority to initiate legislation as has a delegate
 14 Convention of the Association, and which shall have
 15 the power to require reports from any officer or officers
 16 of the Grand Lodge or any district or local lodge, or to
 17 remove any such officer or officers for justifiable cause.
 18 All interim appointments of officers shall be made by
 19 the Executive Council.

ARTICLE XI.

20

Revenues of the Grand Lodge.

5 Section 1. The revenue of the Grand Lodge of The
 6 International Association of Machinists shall be derived
 7 from the sale of supplies, collection of per capita tax,
 8 initiation fees, reinstatement fees, the income from the
 9 publication of the Machinist Journal, interest on investments
 10 and such special assessments as may be levied from
 11 time to time.

Assessments.

12 Sec. 2. Whenever in the opinion of the Executive 30
 13 Council additional funds over and above the regular
 14 income are necessary to carry on the work of the Grand
 15 Lodge, the General Secretary-Treasurer shall prepare a
 16 ballot and submit the same through the referendum
 17 calling for the assessment recommended by the Executive
 18 Council. If a majority of those voting vote in favor of
 19 the assessment, then the same shall thereupon become and
 20 be a lawful charge against the individual members of all
 21 local lodges.

22 All moneys received on a Grand Lodge assessment
 23 shall be used only for the purpose specified on the ballot
 24 calling for the same, except it be approved by a two-
 25 third vote on a general referendum.

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Assessment Rates.

26 Sec. 3. In the event of an assessment being levied by
 27 the Grand Lodge, apprentices and women workers shall
 28 be required to pay only one-half ($\frac{1}{2}$), and machinists'
 1 helpers shall be required to pay only sixty-five per cent
 10 2 (65%) of the assessment levied upon journeymen ma-
 3 chinists.

ARTICLE XII.

Benefits.

Strike and Lockout Benefits.

4 Sec. 1. Members of local lodges who have been in
 5 continuous good standing for at least six months and who
 6 have ceased work on account of a grievance theretofore
 7 approved by the Executive Council, or who have been
 8 victimized and have satisfied the Executive Council that
 20 9 by reason of this discrimination they are unable to secure
 10 employment, shall receive such donations from the Grand
 11 Lodge as may be determined by the International Presi-
 12 dent and Executive Council according to the amount of
 13 funds available for such purposes.

14 No donations shall be paid unless the strike or victim-
 15 ization extends over a period of more than two weeks,
 16 thereafter donations shall be paid in the amount deter-
 17 mined upon by the International President and Executive
 18 Council.

30 19 Members of Local Lodges on strike or victimized, but
 20 not at the time entitled to donations because lacking the
 21 six months' membership required herein, shall be entitled
 22 to receive donations from the Grand Lodge, as may be
 23 determined by the International President and Executive
 24 Council, as soon as they have been in good standing mem-
 25 bership for the six months' period required herein.

26 The payment of donations provided for in this section
 27 may be denied or terminated at any time by the Inter-
 28 national President and Executive Council when, in their

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opinion, the funds of Grand Lodge do not warrant the expenditure.

Any donations paid by Grand Lodge shall be divided or apportioned to members on strike or who may be victimized in the same ratio as per capita tax is paid upon said members.

Deduction for Arrearages.

1 Sec. 2. Whenever a member of a local lodge claiming
 2 Strike or victimized benefits is in arrears for dues or
 3 assessments, the General Secretary-Treasurer may deduct 10
 4 from such benefits an amount sufficient to pay all such
 5 arrearages.

Method of Payment.

6 Sec. 3. Whenever a strike has been ordered or ap-
 7 proved by the Grand Lodge each local lodge member
 8 affected thereby shall sign the strike record semi-weekly.
 9 From the names appearing on the strike record the
 10 secretary of the local lodge shall make up a weekly roll
 11 showing the names of the individuals on strike or who
 12 may be victimized. 20

13 After the weekly roll has been approved by the sig-
 14 natures of the President, Financial Secretary and Re-
 15 cording Secretary of the local lodge it shall be for-
 16 forwarded to the General Secretary-Treasurer, who, after
 17 examination thereof, shall return the same, together
 18 with a check of the Grand Lodge covering the amount
 19 of any donation made to such roll, which check shall
 20 be drawn payable to the President, Financial Secretary
 21 and Recording Secretary of the local lodge.

22 Each individual receiving a donation from the Grand 30
 23 Lodge must receipt for the same upon the duplicate roll
 24 provided, after which the Secretary shall return one
 25 copy of said roll to the General Secretary-Treasurer for
 26 the files of the Grand Lodge, and place one copy on
 27 local lodge files. Except in cases where the distance
 28 and time required for the transportation of the mails
 29 makes the rule impracticable, the General Secretary-
 30 Treasurer shall not forward a check covering a subse-
 31 quent donation before the receipted roll for the previous
 32 week has been received by him. No claim for any do-40

33 nations under the provisions of this section shall be con- RECORD
 34 sidered or allowed unless presented to the General Sec- Exhibits
 35 retary-Treasurer within thirty days from the date on D. 35
 36 which said donations were due. Constitution
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1 No donations shall be paid to any individual who re-
 2 fuses to do the duty assigned to him by those in charge
 3 of the strike.

ARTICLE XIV.

Strikes.

10 30 Section 1. In case of extreme emergency, such as a
 31 reduction in wages, or an increase in the hours of labor,
 1 where delay would seriously jeopardize the welfare of
 2 those involved, the International President may auth-
 3 orize a strike pending the submission to and securing
 4 the approval of the Executive Council. In all other
 5 cases the grievances must be submitted to the Execu-
 6 tive Council and its approval therefore obtained be-
 7 fore any strike may be declared by any local lodge or the
 8 members thereof; and any local lodge or members thereof
 20 9 failing to comply with the provisions of this Article shall
 10 forfeit all rights to strike benefits or to other financial
 11 aid from the Grand Lodge during the entire period of
 12 the controversy.

Method of Declaring Strike.

13 Sec. 2. Whenever any difficulty arises within the juris-
 14 diction of any local lodge between its members and
 15 any employer or employees growing out of a reduction
 16 in wages, lengthening hours of labor, or other griev-
 17 ances incident to the condition of employment, or when-
 30 18 ever any local lodge desires to secure for its members
 19 an increase in wages, a shorter work day, or other change
 20 in the conditions of employment, the local lodge having
 21 the greatest number of members involved shall call a
 22 meeting of all members directly affected to decide by
 23 secret ballot whether the proposed changes shall be ac-
 24 cepted or rejected. A majority vote of those present
 25 and voting on the question shall decide. If as a result
 26 of this decision a strike vote is decided upon it shall
 27 require a three-fourths vote, by secret ballot, of those
 40 28 in attendance and qualified to vote thereon, to declare
 29 a strike. Only individuals who have been members of

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30 a local lodge for more than six months shall be entitled
 31 to vote on the question of declaring a strike. If it is
 32 decided to reject the proposed reduction of wages, in-
 33 creased hours of labor, or other changes in the condi-
 34 tion of employment, or if it is decided to demand an in-
 35 crease in wages, a shorter work day, or other change
 36 in the conditions of employment, the decision shall be
 37 submitted, either in writing or through a committee,
 38 or the business agent, to the employer, or employers and
 1 if the employees involved are unable to reach an agree-¹⁰
 2 ment, the recording secretary of the local lodge shall
 3 prepare a full statement and history of the matters in
 4 controversy and forward the same to the International
 5 President, who shall thereupon in person or by deputy
 6 visit the local lodge where the controversy exists, and,
 7 with a member of the local lodge whose members are
 8 involved, investigate the controversy and if possible effect
 9 a settlement. Upon receipt of the statement and his-
 10 tory of the matters in controversy from the recording
 11 secretary of the local lodge the International President²⁰
 12 shall prepare and forward a copy thereof to each mem-
 13 ber of the Executive Council, together with a request
 14 for their vote on the question of approving a strike of
 15 those involved to enforce their decision in relation thereto.
 16 Upon receipt of the vote of the members of the Execu-
 17 tive Council the International President shall forthwith
 18 notify the local lodge of the decision of the Executive
 19 Council. **No strike shall be declared by any local**
 20 **lodge or the members thereof without first obtaining**
 21 **the consent of the International President or the Ex-³⁰**
 22 **ecutive Council therefor.**

Discontinuance of Grievance

23 Sec. 3. Should any local lodge fail to receive the sanc-
 24 tion of the Executive Council it shall hold a meeting
 25 and declare the grievance at an end. Continuing such
 26 grievance after failure to secure the sanction of the
 27 Executive Council shall be considered sufficient cause
 28 for the suspension of any local lodge and the members
 29 thereof from all rights and privileges, at the option of
 30 the Executive Council. ⁴⁰

Declaring Off a Strike.

31 Sec. 4. Any proposal to settle or declare off an exist-

32 ing strike must be presented at a regular or called meet-
 33 ing of a local lodge and decided by the majority vote, by
 34 secret ballot, of the members involved therein. Wherever
 35 the Executive Council decides that it is unwise to longer
 1 continue an existing strike, it may order all members
 2 of local lodges who have ceased work in connection
 3 therewith to resume work, and thereupon and there-
 4 after all strike benefits shall cease, except that the In-
 5 ternational President, with the consent of the Execu-
 10 6 tive Council, may continue the relief in special deserv-
 7 ing cases.

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Financing Strikes.

8 Sec. 5. The Executive Council may draw upon the
 9 strike fund of the Grand Lodge to finance any strike
 10 or lockout.

Handling Unfair Work.

11 Sec. 6. Whenever members of a local lodge have
 12 ceased work on account of a grievance theretofore ap-
 13 proved by the Executive Council, and the employer
 20 14 is having work done in other places of employment,
 15 whether owned or controlled by such employer or not,
 16 members of local lodges employed in such other places
 17 of employment may be ordered by the local lodge or by
 18 the district lodge, if one exists in that locality, to cease
 19 doing such work or to cease working at such places.
 20 All such orders must be approved by the Executive
 21 Council to entitle members complying therewith to strike
 22 benefits or victimized benefits, as the case may be. In
 23 the event of the members of the local lodge not taking
 30 24 action to cease work as herein described, the Interna-
 25 tional President, with the approval of the Executive
 26 Council, may order said members to cease work until
 27 the dispute is satisfactorily adjusted, or until ordered to
 28 return to work by the International President and the
 29 Executive Council.

**CONSTITUTION FOR LOCAL LODGES
 of the
 International Association of Machinists**

RULES OF ORDER

ARTICLE A.

Definitions.

A Local Lodge.

1 Section 1. A local lodge shall consist of not less than
 2 fifteen (15) persons in any locality, qualified for mem-
 3 bership and organized as a local lodge under a charter 10
 4 issued by the Grand Lodge of The International Asso-
 5 ciation of Machinists.

ARTICLE I.

Duties of Members.

Minimum Rate.

8 Section 1. No member of any local lodge shall be
 9 allowed to start to work for wages less than the rate
 10 paid to his class. Should any member vacate a position
 11 paying more than the minimum rate paid to his class,
 12 any other member who takes his place shall receive the 20
 13 same rate within thirty (30) days thereafter.

Going to Work in Other Localities

14 Sec. 2. Members of local lodges shall report to the
 15 financial secretary, business agent or shop committee be-
 16 fore accepting employment within the jurisdiction of
 17 any other local lodge. Within five (5) days after com-
 18 mencing work in the new jurisdiction such members shall
 19 transfer to the local lodge having jurisdiction over the
 20 shop in which he is employed and shall have his transfer
 21 properly recorded in his due book. 30

22 Financial secretaries receiving dues from members
 23 working under the jurisdiction of another local lodge
 24 shall immediately notify the secretary of the lodge under
 25 whose jurisdiction the member is working, with full
 26 particulars as to name, card No., etc.

Jurisdiction of Lodges.

27 Sec. 3. In all cities where railroad, contract and auto-
28 mobile local lodges exist, machinists must become mem-
29 bers of the local lodges having jurisdiction over the class
30 of work in which they are employed.

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Declining Rough Work.

1 Sec. 4. Any member of a local lodge who refuses to
2 do any kind of work belonging to the trade because it
3 is rough or dirty shall be subject to fine or expulsion.

10

Overtime.

4 Sec. 5. Members of local lodges shall discourage the
5 working of overtime.

Piecework, Two Machines and Premium Systems.

6 Sec. 6. In shops where it is not now a practice no
7 member of a local lodge is permitted to accept piece-
8 work, operate more than one machine, or accept em-
9 ployment under the premium, merit, task, or contract
10 systems. Members found guilty of advocating or en-
11 couraging any of these systems in shops where they are
20 12 not now in operation shall be liable to expulsion.

Advancement of Helpers.

13 Sec. 7. Any member of a local lodge who introduces
14 into the trade any person other than a member of this
15 Association, shall be heavily fined for the first offense
16 and expelled for the second offense. This section shall
17 not be construed to refer to apprentices properly inden-
18 tured.

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DEFENDANT'S EXHIBIT 34

CONSTITUTION OF THE AMERICAN FEDERATION
OF LABOR

CONSTITUTION
of the
AMERICAN FEDERATION OF LABOR

As Adopted
at the

Forty-Seventh Annual Convention Held at Los Angeles,
California, October 3-14, Inclusive, 1927.

10

PREAMBLE

WHEREAS, a struggle is going on in all the nations of the civilized world between the oppressors and the oppressed of all countries, a struggle between the capitalist and the laborer, which grows in intensity from year to year, and will work disastrous results to the toiling millions if they are not combined for mutual protection and benefit.

It, therefore, behooves the representatives of the trade and labor unions of America, in Convention assembled, to adopt such measures and disseminate such principles among the mechanics and laborers of our country as will permanently unite them to secure the recognition of rights to which they are justly entitled.

20

We, therefore, declare ourselves in favor of the formation of a thorough federation, embracing every trade and labor organization in America, organized under the trade union system.

CONSTITUTION
of the
American Federation of Labor.

30

Article I.—Name.

This association shall be known as THE AMERICAN FED-

ERATION OF LABOR, and shall consist of such Trade and Labor Unions as shall conform to its rules and regulations.

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Article II.—Objects.

Section 1. The object of this Federation shall be the encouragement and formation of local Trade and Labor Unions, and the closer federation of such societies through the organization of Central Trade and Labor Unions in every city, and the further combination of such bodies into State, Territorial, or Provincial organizations to secure legislation in the interest of the working
10 masses.

Sec. 2. The establishment of National and International Trade Unions, based upon a strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies.

Sec. 3. The establishment of Departments composed of National or International Unions affiliated with the American Federation of Labor, of the same industry, and which Departments shall be governed in conformity with the laws of the American Federation of Labor.

Sec. 4. An American Federation of all National and International Trade Unions, to aid and assist each other; to aid and encourage the sale of union label goods, and to secure legislation in the interest of the working people, and influence public opinion, by peaceful and legal methods, in favor of organized labor.

Sec. 5. To aid and encourage the labor press of America.

Article V.—Officers.

Section 1. The officers of the Federation shall consist of a President, eight Vice-Presidents, a Secretary, and a Treasurer, to be elected by the Convention on the last day of the session, unless otherwise determined by the Convention, and these officers shall be the Executive Council.

Sec. 2. The President and Secretary shall be members of the succeeding Convention in case they are not delegates, but without vote.

Sec. 3. All elective officers shall be members of a local organization connected with the American Federation of Labor.

Article IX.—Executive Council.

Section 1. It shall be the duty of the Executive Council to

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watch legislative measures directly affecting the interests of working people, and to initiate, whenever necessary, such legislative action as the Convention may direct.

Sec. 2. The Executive Council shall use every possible means to organize new National or International Trade or Labor Unions, and to organize Local Trade and Labor Unions, and connect them with the Federation until such time as there is a sufficient number to form a National or International Union, when it shall be the duty of the President of the Federation to see that such organization is formed.

