

58, 1949

In the Privy Council

No. of 1949

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Appellant

AND:

THE ATTORNEY-GENERAL OF BRITISH
COLUMBIA

Respondent

AND:

THE ATTORNEY-GENERAL OF CANADA and THE
ATTORNEYS-GENERAL OF ONTARIO, NOVA
SCOTIA, ALBERTA AND SASKATCHEWAN

Intervenants

Record of Proceedings

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P A R T I
No. 1

ORDER OF REFERENCE
2189.

RECORD
Court of Appeal
No. 1
Order of
Reference
Sept. 21, 1946

Approved and ordered this 21st day of September, A.D. 1946.

“W. C. Woodward”
Lieutenant-Governor.

At the Executive Council Chamber, Victoria,

Present:

- 10 The Honourable
Mr. Hart in the Chair.
Mr. Wismer
Mr. Kenney
Mr. MacDonald
Mr. Carson
Mr. Weir

To His Honour
The Lieutenant-Governor in Council:

The undersigned has the honour to report:

- 20 THAT Canadian Pacific Railway Company, a Corporation
incorporated by the Statutes of the Dominion of Canada, has con-
structed, owns and operates lines of railway extending continu-
ously from Saint John, New Brunswick, to Vancouver, British
Columbia, and also numerous branch lines extending into and
connecting with railway lines in the United States of America.
The Company owns and operates lines of steamships plying be-
tween Vancouver and Victoria and Seattle, in the State of Wash-
ington. The said Company also leases and operates the lines of
the Esquimalt and Nanaimo Railway Company, running from
30 Courtenay to Victoria.

The lines of railway and branch lines of the said Company
were by 46 Victoria Chapter 24, Section 6 of the Statutes of the
Dominion of Canada, declared to be works for the general advan-
tage of Canada.

The said Company has further, for the purpose of its lines
of railway and steamships and in connection with its said busi-
ness, built the Empress Hotel at Victoria, which it operates for
the comfort and convenience of the travelling public. The hotel
is available for the accommodation of all members of the public,

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as a public hotel. The said hotel caters to public banquets and permits the use of its hotel ballroom for local functions, for reward.

The property upon which the said hotel is built is not contiguous to property used by the Company for its line of railway, and is not a terminus for its railway line or steamships.

The Company has owned and operated the said hotel for a period of thirty-eight years, and the same provides accommodation for large numbers of travellers and tourists from Canada, the United States of America and elsewhere, having five hundred and seventy-three rooms. The operation of the hotel is a means of increasing passenger and freight traffic upon the Company's lines of railway and steamships. 10

The Company owns and operates other hotels elsewhere in Canada for like purposes.

There is a catering department in the hotel wherein the Company employs persons to prepare and serve meals.

The Company also employs hotel clerks, book-keepers and other persons to do clerical work at the hotel.

Pursuant to Section 6 of the Wartime Labour Relations Regulations being P.C. 1003 passed by Governor-General in Council by Order dated March 16, 1945, the War Labour Relations Board (National) certified to all parties concerned that the Canadian Brotherhood of Railway Employees and Other Transport Workers, Empress division No. 276 and the bargaining representatives named in the order are the properly chosen bargaining representatives for the employees of the Empress Hotel, except employees specifically named in said order. 20

Following certification of the bargaining representatives and pursuant to the said Order-in-Council P.C. 1003 a collective agreement was negotiated by the said representatives and the Company and was duly executed by the parties thereto. The said agreement became effective September 1st, 1945, for a period of one year and thereafter subject to termination on thirty days' notice in writing from either party. By the said agreement, rates of pay, hours of work, and other terms and conditions of employment of the employees affected by the said agreement, are fixed for the period of the said agreement. No notice of termination has been given by either party to said agreement. A copy of said agreement is annexed hereto as Schedule A. 30

AND TO RECOMMEND THAT pursuant to the provisions of the "Constitutional Questions Determination Act", there be referred to the Court of Appeal the following question for hearing and consideration:

10 Are the provisions of the "Hours of Work Act" being Chapter 122 of the "Revised Statutes of British Columbia, 1936" and amendments thereto, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent?

DATED this 20th day of September, A.D. 1946.

"G. S. Wismer"
 Attorney-General.

APPROVED this 20th day of September, A.D. 1946.

"John Hart"
 Presiding Member of the Executive Council.

RECORD
Court of Appeal
No. 2
Certificate of
Chief Justice
of B.C. to
Lieut.-Gov. in
Council
Mar. 27, 1947

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No. 2

COURT OF APPEAL

THE CHIEF JUSTICE'S CHAMBERS
LAW COURTS

VANCOUVER, B.C.

TO HIS HONOUR

THE LIEUTENANT-GOVERNOR IN COUNCIL.

Sir:

Pursuant to the provisions of the Constitutional Questions
Determination Act (R.S.B.C. 1936, Ch. 50) Your Honour refer- 10
red to the Court of Appeal for hearing and consideration the fol-
lowing question:

“ Are the provisions of the ‘ Hours of Work Act ’ being
Chapter 122 of the ‘ Revised Statutes of British Columbia,
1936, ’ and amendments thereto, applicable to and binding
upon Canadian Pacific Railway Company in respect of its
employees employed at the Empress Hotel, and if so, to what
extent? ”

As Chief Justice of the Court of Appeal I hereby certify that
the said Court, by a majority opinion, answers the questions in 20
the affirmative.

Attached hereto are reasons for the opinion of Mr. Justice
Robertson, concurred in by myself, Mr. Justice Sidney Smith
and Mr. Justice Bird.

Mr. Justice O'Halloran dissents from the majority opinion
and, for reasons which he will forward shortly, would answer the
question in the negative.

DATED at Vancouver, B.C., this 27th day of March, 1947.

“Gordon M. Sloan”

Chief Justice of the Court 30
of Appeal for British Columbia.

(SEAL)

REASONS FOR OPINION OF THE HONOURABLE
THE CHIEF JUSTICE

RECORD
Court of Appeal
No. 3
Reasons for
Opinion
Sloan, C.J.B.C.
Mar. 27, 1947

In the matter of a Reference as to the effect of the Hours
of Work Act to Metalliferous Mines

The Lieutenant-Governor in council, pursuant to the provisions of the "Constitutional Questions Determination Act," has referred to this Court for hearing and consideration the following questions:—

10 "1. Are the provisions of the 'Hours of Work Act' and amendments applicable to employees in mines, quarries, and metallurgical works within the meaning of the 'Metalliferous Mines Regulation Act' and to their employers and if so to what extent?

20 "2. If the employees in mines, quarries or metallurgical works within the meaning of the 'Metalliferous Mines Regulation Act' have entered into a collective agreement with their employer pursuant to Order in Council P.C. 1003 of the Dominion, by which agreement the hours of work exceed forty-four hours per week, do the provisions of the 'Hours of Work Act' and amendments apply to such employees and employer while the collective agreement is in force?"

30 The relevant sections of the "Hours of Work Act" provide that the working-hours of an employee in any industrial undertaking shall not exceed eight in the day and forty-four in the week. The "Metalliferous Mines Regulation Act" provides no person shall be employed underground or above ground in any mine for a longer period than eight hours in any twenty-four. This Act does not contain any regulation of the maximum number of hours that may be worked in the week.

The first question then raises the real issue in dispute: "Does the forty-four-hour week provision of the 'Hours of Work Act' apply to employees in metalliferous mines? Or is the only limitation upon their hours of work to be found in the 'Metalliferous Mines Regulation Act'?"

It is my opinion, subject to certain qualifications to which I shall return later, that the "Hours of Work Act" is applicable

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(Contd.)

to employees in metalliferous mines and in consequence the forty-four-hour week applies thereto.

Counsel for the Mining Association contended that section 14 of the "Hours of Work Act" exempted the metalliferous mining industry from the operations of that Act. The said section 14 reads in part as follows: "The provisions of this Act shall not in any way limit or affect the provisions of . . . the 'Metalliferous Mines Regulation Act' . . ." It is clear from this phraseology that the "Metalliferous Mines Regulation Act," if it contained provisions contrary to those found in the "Hours of Work Act," would then be the governing and dominant Statute, in relation to those matters wherein the conflict or inconsistency between the two Statutes might exist. But subject to certain qualifications, in my opinion there is nothing in the "Hours of Work Act" which in any way limits or affects the provisions of the "Metalliferous Mines Regulation Act." While the "Hours of Work Act" does "limit or affect" the weekly hours worked by employees in metalliferous mines, that in itself does not "limit or affect" the provisions of the "Metalliferous Mines Regulation Act."

The "Hours of Work Act" provides for an eight-hour day. So does the "Metalliferous Mines Regulation Act." In this respect there is no conflict. The "Hours of Work Act" provides for a forty-four-hour week. The "Metalliferous Mines Regulation Act" is silent on this subject. There can be no conflict on this score unless it can be said that the eight-hour day provision in the "Metalliferous Mines Regulation Act" means the employer may insist upon his employees working an eight-hour day during each working-day of the week. The section in my opinion cannot be given this interpretation. It is restrictive in its meaning. The eight-hour day provision is, in other words, a limitation upon the daily working-hours of each day and is not to be regarded as carrying with it any implied and permissive provision relating to the maximum hours in each working-week. That regulation is supplied by the "Hours of Work Act." The two Statutes, generally speaking, can be read together without either affecting or limiting the provisions of the other.

That brings me to consider the qualifications I mentioned previously. By sections 3 (3), 5, 6, 11, and 12 of the "Hours of Work Act," provisions are made for a working-day of more than eight hours. These sections do "affect" the eight-hour day provisions of the "Metalliferous Mines Regulation Act." In consequence, these sections are not applicable to metalliferous mines and metallurgical works.

Counsel for the Mining Association relied, too, upon subsection 3 of section 28 of the "Metalliferous Mines Regulation Act," which provides that the Lieutenant-Governor in Council may by regulation amend or repeal the provisions of the said Act and may from time to time "prescribe the hours of labour and employment of persons in mines, quarries, and metallurgical works."

10 There is nothing in the "Hours of Work Act" which, in my opinion, "affects or limits" the exercise of this jurisdiction by the Lieutenant-Governor in Council. He might thereunder, for instance, by regulation extend the working-day in metalliferous mines to ten hours and the working-week to sixty hours, or alternatively he might lessen the working-day to five hours and the working-week to thirty hours. In either instance his Order would govern and, to the extent to which that power was exercised and applied (as it was for instance in relation to above-ground placer operations and limestone quarries—see Orders in Council Nos. 211 and 1098 of 1941), the provisions of the "Hours of Work Act" would cease to apply. But until regulations are
 20 made in execution of that power, it seems to me that the "Hours of Work Act" limits the working-week except as noted, namely in above-ground placer operations and limestone quarries— cf. *Labour Reference Case (1925) S.C.R. 505.*

The second question for our consideration involves quite a different problem. Counsel for the Mining Association submits that by the Wartime Labour Relations Regulations (P.C. 1003) the Parliament of Canada has legislated with regard to hours of work, wages, and working conditions covering employees in metalliferous mining operations (inter alia), and that in consequence
 30 the Province has not the legislative competence to deal with these same subject-matters. I do not consider it necessary to enter upon an examination of the constitutional aspects involved in this submission because in my view P.C. 1003 contains regulations which, in pith and substance, are not in relation to those same subject-matters covered by the Provincial "Hours of Work Act." The primary intent and purpose of P.C. 1003 was to create the procedure for an orderly manner of collective bargaining. To this end provision is made for the election of representatives to negotiate and enter into agreements binding upon
 40 every employee of the industrial units concerned. These regulations, however, do not bind the employee or employer to include in the agreement any specified conditions affecting hours of work or rates of pay. There is nothing in P.C. 1003 that, for instance, would preclude an agreement calling for a sixty-hour or a thirty-

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hour week. From the form of the question we must assume that the mining industry, or at least units of it, have entered into collective bargaining agreements providing for a forty-eight-hour week, and it was argued that because P.C. 1003 made that an agreement binding upon all employees for a year, the forty-four-hour week provided in the subsequently enacted "Hours of Work Act" would not apply to those employees covered by such agreement. This submission means in essence that by the terms of P.C. 1003 employers and employees have the right to contract themselves out of the obligations imposed by Provincial Statute law. 10

I am free to concede that if by its terms P.C. 1003 wrote into negotiated agreements substantive and specific covenants covering hours of work and other conditions of employment, and used clear, mandatory, and unambiguous language in the expression of its intent to oust Provincial jurisdiction in those respects, then in that event the Dominion regulations would govern. But, in my view, P.C. 1003 deals in its true sense with procedural matters, and the parties are left free and unfettered thereby to make their own agreements. If that is so, then such agreements, when made and during their term, must be in conformity with and subject to the provisions of relevant Provincial laws, e.g. (inter alia), "Control of Employment of Children Act," the "Truck Act," Minimum Wage Acts, "Semi-monthly Payment of Wages Act," and the "Hours of Work Act." To hold otherwise would lead to chaotic conditions. For instance, one mine with a collective bargaining agreement, entered into pursuant to the terms of P.C. 1003, could operate in complete disregard for all Provincial laws relating to hours of work and conditions of employment, whereas the mine next door without such an agreement would be subject to all relevant Provincial enactments. Such a result would lead to manifest difficulties, and I must refuse to interpret P.C. 1003 in that light unless driven to it by intractable language in the Order itself. That language, in my opinion, cannot be found therein, and in consequence its intent to oust relevant Provincial law cannot be read into its provisions by implication. In my view, therefore, P.C. 1003 and the "Hours of Work Act" can be read together, each applicable in its own legislative sphere. 20 30

To sum up then, I would answer the questions submitted as follows:— 40

As to Question 1: Yes, with the exceptions of sections 3 (3), 5, 6, 11, and 12 thereof, and subject to the extent to which section

28 of the "Metalliferous Mines Regulation Act" has been or may be amended by the Lieutenant-Governor in Council by regulations inconsistent with the provisions of the "Hours of Work Act."

As to Question 2: Yes.

GORDON McG. SLOAN, C.J. B.C.

We concur.

C. H. O'Halloran, J.A.

Harold B. Robertson, J.A.

Sidney Smith, J.A.

10 H. I. Bird, J.A.

Vancouver, B.C.,

March 27th, 1947.

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 Sloan, C.J.B.C.
 Mar. 27, 1947
 (Contd.)

REASONS FOR THE OPINION OF THE HONOURABLE
MR. JUSTICE O'HALLORAN

In this Reference the Court of Appeal is asked to determine whether the Provincial "Hours of Work Act" applies to employees of the Canadian Pacific Railway Company in the Empress Hotel at Victoria. The hotel is owned and operated by the Canadian Pacific Railway Company for the purposes of its railways and steamships in connection with its business and as part of its transportation system.

10

In the view I must take, with deference, the construction, maintenance, and operation of the Empress Hotel forms an integral part of the "works and undertakings" of the Canadian Pacific Railway Company within clause (c) of head 10 of section 92 of the "British North America Act." I conclude accordingly that Provincial hours of work legislation, in so far as it affects Company employees in the Empress Hotel, will operate in principle and in practical effect as if it concerned, for example, dining-car employees on Company trains; and hence, in its true nature and effect, it is "Dominion railway legislation" exclusively with- 20
in the legal competence of the Dominion, and see *City of Montreal v. Montreal Street Railway* (1912) A.C. 333 at 342 and the *Radio Reference* (1932) A.C. at 314-17 and cf. *Atty.-Gen. for Canada v. Atty.-Gen. for B.C.* (1930) A.C. at 118.

I entertain no doubt that factually the Empress Hotel is an integral link in the world ship and rail transportation system of the Canadian Pacific Railway Company, which operates a trans-Canada railway connection with its steamship lines on the Atlantic to the British Isles and European points, and on the Pacific (until war interruption) to Asiatic points, including Japan, Hong- 30
Kong, Manila, and Honolulu, as well as Alaska and British Columbia coastal points. The Empress Hotel is an integral link in that chain of rail and steamship services. That it is an essential part of the "works and undertakings" of the Canadian Pacific Railway Company is conceded in the admitted facts contained in the Order in Council submitting this Reference to the Court. It is recited in part therein: "The said Company has further, for the purpose of its lines of railway and steamships and in connection with its said business, built the Empress Hotel at Victoria, which it operates for the comfort and convenience of the travel- 40
ling public. . . ." And also: "The Company has owned and operated the said hotel for a period of thirty-eight years, and the same

provides accommodation for large numbers of travellers and tourists from Canada, the United States of America, and elsewhere, having five hundred seventy-three rooms. The operation of the hotel is a means of increasing passenger and freight traffic upon the Company's lines of railway and steamships."

10 Although the Canadian Pacific Railway by section 6 of chapter 24 of the Statutes of Canada, 1883 ("The Consolidated Railway Act, 1879," as then amended), was declared to be a work for the general advantage of Canada within the meaning of clause
 1 (c) of head 10 of section 92; nevertheless, it seems to be said that cannot include the Empress Hotel (1) because section 6 of the said Act of 1883 is confined to "lines of railway," and (2) the Canadian Pacific Railway Company did not at that time, nor until section 8 of chapter 52 of the Statutes of Canada, 1902 ("The Canadian Pacific Railway Company Act, 1902"), receive specific power to build and operate hotels as part of its transportation system.

20 Dealing first with section 6 of the Act of 1883, I am of the opinion that it is not restricted literally to the "line of rails," but includes the entire works and undertakings of the transportation system, that is to say, everything involved in the transportation of passengers and freight in a modern, convenient and efficient manner, including of course all manner of services which the travelling public expect and demand.

30 In the first place, the expression "such works" in clause (c) of head 10 of section 92, when read with the opening words of head 10, in my view denotes the works and undertakings (and see the *Radio Reference* (1932) A.C. at 314) referred to in clause (a) and clause (b) of head 10. When related to "lines of railway" in clause (a), the latter is found to embrace "and other works and undertakings." That is to say, the word "and" as there used in clause (a) is not a word of delimitation in the sense of "or" to make "other works and undertakings" something apart from "lines of railway." On the contrary, as I read it, "and" is there used to include with the "line of rails" such other works and undertakings as are found essential to the efficient operation of the railway as a trans-continental transportation system. In short, I am led to regard "such works" in clause (c) of head 10 to mean such works and undertakings in a sense wide enough to
 40 include the Empress Hotel which factually is an integral part of the works and undertakings of the Canadian Pacific Railway transportation system. I think this view is supported also by the opening lines of section 6 of the Act of 1883, *supra*.

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Reasons for
Opinion
O'Halloran,
J.A.
Mar. 27, 1947
(Contd.)

In the second place, I find it difficult to read the terms "lines of railway" in section 6 of the Act of 1883 as limited to the "line of rails." Reading the whole of section 6, it seems that the context of "lines of railway" is unfavourable to its use in a purely literal sense, but points rather to its employment in a more flexible and expansive sense, that is to say, to include the works and undertakings of the railway system. This appears to be confirmed by section 306 of "The Railway Act," chapter 29 of the Statutes of Canada, 1888, which does not confine the declaration for the general advantage of Canada to "lines of railway." It declares the Intercolonial Railway, the Grand Trunk Railway, the Canadian Pacific Railway, etc. to be works for the general advantage of Canada. The most reasonable construction of section 306 to my mind (when read with clause (c) of head 10) is that Parliament intended thereby to declare the works and undertakings of the named railway companies to be for the general advantage of Canada.

That Parliament never intended the language of head 10 of section 92 to receive a rigid and purely verbal construction seems to be indicated by the interpretation Parliament, in section 6 of the Act of 1883 placed upon the words "although wholly situated within the Province," as found in clause (c) of head 10. Quite obviously the Intercolonial Railway Company, the Grand Trunk Railway Company, and the Canadian Pacific Railway Company were not literally "wholly situate" within any one Province when they were declared to be for the general advantage of Canada in 1883 and 1888. Nevertheless, it is plain that rigid and purely verbal construction was not then accepted, and it seems too late now, after the lapse of sixty-four years, to favour a mode of interpretation of clause (c) which Parliament declined to adopt in the Act of 1883. If plain confining words in clause (c) like "although wholly situate within the Province" were thus amplified by Parliament in 1883, there is little to be said in my judgment in favour of a submission that the word "works" in clause (c), in itself a term importing wide generality, should be unaccountably reduced and limited to mean the "line of rails" only.

In the first line of head 10 of section 92, the words "works and undertakings" are used as descriptive of a genus. Unfortunately, in clause (a) and clause (c) of head 10 the word "works" is inadroitly used in the sense of a subordinate classification of the genus "works and undertakings." Likewise, in "The Consolidated Railway Act, 1879" (chapter 9 of the Statutes of 1879) by section 5 (4), "the undertaking" is described to mean "the railway and works, of whatever description, by the Special Act authorized to be executed"; and by section 5 (16)

“ the railway ” is described to mean “ the railway and *the works* by the Special Act authorized to be constructed.”