10

Sec. 3. When a National or International Union has been formed, the President shall notify all Local Unions of that trade to affiliate with such National or International Union, and unless said notification be complied with, within three months, their charters shall be revoked.

Sec. 4. The Executive Council shall also prepare and present to the Convention, in printed form, a concise statement of the details leading up to approved and pending boycotts (and all matters of interest to the Convention), and no indorsement for a boycott shall be considered by the Convention except it has been so reported by the Executive Council.

Sec. 5. While we recognize the right of each trade to manage its own affairs, it shall be the duty of the Executive Council to secure the unification of all labor organizations, so far as to assist each other in any trade dispute.

Article XIII.—Defense Fund for Local Trade and Federal Labor Unions.

Section 1. The moneys of the defense fund shall be drawn only to sustain strikes or lockouts of Local Trades and Federal Labor Unions when such strikes or lockouts are authorized, indorsed, and conducted in conformity with the following provisions of this Article:

Sec. 2. In the event of a disagreement between a Local Union and an employer which, in the opinion of the Local Union, may result in a strike, such Union shall notify the President of the American Federation of Labor, who shall investigate, or cause an investigation to be made of the disagreement, and endeavor to adjust the difficulty. If his efforts should prove futile, he shall take such steps as he may deem necessary in notifying the

Executive Council, and if the majority of said Council shall decide that a strike is necessary such Union shall be authorized to order a strike, but that under no circumstances shall a strike or lockout be deemed legal, or moneys expended from the defense fund on that account, unless the strike or lockout shall have been first authorized and approved by the President and Executive Council.

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Sec. 3. When a strike has been authorized and approved by the President and Executive Council, the president of the Local
10 Union interested shall, within twenty-four hours, call a meeting of said Union, of which every member shall be regularly notified, to take action thereon, and no member shall vote on such question unless he is in good standing. Should three-fourths of the members present decide, by secret ballot, on a strike, the president of the Local Union shall immediately notify the President of the American Federation of Labor of the cause of the matter in dispute; what the wages, hours, and conditions of labor then are; what advances, if any, are sought; what reductions are offered, if any; state the number employed and unemployed; the
20 state of trade generally in the locality, and the number of persons involved, union and non-union; also the number of members who would become entitled to the benefits herein provided should the application be authorized and approved.

Sec. 4. No Local shall be entitled to benefit from the defense fund unless it has been in continuous good standing for one year; and no member shall be entitled to benefit from said defense fund unless he has been a member in good standing in the American Federation of Labor for at least one year.

Sec. 5. When a strike has been inaugurated under the pro-
30 visions of Sections 2 and 3, the American Federation of Labor shall pay to the bonded officer of the Union involved, or his order, for a period of six weeks, an amount equal to seven (\$7) dollars per week for each member. Each Local Union shall require its treasurer to give proper bond for the safe-keeping and disbursement of all funds of the Local. No benefit shall be paid for the first two weeks of the strike. The Executive Council shall have the power to authorize the payment of strike benefits for an additional period.

Sec. 6. No member of a Local Union on strike shall be en-
40 titled to weekly benefits unless he reports daily to the proper officer of the Local Union while the strike continues, and no mem-

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ber who shall receive a week's work, three days to be a week, shall receive benefits. Any member refusing other work while on strike (providing said work is not in conflict with labor's interests) shall not be entitled to any benefits.

Sec. 7. Any union inaugurating a strike without the approval of the Executive Council shall not receive benefits on account of said strike.

Sec. 8. In case of lockout, or the victimization of members, the Executive Council shall have power to pay benefits if, upon investigation, it is found that the Local Union whose members 10 are involved did not by their actions or demands provoke the lockout by their employer.

Sec. 9. During the continuance of a strike the executive board of the Local Union shall make weekly reports to the Secretary of the American Federation of Labor, showing the amount of money distributed for benefits, and to whom paid, furnishing individual receipts to the Secretary of the American Federation of Labor from all members to whom such benefits have been paid, and all other facts that may be required.

Sec. 10. Before a strike shall be declared off a special meet-20 ing of the Union shall be called for that purpose, and it shall require a majority vote of all members present to decide the question either way.

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CONSTITUTION OF RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR

**CONSTITUTION AND BY-LAWS
of the
RAILWAY EMPLOYEES DEPARTMENT
of the**

30

American Federation of Labor
Revised April 1918

All for One

One for All

A. O. Wharton, President
Office, 5-6 Ghio Building - St. Louis, Mo.

G. W. Pring, Vice-President
677 88th Street - - Des Moines, Iowa

John Scott, Secretary-Treasurer
Office, 5-6 Ghio Building - St. Louis, Mo.

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List of Affiliated Organizations

- International Association of Machinists.
International Brotherhood of Boilermakers, Iron Ship Builders
and Helpers of America.
International Brotherhood of Blacksmiths and Helpers.
10 Brotherhood of Railway Carmen of America.
Amalgamated Sheet Metal Workers' International Alliance.
International Brotherhood of Electrical Workers.
Brotherhood of Railway Clerks.
Switchmen's Union of North America.

Executive Council

- W. H. JOHNSTON, International President International Asso-
ciation of Machinists.
J. A. FRANKLIN, International President International Broth-
erhood of Boilermakers, Iron Ship Builders and Helpers of
20 America.
J. W. KLINE, International President International Brotherhood
of Blacksmiths and Helpers.
M. F. RYAN, International President Brotherhood of Railway
Carmen of America.
JOHN J. HYNES, International President Amalgamated Sheet
Metal Workers' International Alliance.
F. J. McNULTY, International President International Broth-
erhood of Electrical Workers.
J. J. FORRESTER, International President Brotherhood of Rail-
30 way Clerks.
S. E. HEBERLING, International President Switchmen's Union
of North America.

Preamble.

We, the members of the various labor organizations engaged in the railway industry, recognize the necessity of establishing closer affiliations, and to this end we pledge ourselves to labor unitedly in behalf of the principles herein set forth, to perpetuate the permanency of a concrete organization, which shall have for its object the uplift of all mankind and more particularly the

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wealth producers, believing as we do, that our individual craft efforts are no longer sufficient to afford us the protection necessary to our success.

Platform.

The Railway Employees' Department aims:

1. To bring within the organization all railway employes.
2. To shorten the hours of labor to eight (8) hours per day.
3. To establish a minimum wage scale for all employes in all branches of railway service.
4. To bring about a national agreement, as we believe this¹⁰ will mean a more permanent and stable condition, acceptable to employe, employer and general public alike. The operation of railways coming more and more under the supervision of the government, the standardization of freight and passenger rates, makes for the standardization of pay for employes on all roads. Hence, the necessity of a national agreement, which may, if necessary, be divided into sections.
5. To prevent strikes and lockouts whenever possible, and thus by concerted action reap the full benefit of their labor.

Name.

20

Section 1. Par. A. This organization shall be known as the Railway Employees' Department of the American Federation of Labor, and shall be composed of National, International and Brotherhood organizations of Railway Employes, recognized as such, duly and regularly chartered by the American Federation of Labor. And shall consist of two sections, namely: Mechanical and Transportation.

The Transportation Section shall be composed of National, International and Brotherhood organizations in the railway service affiliated with this Department. 30

Each section shall have complete autonomy and jurisdiction over its membership, subject to the laws of this Department.

Paragraph B. The Mechanical Section shall be composed of National, International and Brotherhood organizations and con-

sist of the following-named crafts affiliated with this Department: International Brotherhood of Blacksmiths and Helpers; International Brotherhood of Boilermakers and Iron Ship Builders and Helpers; Brotherhood Railway Carmen of America; International Association of Machinists; Amalgamated Sheet Metal Workers' International Alliance; International Brotherhood of Electrical Workers.

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Membership

Sec. 2. Membership in this Department shall be confined to
10 National, International and Brotherhood organizations of railway employes affiliated with the American Federation of Labor.

Conventions.

Sec. 5. This Department shall meet in convention on the second Monday in the month of April, even number of years, for the purpose of electing officers and transacting all business that may be legally brought before the convention. Special conventions may be called by the President, should a majority of affiliated organizations so request.

Sec. 6. Each National, International or Brotherhood Organization shall be entitled to one delegate from each railway system, who shall be elected at least thirty days previous to the convention. Said delegate must be an employe of the railway he represents, or be employed directly by the men on the System, and the names of such delegates shall be forwarded to the Secretary-Treasurer of this Department, immediately after their election.

Divisions.

Sec. 11. The jurisdiction of the Railway Department shall be divided into five Divisions.

30 Division No. 1 shall be composed of all territory lying west of and including the southern lines of the Illinois Central Railroad and lying on the west side of Lake Michigan and south of Lake Superior and west of a line laid through Duluth and extending to the Canadian border, and shall be bounded on the south by the Mexican border.

Division No. 2 shall be composed of the territory east of the aforementioned lines and north of the lines of the C. & O. Ry., and south of the Canadian boundary.

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Division No. 3 shall comprise the territory south of and including the C. & O. Ry., and as far west as the Illinois Central Lines mentioned as the boundary of Division No. 1.

Division No. 4 shall comprise all railways in Canada having their greatest mileage north of the International Boundary line.

Division No. 5 shall comprise all locomotive and car equipment plants located in the United States and Canada.

Railways having the majority of their shops located in one or the other of these Divisions will be entitled to representation on the Federated Board representing the Division, and where a 10 railroad has shops in more than one Division, with equal number of shops, or nearly so, in each Division, the President of this Department will, after investigation, decide on which Federated Board the road shall be represented.

Strike Votes.

Sec. 44. Should it become necessary to take a strike vote, affiliated organizations shall conduct such vote in accordance with the constitution and by-laws of the respective organizations. The returns of a strike vote shall be immediately forwarded to the President of this Department by the respective Grand Lodge of- 20 ficers. The President, on receipt of the complete vote, shall compile and forward the results to all members of the Executive Council. A legal strike vote of this Department shall be based upon an average total of the total vote cast, equaling the constitutional requirements of the organization involved. An order to strike shall be issued by the President and Executive Council.

Relief Fund.

Sec. 45. (A) Any assessment levied in this Department in support of strike inaugurated by this Department shall be of an equal amount on all members in all organizations, and all 30 funds accumulated by said assessment shall be collected by the Grand Lodge of affiliated organizations and by them forwarded to the Secretary-Treasurer of this Department, together with a statement of actual number of men involved. This fund shall be under the supervision of the Executive Council and shall be used for the purpose of establishing commissaries, which shall furnish provisions to strikers and those dependent upon them. Said provisions shall be distributed under the supervision of officers to local federations, records of distribution to be maintained and furnished the President of this Department.

(B) This Department shall, prior to inaugurating a strike, submit a proposition of financing same, to a referendum vote of its affiliated membership. The officers, including the Executive Council, shall have the authority to designate the amount of assessment per member, per month, necessary to conduct said strike for a period of not less than twelve months. This assessment shall be based upon the commissary plan as provided for in Paragraph (B), Section 44, and is for the purpose of supplying the necessities of life to the strikers and their families who are
10 unable to provide for themselves.

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Strikers receiving benefits will be sold commissary supplies at actual cost. All money received from such sales shall become a part of the local commissary fund and be used to purchase supplies.

Sec. 46. Any member of any organization affiliated with this Department who is on strike in any district and leaves said district to accept employment in his own trade, except he be excused by the Department, while strike is pending, shall pay a fine of the value of one day's pay per month, as paid in districts in which
20 he accepts employment. Said fine to be collected by the organization to which he belongs and used to finance strike.

SUBORDINATE SYSTEM FEDERATION CONSTITUTION

Section 1. System Federations of the Department shall consist of no less than three (3) crafts affiliated with this Department at the institution thereof, and shall be styled and known by such titles as each shall adopt.

Sec. 17. No System Federation shall open negotiations for a new agreement without first securing the sanction of the President and Executive Council of this Department. A request for
30 sanction must be accompanied by a statement containing: First, the number of organizations involved; second, the number of men, union and non-union, of each organization; third, if there is an agreement in effect; fourth, if agreement in effect is with Federation or individual organizations, and copy of proposed agreement.

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PLAINTIFF'S EXHIBIT 31

CONSTITUTION OF RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR

**CONSTITUTION AND BY-LAWS
of the
RAILWAY EMPLOYEES' DEPARTMENT
of the
American Federation of Labor.**

Revised April, 1922.

10

B. M. JEWELL.....President
J. F. McGRATH.....Vice-President
JOHN SCOTT.....Secretary-Treasurer

Office 4750 Broadway
Chicago, Illinois

LIST OF AFFILIATED ORGANIZATIONS.

- International Association of Machinists.
- International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America.
- International Brotherhood of Blacksmiths, Drop Forgers and 20 Helpers.
- Brotherhood Railway Carmen of America.
- Amalgamated Sheet Metal Workers' International Alliance.
- International Brotherhood of Electrical Workers.
- Switchmen's Union of North America.
- International Brotherhood of Firemen and Oilers.
- United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers.

EXECUTIVE COUNCIL:

Section No. 1

30

T. C. CASHEN, International President Switchmen's Union of North America.

Section No. 2.

- W. H. JOHNSTON, International President, International Association of Machinists.
- J. A. FRANKLIN, International President International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.
- J. W. KLINE, International President, International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
- MARTIN F. RYAN, General President, Brotherhood of Railway
10 Carmen of America.
- JOHN J. HYNES, International President, Amalgamated Sheet Metal Workers' International Alliance.
- JAS. P. NOONAN, International President International Brotherhood of Electrical Workers.

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Section No. 3.

- TIMOTHY HEALEY, International President, International Brotherhood of Firemen and Oilers.
- E. F. GRABLE, Grand President, United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers.

20

Preamble.

We, the various labor organizations engaged in the railway industry (represented by delegates assembled in convention) recognize the necessity of establishing closer affiliations, and to this end we pledge ourselves to labor unitedly in behalf of the principles herein set forth, to perpetuate a concrete organization, which shall have for its objects the uplift of all mankind and more particularly the wealth producers, believing as we do, that our individual organization efforts are no longer sufficient to afford us the protection necessary to our success; and for the accomplish-
30 ment of these purposes ordain and enact the following constitution and by-laws of the Railway Employes' Department of the American Federation of Labor.

ARTICLE I.**Platform.**

The Railway Employes' Department aims:

1. To bring within the organization all railway employes.
2. To shorten the hours of labor to forty-four (44) hours per week, five days of eight hours and four hours Saturday.
3. To establish a minimum wage scale for all employes in all

RECORD branches of railway service.

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4. To bring about a uniform agreement, as we believe this will mean a more permanent and stable condition, acceptable to employe, employer and the general public alike. The operation of railways coming more and more under the supervision of the government, the standardization of freight and passenger rates, makes for uniform minimum rates of pay for employes on all roads. Hence, the necessity of a uniform agreement in their respective crafts or classes, which may, if necessary, be divided into sections.

10

5. To prevent strikes and lockouts whenever possible.

ARTICLE II.

Organization.

Sec. 1-A. This organization shall be designated Railway Employes' Department of the American Federation of Labor, and shall be composed of National, International and Brotherhood organizations of Railway Employes, recognized as such, duly and regularly chartered by the American Federation of Labor, and shall be divided into three sections, designated Sections one, two and three.

20

Section 1-B. Section one shall be composed of Switchmen's Union of North America, and such organizations as may later become members of this department through proper convention action.

Section 1-C. Section two shall be composed of—International Brotherhood of Blacksmiths, Drop Forgers and Helpers; International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America; Brotherhood Railway Carmen of America; International Association of Machinists; Amalgamated Sheet Metal Workers' International Alliance; International Brotherhood of Electrical Workers.

30

Section 1-D. Section three shall be composed of—International Brotherhood of Stationary Firemen and Oilers; United Brotherhood of Maintenance of Way Employes and Railway Shop Laborers; and such other organizations as may later become members of this Department through proper Convention action.

Section 1-E. Each section shall have complete autonomy and jurisdiction over its membership, subject to the laws of this Department, as per Section 3 of Article III.

Sec. 2. Membership in this Department shall be confined to National, International and Brotherhood organizations of Railway employes affiliated with the American Federation of Labor.

Any such organization desiring to become a member of this Department may make application at any time and shall be admitted to membership by a majority vote upon roll call in Convention.

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ARTICLE III.

Conventions.

10 Section 1. This Department shall meet in Convention on the second Monday in the month of April, in even numbered years, for the purpose of:

1. Electing officers.
2. Amending, revising or adding to the Constitution and By-Laws of the Department, as per Section 10 of this Article.
3. Transacting any other business that may be properly brought before the Convention, in accordance with the provisions of the laws of the Department.

20 Special Conventions may be called by the President, upon reasonable notice, provided that the calling of such Convention is approved by a majority of the Executive Council.

30 Sec. 2. Each National, International or Brotherhood organization shall be entitled to one delegate to the Convention from each railway system, wherein a System Federation has been chartered, as hereinafter provided, who shall be elected at least thirty days prior to the opening day of the Convention. Said delegate must be an employe of the Railway System he represents, or be employed directly by the men on the System, and the names of all such delegates shall be forwarded to the Secretary-Treasurer of this Department, immediately after their election.

A System Federation may elect and pay a delegate who will be permitted to represent in the Convention all craft organizations composing that System Federation which are not represented by craft organization delegates, and such a delegate may cast a single, independent vote on all matters, except on roll call when he must vote as a member of the craft organization in which he holds his membership.

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No System Federation delegate or system craft delegate shall be entitled to a seat in the Convention unless the System Federation or system craft organization represented by the delegate has paid all its financial obligations, in accordance with the laws of the department, to the respective System Federation and the respective division.

Sec. 3. Each delegate shall have one vote in voting on all questions coming before the Convention, except on roll call. On roll call each National, International and Brotherhood Organization, composing this Department, shall be entitled to one vote, provided 10 the organization is represented by duly elected delegates. A majority vote of the delegates of the respective component organizations shall determine the vote of the organization. A roll call shall be ordered upon request of delegates representing at least three of the component organizations.

Sec. 4. The order of business in the Convention shall be as follows:

- A. Call to order.
- B. Presenting credentials.
- C. Report of Committee on Credentials. 20
- D. Correction of minutes.
- E. Appointing of Committees.
- F. Reports of Committees.
- G. Unfinished Business.
- H. New Business.
- I. Election and installation of Officers.
- J. Adjournment.

Sec. 5. The rules and order of business governing the preceding convention and the order of business heretofore provided shall be in force from the opening of any convention of this Depart-30 ment until new rules and a new order of business have been adopted.

Sec. 6. A quorum for the transaction of business shall consist of not less than a majority of the delegates presenting credentials and attending a convention.

Sec. 7. The Convention shall have power to order an executive session at any time.

Sec. 8. No one except a member of a bona fide trade union

shall be permitted to address the convention or to read a paper therein, except by a two-thirds vote of the convention.

Sec. 9. No grievance shall be considered by any convention that has been decided by a previous convention, except upon a recommendation of the Executive Council, nor shall any grievance be considered unless the parties thereto have previously held a conference and attempted to adjust the same themselves.

Sec. 10. Resolutions and propositions having for their object the amendment or revision of, or addition to, the Constitution and By-Laws of the Department, must be in the office of the Secretary-Treasurer of the Department at least fifteen days' prior to the opening day of the Convention. Such resolutions and propositions shall not be introduced after the Convention convenes, except when introduction is authorized by a majority vote of the delegates—or a majority vote of the component organizations upon roll call.

ARTICLE VIII.

Divisions.

Section 1. The jurisdiction of the Department shall be divided into five divisions.

Division No. 1 shall be composed of all territory lying west of and including the southern lines of the Illinois Central railroad and lying on the west side of Lake Michigan and south of Lake Superior and west of a line laid through Duluth and extending to the Canadian border, and shall be bounded on the south by the Mexican border.

Division No. 2 shall be composed of the territory east of the aforementioned lines and north of the lines of the C. & O. railway and south of the Canadian boundary.

Division No. 3 shall comprise the territory south of and including the C. & O. railway and as far west as the Illinois Central lines mentioned as the boundary of Division No. 1.

Division No. 4 shall comprise all railways in Canada having their greatest mileage north of the international boundary line.

Division No. 5 shall comprise all locomotive and car equipment plants located in the United States and Canada.

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Where the majority of the shops of a railway are located in one division, the craft organizations in these shops shall be entitled to representation in the division meeting representing that division, and if the shops of a railway are equally divided, or nearly so, between two or more divisions, the President of the Department shall, after investigation, decide in which division meeting the craft organizations in that railway shall be represented.

Sec. 2. The general chairman, or other duly elected representative of each craft organization on each system of railways in the 10 respective divisions shall be the delegate to the division meeting and shall attend each division meeting and be entitled to vote on all questions.

Sec. 3. The delegates shall elect from among their members a President, Vice-President, Secretary-Treasurer and an Executive Board. (Number of members of the Executive Board being determined by the laws of the division).

Sec. 4. The delegates shall have power to adopt for the government of the division such laws as they may enact when said laws are approved by the President and Executive Council of the 20 Department, which said laws must not conflict with the Constitution and By-Laws of the Department, or component organizations.

Sec. 5. A meeting of the division shall be held annually, or biennially, at such time and place as may be designated in the laws of each Division.

Sec. 6. Special meetings of any Division may be called by the President of the Department, or upon request of a majority of the members of the Executive Council of the Department, when in his or their judgment the same is deemed advisable in the in-30 terest of the members of the component organizations, or a meeting may be called upon request of a majority of the General Chairmen in the Division.

Sec. 7. The Division Executive Board, or Boards, in co-operation with the President of the Department or his representative, and in co-operation with the Executive Council of the Department shall have the authority to prepare such revision of rates, rules and regulations, or of agreements, as may be just and equitable.

Sec. 8. After a proposition has been agreed upon by a Division meeting or Division Executive Board or Boards, a sufficient number of copies of same shall be printed and furnished to each craft organization and System Federation upon each railway concerned and a copy shall be sent to the Executive Council of the Department.

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Sec. 9. When it is decided to initiate wage or agreement movements upon a national or Division basis, the President or Executive Council of the Department shall assist the Division officers in
10 arranging and conducting conferences with the General Managers' Association, or other organizations representing the railways.

Sec. 10. After a proposition has been prepared for submission to the representatives of the railways, it shall be referred to the proper committee of the respective Division or Divisions as provided for in the laws of the respective Division for negotiating with the representatives of the railways.

Sec. 11. The Executive Board representing a Division that is a party to the movement, or the Executive Boards in a movement involving more than one Division, shall have authority to
20 make such revisions or modifications of the original proposition, after conferences have been held with the representatives of the railways, as in their judgment are warranted, provided such changes are endorsed and approved by the President and Executive Council of the Department.

Sec. 12. Any Division or Divisions participating in a movement of this character may be represented in the conference by the President or by a member or members of the Executive Council of the Department, provided a majority of the members of the Executive Board or Boards of the Division or Divisions requests
30 such representation.

Sec. 13. All rules and agreements agreed upon and signed by the representatives of the railways and the representatives of a Division or Divisions shall be binding on all organizations represented.

Sec. 14. When a Division or Divisions has or have decided to present a joint agreement, no System Federation or craft organization therein shall be permitted to withdraw from the proposed joint agreement, nor shall they be permitted to open negotiations which shall be contrary to the rules and laws adopted by the Divis-

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ion. Any System Federation or craft organization therein violating this section shall be liable to fine or suspension, or both, under the General Laws of the Department.

Sec. 15. The Executive Board members of all Divisions shall be paid by their respective Divisions, in accordance with the Division laws. Other necessary expenses shall be paid by the respective Divisions, and when two or more Divisions are involved the expenses shall be prorated on a per capita basis between the Divisions involved.

Helpers and apprentices shall pay one-half the amount assessed 10 journeymen. All assessments shall be charged against the component or subordinate organizations represented.

Any organization failing to pay its assessment within ninety days from date of issuance shall be subject to fine or suspension and shall not be permitted to participate in the business of this Department until all assessments, fines and back per capita have been paid in full, including the period of suspension.

ARTICLE IX.

Strikes.

Section 1. Should it become necessary to take a strike vote, 20 the component organizations of the Department shall conduct such a vote in accordance with the Constitution and By-Laws or Convention action of the respective organizations. Returns of a strike vote shall be forwarded immediately to the President of the Department by the respective Grand Lodge officers of the component organizations, or officers of the subordinate organizations. A legal strike vote of the Department shall be based upon an average total of the total vote cast, equaling the constitutional requirements of the organizations involved. A sanction to strike shall be issued by the President and Executive 30 Council of the Department.

Sec. 2. Any assessment levied in this Department in support of a strike sanctioned by the Department shall be of an equal amount on all members in all organizations, and all funds accumulated by said assessment shall be collected by the Grand Lodge of the component organizations and forwarded to the Secretary-Treasurer of the Department, together with a statement of the actual number of men involved. This fund shall be under the supervision of the Executive Council and shall be used wherever

possible for the purpose of establishing commissaries, to furnish provisions to strikers and those dependent upon them. Said provisions shall be distributed under the supervision of the officers of the Department to system federations, and records of distribution shall be kept and furnished to the President of the Department.

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10 Sec. 3. The officers of the Department, including the Executive Council, prior to (or subsequent to) sanctioning a strike, may assume the authority to submit the proposition of financing same to a referendum vote of the membership of the component organizations. They shall have the authority to designate the amount of the assessment per member per month necessary in aid of said strike. Such an assessment shall be based upon the commissary plans provided for in Section 2, and shall be for the purpose of supplying the necessities of life to strikers and their families who are unable to provide for themselves.

Strikers receiving benefits shall be sold commissary supplies at actual cost. All money received from such sales shall become a part of the local commissary fund and be used to purchase 20 supplies.

No money, however received or by whom held, shall be used in any manner to promote, encourage or support the commission of any disorderly or unlawful act, or for any purpose not sanctioned by official action of the responsible officers of the respective organizations. It shall be held to be a misappropriation and misuse of any money which may be so used, and the custodian thereof shall be held personally responsible for the results of any such wrongful use of money, and shall be required to reimburse the fund from which money has been thus wrongfully taken.

30 Sec. 4. Any member of any organization composing or affiliated with this Department, who is on a strike in any district and leaves said district to accept employment in his own trade unless he be excused by authority of the department, while a strike is pending shall pay a fine of the amount of one day's pay per month, as paid in the district in which he accepts employment. Said fine shall be collected by the organization to which he belongs, and used in aid of the strike.

ARTICLE XI.

Jurisdiction and Appeals.

40 Section 1. Recognizing the justice and necessity of well-

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defined jurisdiction for component organizations, it shall be the aim of this Department to use its good offices in adjusting all questions of this character. The Department shall require a written statement from each organization, covering the extent and character of its trade jurisdiction, and shall not sanction or permit any encroachment of said jurisdiction by any other trade when the trade jurisdiction has once been established and approved by this Department and the American Federation of Labor.

Sec. 2. An appeal from a decision of this Department may be taken to the Executive Council of the American Federation of Labor provided written notice containing the position of the organization by which the appeal is taken is sent to the President of this Department and the President of the American Federation of Labor within ninety days after the date when the interested parties have been notified of the decision rendered.

Section 3. No System Federation, System Organization or Local thereof shall have the power to permanently settle a disputed question of jurisdiction.

When a dispute between any of the crafts at any local point as to proper application of the Wilson Arbitration Board's Award, the Agreement, or concerning any other jurisdictional question arises, past practices shall be permitted to continue and a committee of one from each craft employed at the local point shall be selected within five days by the crafts organizations of the Section (as defined in Section 1, Article II). This committee shall meet at a time and place convenient to them during other than working hours, and by a majority vote decide such dispute, using the Board's Award, the Agreement and the Interpretations thereof as their guide, keeping in mind, first the rule adopted by this department and later incorporated in the Arbitration Board's Award, viz:

"None but mechanics and their apprentices in their respective trades covered by this agreement, shall operate oxy-acetylene, thermit or electric welders. Where oxy-acetylene or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes."

The majority vote of this committee shall be the decision accepted by all craftsmen represented at the local point, and the

usual procedure of handling federated grievances shall be pursued in securing the acceptance of this understanding by the local railway officials.

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Immediately upon the completion of the above procedure, a full and complete report of the local committee's findings shall be jointly referred to the general chairman of each craft represented on the railroad. These general chairmen shall meet at a time and place agreed upon and by a majority vote agree upon a uniform practice on the railroad for those whom they represent, for the performance of the work which has been in dispute at the different local points, using the report of the local committee, the Arbitration Board's award and the Agreement as their guide, the decision of the majority of this committee to be the decision of all crafts represented on the railroad. Such decision shall be handled by the System Federation committee just as they would handle any other federation grievance with the railroad officials. Should any craft desire to appeal from such decision, the same shall be handled as provided for hereinafter, but the decision by the majority vote of the general chairmen shall be accepted by all crafts represented pending final action on any appeal that may be taken.

Should any dispute between the crafts arise as to the proper application of the Arbitration Board's Award, Agreement or any other jurisdictional questions which fail of adjustment, after strict compliance with the above procedure, then such dispute or an appeal from the majority decision of the general chairmen shall be jointly referred to the President of the Railway Employees' Department within fifteen days after such majority decision has been made or meeting of general chairmen has been held; all evidence as to whether it was work generally recognized as work belonging to the craft appealing shall accompany this joint submission, and any additional information desired by the Railway Employees' Department shall be furnished upon request.

Upon receipt of the required information, the President of the Railway Employees' Department shall decide as to the proper application of the Wilson Arbitration Board's Award or the Agreement as to the work in dispute, his decision to be final and binding upon all crafts represented until reversed by an action of the Executive Council of the Railway Employees' Department, or by a Convention of the Railway Employees' Department.

It must be clearly understood by all that this procedure will be followed only when disputes arise between the crafts and that,

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in each step provided for, nothing shall be done by the membership of component organizations which will result in a stoppage of work.

When the general chairmen of a railroad have decided by a majority vote or when the President of the Railway Employees' Department has rendered a decision, the System Federation committee on the railroad shall meet with the proper railroad officials in accordance with Rule 35 or the grievance rule designated in any other manner of the Agreement and secure the application of their decision or the decision of the Railway Employees' Department in just the same manner as they would handle any other federation grievance. 10

With regard to the plan as above outlined, and to enable the Executive Council of the Department to gradually bring about a uniform policy, it will be necessary that the general chairmen on each system be furnished with a copy of the minutes of all meetings held by the local committees wherein questions of jurisdiction are involved, the chairmen in turn will send copy of minutes of their meetings to this department giving full information as to present status of questions under dispute, and advising in 20 each case where appeal has been taken from any decision rendered.

ARTICLE XII

System Federations.

The Constitution of a subordinate System Federation to be chartered by this Department, as heretofore provided, shall be as follows:

Preamble.

The success of a movement, such as that outlined in the Constitution of the Railway Employees' Department, depends very 30 largely upon the loyalty of its component and affiliated parts and the faithful observance of the laws adopted for government. System and Local Federations can do no greater work than that of commanding the respect of all with whom they may be called upon to transact business; it lies within their power to affect public opinion either for or against the movement. The most important and necessary adjunct to the success of the Railway Employees' Department can best be described by the word "discipline," because of the fact that a single act on the part of a local or System Federation, or local craft organization either through 40

the non-observance or violation of law, carries with it the possibility of reflecting upon thousands of fellow workers comprising the component organizations.