We were not referred to a statutory definition of “ works ” in relation to railways. It seems to be used indiscriminately as a genus in some places and as a subordinate classification of a genus in other places. But in the opening lines of section 6 of the Act of 1883, which describes certain “ works and undertakings ” such as the Canadian Pacific Railway to be works for the general advantage of Canada, I must conclude the term “ works ” was
 10 used in its generic sense and not as a subordinate classification confined to the “ line of rails.” The contextual background in my opinion forces “ lines of railway ” therein to mean the railway as a transportation system and everything that goes with it in the sense of the generic words “ works and undertakings.”

“ Undertakings ” is a word of wide meaning. At the time the Act of 1883 was passed, it had already become a word of art to some extent by the definition found in “ The Consolidated Railway Act of 1879,” to which I have already referred. “ Works,”
 20 as already stated, does not seem to have been given any statutory definition in relation to railways. That lack of statutory definition could be explained by a desire to keep its meaning as wide and flexible as possible. Before turning to a standard dictionary, it is noted that the plural “ works ” is used in head 10 of section 92 while both the plural “ works ” and the singular “ work ” are used in section 6 of the Act of 1883, although perhaps any difficulty in the latter respect may have been cured by the use of the plural “ works ” in section 306 of “ The Railway Act of 1888.”

However that may be, if we turn to a standard dictionary,
 30 such as Webster’s New International Dictionary, 1934 (and which it is observed the then current edition was resorted to by the Judicial Committee in *City of Victoria v. Bishop of Vancouver Island* (1921) 2 A.C. 384) one notes some twenty different classifications of meanings of the singular “ work.” But if, as I think, the word “ work ” in section 6 of the Act of 1883 must not be interpreted in an original singular sense, but in its secondary sense as the singular of the primary meaning of the plural “ works,” we arrive at the appropriate meaning, viz., “ everything; especially everything possible or at one’s command; all one’s resources.” By
 40 way of illustration, reference is there found to the slang expression “ to give him the works.” In my judgment “ works ” in head 10 of section 92, and “ works ” and its singular “ work ” in section 6 of the Act of 1883, was intended to mean everything found to be essential to the most efficient operation of a railway and steamship transportation system.

Court of Appeal

No. 4
Reasons for
Opinion
O'Halloran,
J.A.
Mar. 27, 1947
(Contd.)

Hence in my view when the Canadian Pacific Railway was declared in 1883 to be a work for the general advantage of Canada, that was intended to include not only its "lines of rail" as such, but everything which might become essential to the transportation system in order to make it a modern, convenient, and efficient transportation system, measured in terms of the competition it would receive from other large transportation systems. To my mind, with respect, any other view is foreign to the historical setting in which the Canadian Pacific Railway Company was planned, and conceived as a great transcontinental and Imperial system, to bind together the colonies of British North America following the American Civil War, and also to provide ready access to India and the Far East after the Indian Mutiny of 1857. 10

It is true that the Empress Hotel was not constructed until the 1900's. But it is common knowledge the City of Victoria itself could not justify a hotel of its proportions, amenities, and facilities. It served as a connecting link between the Company's railway-lines and its steamships to the Far East. Passengers from Europe and America could await their sailings of trans-Pacific ships surrounded by comforts and conveniences of old world traffic agencies. Passengers from the Far East could "break" their sea voyage by a few days or few weeks' stay in accordance with their comfort or ship sailings from the Atlantic Coast. In more recent years, with the modern development of the tourist industry, the Empress Hotel has become a magnet for tourists from all parts of the United States and Canada. Its unique charm has drawn visitors for long and short stays from all parts of the world to the immediate advantage of the Company's rail and steamship lines. 20

What has been said would perhaps lose much of its force if the great bulk of the people drawn to the Empress Hotel came there commercially bent upon business in Victoria. But that is far from the situation. It may be true that during more prosperous recent years, the Empress Hotel has catered more extensively to increasing local social and commercial demands. But the undertaking of the Canadian Pacific Railway Company is one single undertaking and is not a collection of separate and distinct businesses. Nor can its purely local hotel business in the Empress Hotel be satisfactorily separated from its railway and steamship business in the Empress Hotel any more than the local business and the long-distance business of the Bell Telephone Company of Canada could be separated in *Toronto Corporation v. Bell Telephone Company of Canada* (1905) A.C. 52 at 59. 30 40

Much might be said against the Empress Hotel being part of the works and undertakings of the Canadian Pacific Railway

Company declared to be for the general advantage of Canada in 1883 and 1888, if at that time the Canadian Pacific Railway Company had not the power to build and maintain hotels as part of its transportation system. While the Company saw fit to receive this specific power by section 6 of "The Canadian Pacific Railway Company Act, 1902" (chapter 52 of the Statutes of Canada, 1902), it would seem that was a superabundance of caution to particularize general powers already possessed by the Company.

10 Section 17 of chapter 1 of the Statutes of Canada, 1881, which incorporated the Canadian Pacific Railway Company, made applicable "The Consolidated Railway Act, 1879" (chapter 9 of the Statutes of Canada of that year). Sections 8 and 10 of the Act of 1879 gave power:—

"[Sec. 8] To erect and maintain *all necessary and convenient buildings*, stations, depots, wharves and fixtures and from time to time to alter, repair or enlarge the same . . . for the accommodation and use of the passengers, freight and business of the railway.

20 "[Sec. 10] To construct and make *all other matters and things necessary and convenient* for the making, extending and using of the railway in pursuance of this Act, and of the Special Act."

It seems to follow that when the Canadian Pacific Railway Company was incorporated in 1881, it then obtained power to "erect and maintain all necessary buildings" in addition to "stations, depots, etc.," and also the power "to construct and make all other matters and things necessary and convenient for the using of the railway." That purposely general language would require to be cut down and restricted if it were held not to include the building and operation of hotels "for the accommodation and use of the passengers and the business of the railway."

30

In my judgment the fixing and determination of the salaries and wages, hours of work, and working conditions throughout a Dominion-wide railway and steamship service and system such as the Canadian Pacific Railway Company is a matter which relates to the general conduct, management, and efficient carrying-on of the business of the Railway Company as a whole. It is in substance a matter of railway and steamship management and not a matter of property and civil rights within each of the several Provinces of Canada. The relations established between employer and employee therein fall necessarily within the realm of

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railway management, which falls within the exclusive jurisdiction of the Dominion Parliament, and see *Canadian Pacific Railway Company vs. The Corporation of the Parish of Notre Dame de Bonsecours* (1899) A.C. 367 at page 372; *Attorney-General for Canada vs. Attorney-General for Ontario* (the Fisheries case) (1898) A.C. 700; Lord Herschell at page 714; *Toronto Corporation vs. Bell Telephone Company* (1905) A.C. 52 at pages 57-59; *Great West Saddlery Company vs. The King* (1921) 2 A.C. 91 at pages 99, 100 and 117; and *In re Alberta Railway Act* (1913) 48 S.C.R. 9 at 36-7.

10

In my judgment also the fixing of hours of work of employees of a Dominion-wide undertaking such as the Canadian Pacific Railway Company is not a matter of local or Provincial concern. Considering the interests affected, it concerns the Dominion as a whole, and such being the case, legislation with respect to that subject-matter falls within the sole competence of the Dominion Parliament under section 91 to the exclusion of Provincial legislation: *Attorney-General for Ontario vs. Canada Temperance Federation* (1946) A.C. 193, 1946 2 D.L.R. at page 5; *The Railway Act Reference* (1905) 36 S.C.R. 136 at 142-4; and *Mad- 20*
den v Nelson & Fort Sheppard Ry. Co. et al. (1899) A.C. 626.

Having reached the foregoing conclusions, I find no occasion to consider alternative submissions advanced respecting the question asked, viz.: "Are the provisions of the 'Hours of Work Act,' being chapter 122 of the 'Revised Statutes of British Columbia, 1936,' and amendments thereto, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent?"

I hereby certify accordingly to His Honour the Lieutenant-Governor in Council that my answer to the above question as sub- 30
mitted is in the negative.

C. H. O'HALLORAN, J.A.

Vancouver, B.C.
March 27th, 1947.

146-ap3

No. 5

REASONS FOR THE OPINION OF THE HONOURABLE
MR. JUSTICE ROBERTSON

Pursuant to the "Constitutional Questions Determination Act," His Honour the Lieutenant-Governor in Council has referred to this Court for hearing and consideration the matters set out in an Order in Council of the 21st day of September, 1946, which in part is as follows:—

10

"Order of Reference.

"That Canadian Pacific Railway Company, a Corporation incorporated by the Statutes of the Dominion of Canada, has constructed, owns and operates lines of railway extending continuously from Saint John, New Brunswick, to Vancouver, British Columbia, and also numerous branch lines extending into and connecting with railway lines in the United States of America. The Company owns and operates lines of steamships plying between Vancouver and Victoria and Seattle, in the State of Washington. The said Company also leases and operates the lines of
20 the Esquimalt and Nanaimo Railway Company, running from Courtenay to Victoria.

" The lines of railway and branch lines of the said Company were by 46 Victoria Chapter 24, Section 6 of the Statutes of the Dominion of Canada, declared to be works for the general advantage of Canada.

" The said Company has further, for the purpose of its lines of railway and steamships and in connection with its said business, built the Empress Hotel at Victoria, which it operates for the comfort and convenience of the travelling public. The hotel
30 is available for the accommodation of all members of the public, as a public hotel. The said hotel caters to public banquets and permits the use of its hotel ballroom for local functions, for reward.

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“ The property upon which the said hotel is built is not contiguous to property used by the Company for its line of railway, and is not a terminus for its railway line or steamships.

“ The Company has owned and operated the said hotel for a period of thirty-eight years, and the same provides accommodation for large numbers of travellers and tourists from Canada, the United States of America and elsewhere, having five hundred seventy-three rooms. The operation of the hotel is a means of increasing passenger and freight traffic upon the Company's lines of railway and steamships.

10

“ The Company owns and operates other hotels elsewhere in Canada for like purposes.

“ There is a catering department in the hotel wherein the Company employs persons to prepare and serve meals.

“ The Company also employs hotel clerks, book-keepers and other persons to do clerical work at the hotel.

“ Pursuant to Section 6 of the Wartime Labour Relations Regulations being P.C. 1003 passed by Governor-General in Council by Order dated March 16, 1945, the War Labour Relations Board (National) certified to all parties concerned that the Canadian Brotherhood of Railway Employees and Other Transport Workers, Empress Division No. 276, and the bargaining representatives named in the order are the properly chosen bargaining representatives for the employees of the Empress Hotel, except employees specifically named in said Order.

“ Following certification of the bargaining representatives and pursuant to the said Order-in-Council P.C. 1003, a collective agreement was negotiated by the said representatives and the Company and was duly executed by the parties thereto. The said agreement became effective September 1st, 1945, for a period of one year thereafter, subject to termination on thirty days' notice in writing from either party. By the said agreement, rates of pay, hours of work, and other terms and conditions of employment of the employees affected by the said agreement, are fixed for the period of the said agreement. No notice of termination has been given by either party to said agreement. A copy of said agreement is annexed hereto as Schedule A.

“And to recommend that pursuant to the provisions of the ‘Constitutional Questions Determination Act,’ there be referred to the Court of Appeal the following questions for hearing and consideration: Are the provisions of the ‘Hours of Work Act,’ being Chapter 122 of the ‘Revised Statutes of British Columbia, 1936,’ and amendments thereto, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent?”

The Attorney-General for British Columbia submits that
10 the “Hours of Work Act” (which, in short, provides, generally, a workman may not work more than eight hours in one day and more than forty-four hours in a week) is valid legislation under the exclusive jurisdiction of the Legislative Assembly of the Province (later called “the Province”) under head 13 of section 92 of the “British North America Act;” that it is not “truly railway legislation;” that if the “Hours of Work Act” (later referred to as “the Act”) be held to be not within the exclusive
20 jurisdiction of the Province, but to be “truly ancillary to railway legislation,” the Parliament of Canada (later called “the Dominion”) and the Province have overlapping jurisdiction in this respect; and the Dominion, not having exercised its power, the field is clear for the Province, and therefore the Act is valid.

Council for the Canadian Pacific Railway (to which it will be convenient to refer later as “the Company”) argues that section 8 of chapter 52, Statutes of Canada, 1902 (to be later referred to as the “1902 Act”), is truly railway legislation and that under the circumstances set out in the Reference the hours of work of employees of the Empress Hotel is within the exclusive control and jurisdiction of the Dominion, and the Act can have
30 no application to it.

Alternatively, he submits that if legislation as to the hours of work in the Empress Hotel is “clearly ancillary to railway legislation” the Dominion has legislated (see s. 287 of the “Railway Act,” R.S.C. 1927, c. 170), and such legislation must prevail over the Act. In any case, he further says that the collective agreement referred to in the reference is validated by virtue of Regulation No. 8 of the Wartime Labour Relations P.C. 1003, passed under the provisions of the “War Measures Act” and made applicable to British Columbia by the “Wartime Labour Regulation Act,” being chapter 18 of the Statutes of British Columbia,
40

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(Contd.)

1944. This regulation provides in part that “a collective agreement negotiated by such representatives shall be binding on every employee in the specified unit of employees.”

There is no doubt that the lines of railway operated by the Company are under the exclusive jurisdiction and control of the Dominion as the effect of subsection 10 of section 92 of the “British North America Act” is to transfer the excepted works mentioned in subheads (a), (b), and (c) of it into section 91. See *City of Montreal v. Montreal St. Ry.* (1912) A.C. 333 at p. 342. “Railway legislation” strictly so called belongs to the Dominion —*Tennant v. Union Bank of Canada* (1894) A.C. 31; *Canadian Pacific Ry. Co. v. Bonsecours* (1899) A.C. 367 at 372-3. Any such Federal legislation must strictly relate to railway-lines—*A.G. for Canada v. A.G. for B.C.* (1930) A.C. 111 at 118—subject to this: that matters which would otherwise be within the legislative competence of the Province but are necessarily incidental to effective legislation by the Dominion upon a subject of legislation expressly enumerated in section 91 are within the legislative competence of the Dominion. With reference to the latter, however, the Dominion and the Province have “overlapping” jurisdiction. It was put this way by Lord Dunedin in *Grand Trunk Ry. v. A.G. for Canada* (1907) A.C. 65 at 68: “First, that there can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires, if the field is clear; and secondly, that if the field is not clear, and in such a domain the two legislations meet, then the Dominion legislation must prevail.” See also *In re Silver Brothers, Ltd.* (1932) A.C. 514 at 520; *La Compagnie Hydraulique de St. Francois v. Continental Heat and Light Co.* (1909) A.C. 194; *Crown Grain Company, Limited v. Day* (1908) A.C. 504 at 507.

The Dominion has exclusive legislative jurisdiction and control to pass legislation which is “truly railway legislation.” It also has power to pass legislation where such legislation is “truly ancillary to railway legislation.” See *G. T. Ry. v. A.G. for Canada*, supra. Primarily legislation dealing with property and civil rights in the Province is within the jurisdiction of the Provinces. See *In the matter of Legislative Jurisdiction over Hours of Labour* (1925) S.C.R. 505 at 511; followed in *A.G. for Canada v. A.G. for Ontario* (1937) A.C. 326 at 350.

It is to be observed that it is only the “lines of railway” of the Company, not its undertaking, which have been declared to be for the general advantage of Canada; and that a declaration that a railway is for the general advantage does not transfer to

the Dominion power to legislate over matters not necessary to the railway. See *Wilson v. E. & N.* (1922) 1 A.C. 207. The word "undertaking" might include the Company's hotels, but even if that word had been used, it would not have been conclusive.

It is now necessary to consider the 1902 legislation with reference to hotels to determine into which class it falls, that is, the class of truly railway legislation or that of "truly ancillary to railway legislation."

10 Section 8 of chapter 52 of the 1902 Act authorizes the Com-
pany "*for the purposes of its railway and steamships and in con-
nection with its business to build hotels at such points or places
along any of its line of railways and lines operated by it, or at
points or places of call of any of its steamships, and to carry on
business in connection therewith . . .*" (The italics are mine.)
Prior to this Act the Company had no express power to build and
operate hotels. Hotels are not mentioned in the "Railway Act."

20 The Canadian Pacific Railway Company was incorporated
to construct and operate "lines of railway." The Dominion's
powers are restricted to lines of railway mentioned in subsection
10 of section 92. What was the meaning of these words in 1867
when the "British North America Act" was passed? We have
not been referred to any decision upon this point.

30 Webster's Imperial Dictionary (1913), page 1365, defines
"railroad" as "A road or way having parallel lines of steel
rails spiked to cross-ties, and at a certain variable distance from
each other, called the gauge; designed for the advantageous and
economical passage of vehicles used in the transportation of
freight, passengers, etc. The word 'railroad' is used in the
United States in preference to the word 'railway,' the latter being
the word used in England. The word 'railway' is frequently
used in the official title of roads in this country."

In Volume 8 of Murray's Oxford Dictionary the definition,
in part, of "railroad" states: "It is defined to be a road or way
laid with rails on which the wheels or waggons containing heavy
goods are to run."

40 The words "lines of railways" connecting two Provinces
seem to point primarily to the rails and the right-of-way. Again,
the words in section 8 of the 1902 Act "along any of its lines of
railway" seem to indicate that the railway mentioned in the sec-
tion is primarily the right-of-way and the rails.

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I do not suggest this is their entire meaning. I think that whatever is absolutely necessary for the physical use of the railway is to be treated as part of the line of railway. This would include such things as roundhouses, stations, rolling-stock, equipment, and all other things necessary for the operation of a railway. I would not include the Empress Hotel in this category.

I think the hotel is an adjunct to the railway company, "necessary for convenient business purposes." It is one of the "merely ancillary conveniences to be used in connection therewith"—to quote language used in *Lancashire & Yorkshire Ry. v. Liverpool Corporation* (1915) A.C. 152 at pages 183 and 192. No one would suggest that an hotel as such is a railway. I fail to see how the fact that it is built for the "purposes" of a railway makes it part of a railway. In fact, the language of section 8 "for the purposes of its railway and in connection with its business" suggest that it is something apart from the railway itself. The Court of Appeal in Saskatchewan had to consider the meaning of the word "railway" contained in an exemption section of a Provincial railway taxation Act in *In re Canadian Pacific Railway Company and Rural Municipality of Lac Pelletier* (1944) 3 W.W.R. 637. The judgment of the majority of the Court was delivered by Macdonald J.A. He pointed out at page 645 that in certain sections of said chapter 170 the word "railway" is used in a restrictive sense, i.e., meaning the way or road, notwithstanding the wider meaning given to the word in the interpretation section, viz., section 2 (21). At page 648 he said that he doubted that everything necessary for a railway could be held to be part of a railway, even when "railway" was used in its widest sense. At the same page he further says that the words "required for the railway" referring to certain materials, indicate to him that these materials are not part of the railway. For these reasons I think the hotel is not part of the line of railway and therefore not within the exclusive legislative jurisdiction of the Dominion.

Counsel for the Company alleges that the Dominion has legislated with regard to hours of work by virtue of said section 287, subsection (j), under which the Company may make orders and regulations, as follows:—

"(j.) limiting or regulating the hours of duty of any employees or class or classes of employees, with a view to the safety of the public and of employees."

Apart from the fact that this legislation is not a general power to regulate hours of duty, but only to regulate with a view

to safety, I think it is not an exercise by the Dominion of its power. The section merely gives the power to the Board, but the Board has not exercised it. Merely authorizing another body to deal with the question is not, in my opinion, an exercise of the right. See 1925 S.C.R. 505 at 511, supra.

As to the argument based upon regulation 8 as to the validation of the contract, I refer to the opinion of the Chief Justice upon this point certified in *In the Matter of the "Constitutional Questions Determination Act"* and in the *Matter of a Reference as to the Effect of the "Hours of Work Act" to Metal-liferous Mines*, with which I respectfully agree.

As I think the field is clear I would answer this question in the affirmative. I say, in addition, that the whole Act applies.

HAROLD B. ROBERTSON, J.A.

I concur.

GORDON MCG. SLOAN, C.J.B.C.

I concur.

SIDNEY SMITH, J.A.

I concur.

H.I.B., J.A.

Vancouver, B.C.,
 March 27th, 1947.

Court of Appeal

No. 6
Registrar's
Certificate as
to Deposit
of Security
May 3, 1947

IN THE MATTER OF the Constitutional Questions
Determination Act, Chapter 50, R.S.B.C. 1936.

AND:

IN THE MATTER OF a Reference as to the applica-
tion of the "Hours of Work Act", being Chapter 122,
R.S.B.C. 1936, as amended, to the employees of the
Canadian Pacific Railway Company at the Empress
Hotel, Victoria, British Columbia.