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The Convention in adopting the laws for the government of this Department is on record for the strict enforcement of the same and the members of the component and subordinate organizations are hereby notified that they must expect no consideration from this Department if its laws are not obeyed.

Section 1. System Federations of the Department shall be
10 composed of not less than three system craft organizations whose National, International and Brotherhood organizations are members of this Department. These System Federations shall be styled and known by such titles as each shall adopt.

Sec. 2. No local of an organization shall be admitted to membership in a System Federation whose National, International or Brotherhood organization is not a member of this Department.

Sec. 3. Applications to this Department for Charters for System Federations must be signed by the duly authorized representatives of three or more system craft organizations, whose
20 National, International or Brotherhood organizations are members of this Department and all such System Organizations on all systems shall make application for a charter within a period of ninety (90) days' after receiving notice of this requirement from the President and Secretary-Treasurer of the Department. Compulsory affiliation of local unions with the System Federation shall be required by the component organizations of the Department.

Sec. 4. All applications for a charter shall be made in the following form and shall be accompanied by ten dollars (\$10.00)
30 to pay for charter fee and supplies, which shall include the official seal of the System Federation.

"The undersigned representatives of
system craft organizations in conformity with the laws of the Railway Employees' Department respectfully request the Department to grant us a charter to organize a System Federation which shall have jurisdiction on the following railway or railways comprising the above System....., we pledge ourselves individually and collectively to be governed

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by the Constitution and Laws of the Department. We desire to be recognized by the following name:

.....”

Sec. 5. The application for a charter shall show the number of union and non-union men of each craft within the jurisdiction of the proposed System Federation, and also shall furnish all available information relative to any eligible organization which is not represented on the application.

Sec. 6. A Convention meeting of a System Federation shall observe the order of business provided in Section 4 of Article 10 III for Conventions of the Department.

Sec. 7. Delegates to the Convention of a System Federation shall be selected by the craft organizations, in accordance with their respective laws and rules, and each delegate shall have one vote except that in voting on roll call, each craft organization shall have one vote, a majority vote of the delegates of each craft organization to determine the vote of the delegation, a roll call shall be ordered upon request of delegates representing at least three organizations.

Sec. 8. The Convention of a System Federation shall adopt 20 By-Laws for the government of the System Federation, which By-Laws and all amendments thereto must be submitted to the President of the Department for correction and approval before being published, and for official publication an attested copy shall be sent to the President of the Department.

Sec. 9. The seal of the System Federation or any local thereof shall only be used on matters pertaining to the official business of the System Federation, and all official communications or documents to be regularly attested shall bear its impression. Any officer or member using the seal for any purpose without permis- 30 sion of the System or Local Federation thereof, shall be fined, suspended or expelled, at the option of the System or Local Federation.

Sec. 10. The System Federation, assembled in Convention or acting through its appropriate officers between Conventions, shall be the highest tribunal within its limits, subject to the general laws of and subordinate to the Railway Employees' Department, and the respective National, International and Brotherhood organizations.

Sec. 11. The officers of a System Federation shall consist of a President, Vice-President and Secretary-Treasurer, and Executive Board, which Board shall be composed of not to exceed five (5) members, selected by each system craft organization composing the Federation.

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The President, Vice-President and Secretary-Treasurer shall be elected by the Convention from the members of the Executive Board and no more than one of these officers shall be a member of the same craft organization. One member of the Executive
10 Board from each system craft organization shall be selected by the system craft organization as a member of the Board of Adjustment. Said Adjustment Board shall have the authority to handle grievances with the employer, and to represent any organization which complies with the laws of the System Federation and officially request the services of said Board.

A quorum for the transaction of business by the Executive Board of a System Federation shall consist of a majority of the members of the Board. A quorum of the Executive Board of a section of a Federation, or of two sections, shall consist of a
20 majority of the members of the Board in each section. A majority of a quorum of such an Executive Board meeting of the Federation, or of a section or sections shall determine the actions of the Board.

Sec. 12. The duties of all officers of a System Federation, except as they may be provided for in the laws of the Department, shall be determined by the conventions of the respective System Federations, and be in conformity with the laws of the Department and of the respective National, International and Brotherhood organizations.

30 Sec. 13. The revenue and collection thereof necessary to the maintenance of each System Federation shall be determined by the conventions thereof, and the funds shall be forwarded to the Secretary-Treasurer of the System Federation. All officers of the Local or System Federation authorized to receive and disburse the funds of the Federation shall be bonded.

Sec. 14. If the funds of a System Federation do not meet the requirement of necessary expenses, the System Federation when duly assembled in Convention shall have the authority to levy an assessment, or between Conventions should occasion arise
40 the Executive Board of a System Federation shall have the authority to levy an assessment by a majority vote of said Board.

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Sec. 15. Any organization becoming six (6) months in arrears in payment of its per capita tax to the System Federation, or failing to pay any legal assessment within 90 days from date of issuance shall be subject to fine or suspension by appropriate action of the Convention or Executive Board.

Sec. 16. Should a System Federation lapse, it shall be the duty of the Secretary-Treasurer in conjunction with the System Federation President and Executive Board to transmit all funds and property belonging to said System Federation to the General Secretary-Treasurer of the Department who shall hold them in-¹⁰ tact for a period of six (6) months. If application is made for a Charter within six months from the date of lapsing, and said Charter application is finally granted, said funds and property shall be returned to the successful applicants. In the event that no application is made within six months or such application is finally denied, said funds and property shall then become a part of the funds and property of the Department.

Sec. 17. No System Federation shall open negotiations for a new system agreement without first securing the sanction of the President and Executive Council of the Department. A request²⁰ for sanction must be accompanied by a statement containing: First, the number of system organizations involved; second, the number of men, union and non-union, of each craft; third, whether there is an agreement in effect; fourth, whether any agreement in effect is with the System Federation or individual system organizations, and a copy of the proposed agreement.

Sec. 18. Except in emergency cases, and then only with the sanction of the President and Executive Council of the Department, no System Federation shall present an agreement which shall include a system organization whose membership is less³⁰ than fifty-one (51) per cent of the total number of men of the craft on the system with which the agreement is proposed.

Sec. 19. A System Federation, on being officially notified by the system organization affected, shall be required to take up the case of any person who has been dismissed by the employer because of his affiliation with the organization of his craft.

Sec. 20. There shall be no withdrawal of workmen from any System by a component or subordinate organization of the Railway Employes' Department because of trade jurisdictional disputes. The Constitution and laws of this Department provide⁴⁰

the manner of adjustment of all such cases, and must be strictly adhered to.

Sec. 21. No System Federation, System organization or local thereof, shall have the power to permanently settle a disputed question of jurisdiction.

Sec. 22. Any union or member of a System Federation Executive Board, or other officer, who does an act or is the instrument through whom an act is perpetrated, injurious to the Federation or to the interests of labor in general, may be prosecuted in the following manner: Charges shall first be preferred to the Secretary-Treasurer of the System Federation by a member of the System Federation, in writing, stating the offense committed, and a copy thereof, under the seal of the accusing organization, shall be forwarded to the accused. Such charges shall be referred to the Executive Board, who shall investigate the charges made, and report without unnecessary delay in the following words: "There seems to be (or, does not seem to be) foundation for the charge." If defendant be a union, the Executive Board shall convene in executive session to try the defendant. If found guilty by a two-thirds vote, the Board shall submit the matter, together with the findings and evidence, to the President and Executive Council of the Department, who shall make final disposition of same, the System Federation to be officially notified of action taken. If the defendant be a member of the Executive Board, he shall, on the Executive Board reporting, "There seems to be foundation for the charge," stand suspended without trial, and his case be at once referred to his organization for trial. Said union shall at once be furnished with a copy of the charges, and the names and addresses of witnesses examined.

Sec. 23. Obligation for System Federation officers, which shall be given when officers are installed:

I,, pledge my honor as a man that I will, to the best of my ability, fulfil the duties devolving upon me as an officer of the System Federation, and that I will act in my assigned capacity for the general benefit of the members.

Sec. 24. All members of National, International or Brotherhood organizations composing this Department, when working in the jurisdiction of a System Federation where there is no local lodge of the craft shall be under the jurisdiction of the System Federation and subject to its laws, and shall receive the protec-

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tion and support of the System Federation, provided that they have transferred to the local lodge of their respective organizations which comes under the jurisdiction of that System Federation, and has jurisdiction over the point at which they are employed.

ARTICLE XIII.

Definitions and Constructions.

Sec. 1. Unless otherwise specified, the following words, when used in this Constitution and By-Laws shall have the following meanings: 10

(A) "Organization" means a trade union organization and particularly the National, International or Brotherhood organizations of Railway Employes.

(B) "Local" organization means a local lodge of employes in a single Railway System who are members of a National, International or Brotherhood organization.

(C) A railway "system" means a railway under one general manager.

(D) "Affiliated" membership means either an organization subordinate to or affiliated with one of the component organizations of the Railway Employes' Department, or, where a referendum vote is provided, affiliated "membership" means the individual members of the component organizations. 20

Sec. 2. In construing the powers and duties of the Officers, component organizations and affiliated membership of the Railway Employes' Department, it should be understood that the fundamental source of authority is in the local craft organizations which take concerted action within the craft through their representatives meeting in Convention of the National, International or Brotherhood organization; and take concerted action on a Railway System through representation in the System Federation Convention, and take concerted action in the Railway industry in the Convention of the Railway Employes' Department. 30

It is also a rule of construction of this Constitution and By-Laws that whereas authority proceeds from the smallest organized group,—the local lodge—the exercise of authority and power conferred is governed by the principle of co-operation for the greatest good of the greatest number, preserving also, so far as

possible, the autonomy of the craft organizations, of the Department, of Sections and Divisions, and of System Federations over all matters that are primarily the concern of these respective organizations.

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Sec. 3. This Constitution and By-Laws, including the Constitution and By-Laws provided for System Federations, and all amendments thereto, shall become effective the first day of the month following the month in which the Convention adopting this Constitution and By-Laws, and any amendments thereto, shall
10 adjourn, except as may be otherwise specifically provided herein.

PLAINTIFF'S EXHIBIT 24

**CONSTITUTION AND BY-LAWS OF DIVISION No. 4 RAIL-
WAY EMPLOYEES DEPARTMENT OF THE
AMERICAN FEDERATION OF LABOR**

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1926.

Division No. 4

**Railway Employees' Department
A. F. of L.**

CONSTITUTION AND BY-LAWS

Revised March, 1926

20

ARTICLE 1

NAME

Section 1. This organization shall be known as Division No. 4, Railway Employees' Department of the American Federation of Labor, composed of the following crafts:—Machinists, Boilermakers, Blacksmiths, Railway Carmen, Sheet Metal Workers, Electrical Workers and any other crafts that may become affiliated with the Railway Employees' Department of the American Federation of Labor, together with their respective Helpers and Apprentices.

30 Sec. 2. This Division No. 4, Railway Employees' Department of the American Federation of Labor, shall be composed of all Railway Systems in the Dominion of Canada.

Sec. 3. This body shall be composed of not more than two (2)

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delegates from each craft from each General Manager's territory on each system affiliated with the Division. The delegates shall have voting power as per Article five (5).

Sec. 4. Systems paying Per Capita Tax on less than 500 members shall be represented by one (1) delegate from each craft affiliated, with voting power as per Article five (5). Should a delegate hold credentials for different organizations he shall have full voting power as per credentials.

ARTICLE 2

OFFICERS

10

Section 1. The Officers of this Division shall be a President, Vice-President and Secretary-Treasurer.

Sec. 2. Should an Officer leave the jurisdiction of this Division, or accept other employment, his office shall be declared vacant, and his successor shall be elected or appointed by the Executive Board.

ARTICLE 3

DUTIES OF OFFICERS

Section 1. PRESIDENT. It shall be the duty of the President to preside at all meetings, to preserve order, and enforce the laws 20 of this Division. He shall decide all questions of order submitted to appeal to the meeting or body. He shall keep a correct record of all work performed by him, and submit an annual report to the convention, and for publication in the Division Bulletin. He shall devote his entire time to the work of the Division. He shall be the Executive Officer of this organization authorized to negotiate and adjust any grievance or other matters, whether local, system or general, in accordance with our laws and the Agreements with the Railroad Management's and shall carry out all instructions issued by the Convention or Executive Board. 30

He shall submit a monthly synopsis of his activities for publication in the Division Bulletin. He shall countersign all orders lawfully drawn on the treasury by the secretary. For the faithful performance of his duties he shall receive a salary of Three Hundred Dollars (\$300.00) per month, payable weekly, and Six Dollars (\$6.00) per day expenses when away from home station.

Sec. 2. VICE-PRESIDENT. The duties of the Vice-President shall be to assist the President in preserving order, and to preside in his absence.

Sec. 3. SECRETARY-TREASURER. The Secretary-Treasurer shall devote his entire time to the duties of his office. He shall keep a correct record of all proceedings of this body. He shall conduct all correspondence. He shall receive all monies for this body, giving his receipt for same.

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He shall submit a quarterly report to each organization on each railway system showing receipts and disbursements. He shall furnish a copy of the minutes of all conventions, and Executive Board meetings to the Chairmen of each craft on each railway system affiliated. He shall notify the President and Executive Board Members of all grievances that are sent to him, and the decisions on all questions which from time to time are submitted to the Executive Board, within ten (10) days of the closing of the vote. He shall have full supervision over his office, shall purchase necessary supplies with the consent of the President. He shall deposit all monies received in a chartered bank approved by the Executive. He shall issue a monthly Bulletin. He shall receive for the faithful performance of his duties the sum of Two Hundred and Seventy-five Dollars (\$275.00) per month with transportation and Six Dollars (\$6.00) per day expenses when away from home station. He shall be bonded to the amount of Ten Thousand Dollars (\$10,000.00) in some reliable security company, the same to be approved by the Executive Board, and the bond retained by the President, the cost of bond to be paid by the Division.

Sec. 4. The Secretary-Treasurer shall, during the months of June and December, issue a form to each Local Lodge, asking them to supply to the Secretary the number of Railroad Membership as per seniority list of Wage Agreement No. 4.

Lodges neglecting to make above returns within sixty (60) days, the Secretary shall immediately take the matter up with their respective Joint Protective Boards or District Lodges, and in case of Local Lodges not having such Boards or Districts, with the Grand Lodge of same, with a view to getting proper returns submitted.

ARTICLE 4 EXECUTIVE BOARD

Section 1. The Executive Board shall consist of three (3) members from each craft affiliated. The President and Secretary-Treasurer shall by virtue of their respective offices, be ex-officio members without vote, except that the President shall vote in case of a tie vote of the Board.

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Sec. 2. The term of office shall be for two (2) years, or until such time as their successors are elected or appointed.

Sec. 3. During the interim between conventions the Executive Board shall have full power, and may decide any question that a convention could, subject to re-consideration by convention.

Sec. 4. They shall have the authority to temporarily fill any vacancy that may become vacant.

Sec. 5. They shall attend all conventions of this Division. Special meetings may be held in the interim should occasion arise that may demand the assembling of the Board. These meetings may be called by the President when sanctioned by the Board, or by written request of a majority of the Board.

Sec. 6. Should the funds in the hands of the Secretary-Treasurer not be sufficient to cover necessary expenses, they shall have the power to call for an assessment in accordance with the laws of the Crafts affiliated.

Sec. 7. A Sub-Committee of the Executive Board consisting of one representative from each craft, shall be formed for the purpose of negotiating schedules, (each organization shall notify the Secretary-Treasurer who they desire to be their representative).²⁰ If while negotiating the question of rates of pay and hours of work, the Schedule Committee fails to reach a settlement, no modification of the original proposals upon these two items shall be accepted until such modification has been submitted through the referendum to the general membership.

Any craft desiring to, may place not more than four (4) extra representatives on the negotiating committee, the expenses of such extra representatives to be paid by the craft they represent, except when they are members of the Executive Board and the Executive Board is called into session, as is provided for in Section five (5) of Article four (4).