10

No. 6

CERTIFICATE

I HEREBY CERTIFY that Canadian Pacific Railway
Company has deposited with me the sum of Five Hundred
(\$500.00) Dollars of lawful money of Canada as security that
the said Canadian Pacific Railway Company will effectually
prosecute its appeal to the Supreme Court of Canada from the
Judgment of this Honourable Court pronounced on the 27th day
of March, A.D. 1947, and will pay such costs and damages as may
be awarded against the said Canadian Pacific Railway Company
by the Supreme Court of Canada.

20

DATED at Victoria, B.C., this 3rd day of May, A.D. 1947.

"Cleeve G. White"

Registrar.

Court of Appeal, Victoria Registry.

B.C.L.S.

\$1.00

Seal
Court of Appeal.

Victoria Registry
May 3, 1947

30

COURT OF APPEAL

RECORD
Court of Appeal
No. 7
Order
Approving
Security
May 7, 1947

IN THE MATTER OF the Constitutional Questions
Determination Act, Chapter 50, R.S.B.C. 1936.

AND:

IN THE MATTER OF a Reference as to the applica-
tion of the "Hours of Work Act", being Chapter 122,
R.S.B.C. 1936, as amended, to the employees of the
Canadian Pacific Railway Company at the Empress
Hotel, Victoria, British Columbia.

10

CORAM:

The Honourable the Chief Justice of British Columbia

Victoria, B.C., the 7th day of May, A.D. 1947.

UPON MOTION of Canadian Pacific Railway Company,
and Upon hearing Mr. J. A. Wright of Counsel for the said Cana-
dian Pacific Railway Company, and Mr. H. Allan Maclean of
Counsel for the Attorney-General for British Columbia, and
Upon reading the Notice of Motion herein and the Certificate of
the Registrar of this Honourable Court, and the Proceedings

20

herein.

IT IS ORDERED that the sum of Five Hundred (\$500.00)
Dollars of lawful money of Canada deposited by the said Cana-
dian Pacific Railway Company with the Registrar of this Hon-
ourable Court as security that the Canadian Pacific Railway
Company will effectually prosecute its appeal to the Supreme
Court of Canada from the Judgment of this Honourable Court
pronounced on the 27th day of March, A.D. 1947, and will pay
such costs and damages as may be awarded against the said Cana-
dian Pacific Railway Company by the Supreme Court of Canada,
be allowed as proper security for the said Appeal.

30

"Gordon McG. Sloan"
C.J.B.C.

Entered Vol. 7 Fol. 473
Date 8.5.47
By R.M.B.

Victoria
May 7-1947
Registry

B.C.L.S.
60c

H.A.M. Checked
By R.M.B.

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

BETWEEN :

CANADIAN PACIFIC RAILWAY COMPANY,
Appellant

AND

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA
Respondent 10

No. 8

AGREEMENT AS TO CONTENTS OF CASE

WE, the undersigned, solicitors for the Appellant and Respondent herein do hereby agree that the following shall constitute the printed Case on the appeal herein to the Supreme Court of Canada :

1. Contents of the Appeal Book before the Court of Appeal for British Columbia on the Reference.
2. Certificate of the Chief Justice of British Columbia to 20 His Honour the Lieutenant-Governor in Council, dated March 27th, 1947.
3. Reasons for the Opinion of the Honourable the Chief Justice in the matter of a Reference as to the effect of the Hours of Work Act to Metalliferous Mines, dated March 27th, 1947.
4. Reasons for the Opinion of the Honourable Mr. Justice O'Halloran, dated March 27th, 1947.
5. Reasons for the Opinion of the Honourable Mr. Justice Robertson, dated March 27th, 1947. 30
6. Certificate of the Registrar as to the deposit of security, dated May 3rd, 1947.

7. Order approving the security for the costs of the appeal to the Supreme Court of Canada, dated May 7th, 1947.
8. Agreement as to Contents of Case.
9. Registrar's Certificate as to Case.

RECORD

*Supreme Court
of Canada*

No. 8
Agreement
as to Contents
of Case
Sept. 4, 1947
(Contd.)

DATED at Vancouver, B.C., this 4th day of September,
A.D. 1947.

“J. A. Wright”
Solicitor for Appellant.

“H. Alan Maclean”
Solicitor for Respondent.

IN THE SUPREME COURT OF CANADA
ON APPEAL FROM THE COURT OF APPEAL OF
BRITISH COLUMBIA

BEFORE:

The Honourable Mr. Justice
Taschereau in Chambers

} Friday, the 3rd day of
October, A.D. 1947.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Appellant, 10

— AND —

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA

Respondent.

No. 9

UPON APPLICATION made on behalf of the Attorney-General of Canada and upon hearing what was alleged by counsel for the Attorney-General and for the Appellant and Respondent;

IT IS ORDERED that leave be granted to the Attorney-General of Canada to intervene in this Appeal upon terms that the Attorney-General may be represented by counsel upon the argument of the said Appeal and file a factum. 20

AND IT FURTHER ORDERED that the costs of and incidental to this application do follow the event.

(Sgd) "PAUL LEDUC,"

Registrar.

P A R T I I
EXHIBIT No. 1

WARTIME WAGES CONTROL ORDER, 1943

P.C. 9384, December 9, 1943

*As amended by P.C. 1727, March 13, 1944; P.C. 3277, May 4, 1944;
P.C. 655, January 30, 1945; P.C. 348, January 31, 1946; P.C. 1996,
May 17, 1946; and P.C. 2432, June 20, 1946.*

RECORD

Court of Appeal

Exhibit No. 1
Wartime
Wages Control
Order, 1943,
P.C. 9384
Dec. 9, 1943

10 Whereas by reason of the expansion of Canada's war effort and consequent scarcities of materials, supplies, and manpower, it became apparent in 1941 that there would result a serious inflation in Canada with the probability of great economic dislocation and of hardship and suffering to the Canadian community unless preventive measures were taken;

 And whereas the Government of Canada has, accordingly, deemed it essential to the war effort and to the national welfare, both in the war and in the post-war period, to take measures leading to economic stabilization in Canada during the war, including as necessary components the maintenance of price ceilings and the control of wage rates;

20 And whereas machinery to give effect to such measures was accordingly established and as a result the cost of living in Canada has risen, since the outbreak of the war, less than one-third as much, and since such controls were established less than one-tenth as much, as in the corresponding periods of the last war;

30 And whereas it being the declared policy of the Government of Canada to take all practicable measures to stabilize living costs at present levels, with further appropriate action to be considered in the event that an appreciable continued change in living costs renders a review of such policy advisable, provision for the payment of bonuses in respect of increases in the cost of living is no longer deemed necessary, and it is desirable to make provision for the incorporation of the bonuses presently payable under the Wartime Wages Control Order into wage rates;

40 And whereas as a result of its experience and following upon a recent inquiry undertaken by it, the National War Labour Board has recommended that the provisions of the Wartime Wages Control Order be simplified and be amended to make more apt provision for the rectification of any gross inequalities and injustices in wage rates insofar as this is possible consistently with the paramount principle, essential to the national welfare, of price stabilization;

Court of Appeal

Exhibit No. 1
Wartime
Wages Control
Order, 1943,
P.C. 9384
Dec. 9, 1943
(Contd.)

And whereas the Minister of Labour is of the opinion that it is necessary for the security, defence, peace, order and welfare of Canada to make provision for the matters aforesaid;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, concurred in by the Minister of Finance, and under and by virtue of the powers conferred by the War Measures Act, and otherwise, is pleased to order as follows:

1. The Wartime Wages Control Order established by Order in Council of the 10th July, 1942, (P.C. 5963) as amended, is hereby revoked. 10

2. The annexed Wartime Wages Control Order, 1943, is hereby made and established in substitution for the Order hereby revoked.

3. All persons appointed to any Board, Committee, Office or position under the said Wartime Wages Control Order, as amended, or under any other Order in Council providing for the appointment of persons to offices or positions in connection with the administration of the said Wartime Wages Control Order, as amended, shall continue to hold office on the said Board or Committee or in the said office or position under the Wartime Wages Control Order, 1943, hereby made until their appointment is revoked or otherwise terminated under the provisions of the said Wartime Wages Control Order, 1943, or otherwise. 20

4. All directions and by-laws made under the Wartime Wages and Cost of Living Bonus Order made by Order in Council P.C. 8253 of October 24, 1941, as amended, or under the said Wartime Wages Control Order, as amended, shall continue in force insofar as they are not inconsistent with the provisions of the Wartime Wages Control Order, 1943, hereby made, until they are revoked or varied under the provisions of the said Wartime Wages Control Order, 1943. 30

5. (1) Where an application has been received by a War Labour Board constituted under the Wartime Wages Control Order prior to the date of this Order for any direction authorized to be made under the said Wartime Wages Control Order, and no direction has been made by the said Board pursuant thereto prior to such date, all proceedings in connection with such application shall be continued by the War Labour Board constituted under the Wartime Wages Control Order, 1943, hereby made, in the place of the Board to which such application was made and, notwithstanding the revocation of the Wartime Wages Control Order, the Board so constituted shall, subject to sub- 40

paragraph (2) of this paragraph, give the direction which in its opinion ought to have been given if the said Wartime Wages Control Order had been continued in full force and effect.

10 (2) Nothing contained in sub-paragraph (1) of this paragraph shall be deemed to authorize an employer to omit to comply with any provision of the Wartime Wages Control Order, 1943, requiring him to establish any single wage rate or range of wage rates for an occupational classification of his employees, and the War Labour Board constituted under the Wartime Wages Control Order, 1943, by which any proceedings pursuant to an application under the Wartime Wages Control Order, are continued, shall base its finding for any direction pursuant thereto, on single rates or ranges so required to be established, and in comparison with other single rates or ranges so required to be established insofar as they are relevant.

(3) Any direction given pursuant to sub-paragraph (1) of this paragraph shall have the same force and effect as if given under the Wartime Wages Control Order, 1943.

20 6. Words and expressions in this Order have the same meaning as in Part II of the Wartime Wages Control Order, 1943, hereby made, except that "direction" includes any authorization, declaration, determination, direction, finding or order.

A. D. P. HEENEY,
Clerk of the Privy Council.

ORDER

1. This Order may be cited as the Wartime Wages Control Order, 1943.

PART I

Administration

30 CONSTITUTION OF THE NATIONAL WAR LABOUR BOARD

*2. (1) There shall be a National War Labour Board (hereinafter referred to as the National Board) consisting of three members one of whom shall be chairman.