The Sub-Committee shall meet two (2) days prior to the opening of conventions, appoint committees on Credentials and Rules of Order, consider all resolutions then in the hands of the Secretary-Treasurer, and have same printed to place before convention at the opening session.

Sec. 8. Craft organizations will be required to elect their re-

representatives to the Executive Board, and their names forwarded to the Secretary-Treasurer not later than June 1st of each alternate year.

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Sec. 9. The members of the Executive Board shall receive for their services, the sum of Eight Dollars (\$8.00) per day, with Six Dollars (\$6.00) per day for expenses when away from home station, and One Dollar (\$1.00) per day while at their home station.

Sec. 10. The Officers and Executive Board Members shall be provided with sleeping berth, and transportation when necessary.

10

ARTICLE 5

VOTING

Section 1. Each craft shall be allowed Two (2) votes for the first Twenty (20) members or fraction thereof. Two (2) votes for the next Fifty (50) members, Two (2) votes for the next One Hundred (100) members and Two (2) votes for each Five Hundred (500) members above that number.

Sec. 2. Any Craft not represented by their full number of delegates, shall be allowed their full voting power.

Sec. 3. Any Craft having the majority fraction of the desired 20 number of members shall be entitled to the additional number of votes.

Sec. 4. On request of Six (6) delegates from Two (2) or more Crafts, a roll call vote shall be taken on any question.

ARTICLE 6

NOMINATION AND ELECTION OF OFFICERS

Nomination and Election of Officers shall take place at each biennial meeting of this Division. They shall continue in office until such time as their successors are elected or appointed.

ARTICLE 7

30

CONVENTIONS

Section 1. Conventions shall be held biennially in even numbered years, the date and time of meeting shall be fixed by the Executive Board.

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Sec. 2. The Convention while in session shall decide the place where next convention shall be held, a quorum shall consist of a majority of the representatives of the crafts affiliated.

Sec. 3. If in the opinion of the Executive Board, a special convention is necessary, they shall be empowered to take a referendum vote on the advisability of holding such convention. In the event of a favorable vote being received, they shall carry out the necessary arrangements for the holding of same.

ARTICLE 8

REVENUE

10

Section 1. The Per Capita Tax shall be Ten (10) cents per member per month, payable quarterly in advance.

Sec. 2. Any Craft becoming Six (6) months in arrears in payment of Per Capita Tax to this Division, or failing to pay any legal assessment, within Ninety (90) days from date of issuance, will be subject to suspension, and shall not be permitted to participate in the business of this Division until all assessments and back Per Capita Tax have been paid in full, including that for the period of suspension.

Sec. 3. Per Capita Tax and Assessments will be collected and forwarded to the Secretary-Treasurer, of the Division, by one Secretary-Treasurer or other duly authorized officer from each craft on each Railway System affiliated, except in cases of Local Lodges not coming under the jurisdiction of Joint Protective Boards, District Lodges or such like.

ARTICLE 9

RECALL

Section 1. Any Craft in good standing shall have the privilege of proposing the recall of any officer of Division No. 4 through the referendum by submitting to the Secretary-Treasurer a proposition, giving the specific reasons for the issuance of such recall, and accompanying the same with the endorsement of two other Crafts.

Sec. 2. The Secretary-Treasurer upon the receipt of the proposition and endorsement as provided above, shall immediately notify the officer whose recall is demanded (by registered letter), said officer shall have the privilege within Twenty (20) days of receipt of such notice, to submit to the Secretary-Treasurer a

written statement in his own defence, which shall be printed at the expense of the Division, it shall be issued with the notice for nomination to the position held by the officer whose recall is proposed, and he shall issue said notices to all Crafts within Thirty (30) days of the receipt of the proposition to recall, and shall hold an election in conformity with the referendum law.

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Sec. 3. Should a referendum fail to carry the Crafts proposing and endorsing same shall defray all expenses.

ARTICLE 10

10

DELEGATES AND CONVENTIONS

Section 1. Delegates to conventions must be an employee of the railway he represents, or employed directly by the men on the system, and the names of such delegates shall be forwarded to the Secretary-Treasurer of this Division immediately after election.

Sec. 2. The expenses of delegates to convention shall be paid by the Craft they represent.

Sec. 3. Credentials for conventions shall be issued in duplicate to all Crafts affiliated, one of which when properly filled out shall be forwarded to the Secretary-Treasurer of the Division,
 20 Five (5) days previous to convention, the other to be presented by the accredited party to convention.

Sec. 4. All resolutions and schedule amendments for the consideration of the Convention, must be submitted in duplicate to the Secretary-Treasurer of the Division, not later than five (5) days prior to the opening of the Convention.

Sec. 5. All resolutions having for their purpose additions to or changes in the craft or general rules in the Wage Agreement, or grievances and interpretations arising therefrom, or to this constitution, can only be submitted through, or by the respective
 30 District Lodges, Joint Protective Boards, or similar organizations of the respective craft organizations affiliated with this Division.

Any resolution or proposition as aforementioned in this Section, that are received by the Division Secretary-Treasurer, from Local Lodges not having District Lodges, Joint Protective Boards, or similar organizations, shall be referred by the Division Secretary-Treasurer to the Executive Board Members of the craft concerned on the Division Executive Board, and in the case of Local

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Lodges having District Lodges, Joint Protective Boards or similar organizations, said resolutions will be referred to those organizations for their disposition.

ARTICLE 11

REPRESENTATIVES TO CONVENTIONS

Section 1. All Federations, Councils, and Local Lodges affiliated, shall be privileged to send representatives to conventions, who shall be entitled to a seat with full privileges, with the exception of voting.

Sec. 2. All International Officers, and General Chairmen of 10 each Craft on each railway system affiliated, shall by virtue of their office, be entitled to a seat in convention with the same privilege as outlined in Section 1, of this Article.

ARTICLE 12

AUDIT

Section 1. The Secretary-Treasurer shall call upon each Local Federation at Headquarters to elect one of its members to act as a committee on audit for one year. The books of this Division shall be audited quarterly, said committee to receive Four Dollars (\$4.00) each per audit. 20

ARTICLE 13

CHANGE OF RULES, ETC.

Section 1. No individual requests shall be made for change of rules, rates or regulations, and no individual action shall be taken by any Craft or System affiliated with this Division, without the authority of the Executive Board, and the Executive Council of the Railway Employees' Department of the American Federation of Labor.

ARTICLE 14

APPEALS IN CONTROVERSY 30

Section 1. If any controversy should arise between any affiliated organization, and any railway company, and same cannot be adjusted satisfactorily, an appeal may be made to the President of Division No. 4 for adjustment.

ARTICLE 15

ALTERATIONS TO BY-LAWS

Section 1. No alterations or amendments shall be made to

these By-Laws, unless offered in writing and approved by a majority of the accredited delegates at convention, and confirmed by referendum of the whole Division.

COMMITTEE ON LAW,

CHAS. McLAREN, Chairman.
W. J. LOOKER,
AMOS ASTIN,
D. E. McKINNON,
H. DAVIS, Secretary.

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10

DEFENDANT'S EXHIBIT 41

CONSTITUTION GOVERNING CO-OPERATIVE PLAN

CANADIAN NATIONAL RAILWAYS

CONSTITUTION

Governing action and procedure of Canadian National
Railways Joint Co-operative Plan

Effective January 1st, 1927

Constitution Governing Action and Procedure of Canadian
National Railways Joint Co-operative Plan

D. 41
Constitution
governing
Co-operative
Plan,
1st Jan., 1927.

Whereas the principle of co-operation for mutual benefit was
20 adopted by the Canadian National Railway System Federation of
Shop Trades and the Canadian National Railways, effective January
1st, 1925, since which date various Joint Committees have
been appointed and other steps have been taken, from time to
time, to give practical effect to the adoption of said principle:

And Whereas no definite rules or plans of procedure were es-
tablished at the beginning, it then being felt that owing to lack
of experience and exact knowledge as to the best methods to carry
the principle into effect the formulation of a Constitution and
Rules of Procedure might well be deferred for a time, in order
30 that necessary experience might be gained:

And Whereas the Plan of Co-operation having now been in
actual operation at many points for over two years with generally
satisfactory results and substantial benefits to the respective par-

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 governing
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 1st Jan., 1927.
 (Continued)

ties, it is now believed that sufficient knowledge of the subject has been acquired to warrant the adoption of certain definite Rules:

Now, Therefore, the following is adopted as the Constitution of the Co-operative Movement:—

Article 1

The plan shall be known as the Canadian National Railways Joint Co-operative Plan.

Article 2

Joint Co-operative Committees shall be appointed at each large Motive Power and Car Repair Shop, and also at Locomotive round-10 houses and car repair points, including repair tracks, where approximately fifty or more men are employed.

Article 3—Shops Committees

At Major Shops the committees shall consist of one representative from each shop craft, appointed by the respective crafts, the members of this committee to act for a period of one year from the date of their appointment.

At the larger roundhouses and car repair points the committee shall consist of three representatives of the employees.

At smaller points the committee shall consist of two representatives of the employees.

Should the craft representative be removed from the locality or service, the craft affected shall appoint a representative from its membership to fulfill the term of office.

The Railway Company shall also appoint an equal number of representatives from the local Superintendent's staff, including one representative from the Stores Department.

The local Shop Superintendent or head of the department shall act as chairman at all meetings.

In cases of emergency it shall be the privilege of the committee 30 to call on any employee to attend a meeting when necessary.

Article 4—Regional Committee

A Regional Committee shall be appointed, consisting of the

executive officers of each shop craft. An equal number of representatives shall be appointed by the General Manager on the respective Regions to represent the Company. The Chairman to be appointed by General Manager.

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governing
Co-operative
Plan,
1st Jan., 1927.
(Continued)

Article 5—System Committee

A System Committee shall consist of officers appointed by the Vice-President of Operation of the Railway Company, and the following representatives of the employees:—

- Chairman of Division No. 4.
- 10 Chairman of Canadian National System Federation No. 11.
- Secretary of Canadian National System Federation No. 11.

and a federation representative from any Region or craft not directly represented. This committee to have the privilege of calling in any executive officer of the company or any representative of the men mutually desired.

Article 6—Meetings

The Joint Committee at each Major Locomotive and Car Repair Shop shall meet twice each month, on the first and third Tuesdays.

- 20 The Joint Committee at all Roundhouses and Car Repair Points shall meet once each month, on the first Tuesday.

The Regional Committee shall meet at the call of the chairman, once every six months.

The System Committee shall meet at the call of the chairman once each year.

Note:—It shall be the privilege of the chairman of the Regional Committee or System Committee to call an additional meeting at any time.

- 30 It is left within the jurisdiction of the Regional Committee to reduce the meetings at all major shops from two meetings per month to one, if such action is felt desirable.

Article 7—Minutes

Minutes of all meetings, and records of proceedings shall be accurately kept, copies of these minutes to be supplied to each member of the Committee.

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Plan,
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(Continued)

Copies of all local minutes to be sent to
Secretary, Division No. 4.
Secretary, Regional Federation.
Secretary, System Federation.

Copies of Regional minutes to be sent to
Secretary Division No. 4.
Secretary, C.N. System Federation No. 11.

and to

General Supt. of Motive Power or
General Supt. of Car Dept. on each Region.
General Supervisor of Shop Methods.

10

Article 8—Action and Procedure

All recommendations and subjects should be discussed and prompt decisions arrived at. A unanimous decision should govern the action to be taken—no subject which would affect wage agreements already in operation shall be considered.

The Committee shall confine their recommendations to such subjects as apply only to the advancement of the industry under the jurisdiction of the chairman, or to the welfare of the employees under his jurisdiction, and to the betterment of the rail-20 way's service to the public.

S. J. HUNGERFORD,

Vice-President of Operation.

W. R. ROGERS,

Chairman, C.N.R. Federation No. 11.

D. 51
Certificate
under News-
paper Act,
28th May, 1928.

DEFENDANT'S EXHIBIT 51

CERTIFICATE UNDER NEWSPAPER ACT

I hereby certify that the paper writing hereto annexed is a true copy of an affidavit filed under "The Newspaper Act" in the office of the Prothonotary of the Court of King's Bench in the 30 City of Winnipeg in Manitoba on the 16th day of May, 1923.

Given under my hand and seal this twenty-eighth day of May, 1928.

(Signed) A. J. CHRISTIE,

Ass't. Deputy Prothonotary.

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Certificate
under News-
paper Act,
28th May, 1928.
(Continued)

(SEAL)

CANADA }
PROVINCE OF MANITOBA } IN THE MATTER of the "News-
To wit: } paper Act" and the "One Big
Union Bulletin."

We, Thomas Wooler, Carpenter, and Henry George Veitch, printer, both of the City of Winnipeg in the Province of Manitoba, make oath and say as follows:

1. We have a personal knowledge of the matters herein deposed to by us.
2. The said Henry G. Veitch is the President of the Wallingford Press Limited, a company duly incorporated under the laws of the Province of Manitoba, with its Head Office at 283 Kennedy Street in the City of Winnipeg.
3. The said Thomas Wooler is the president of the Winnipeg Central Labor Council.
- 20 4. The Wallingford Press Limited are the printers of a weekly newspaper entitled the "One Big Union Bulletin."
5. The publishers and sole proprietors of the said weekly newspaper are the Winnipeg Central Labor Council, a voluntary unincorporated organization made up of representatives from labor units.
6. The building wherein the said newspaper is printed is 54 Adelaide Street in the City of Winnipeg.

SEVERALLY SWORN BEFORE ME }
at the City of Winnipeg in the Pro- } THOMAS WOOLER
30 vince of Manitoba this 16th day of May, } H. G. VEITCH
A.D.1923.

A. M. DOYLE,
A Commissioner in B.R., etc.



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 D. 47
 Excerpts from
 One Big Union
 Bulletin.

DEFENDANT'S EXHIBIT 47

EXCERPTS FROM ONE BIG UNION BULLETIN

ONE BIG UNION BULLETIN

Published by the Winnipeg Central Labor Council of the O.B.U.

Member of The Federated Press

Vol. V., No. 233

Price, 5c per Copy

Winnipeg, Thursday, January 24th, 1924

Page Four

ONE BIG UNION BULLETIN

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MAKE ALL CHEQUES PAYABLE TO THE ONE BIG UNION BULLETIN.

Managing Editor: FRANK WOODWARD. 20

Winnipeg, Thursday, January 24th, 1924

THE JOHNSTON CO-OPERATIVE SCHEME "PROGRESSES"

Readers of the "Bulletin" have already been made aware of the co-operation scheme of W. H. Johnston, president of the International Association of Machinists. A trial of the scheme has been made on the Baltimore and Ohio railway and has proven very satisfactory to the management. In this connection Johnston says that once any railroad managements enter his co-operative scheme, they will never again wish to revert back to the old conditions and eliminate the I.A. of M. from the scheme of things on the railroads.³⁰

We believe this to be quite true, for this great co-operation scheme is nothing more nor less than a speeding up process. The I.A. of M. places efficiency experts in the shops, whose duty it is to eliminate waste both in material and time, to see that equipment is up to date, to see that the good union men keep strictly to their jobs and to increase the output per man. This, to the

boss, means increased profits and there is no wonder at all that he is willing to accept such a proposition.

And in return, we are told, the worker is to get steady instead of periodical employment, recognition of his union and some voice in the management. This arrangement, Mr. Johnston says, is mutually satisfactory.

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Coming to Canada, too

Since writing the above we have received some very interesting news from Montreal dealing with this same co-operative 10 scheme. Our correspondent informs us that the officials of the International Association of Machinists are at the present time making strenuous attempts to introduce their co-operation scheme upon the Canadian National Railway. It appears that on Tuesday, Jan. 7th, an interview with this object in view was held between J. A. McClelland, International Vice-President of the Machinists, J. T. Foster, Tom Moore, President of the Canadian Trades Congress and director of the C.N.R., and Sir Henry Thornton. It is rumored that they made headway with the scheme, for on the following Friday the talented originator of 20 the scheme, W. H. Johnston, arrived in Montreal and was closeted with the aforementioned gentlemen for several hours.