(2) The Governor in Council may appoint one or more alternate chairmen of the National Board any one of whom may act in the absence of the Chairman and while so acting, an alternate chairman shall be deemed to be a member of the Board and shall exercise the powers of the Chairman.

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(3) The members of the National Board shall be appointed by the Governor in Council and shall hold office during pleasure.

(4) The head office of the National Board shall be in Ottawa.

(5) A majority of the members of the National Board shall constitute a quorum.

(6) A decision of the majority of the members of the National Board present and constituting a quorum shall be a decision of the Board and in the event of a tie the Chairman shall have a casting vote.

(7) There shall be a National War Labour Committee consisting of eight or more members, for the purpose of consulting with and assisting the National Board, the members of such National War Labour Committee to be appointed by the Governor in Council to hold office during pleasure and to be selected as to four or more of such members having regard to the interests of employers and as to an equal number of such members having regard to the interests of employees. 10

(8) The members of the National Board shall be paid such salaries as may be fixed by the Governor in Council and such expenses as may be incurred by them in the discharge of their duties. 20

(9) The members of the National War Labour Committee shall be paid such salaries, per diem allowances or expenses as may be fixed by the Governor in Council.

**Subsecs. (1), (2), (5), (6) amended by Order in Council P.C. 1727, Mar. 13, 1944; subsecs. (1) and (2) amended by Order in Council P.C. 2432, June 20, 1946.)*

STAFF

3. (1) The National Board may appoint an officer to be the Chief Executive Officer of the National Board who shall be paid such salary as may be fixed by the Governor in Council. 30

(2) The Department of Labour shall furnish such technical and clerical assistance to the National Board as may be possible, and the National Board, with the approval of the Governor in Council, may employ such other officers and employees as may be necessary for the conduct of its business and may, with such approval, fix their remuneration.

DUTIES AND POWERS OF NATIONAL BOARD

4. (1) The National Board shall be charged with

(a) the administration of this Order including the supervision, direction and control of the work of the Regional Boards constituted under this Order, and

(b) such other duties as may be assigned to it by the Governor in Council or by the Minister of Labour.

(2) The National Board shall, as directed by the Minister of Labour or from time to time as it deems advisable, investigate wage conditions and labour relations in Canada and report thereon together with such recommendations as it may deem advisable, to the Minister of Labour.

5. (1) The National Board shall have all the powers and authority of a Commissioner appointed under Part I of the Inquiries Act.

(2) The Chairman or any member of the National Board may administer oaths.

6. The National Board may, with the approval of the Minister of Labour, make such by-laws as may be necessary

(a) to enable it to carry into effect the duties imposed upon it by this Order;

20 (b) to provide for the supervision and control of its officers, clerks and employees; and

(c) to assign to the Regional Boards duties and responsibilities under this Order and to confer upon Regional Boards authority to exercise, in the discharge of such duties and responsibilities, all or any of the powers of the National Board under Part II of this Order except the powers conferred on the National Board by subsection (2) of section 15, and paragraphs (a) and (c) of section 29 of this Order.

30

REGIONAL WAR LABOUR BOARDS

7. (1) There shall be nine Regional War Labour Boards (hereinafter referred to as Regional Boards) one for each province, each of which shall consist of three or more members, one of whom shall be Chairman, one or more appointed as representative of employers and an equal number appointed as representative of employees.

(2) The Chairman of the Regional Board for each province shall be appointed by the Governor in Council.

40 (3) The Chairman of each Regional Board may designate a person to be Vice-Chairman thereof to preside over the Regional

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Board in his absence who shall for such purpose be a member of the Board, but where the Chairman is a person other than a Provincial Minister, no such appointment shall be made except with the approval of the Minister of Labour of Canada.

(4) The members of each Regional Board appointed as representative of employers and employees shall be appointed by the Governor in Council, on the recommendation of the Minister of Labour after consultation with the Minister of Labour or other appropriate Minister of the province concerned, and with employer and employee organizations, as the case may be, and shall hold office during pleasure; and the head office of each Regional Board shall be at such place as may be determined by the Regional Board. 10

(5) A majority of the members of each Regional Board shall constitute a quorum of the Regional Board.

(6) The Vice-Chairman and members of the Regional Board appointed as representative of employers and employees shall be paid such per diem allowance or expenses as may be fixed by the Governor in Council.

(7) Where the Chairman of a Regional Board is a person other than a Provincial Minister he may be paid such salary, per diem allowance or expenses as may be fixed by the Governor in Council. 20

(8) Each Regional Board may, with the approval of the National Board, appoint an executive officer to be the Chief Executive Officer of the Regional Board and such officer shall be paid such salary as may be fixed by the Governor in Council.

(9) The Governor in Council may appoint a person who is representative of employers or employees, as the case may be, to act as an alternate member of a Regional Board in the absence of a member appointed as representative of employers or employees, and while so acting an alternate member shall be deemed to be a member of the Board. 30

(Sub-para. (9) added by Order in Council P.C. 1996, May, 17, 1946.)

DUTIES AND POWERS OF REGIONAL BOARDS

8. (1) A Regional Board shall be charged with such duties and responsibilities under this Order as may be assigned to it by the National Board and shall exercise such powers of the National Board under this Order as it is authorized to exercise under the by-laws of the National Board. 40

(2) Where any Regional Board purports to make any direction under the provisions of this Order, it shall be conclusively presumed for the purpose of any proceedings in any court pursuant to this Order that the power to make such direction is validly and effectively conferred on such Regional Board by the by-laws of the National Board.

(3) A Regional Board shall have all the powers and authority of a Commissioner appointed under Part I of the Inquiries Act.

10 (4) The Chairman or any member of a Regional Board may administer oaths.

REVIEW OF REGIONAL BOARD DECISIONS

9. A Regional Board shall report to the National Board every decision or direction made by it under this Order forthwith upon the making thereof, and shall make such other reports or returns in respect of the performance of its duties and responsibilities or the exercise of its powers under this Order as the National Board may require.

20 10. (1) In order to provide for uniformity in the administration of this Order throughout Canada and to avoid dissatisfaction which would otherwise result from the issue of inconsistent directions by Regional Boards, the National Board shall arrange for the review of every decision or direction of each Regional Board, and if in the opinion of the National Board any such decision or direction is not in accordance with the purposes or provisions of this Order, the National Board may of its own initiative, after giving notice to the parties concerned and giving them an opportunity to submit further representations, vary or
30 revoke any such decision or direction and in doing so shall advise the Regional Board of its reasons therefor.

(2) Where on a review under the powers conferred by this section the National Board varies or revokes any decision or direction of a Regional Board, the decision or direction of the National Board shall be effective only from the date of the making thereof.

(Amended by Order in Council P.C. 1727, March 13, 1944.)

APPEALS

40 11. (1) Any person interested in or affected by any decision or direction of a Regional Board may appeal to the National Board if

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(a) the Regional Board making such decision or direction grants leave so to appeal and the request for such leave to appeal has been made within thirty days of the announcement of the decision or direction of the Regional Board, or

(b) the National Board grants leave to so appeal and the request for such leave has been made within sixty days of such announcement.

(2) On any such appeal the National Board may make the decision or direction which in its opinion the Regional Board ought to have made and the decision or direction of the National Board shall constitute the decision or direction of the Regional Board as if originally made by it. 10

(3) "Direction" shall have the same meaning in this section and in subsection (2) of section 8, and sections 9 and 10 of this Part as in Part II of this Order.

EXPENSES

12. The administrative expenses of the National Board and of the Regional Boards, other than the salaries and usual travelling expenses of Dominion or Provincial officials, shall be paid out of the War Appropriation. 20

PART II

Wage Rates

13. (1) In this Part, unless the context otherwise requires:

(a) "cost of living bonus" means a periodic supplement to the wages paid to an employee in respect of changes in the cost of living;

(b) "direction" includes any authorization or determination made by the National Board under the authority of this Order; 30

(c) "employee" means any person employed by an employer under a contract of service except a person employed in domestic services in a private home or employed to do work of a casual nature other than in the trade or business of the employer;

(d) "employer" means any person, firm or corporation employing any person and shall include His Majesty the King in right of Canada, but shall not include:

- (i) any department or agency of the Government of Canada subject to the provisions of Order in Council P.C. 6702, of August 26, 1941, as amended; or
- (ii) any department, branch or portion of any Provincial Government; or
- (iii) any agent of the Crown in the right of any Province; or
- 10 (iv) any municipality and any undertaking operated by the council or by a committee of the council of the municipality, but shall include a corporation carrying on an undertaking in any municipal area, which corporation is separate from the municipality, notwithstanding that the municipality or council exercises a measure of control over such corporation; or
- (v) any person, firm or corporation operating any hospital or any religious, charitable or educational institution, or association, if such hospital or such institution or association is not carried on for purposes of gain; or
- 20 (vi) any person, firm or corporation engaged in agriculture, horticulture, fishing, hunting or trapping;
- (e) "incentive rate" means a piece work rate or a rate calculated on the basis of a commission on the volume or value of results or any other rate calculated on a basis other than solely on the basis of time worked;
- (f) "National Board" includes, except in subsection (2) of section 15, and paragraphs (a) and (c) of section 29 and in section 31 of this Part, a Regional Board in respect of employers and matters in respect of which the Regional Board is by the by-laws of the National Board, authorized to exercise the powers of the National Board under this Order;
- 30 (g) "normal working hours" means the hours normally worked by an employee on a full time basis in the standard work week established by practice or collective agreement and not considered to be overtime, and where an employer has established a standard work week in accordance with instructions of the National Board for the purpose of computing cost of living bonus payable under the Wartime Wages Control Order, means the hours
- 40 comprised in such standard work week;