Canadian railroad workers can look for a consummation of this scheme in the near future. The International is asking for a closed shop and in return for this they are prepared to tie the workers down to a definite scheme of co-operation with the boss. Increased production and increased profits for the road are to be guaranteed in return for a recognition of the union officials by the company.

More Abject Slavery

30 In other words, the Canadian railroad workers are to be bound more tightly to their slavery. The production of each good union member is to be tabulated both by the boss and by the "union boss" and all those falling below the mark, or who show any opposition to the scheme will, no doubt, receive the axe.

We have many times stated that the craft unions are bound to become more reactionary as time goes on, and this is proving to be exactly the case. The leaders, in order to retain their "recognition" and offset the growing class sentiment of the rank and file, are bound to draw closer to the master class and as a result 40 become more pronouncedly anti-working class. But the bosses

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do not "recognize" these gentlemen because they love them, they do it in order that they shall receive some benefit in return. But personally the labor leader has nothing to give, but what he does give is concessions from the rank and file of the workers, to whom he is ever playing the Judas.

Will the Canadian railroad workers again submit to this further degradation? Will they allow themselves to be shackled hand and foot to these dual exploiters and pay union dues to further exploit and degrade themselves? Will they consent to submit to a dastardly plot that will earn for them the utter contempt¹⁰ of the progressive workers of the world? Or will they strike a final blow to rid themselves of this unclean thing and line up with the progressive workers in a militant union of the rank and file, that refuses to co-operate with the exploiters, but on the contrary is striving to end exploitation for ever?

Winnipeg, Thursday, February 7th, 1924

THE MASTER'S VOICE

Sir Henry Thornton, President of the Canadian National Railway, seems to have the psychology of the skin game down to a science. He seems to have learned that in order to get real²⁰ good results it is very necessary to kid the workers, and make them think that they are shareholders in the business. He is making pretty good at this and as a result is receiving the plaudits of his fellow-exploiters.

We have it on pretty good authority that he is contemplating introducing the Johnston co-operative plan and with the I.A. of M. functioning as a company union, show the world what an honest to God co-operative plan can accomplish. With the aid of Tom Moore and a few other "revolutionaries," Mr. Johnston and Sir Henry have worked out the details of the scheme and, we are³⁰ informed, are intending trying it out first in the Stratford shops. The unions are to install their experts and Mr. Johnston is betting big odds on greatly increased productivity in a very short time.

It Will Speed Up Western Shops

When the scheme gets going and the boys in the Stratford shops are "making good" and the time taken on the jobs is tabulated and sent to the shops in the West as a "basis," what is going to happen? It is not necessary to tell the average worker

what will happen, he knows well enough that it will mean a general speeding up.

It has been said that owing to the fact that there is such a small percentage of employees in the West who are members of the International unions, it will be impossible to put this co-operative plan into operation here.

This is undoubtedly true, but at the same time it does not remove the danger. Even though they do not introduce the scheme here, they will use the new "speed" times from the East, as a lever for speeding up here and in the interests of co-operation will no doubt promote a few good international brothers to the enviable position of pace-setters.

In any case it looks as though the workers on the C.N.R. are due for another wallop and that the co-operative plan will give them another good reason to bless the International unions.

Propaganda Over the Radio

It is here that Sir Henry shows that he has studied the psychology of the skin game. Knowing that bitter feeling is likely to show itself as a result of the "co-operative" plan, he plans to utilize the radio in order to soften the blow and lull the aggrieved workers to sleep with gentle and high-minded platitudes. He says that "In a railroad much more than in any other business much must be left to the loyalty and sense of honor of the employees." Consequently, after increasing, with the help of the trade union leaders, the rate of exploitation, he will establish broadcasting stations at various points throughout the system and broadcast his message of good will and co-operation to the employees at least once a week. After producing the goods all day, at the pace set by a good International Union efficiency speed expert, the worker can go home to his shack and after washing off some of the grime, tune up his radio and while eating his pork and beans or two-eyed steak, listen to **his master's voice** telling him how much profits **his road** is making; **the new speed records set at Stratford under the co-operative plan**; the need for "honor and loyalty" on the part of the employee; and above all never to forget the fact that he is working on a government road, which means that each employee is a part-owner and has a stake in the road and consequently must strive to make it progress.

40

A Radio in Every Home

Sir Henry has adopted as his slogan "A radio in every home,"

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and he wants every employee to get one in and thus come within the sound of his voice. To render this more simple he also intends to sell the outfits at cost and allow the employees to pay for them at the rate of one to two dollars per month.

It is felt that a change for the better will soon be noticed in the outlook of the Western employees of the government road. Instead of spending their evenings discussing their "imaginary" wrongs or reading the O.B.U. Bulletin, or in some other way dissipating their time and energy, they will be getting first-hand information about their own railroad from the respected chief 10 and it is felt that ere long a new psychology will be in evidence.

Another important point is that it should stop the disgraceful discussion of so-called "class issues" in the noon hours, and in future it is felt that the noon hour topic of conversation will be the philosophy expounded through the radio, the philosophy of **The Master's Voice.**

No Doubt You Will Prefer Jazz

Cheap at a dollar a month? Well, yes, that seems reasonable enough and if you feel like having a radio, why hop to it—and of course unless you are a co-operator you don't have to listen 20 to your master's voice—sure the majority will prefer jazz.

Winnipeg, Thursday, March 27th, 1924

THE SLAVE SCHEME

Reactionary trade union officials are waxing more and more enthusiastic over the Baltimore & Ohio Slave Co-operation plan, and one cannot pick up an A.F. of L. paper today without seeing several favorable references to it.

Everywhere in the West one hears the expression from these workers, "The boys won't stand for it," and that in itself shows that they are at least alive to the situation, but merely to take 30 this attitude is not enough. Railroad workers have had experience enough to know that unorganized discontent will not carry them very far. We know full well that the discontent is there, but unless it is organized it will merely end in a growl and further degradation. It is now time to organize that discontent in such a manner that it can resist any further attempt to degrade the railroad workers, and not only that, it can be used to com-

mence the march forward which has been delayed too long.

Remember, fellow workers, that the boss is well aware of your disorganized condition and it is on this account that he feels so confident that he can pull off any stunt he so desires. He knows that the B. & O. slave co-operation plan can be instituted, in spite of all your growling, unless you are organized in such a manner that your interests can be protected.

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Organize—This Is the Only Way

The Railroad Department of the One Big Union is an industrial union of railroad workers. In this organization there are no craft divisions, and all workers in the railroad industry are eligible for membership. Here are to be found all the militant railroad workers seeking to line up their fellows in order that a halt may be called to the shameful retreat of the railroad workers and an advance commenced. At every point in the West and Middle West and in many Eastern points these workers are carrying on, spreading the message among their fellows and guiding their discontent into sensible channels. Is it not time you mere kickers and grumblers thought this matter over earnestly? We know you resent the fall in your standard of living, you resent the actions of the craft union leaders and you do not want to see the slave co-operation plan inaugurated; then why not take the only logical course and line up with the progressive workers in an organized attempt to stop these things?

Come along, you fence straddlers. Your past attitude is in great measure responsible for your present condition and the longer you stay on the fence the more precarious will your position become. Clamber down, clamber down on the side of the rank and file of the railroad workers, where you rightfully belong, for it is either that or the new slave plan on the railroads.

Winnipeg, Thursday, December 25th, 1924

DOING THEIR MASTERS' WORK

Petty officials of the Railroad Shop Crafts Unions in Winnipeg are taking advantage of every opportunity these days to tell the public that their scheme to further enslave the workers of the Canadian National Railroad Shops has been successful and that the B. & O. slave scheme will soon be in operation all over the system. The local capitalist press is, as usual, anxious to assist these "labor" men with their propaganda, and every few days we are told that "The Baltimore scheme will go into effect

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at the Moncton, N.B., shops of the Canadian National on Jan. 5th, and will be extended gradually over the entire system. The scheme is expected to go into operation here in March."

In this manner are the workers in the C.N.R. shops becoming accustomed to the idea of the slave scheme and as a result it is expected that they will tamely submit to having it put over them.

The Slave Scheme Is Coming

And judging by the present apathy of these workers that is exactly what is going to happen. No matter what is done in an attempt to rouse them to a realization of the danger that is threatening them, it is of no avail. Most of them are unorganized and hopelessly muddled, and when the labor skates have slipped this dirty deal over them they will be powerless to resist it, for, without organization resistance is impossible. 10

It seems a great pity that these workers should not be clear-sighted enough to mobilize their forces and show the unholy alliance of labor leader and exploiter that they will not stand for this scheme. It is now obvious that nothing will be done in this direction BEFORE the slave scheme is tried out. That is exactly the reason why it has been delayed so long. The management of the C.N. know full well that their workers will not join the unions fathering this scheme, and they have waited to see if they intended to make any concerted move to organize effectively and to resist its introduction. If they had done so they were prepared to ditch all ideas of the B. and O. and would have given the labor renegades who were boosting it the cold shoulder, but the inactivity of the shopmen has encouraged them and they have now decided that it is safe to give it a trial. 20

They Will Act When They Have Tasted It

Of course, it is no use crying over spilled milk and while we would have much preferred to see the C.N.R. shopmen take a definite organized stand against this slave scheme and thus stop it BEFORE it was introduced, we shall have to be content in the knowledge that they will move pretty quickly AFTER its introduction. What has happened on the Baltimore & Ohio will happen on the Canadian National. On the B. & O. the workers are cursing the scheme as a new and intolerable form of slavery and they shun the unions that introduced it as they would the plague. 30

If the past few months had been utilized by the shopmen of the C.N. in organizing into the O.B.U. to fight the slave scheme,

they would have saved themselves much inconvenience and perhaps hardship, but when they have bought their experience and tasted the bitter fruits of their own apathy the O.B.U. will stand ready to serve their interests as the most effective weapon yet devised by the workers for use in their everyday struggles with the exploiter.

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Winnipeg, Thursday, June 17th, 1926

THE B. & O. IN THE LIMELIGHT

How the B. & O. plan of co-operation, the infamous class corroboration scheme of Bill Johnston's, has been able to swell the profits for the shareholders of the B. & O., is told in a Federated Press dispatch by Leland Olds, a renowned labor economist and statistician.

We would suggest to the slaves on the B. & O. system that they play "ca-canny" for a while and then perhaps the boss will pay some attention to their wage requests. But better still it would be, if they disregarded the sacred agreements the officers of the union have entered into, and get together into a class union, so that they would be in a position to talk "cold turkey."

20

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Bulletin,
17th May, 1928.

EXCERPT FROM ONE BIG UNION BULLETIN

ONE BIG UNION BULLETIN

Published by the Winnipeg Central Labor Council of the O.B.U.
Winnipeg, Thursday, May 17, 1928

LOCAL LABOR OFFICIAL ON COMPANY BUSINESS

Chairman of C.N.R. Federation (Western Division) Travels to the Head of the Lakes in Company Official's Private Car to Institute B. & O. Co-operative Scheme among Workers at Those Points.

30 It is customary for the daily newspapers to regard the move-

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ments of railway officials as news. When one of them is transferred to another point or embarks on an official trip, the fact is recorded in the daily press. Therefore, to the newspaperman, there is nothing particularly significant in the following news item that appeared in the Winnipeg "Evening Tribune" of May 14.

"A. H. Eager, general superintendent of motive power and car equipment, Canadian National Railways; H. Davis, chairman of the Federated Railway Workers' Council, and other railway officials, have returned from a trip to the head of the lakes where they made arrangements for the appointment of committees at Port Arthur and Fort William to consider the inauguration of the B. and O. policy of promoting the co-operative scheme. This scheme is now in operation in the Fort Rouge and Transcona shops.

Edmonton, Saskatoon and other points west have still to be brought under the co-operative method and the same deputation will visit these points to inaugurate the scheme. They are travelling in a private car."

To the worker who is familiar with railway activities, however, it will come as somewhat of a surprise to learn that Davis, the local representative of the C.N.R. Federation in Fort Rouge Shops, and one of the chief advocates of the B. & O. plan of co-operation, has now been taken to the bosom of the C.N.'s official family and travels in the General Superintendent's private car. It is quite evident oneness has been established between the local Canadian National officials and the local union representatives. Unquestionably it is complete. Their interests are of such a common nature that both find it possible, pleasurable and perhaps profitable to advance the interests of the Canadian National Railway.

The unbiased observer may feel impelled to enquire: Why the duplication of service? If the interests of the workers on the C.N.R. are identical with those of the company—and the advocates of the B. & O. plan of co-operation insist this is true—then could not either Mr. Eager or Mr. Davis look after the company's welfare singly? To the man who is trained in efficiency methods, the idea of sending two men to do one man's job is extremely wasteful and savors much of inexperience.

Their mission to Port Arthur and Fort William was to inaugurate the B. & O. system of co-operation in the shops there.

Somehow, the thought persists that harmony and identity of interests is merely on the surface—existing among the officials only—for it was apparently necessary that Mr. Davis proceed with Mr. Eager to the head of the Lakes in order to allay the fears of the workers there, who view with suspicion the co-operative plan, a job which an avowed representative of the company would likely find extremely difficult

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In view of the repeated remarks of the officials of Division No. 4, under whose jurisdiction Mr. Davis comes, of the necessity for a 100% union to protect the interests of the workers, the suggestion that Mr. Davis's duty consists of paving the way among the workers for something to be introduced among them which their training in the trade union tells them to be wary of, is a very proper one and is full of significance to those workers on the Canadian National Railways who are sufficiently old-fashioned to believe that the interest of the workers as sellers of labor power does not coincide with the buyers' interest.

Perhaps the workers are stupid, ill informed, slow, yet it is rather strange that the company has chosen the method of picking out the "brilliant," the "well informed," paid and unpaid officials of the unions and converting them to their idea of co-operation. If the plan has merit, it would seem that the easiest way would have been to have directly approached the workers, seeing they are so "ignorant."

What a stupendous task they have accomplished in converting the "brilliant" leaders of the unions that comprise Division No. 4, to their scheme! What a costly job it must have been! Yet they have done well, for now we find these officials and the Company see eye to eye—and they ride together, for the company's benefit presumably, in a private car. Will wonders never cease?

DEFENDANT'S EXHIBIT 48

LEAFLET

**TO OUR FELLOW WORKERS IN THE TRANSCONA
RAILROAD SHOPS**

**Are We Going to Submit to a Slave Scheme Sponsored by
the Officialdom of Div. No. 4 A.F. of L.?**

COMRADES AND FELLOW WORKERS:

For several weeks past the chief topic of interest in the shops has been the Co-operative scheme, now known as the B. & O. Plan, which has been in operation in the Glenwood shops of the 10 Baltimore & Ohio Railroad at Pittsburgh for the last twelve months. The reason for this interest is on account of the fact that at its convention a few weeks ago in Montreal, Div. No. 4, A.F. of L., went on record as favoring this plan and has since, after an interview with Sir Henry Thornton, announced that this B & O. scheme is to be put into operation on the C.N.R. Judging by the recent activities of representatives of Div. No. 4, and the manner in which they have concentrated upon Transcona with their propaganda, it is generally assumed by the workers that Transcona has been singled out as the most fitting point to 20 try this experiment.

They Are Afraid of the Facts

In view of this fact, and seeing also that the plan has already been in operation in Glenwood for one year, is it not remarkable that these officials of Div. No. 4 have kept the details of the scheme exclusively to themselves and have made every effort to keep the Transcona shop workers, and the Canadian railroad workers in general, entirely ignorant of what the scheme will mean to them?