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- (h) "occupational classification" means a classification of employees on the basis of
- (i) the performance of similar work or duties; and
 - (ii) the exercise of a like type and degree of skill and accuracy in the performance thereof,
- and where only one employee is employed to perform work or duties of a particular kind or to exercise a particular type and degree of skill and accuracy in the performance of any work or duties of a particular kind, means the job or position occupied by such employee; 10
- (i) "previous authorized bonus" means a cost of living bonus authorized or required to be paid by an employer to his employees in any occupational classification by or pursuant to the Wartime Wages and Cost of Living Bonus Order (Order in Council, P.C. 8253, dated October 24, 1941), or the Wartime Wages Control Order, or the Wartime Salaries Order or any Order in Council specially applying to the employer or by or pursuant to any declaration, determination, direction, instruction, order or General Order made under the authority of 20 the said Orders;
- (j) "previous authorized single rate" or "previous authorized range" means the single rate or range, not including cost of living bonus, authorized or required to be paid by an employer to his employees in any occupational classification in respect of work performed during normal working hours by or pursuant to the Wartime Wages and Cost of Living Bonus Order (Order in Council, P.C. 8253, dated October 24, 1941), or the Wartime Wages Control Order, or the Wartime Salaries Order or any 30 Order in Council specially applying to the employer or by or pursuant to any declaration, determination, direction, instruction, order or General Order made under the authority of the said Orders;
- (k) "range of rates" or "range" means a group of two or more wage rates, inclusive of the highest and lowest wage rate in such group, paid by an employer to employees in one occupational classification where more than one rate is paid by the employer to employees in the classification; 40
- (l) "Schedule A" means Schedule A to this Order;
- (m) "single" with reference to a wage rate means a rate which is payable to all employees in one occupational

classification and in respect of which no range is paid by the employer;

- (n) "time rate" means a wage rate calculated solely on the basis of time worked;
- (o) "wages" include wages, salary, commissions, gratuities, emoluments or other remuneration paid to, or other benefit having a pecuniary value conferred on an employee by an employer in respect of the services of the employee, including any share of profits or bonuses dependent upon the profits of the employer and all other forms of "income" as defined by section 3 of the Income War Tax Act if such income is related to the services rendered by the employee, and includes payments or benefits aforesaid made to or conferred on persons other than the employee in respect of the services rendered by the employee;
- (p) "wage rate" or "rate" means the basis of the calculation of the wages paid to an employee whether such basis of calculation is with reference to a period of time worked or on a piece work basis or as a commission on volume or value of results or on any other incentive basis, and where the basis of calculation of the wages paid to an employee is a combination of such bases of calculation, means each such basis; and
- (q) "Wartime Wages Control Order" means the Wartime Wages Control Order made by Order in Council, P.C. 5963, dated July 10th, 1942, as amended.

(2) For the purpose of this Order, an employee in any office, factory, shop or undertaking whether his compensation is called wages or salary,

- (a) who is actually engaged in and whose principal duty is the performance of work not of a supervisory character is below the rank of foreman or comparable rank;
- (b) who has direct supervision of the employees engaged in such work and whose duties are mainly supervisory, is a foreman or of a rank comparable to a foreman,

if such employee does not, in either case, discharge duties and responsibilities of an executive character.

(3) If the Lieutenant-Governor in Council of a province by order consents, or if a Minister of the Government of a province authorized on that behalf by the Lieutenant-Governor in Coun-

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oil of such province signifies in writing to the Minister of Labour of Canada that he consents to the application of the provisions of this Order in respect of a municipality in such province, the provisions of this Order shall on and after the date of such consent be applicable to such municipality as an employer, notwithstanding sub-paragraph (iv) of paragraph (d) of subsection (1) of this section.

(4) If any person, firm or corporation included within the provisions of sub-paragraphs (v) and (vi) of paragraph (d) of sub-section (1) of this section has employees engaged in other employments than those specified in such sub-paragraphs, such person, firm or corporation shall, notwithstanding anything contained in the said subsection (1), be an employer subject to the provisions of this Order in respect of such other employees. 10

Purposes of Order

14. It is the purpose of this Order

- (a) to provide for the establishment of wage rates incorporating therein cost of living bonuses payable in respect of the rise in the cost of living;
- (b) to stabilize the wage structure in Canada established in this manner in order to maintain stability in prices and prevent increases in the general cost of living; and 20
- (c) to make provision for orderly adjustment of wage rates on such basis as and to the extent that the National Board finds just and reasonable in the circumstances, insofar as this is possible and consistent with the paramount principle of the maintenance of stability in prices.

(Sub-para. (c) amended by Order in Council P.C. 2432, June 20, 1946.)

Establishment of Wage Rates

30

15. (1) Every employer shall establish a single rate or range in the manner prescribed in the rules set out in Schedule "A" for each occupational classification of employees in his employment

- (a) for which the previous authorized single rate or the highest rate in the previous authorized range is less than \$250 per month, or,
- (b) the employees in which are, notwithstanding that the said rates are rates of \$250 per month or more, not above the rank of foreman or comparable rank,

provided that, where the previous authorized single rate or the highest rate in the previous authorized range for an occupational classification is a rate of \$250 or more per month, the employees in the classification shall be presumed to be above the rank of foreman or comparable rank unless the nature of their duties and responsibilities and their relationship to other employees indicates clearly that they are not above the said rank.

(2) In the case of an occupational classification of employees for which the previous authorized single rate or the highest
10 rate in the previous authorized range was a rate of more than \$175 per month and for which a single rate or range had not been required to be established under this order prior to January 30, 1945, for the purposes of this order the previous authorized bonus shall include only any such bonus actually being paid to the employees in the classification in the last payroll period ending on or before December 1, 1944.

(3) The National Board may, by order, make additional rules not inconsistent with the rules set out in Schedule "A" as to the manner in which an employer shall establish single rates or
20 ranges for the occupational classifications of his employees specified in subsection (1) of this section.

(4) The National Board may direct the manner in which a rate or range shall be established by an employer for an occupational classification of his employees to give effect to the rules set out in Schedule "A", or any additional rules made under subsection (3) of this section.

(Amended by Order in Council P.C. 655, January 30, 1945.)

Stabilization of Wage Rates

16. (1) No employer shall, except in accordance with a writ-
30 ten direction of the National Board pay wages to an employee in an occupational classification for which he is required to establish a single rate or range under section fifteen of this order, other than an employee in an occupational classification referred to in subsection two of the said section fifteen, at a rate other than a single rate or a rate within a range so established.

(2) No employer shall, except in accordance with a written
40 direction of the National Board, in any payroll period commencing on or after March 15, 1945, pay wages to an employee in an occupational classification referred to in subsection two of section fifteen of this order at a rate other than a single rate or a rate within a range established in the manner prescribed by the said section fifteen for such classification and until the said first

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payroll period the employer shall not, except in accordance with a written direction of the National Board, pay wages to an employee in the classification at a rate other than the previous authorized single rate or a wage within the previous authorized range together with the previous authorized cost of living bonus, if any, actually being paid to the employee in the last payroll period ending on or before December 1, 1944.

(Amended by Order in Council P.C. 655, January 30, 1945.)

17. No employer shall pay wages to an employee for the performance of work or duties or for the exercise of a type and degree of skill and accuracy in the performance of any work or duties not performed and not exercised by his employees in any occupational classification prior to December 9, 1943, or who are employed in any establishment in which, or at any site of operations at which, the employer commenced operations after the said date 10

(a) at a rate of less than \$250 per month, or

(b) at a rate of \$250 per month or more, if the employee is not above the rank of foreman or comparable rank,

until he has obtained a direction of the National Board establishing a single rate or range for the occupational classification in which such employee is employed or unless the payment of such rate was duly authorized prior to January 30, 1945, pursuant to this Order or the Salaries Order; provided that where the employer proposes to pay wages to such employee at a rate of \$250 per month or more, the employee shall be deemed to be above the rank of foreman or comparable rank and subject to the provisions of the Wartime Salaries Order unless the National Board determines that he is not above the said rank. 20

(Amended by Order in Council P.C. 655, January 30, 1945.) 30

18. No employer shall, except in accordance with a written direction of the National Board, alter any term of employment directly or indirectly increasing or decreasing a single rate or the rates within a range established by him under section 15 of this Order or by or pursuant to a direction of the National Board under this Order.

19. No employer shall pay wages to an employee, or employ an employee on terms which are in contravention of or otherwise than in compliance with any direction or order made by the National Board under this Order given or made to or in respect of, such employer. 40

Powers of the National Board

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20. (1) The National Board may
- (a) authorize or direct an employer to increase a single rate or the rates of a range established by him under this Order, or by or pursuant to a direction of the National Board, for an occupational classification of his employees if, and to the extent that, the National Board finds that such increased rate or range is just and reasonable, and is consistent with, and will give effect to, the purposes of this Order, having regard to all the circumstances deemed by it, in its discretion, to be material;
- 10
- (b) authorize or direct an employer
- (i) to alter a term of employment, which may have the effect of increasing, directly or indirectly, a single rate or the rates within a range established under this Order for an occupational classification of his employees; or
- (ii) to establish a single rate or range for a new occupational classification of his employees in respect of which section seventeen of this Order is applicable; or
- 20
- (iii) to establish a range of rates for an occupational classification for which such employer pays only a single rate established under this Order; or
- (iv) to change a time rate or range established under this Order into a rate or range calculated on any other basis, or to change a rate or range established under this Order on any other basis of calculation into a time rate or range; or
- 30
- (v) to establish a single rate or range of rates calculated on any other basis to be paid in conjunction with a time rate or range of rates established under this Order,
- in such manner or at such rate or range as in the opinion of the National Board is fair and reasonable and is consistent with and will give effect to the purposes of this Order, having regard to all the circumstances deemed by it, in its discretion, to be material.
- (2) In considering any application to authorize or direct an increase in wage rates under this section, the National Board shall take into account the probable effect of such increase in wage rates on the cost of living and on the cost of production or opera-
- 40

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tion of the business or industry in which the increased rates are to be paid, and shall require any employer who alleges that the proposed increase in wage rates will be beyond his ability to pay without increasing the price of his products or services rendered by him, to present evidence in writing demonstrating the basis of such statements and setting out the amount of the increase in the price of his products or services for authorization of which it will be necessary for him to apply if the proposed increase in wage rates is made. No decision of the National Board under this section shall be construed as imposing an obligation on or implying a commitment on the part of any other agency of government. 10

(Subsec. (1) amended by Order in Council P.C. 1727, Mar. 13, 1944; subpara. (b) (iv) of subsec. (1) further amended by Order in Council P.C. 3277, May 4, 1944. Subsecs. (2), (3) added by Order in Council P.C. 1727. Sub-para (a) of subsec. (1) amended by Order in Council P.C. 2432, June 20, 1946.)