Past experience has taught us to be watchful of the actions of 30 these gentlemen and there is not the slightest doubt that had the scheme been beneficial to the workers concerned, they would have seen to it that all the information relative to the subject should be lavishly distributed. Obviously then, there must be good reason for their silence.

That these statements are entirely correct is proven by the recent investigations in the Glenwood shops made by the Federated Press of Chicago, the most trustworthy news gathering agency in the United States. The representative of the Federated Press, after a thorough investigation of the scheme at Glenwood, sends us his report, which reads in part as follows:

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How It Operates

In operation the scheme works out like this:

A bi-weekly co-operative meeting is held in the shop. The 10 workers are represented by eight men. Across the table are eight bosses from the company's side of the house. The business of the joint committee is:

"To meet for frank discussion of questions relating to the planning and carrying on of work and having in mind that the specific purpose of these meetings is mutual helpfulness and not one of criticism or fault finding. It is understood that these meetings are not for the purpose of discussing or adjusting grievances."

A perusal of the minutes of such a meeting on March 19th, 20 shows that 76 separate suggestions were entertained and acted upon at this one meeting. The character of the questions and action taken may be seen in the following 10 items chosen at random:

| Description of Item | Action Taken |
|---|---|
| 1. Installation of furnace in blacksmith shop for use of boiler force. | Referred for attention of general committee, Baltimore. |
| 2. Re-location of spring plant. | Ditto. |
| 3. Locker situation. | In progress |
| 30 4. Installation of coal bins for storing coal for blacksmith use. | Referred to Supt. of Motive Power for authority which has not been given. |
| 5. Opening of Apprentice School. | Referred to Dist. Master Mechanic, but no advice received. |
| 6. Installation of separate drinking fountains for colored and white employees. | Ten white and four colored signs painted. |

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|--|--|----|
| 7. Requested that walk be installed from blacksmith shop to Glenwood station. | Storekeeper requested to obtain slag. | |
| 8. Condition of toilets. | Referred to Div. Engineer for handling and is taken up with Gen. Supt. | |
| 9. Pipe vise for pipe shop. | In progress. | |
| 10. Suggestion that ladders be built for use of employees when performing work on locomotives to avoid loss of time by climbing up through cab, etc. | Referred to car foremen to have these built. | 10 |

Fine for the Boss

Much can be said for the plan by adding up the railroad's side of the ledger. The men have diligently carried out the co-operation. There are figures aplenty to prove it. Before the plan was established the material shop expense per man was \$15.08 a month. Now it is \$7.43. Repair work on locomotives that used to take 60 days is now done in 21. Engines that were formerly overhauled in contract shops are now repaired at home at a saving of \$4,000.00 per engine—to the company. And so it goes, page after page of such comparisons. All of this is entirely due to the men working out short cuts here and there, improved machinery devices and various other speed-up programmes. The boss no longer drives the men. They drive themselves. Those who would not go along with the efficiency stunts were "gotten rid of," according to the men themselves. So it isn't exactly "voluntary" co-operation. So much for the boss. Turn over a page. What has been the worker's reward? The plan's literature says something about both groups sharing "fairly in the benefits which follow their joint efforts." The workers here unanimously agree that this has not been done. Continuity of work, the only definitely stated benefit to the workers stated in the plan has not been realized. There are still "furloughs" here as in other shops. The wages paid are: Mechanics, 73c. per hour; Helpers, 50c. per hour; Laborers, 40c. per hour. Nothing extra is paid for over time. The workers here say other roads pay as much and several pay more and not a few pay double or time and a half for overtime. Steady work is looked for, but it is as yet a promise.

The co-operative machinery has no teeth. No power. If the

company doesn't want to carry out a proposal it doesn't do so and that ends the proposition. The only club the workers have is their regular unions. And judging from the results of their last strike the strength of these—as they are now organized—is unable to cope with the power of the railroads and their fighting allies. Perhaps that is why the co-operative plan is put forth—as an olive branch. The workers say so frankly.

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What the Slaves Think of It

An interview with the workers' co-operative committee men and the local union heads, which was arranged to be questioned for publication, brought out the following:

The meeting is in the wash-room of the shop at noon. There are 18 workers in overalls present. The question that each answered in turn was:

“What is your honest opinion of the Co-operative plan, for publication?”

The replies that differed were:

“The plan is all right. It gets production, but we haven't got anything out of it yet. This is one-sided co-operation. We're the 20 goat; the company wins always.”

“It has certainly brought up the morale of the men, but we want to see results coming our way. We are supposed to get steady work, but we aren't. The plan is O.K. It depends on who you think should get all the profits.”

“It's the bunk. We have done our part to the limit. We got rid of the agitators. We put them out; the company didn't get rid of the men we didn't like on their side. They are still here. As an efficiency plan, this is it, but we want to see the results in OUR PAY envelope.”

30

Lamb Chops for the Lion

The group was a bunch of typical trade unionists selected by the rank and file to represent them both on the Co-operative plan and in the union's business. The other workers in the shops, questioned here and there, were unanimous in agreeing that what they got out of the Co-operative plan so far was—more work.

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And so, it still is a matter of conjecture as to whether the lion and the lamb have lain down together at last. There is a sneaking suspicion about here that the experiment may yet result in a meal of lamb chops for the lion.

To sum up, after careful observation and a comparison of results, it seems to me that a railroad president would be a fool indeed not to grab at this B. & O. "Co-operation" scheme with both hands.

No Wonder They Hide the Facts

No wonder the officials of Div. No. 4 have kept the details of 10 this scheme away from the workers, for had they given us the facts it would have been impossible for them to go ahead with their plot against us. Both they and their unions are totally discredited, so that in order to get our ear they secured the services of workers in the shops as an Organization Committee to act as Judases in an attempt to rivet the shackles upon us. But in this they have overstepped the mark and your attitude during the campaign has shown quite clearly that you have no more respect for the yellow renegade Socialists than you have for the notoriously anti-working class officials of Div. No. 4. It is grati-20 fying to note that after the long period of apathy you are at last waking up to a realization of your position, the need for asserting yourselves as a rank and file, and curbing once for all the traitorous tactics of labor's misleaders.

What Is Their Object?

Why should the officials of Div. No. 4 attempt to rivet this slave scheme upon you? Here's the reason. They are totally discredited, the rank and file have left their organization, and knowing this they will follow any tactics which will give them permission and a so-called "right" to put their feet under the 30 same table as the representatives of the railroads. The railroad management is well aware of their weakness and, as a return for continued recognition, demand that the interests of the shopmen be sacrificed. In other words, in order that these gentlemen may continue to ride upon our backs, we, the shop workers, are to be forced into a slave scheme which will mean much greater exploitation, a great reduction of staff, and huge profits for the road.

Speaking at Humboldt a short time ago, Mr. Hewitt, organizer for the Carmen, showed plainly what was the motive be-40 hind the scheme. He stated that the desire of Div. No. 4 was to

have the closed shop and the check-off method of collecting dues, but that motions to this effect were defeated at the convention Owing to the Division's Numerical Weakness and the fact that the Railroad Association knew Full Well That They Had Not the Backing of the Men.

By instituting this scheme, it is felt that the workers may be forced into the union and such huge profits will be made by the road that next year they may be granted the check-off and the closed shop, and thus the high salaries of the union officials will be made secure.

Fight the Fakers

Fellow Workers! Are we cowardly enough to submit to this scheme? Will we allow a handful of labor fakers and yellow renegade Socialists to do as they like with us, or will we not, as wealth-producers, as workers without whom the railroad cannot function, will we not assert ourselves and demand that we have the right to a voice in determining the conditions under which we labor.

Sir Henry Thornton has stated that this scheme was not to be put into operation until a vote had been taken of the employees thus affected. The labor fakers in their literature and from the platform are telling you that Sir Henry had lied and that only the handful of members of Div. No. 4 shall have the right to vote. This, fellow workers, is not true, and is only done in an attempt to force you back into their discredited unions and to extract from your pockets a few more dollars to keep them, the fakers, from putting on the overalls.

Do not be deceived. Do not fall for their bluff. Show the labor fakers and the yellow Socialists that you can think for yourselves, and that you have the courage to stand on your own feet. If they ignore us, the mass of the workers, they cannot have cooperation. Their slave scheme will fail just as all their other anti-working class activities have finally failed and the workers will see in this scheme but another method to sell them bound hand and foot to the exploiters of labor.

Comrades, stand your ground. Insist on having a vote on the scheme. Protect your interests. Stand together as railroad workers. If we do this no aggregation of labor fakers is strong enough to institute the Slave Pact.

DEFENDANT'S EXHIBIT 49

LEAFLET

WHAT THE B. & O. HAS BROUGHT

An Increase That Reduces

An Appeal to All Railroad Shopmen

For the past two years, we have continually exposed what the B. & O. slave scheme would do unless the workers in the railroad shops put up strong opposition to its introduction.

The workers of the West have, up until now, more or less successfully opposed it, but the Eastern workers took it to their bosom. Now they are beginning to realize the error they have made.

In this article we intend to outline, in the brief space at our disposal, just how the B. & O. has been used, as we pointed out it would be used, to reduce wages.

The Conditions Before the B. & O. Was Introduced

Under the bonus scheme that prevailed in the Stratford shops before the B. & O. scheme was introduced, the greater number of the men made from 20% to 35% over their hourly rate of wages. This meant that mechanics on the hourly rate of 70c made, by bonus ranging from 20% to 35%, the equivalent of from 84c per hour to 94½c per hour.

The Conditions After the B. & O. Was Introduced

With the introduction of the B. & O. plan, each department started to work the bonus scheme on a collective, instead of individual basis, and to their regret they found out that, although they worked just as hard, they only earned a bonus of from 14% to 17%, which meant a reduction in wages of from 84c to 94½c per hour, to 79 4/5c to 81 9/10c per hour—an average reduction of from 4c to 12½c per hour. This means, fellow work-30 ers, that while the men worked as hard as previously, the company saved on an average of from 4c to 12½c per hour per man.

**An Exposure of the Latest Reduction Brought About by the
B. & O. Under the Guise of an Increase**

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Not content with their first grab, the Canadian National management came after another, and once again Division No. 4, A. F. of L., was used to bring about the steal

Leaflet.
(Continued)

This, briefly, is how it was done: Byers, Tallon, and Division No. 4 have continually been after the management to cut out the bonus system. Knowing this, the management, after one year's experience with the group bonus system in place of the individual bonus system, during which time, with the aid of the B. & O. committees, they were able to speed up production and create standards of efficiency that the workers had to maintain in order to hold their jobs, and, also confronted with the request of Division No. 4 for a wage increase, turns round and kills two birds with the one stone. By cutting down operating at the same expenses they stall off the requested increase and save themselves thousands of dollars weekly as well.

The Method Employed

On December 8th, the following notice was posted in the shops 20 of the Canadian National Railroad:

"Canadian National Railways—Western Region."

30 "Effective December 8th, 1926, the premium payment plan which is now in vogue at certain shops will be abolished, and hereafter all employees covered by wage agreement No. 6, between the Railway Association of Canada and the Federated Shop Trades will be paid the hourly rates specified in said agreement and in addition will be given a bonus of 2 cents per hour. This bonus will be a separate item on the payroll for each employee affected, and the rates in agreement No. 6 will continue to be the basic rates for application of overtime and so forth.

"(Sgd.) A. H. EGAR."

You will see from the above, fellow workers, just what has happened. The bonus system has been abolished, thus taking the sting out of Division No. 4.

But you see it also reduces the wages of almost 50% of the Canadian National shopmen, from 79 4/5c to 81 9/10c per hour, to a flat rate of 72c per hour—a saving to the company of from

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8c to 10c per hour on 50% of the employees (those on Eastern lines), where the bonus system previously applied. Out of this saving of from 8c to 10c per hour per employee of 50% of the staff, they give the other 50% of the employees (on Western lines) a 2c increase, which leaves the company with a saving of 6c to 8c per hour per employee on 50% of their employees.

In other words, let's say there are 10,000 shop employees on the C.N.R., 50% or 5,000 working on the bonus system, and 50% or 5,000 on the flat hourly rate of 70c per hour. By this move, the C.N.R. cuts the earnings of the 5,000 men, previously working on 10 the bonus system, an average of 9c per man per hour, which means a saving to the company of \$450.00 per hour, or \$3,600.00 per day, which, in a 40-hour week effects a saving of \$18,000.00. Out of this, however, they have to give a 2c increase per hour per man to the other 5,000 employees, and to use the figures we have already quoted, it means an increase of \$100.00 per hour, or \$800.00 per day, which in a 40-hour week would amount to \$4,000.00.

Now, if we take the \$4,000.00 per week increase given to the men who did not work on the bonus before, from the \$18,000.00 20 taken from the men who previously worked on the bonus, you will see that the company saves, through this wonderful B. & O. scheme, the handsome sum of \$14,000.00 per week.

Should there be a "doubting Thomas" who still thinks our analysis is not a correct one, let him read the following statement from S. J. Hungerford, as printed in the "Montreal Gazette."

"Under the new method, the company will not pay the workmen, in the aggregate, any more than has been paid hitherto, and in addition will secure certain other economies. Having regard to all of the factors involved, it is confidently believed that this change in practice will, on the whole, be of benefit to both the railway and the employees concerned."

30

What has really happened is that the Western shopmen, who have opposed the B. & O. scheme are given a 2c per hour bonus as an inducement to fall in line and co-operate. This increase, however, is given at the expense of the Eastern workers who get a reduction, as we have shown. Having accepted the B. & O. scheme, they have created records and set a pace on the job that 40 they now cannot get away from, unless they join an organiza-

tion that is prepared to fight the whole B. & O. scheme, or any other speeding-up system that the boss, with the aid of the A.F. of L., tries to put over.

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The other advantage gained by the railroads in this move is that by granting a 2c per hour bonus increase on the hourly rate, they hope to be able to keep the wage increase that Division No. 4 has been after all summer, and is still after, within these limits. This, fellow workers, is the trick they are trying to pull over. Will you fall for it, or will you stand up like he-men, as we have
10 done in the past, and demand a real increase in wages—not a reduction, as this has been?

The Way Out

How can we get such an increase? many will ask. The answer is simple: Throw off the shackles of Division No. 4 that bind you; join a real rank and file union—the One Big Union. Then demand that the railroads meet a committee of the men on the job to negotiate immediately a REAL INCREASE in WAGES, which is long overdue.

Most of the shopmen in the West are ready—but what about
20 you fellow workers in the East?

Division No. 4 says you are the backbone of their movement today. It's true that you are the fellows who make it possible for them to sit on the lid, but this you can easily remedy by breaking away from the A. F. of L. and joining up with the only rank and file movement in Canada, the O.B.U.

There is no time to lose. You must act quickly if you desire to recover the ground lost.

You failed to heed our warning about the B. & O. speeding-up system—now chickens have come home to roost with a vengeance for the Eastern workers on the C.N.R. The famous B. & O.
30 slave scheme has given you a reduction in wages of approximately 9c per hour.

Are you with us in this move to free ourselves from the officialdom that makes such reductions possible?

If you desire to act with us, send in your name and address and occupation, also the names and addresses of your fellow workers who are prepared to do their part. Let us know what

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the men at your point think about it, and if there is sufficient interest we will send in speakers and organizers. Don't be afraid, fellow workers. Now is the time for action! Are you ready?

Fill in the following blank and return to R. B. RUSSELL, General Secretary, Organizing Department, O.B.U., 54 Adelaide Street, Winnipeg, Man.

Will you attend meetings arranged in your town to discuss the next step to take?.....
 Will you do all you can to get other Railroad shopmen to attend meetings if arranged?..... 10
 Do you desire further literature on this question?.....

Name
 Address
 Occupation
 What Department do you work in?.....

1926 has been a Banner Year for the C.N.R. Coupon Clippers

In 1925 the C.N.R. earned \$32,364,414 over operating expenses.

In 1926 the C.N.R. earned for 11 months \$41,451,628 over operating expenses. This means an increase of over nine million dollars. 20

In the year 1920 the owners earned nothing on their investment and the people of the country dipped into their pockets to pay the bonded indebtedness and also had to pay out of the Dominion Treasury an operating deficit of thirty-four million dollars.

Out of this year's revenue, which for 12 months is estimated at over forty-six million dollars, \$40,438,235 will be paid out on Bonds and Debentures. This is the Coupon Clippers' share and will leave a surplus of over six million dollars after all operating expenses are paid, but your share of this is NIL. 30

Instead of getting an increase you get a reduction all over the road of over \$14,000.00 per week, as the foregoing article discloses.

Get wise to yourself, act now, act quickly!

Fill in the questions on the other side and mail at once to the O.B.U. HEADQUARTERS, 54 Adelaide Street, Winnipeg, Man.

Issued by the
O.B.U. RAILROAD DEPARTMENT

DEFENDANT'S EXHIBIT 50**LEAFLET**RECORD
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Leaflet.**AN APPEAL TO THE EASTERN WORKERS ON THE
CANADIAN NATIONAL RAILWAYS****COMRADES AND FELLOW WORKERS:**

For the past eight or nine months the whole efforts of the officers of Division No. 4 have been centred upon introducing the B. & O. scheme on the Canadian National Railways.

Their first attempt to introduce this slave scheme was made
10 at the Transcona and Fort Rouge Shops, Winnipeg.

Fortunately, however, for ourselves, we had followed with interest the history of the men on the Baltimore and Ohio under this plan and had learned that it was one of the most slavish schemes ever attempted.

With the knowledge gained from the experiences of our fellow workers at the Glenwood Shops (B. & O. Ry.), we, your fellow workers at Winnipeg, launched a campaign to oppose the introduction of this Slave Scheme on the C.N.R. In this struggle two of our fellow workers, J. Clancy, a Boilermaker, and C. W.
20 Foster, a Machinist, lost their jobs. In spite of this we continued our opposition to the B. & O. Plan with the result that the Management along with the Officers of Division No. 4 were compelled to cease their efforts to introduce it at Winnipeg and try it elsewhere.

Learning from the strong opposition that had been organized to resist its introduction at Winnipeg they took their slave plan down to the extreme East amongst you fellows at Moncton. But instead of putting it over rough-shod upon you they started in
30 easy—by giving you better tools, etc., without speeding you up to any extent. But don't be fooled by this for the speeding up will come after.

Speeding Up is Their Game

During the Elections that were recently held two old parties, Conservatives and Liberals alike, told the people they were op-

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posed to the amalgamation of the C.N.R. with the C.P.R. as they both agreed in competition.

Both Meighen and King pointed out it was this competition that was responsible for the C.N.R. cutting down expenses so as to successfully compete with the C.P.R.

More Work But Less Men is What it Means

Government figures show that the C.P.R. is handling more traffic with less employees than the C.N.R. Here are the figures:

C.P.R., 60,000 Employees.

C.N.R., 100,000 Employees.

10

Sir Henry Thornton along with the officers of Division No. 4 are therefore introducing this B. & O. Slave Scheme so that the C.N.R. shall be as efficient as the C.P.R.

Which means that, when properly operating, the B. & O. Scheme will so increase the work of each employee that instead of having 100,000 employees on the C.N.R., like the C.P.R. they will be able to do the work with 60,000 men or less.

How Can That Be Done? You Will Ask

Well, the answer is that it has done it on the Baltimore and Ohio Railroad as the following facts will show:

20

Before the plan was introduced on the B. & O. the Shop expense per man was \$15.08. Now after one and a half years' operation it is cut down to \$7.43 per man.

Repair work on locomotives that used to take sixty (60) days is now done in twenty-one (21) days.

Engines that were formerly overhauled in contract shops are now repaired at home at a saving of \$4,000.00 per engine—to the company. And so it goes, page after page of such comparisons. All of this is entirely due to the men working out short cuts here and there, improved machinery devices and various other speed-up programmes. The boss no longer drives the men. They drive themselves. Those who would not go along with the efficiency stunts were “gotten rid of,” according to the men themselves. So it isn't exactly “voluntary” co-operation. So much for the boss. Turn over a page. What has been the worker's reward? The plan's literature says something about both groups sharing “fairly in

the benefits which follow their joint efforts." The workers here unanimously agree that this has not been done. Continuity of work, the only definitely stated benefit to the workers stated in the plan has not been realized. There are still "furloughs" here as in other shops. The wages paid are: Mechanics, 73c. per hour; Helpers, 50c. per hour; Laborers, 40c. per hour. Nothing extra is paid for overtime.

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In "Success Magazine," March, 1925, there appears a report of an interview given by the B. & O. Federated Trades Chairman
10 wherein he says:

"The plan submitted by Byers and Johnson was something like this:

" 'Let men and management meet periodically,' they said, 'not for grievances, not for complaints, not for the purpose of attack; but for constructive mutual helpfulness.

" 'If a man has a suggestion that will improve an operation in his department, let him speak up and tell about it.

" 'If he feels he can speed up labor by better tools, let him tell about it.

20 " 'If a change in schedule will turn out better work, give him the opportunity to explain it.'

"To show how the plan worked out a meeting was called in the office of Jack Howe, the superintendent of shops. Seven men came in representing management. The shop inspector was there, the assistant storekeeper, the tool-room foreman, the blacksmith foreman, the shop-draftsman, the electrical foreman, and the welding foreman, men in a word, who are the immediate superiors of the workers.

30 "Representing the latter came a machinist, George Beisser—who by the way is also president of the local federated unions, or in other words, the main spokesman for all the men in the shop—a boilermaker, a machinist's helper, a sheet metal worker, a blacksmith, a tender repairman and a stationary engineer. All these are union men, elected by their co-workers to act as spokesmen and representatives for them.

"What's this co-operative plan done for you? I asked the men who came to speak for their fellow workers in overalls and cap.

"Can you put your finger on any one definite thing?"

"And, in turn, each of them spoke up.

"'Jack' Howe told me today that engines were being rebuilt from five to six hundred dollars less than in the old days when there was no such thing as co-operation.

"'For a long time,' another workers' representative broke in, 'we wanted a special kind of wrench to work with. It's expensive, but it does the trick with less labor for the men and quicker results for the management. They told us they couldn't afford it, so we went on wasting time and breaking bad tools. 10

"'Today we have the wrench and everything is O.K.

"'You don't know what it means for a man to work with a first class tool. It makes him feel like a kid with a new toy. And the feeling never goes. Wrenches aren't all. Lots of improvements have been made, making the work quicker, easier, safer.'

"It seemed that these men had said all that needed to be said—but the sixth man, not yet heard, spoke up:

"'About the union organization. We men want to belong to unions. We always have. The shop is ninety-five per cent organized. We never were sure that the management liked it. In fact, 20 we kind of suspicioned they didn't. The idea of sneaking to meetings kind of made us mad. A man doesn't like to sneak. Well, that's changed. THE UNION'S TAKING RESPONSIBILITY FOR THE KIND OF WORK TURNED OUT IN THE SHOPS AND WHEN WE ATTEND A MEETING, IT'S TO TALK ABOUT SPEEDING UP THINGS IN THE SHOP. It's open and above-board. No more fighting—no more grumbling. It's all right.'

"'You bet!' came a chorus of affirmation.

No Strikes

30

"There was a question on my mind and I asked it:

"'Suppose your crafts on another road called a strike and asked you men to come out in sympathy, what then?'

"'We'd vote NO!' came the quick answer. 'You can't call a

sympathetic strike, unless the men vote favorable on it. We'd vote no. I'm certain of that.'

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"The other workers in the room agreed. One went a bit further. Fixing me with his eyes, he said:

"Say, if you want to get back where you came from, you won't talk strike to this gang!" "

What is Their Object?

Why should the officials of Div. No. 4 attempt to rivet this slave scheme upon you? Here's the reason. They are totally discredited, the rank and file have left their organization, and knowing this they will follow any tactics which will still give them permission and a so-called "right" to put their feet under the same table as the representatives of the railroads. The railroad management is well aware of their weakness and, as a return for continued recognition demand that the interests of the shopmen be sacrificed. In other words, in order that these gentlemen may continue to ride upon our backs, we, the shop workers, are to be forced into a slave scheme which will mean much greater exploitation, a great reduction of staff, and huge profits for the road.

20 Speaking at Humboldt a short time ago, Mr. Hewitt, organizer for the Carmen, showed plainly what was the motive behind the scheme. He stated that the desire of Div. 4 was to have the closed shop and the check-off method of collecting dues, but that motions to this effect were defeated at the convention OWING TO THE DIVISION'S NUMERICAL WEAKNESS and the fact that the Railroad Association knew FULL WELL THAT THEY HAD NOT THE BACKING OF THE MEN.

30 By instituting this scheme, it is felt that the workers may be forced into the union and such huge profits will be made by the road that next year they may be granted the check-off and the closed shop, and thus the high salaries of the union officials will be made secure.

Fight the Fakirs

Fellow Workers! Are we cowardly enough to submit to this scheme? Will we allow a handful of labor fakirs to do as they like with us, or will we not, as wealth-producers, as workers without whom the railroad cannot function, will we not assert ourselves and demand that we have the right to a voice in determining the conditions under which we labor?

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A few officers have usurped the power we once had as a Rank and File, and the B. & O. plan is intended by them to keep the power in their own hands, regardless of the bad effects it will have upon us, the rank and file.

We C.N.R. Railroad Workers in Transcona and Ft. Rouge up until now have been able to stop the introduction of this Slavish scheme. We were able to do this because we were organized. Organization as you well know first starts in a man's head. That is to say, we organize around an idea. When that idea becomes general then we have united effort and solidarity. We members 10 of the O.B.U., in the Transcona and Ft. Rouge shops were instrumental in developing the necessary resistance to the infamous B. & O. Plan, and although we are not as yet 100% O.B.U., yet the vast majority of the shopmen are imbued with the idea of preventing at all costs the introduction of this scheme.

We call on you, our fellow workers, to also stiffen your resistance to this scheme before it is too late.

How Can This Be Done?

By getting your delegate to Division No. 4 Convention instructed to vote for this scheme to be abolished from the C.N.R.²⁰

NOW IS THE TIME TO ACT.

DO IT QUICK. DO IT NOW!

O.B.U. PUBLICITY COMMITTEE.

LIST OF EXHIBITS NOT PRINTED

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List of
Exhibits
Not Printed.

| Exhibit Mark | Description of Documents | Date |
|--------------|--|------------------|
| D. 1 | Notice by Defendant to Minister of Justice under sec. 28 of King's Bench Act of intention to question constitutional validity of the Trade Unions Act, R.S.C. 1927, ch. 202, this Notice being set out in full at p. 15 of the Record..... | 27th April, 1928 |
| 10 P. 2 | Wage Agreement No. 4 (being the same as Exhibit 25) | 12th Nov., 1919 |
| P. 17 | 5 registration receipts from Winnipeg Post Office showing the mailing on 13th August, 1927, of three letters addressed as follows: | |
| 20 | (a) W. R. Rogers, Esq., President General Committee, C.N.R. System Division, 344 Cameron Street, Moncton, N. B. | |
| | (b) F. Harrison, Esq., Secretary General Committee, C.N.R. System Federation, 33 Margaret Bourgois Pk., Montreal, P.Q. | |
| 30 | and (c) A. W. Gibson, Esq., C.N.R. System Federation, 416 Elgin Ave., Winnipeg, Man. | |
| | and showing the mailing on 8th September, 1927, of two letters addressed as follows: | |
| 40 | (d) Grant Hall, Esq., Chairman, Railway Association of Canada, Montreal, P.Q. | |
| | (e) R. J. Tallon, Esq., President, Division No. 4, Railway Employees Dept., American Federation of Labor Montreal, P.Q. | |

LIST OF EXHIBITS NOT PRINTED—Continued

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(Continued)

| Exhibit Mark | Description of Documents | Date |
|--|--|------------------|
| | similar in nature and effect, to those portions of said exhibit printed in this Record. | |
| D. 52 | Examination for discovery of Plaintiff... | |
| D. 53 | De bene esse evidence of Frank McKenna | |
| 10 D. 55 | Bound copy of One Big Union Bulletin produced from Provincial Library containing duplicates of issues for same dates as Exhibit 47 and same portions relating to years 1924 and 1925 | |
| D. 56 | Bound copy of One Big Union Bulletin produced from Provincial Library containing duplicates of issues for 1926 for same dates as Exhibit 47 and same portions (six issues) | |
| 20 D. 58 | Order of Referee in Chambers pursuant to which evidence de bene esse of Charles Dickie and Frank McKenna was taken. | 19th April, 1928 |
| LIST OF EXHIBITS FOR IDENTIFICATION | | |
| P. "A" | Seniority List (filed as Exhibit 21)..... | 1st June, 1927 |
| P. "B" | Federated Metal Trades Agreement (filed as Exhibit 5) | 1st May, 1916 |
| P. "C" | Plaintiff's application for employment (filed as Exhibit 9) | 10th June, 1920 |
| 30 P. "D" | List of men to be laid off (filed as Exhibit 8) | |
| P. "E" | Letter, H. W. Thornton to R. B. Russell... | 2nd Jan., 1923 |
| P. "F" | Letter, A. E. Warren to M. H. Davy (filed as Exhibit 12) | 31st Jan., 1923 |
| P. "G" | Letter, A. E. Warren to M. H. Davy (withdrawn by Plaintiff) | 2nd Feb., 1923 |
| P. "H" | Letter, H. W. Thornton to W. H. Davy (filed as Exhibit 14) | 10th April, 1923 |
| P. "I" | Letter, Plaintiff to F. Harrison | 12th Aug., 1927 |

LIST OF EXHIBITS NOT PRINTED—Continued

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| Exhibit Mark | Description of Documents | Date |
|-----------------|---|-----------------------------|
| P. "J" | Letter, Plaintiff to W. R. Rogers, (same as Exhibit "L") | 12th Aug., 1927 |
| P. "K" | Letter, Plaintiff to R. J. Tallon..... | 7th Sept., 1927 |
| P. "L" | Letter, Plaintiff to W. R. Rogers (same as Exhibit "J") | 12th Aug., 1927 |
| P. "M" | Letter, Plaintiff to Grant Hall..... | 7th Sept., 1927 |
| P. "N" | Letter, C. P. Riddell to Plaintiff (filed as Exhibit 39) | 3rd Oct., 1927 |
| D. "O" | Constitution of One Big Union | 22nd to 27th March, 1926 |
| P. "P" | Resolutions passed at the Sixth Convention of Division No. 4, Railway Employees' Department of A.F. of L..... | |
| D. "Q" | Leaflet (filed as Exhibit 50) | |

I, the undersigned Deputy Registrar of the Court of Appeal for Manitoba, do hereby certify that the foregoing printed document from page I to page 1112 inclusive, is the Record on appeal by William Young to His Majesty in Council in a certain case pending in the said Court of Appeal between the said William Young, Appellant (Plaintiff), and Canadian Northern Railway Company, Respondent (Defendant), and from the decision or judgment of the said Court pronounced and made on the 3rd day of February, A.D. 1930, on the appeal in the said case.

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Certificate.

- 10 AND I FURTHER CERTIFY that the said Record contains the reasons given by all of the Judges for the judgments pronounced in the course of the proceedings out of which the said appeal arises.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said Court of Appeal for Manitoba, and have initialled and affixed the seal of the said Court to every eighth page of the said Record this 9th day of May, A.D. 1930.

20

A. J. CHRISTIE,

Deputy Registrar of the
Court of Appeal for
Manitoba.

SEAL OF
COURT OF
APPEAL