21. Where the National Board authorizes or directs an employer to increase a single rate or the rates within a range for an occupational classification of his employees, the Board may authorize or direct the employer to increase single rates or rate within ranges for other occupational classifications of his employees, in order to maintain differentials in relation to the rates so increased, only if and to the extent that the Board finds that the conditions prescribed by paragraph (a) of section 20 of this Order to the powers of the Board to authorize or direct increases in such single rates or the rates within such ranges, exist, and only in smaller amounts where the rates are higher than the rates so increased. 20

22. (1) If the National Board finds that the rate or range of rates payable by an employer for an occupational classification of his employees engaged in international railway service was, at November 15th, 1941, pursuant to a collective agreement or to a recognized practice of long standing, based upon a rate or range of rates payable to similar employees of that employer outside of Canada, and if the National Board also finds that the rate or range of rates outside of Canada upon which the said rate or range of rates was based has been changed by a collective agreement, established practice or competent authority, the National Board may in its sole discretion authorize or direct the payment of a new rate or range of rates for that occupational classification in respect of employees engaged in international railway service based in a corresponding manner upon the corresponding new rate or range of rates payable outside of Canada. 30 40

(2) Any rate or range of rates established under subsection 1 of this section shall not be taken into account by the National Board in considering any other application for changes in wage rates.

(3) No authorization or direction may be made under this section by a Regional Board.

(Substituted for previous sec. 22 by Order in Council P.C. 1727, Mar. 13, 1944; subsec. (1) amended by Order in Council P.C. 3277, May 4, 1944.)

10

ANCILLARY PROVISIONS

Provincial Minimum Wage Legislation

23. (1) Notwithstanding anything contained in this Order, an employer may, without a direction from the National Board, increase a wage rate paid by him to an employee to the minimum wage rate for such employee established at any time by or pursuant to powers conferred by provincial minimum wage legislation, if such minimum wage rate is not in excess of thirty-five cents per hour or such higher rate per hour, if any, established for such employees by or pursuant to such legislation on November
20 15, 1941, or in excess of an equivalent rate where such rate is other than an hourly rate; and this Order shall not be deemed to authorize or require an employer to pay to an employee a wage rate less than such minimum wage rate or to relieve the employer from liability of any kind, under such provincial legislation or otherwise, for failure or omission so to do.

(2) Notwithstanding anything contained in this Order on and after June 30, 1946, it shall not be necessary for an employer to obtain a direction from the National Board.

30 (a) to increase a wage rate paid by him to an employee in an occupational classification to the minimum wage rate established for the occupational classification of such employee at any time after November 15, 1941, by or pursuant to powers conferred by provincial minimum wage legislation;

(b) to comply with the provisions of any provincial legislation concerning hours of work or vacations with pay.

(Subsec. (2) added by Order in Council P.C. 348, Jan. 31, 1946.)

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Adjustment of Incentive Rates

24 . An employer may, notwithstanding anything contained in this Order

- (a) change an incentive rate or range established by him under this Order or by or pursuant to a direction of the National Board for an occupational classification of his employees,
- (i) if such change is made to compensate for the addition, removal or alteration of a work element forming part of the operation or series of operations performed by the employees in such occupational classification, and is strictly commensurate with such addition, removal or alteration, and 10
- (ii) if that portion of the employer's cost of production representing the labour cost of such operation or series of operations is not increased, and
- (iii) if a flat rate or time rate or range of such rates is paid in conjunction with the incentive rate or range so established, if such flat rate or time rate or the rates within such range are not increased or decreased and are retained as part of the changed rate or range; 20
- (b) convert a time rate or range established by him under this Order or by or pursuant to a direction of the National Board for an occupational classification of his employees to an incentive rate or range if there was established by him under this Order an incentive rate or range in respect of the same operation or series of operations and if the conversion is effected in accordance with the same method of calculation followed by the employer in calculating such incentive rate or range. 30

Individual Employees

25. (1) Nothing contained in this Order shall be deemed in any way to prohibit an employer

- (a) from increasing or decreasing the rate paid to an individual employee within the limits of a range established by him under this Order or by or pursuant to a direction of the National Board for the occupational classification in which the employee is employed, or
- (b) from increasing, or after consultation with the employee, or his representatives or in accordance with the terms of 40

a collective agreement, if any, from decreasing the rate paid to an individual employee upon the promotion or demotion of the employee from one occupational classification to another occupational classification, if the wage rate paid to the employee after his promotion or demotion is the single rate or is a rate within the range established by the employer under this Order, or by or pursuant to a direction of the National Board, for such occupational classification;

- 10 (c) pursuant to an agreement with his employees or their representatives, from establishing or altering a term of employment concerning vacations with pay, off-shift differentials, hospital aid plans, annuities, pension plans or group insurance plans.

(2) A change in conditions of employment made by an employer pursuant to paragraph (c) of subsection one of this Section shall not be deemed to constitute grounds in support of an application to any other agency of government for permission to increase the maximum prices of his goods or services.

- 20 (*Subpara. (c) of subsec. (1) and subsec. (2) added by Order in Council P.C. 348, Jan. 31, 1946.*)

Payments to Employees other than Wages

26. No employer shall make any gratuitous payment or other gift of any kind whatsoever having a pecuniary value, other than a monetary Christmas gift not in excess of twenty-five dollars, to any of his employees in any occupational classification for which he is required to establish, or to obtain a direction of the National Board establishing a single rate or range under this Order; provided that where an employer paid to his employees in any such
 30 occupational classification prior to November 15, 1941, or thereafter pursuant to any authorization of the National Board, a voluntary periodical bonus other than a cost of living bonus, he may continue or discontinue the payment of such bonus to such employees, but if he continues payment thereof, the yearly rate of payment shall not exceed the rate of payment established by practice of the year ending November 15, 1941, or by such authorization.

27. Where an employer purports to make any payment by way of loan to any of his employees in any occupational classification for which he is required to establish or to obtain a direction of the National Board establishing a single rate or range
 40 under this Order, in addition to the wages paid to the employee

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under the contract of service between the employer and the employee,

(a) if such payment is made periodically at the same time or times as wages are payable under the contract of service, or

(b) if such payment is made otherwise than as provided in paragraph (a) of this section, unless it is proved that such payment was made in good faith as a loan which it is intended at the time of the making of the payment by both the employer and the employee will in fact be required to be repaid in full by the employee to the employer, 10

such payment shall, for the purpose of this Order or any proceedings taken pursuant to this Order, be conclusively presumed to be a payment of wages.

Additional Powers of National Board

28. The National Board may, for the purpose of this Order, determine

(a) the previous authorized single rate or the rates within the previous authorized range payable by an employer to his employees in an occupational classification; 20

(b) the previous authorized bonus payable by an employer to his employee in an occupational classification;

(c) the rate or range required to be established by the employer for an occupational classification of his employees in accordance with section 15 of this Order;

(d) whether an alteration in a term of employment of an employee will directly or indirectly increase or decrease a rate or the rates within a range established by the employer under this Order for the occupational classification in which the employee is employed; 30

(e) the occupational classification in which an employee should be classified;

(f) in any case of doubt or dispute with regard to the rank of the employee, whether such employee is above the rank of foreman or comparable rank;

(g) any other matter necessary to be determined for the making of any direction by the Board.

29. The National Board may, by order,

- 10 (a) make such regulations as it deems necessary to give effect to the provisions of this Order;
- (b) require an employer to make returns or reports furnishing information with respect to the work or duties performed by or terms of employment or working conditions of his employees in any occupational classification, the single rate or range or the amount of any cost of living bonus paid to such employees at any time prior to, on or after November 15, 1941, or such other information in respect thereof as the National Board deems advisable;
- 20 (c) exclude an employer from any of the provisions of this Order either in whole or in part or in respect of any employee or class of employees or in respect of any area designated by the National Board, if, in the opinion of the National Board, it is impracticable to administer any of such provisions in respect thereof or in any other case, if, in the opinion of the Board it is in the public interest so to do and if the Wartime Prices and Trade Board concur.

30 30. (1) Where any power is conferred on the National Board under this Order to give any direction or order the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the direction or order.

- (2) Any direction given by the National Board pursuant to this Order may be subject to such terms or conditions as the Board deems necessary to give effect to the purposes of this Order and may require the employer to give effect to such direction commencing with such date, either before or after the making thereof, as the Board, in its discretion, prescribes.

Directions Final and Conclusive in any Court

31. Any finding, direction or order given or made under the authority of this Order by the National Board, or by a Regional Board, until varied or revoked by the National Board on review or appeal, shall be final and conclusive for the purpose of any proceedings in any court taken pursuant to this Order and shall be accepted by and shall not be subject to review in such court.

40 Applications

32. Where it is provided in this Order that any direction or order may be given by the National Board an application may be

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made by an employer or by or on behalf of an employee for such direction or order.

Offences and Proceedings

33. Every employer, or officer or agent thereof, who

(a) causes a lockout of any of his employees, to deter or prevent any of his employees from making an application to a War Labour Board constituted under this Order, or who

(b) contravenes or omits to comply with any of the provisions of this Order or of any direction or Order made under the authority of this Order by a War Labour Board constituted under this Order, 10

shall be guilty of an offence and liable upon summary conviction to a fine of not less than \$100 and not more than \$5,000; and each payment of wages to an employee in contravention of any provisions of this Order or of any direction or order made under the authority of this Order shall constitute a separate offence under this section.

(Amended by Order in Council P.C. 1727, Mar. 13, 1944.)

34. Every employer who discharges or threatens to discharge or who in any way discriminates against an employee who 20

(a) has furnished information in support of any application or in any investigation made under the provisions of this Order; or who

(b) has given any information to a War Labour Board constituted under this Order regarding the wages or rates payable to such employee or any other employee of his employer; or who

(c) has initiated or taken part in any application made to any War Labour Board constituted under this Order, 30 shall be guilty of an offence and liable on summary conviction to a fine of not less than \$100 nor more than \$5,000; provided that it shall be a good defence to any prosecution under this section if it is proved that the discharge or threat of discharge or of alleged discrimination against any employee was made or done in good faith and not by reason of any act or conduct of the employee described in paragraphs (a), (b) or (c) of this section.

35. (1) Every employee who strikes or takes part in any strike

- (a) to obtain an increase in a single rate or range established under this Order, or pursuant to any direction of a War Labour Board constituted under this Order, or
- (b) to obtain the alteration of a term of employment which would, directly or indirectly, increase any such rate or range, or
- (c) for the purpose of obtaining any direction from or of influencing the decision of a War Labour Board constituted under this Order or in protest against or to obtain
- 10 shall be guilty of an offence and liable upon summary conviction to a fine of not more than Twenty Dollars for each day or part of a day he is on strike.

(2) The provisions of this section shall apply in respect of an employee who goes on or takes part in any strike, notwithstanding that an Industrial Disputes Inquiry Commission appointed under Order in Council P.C. 4020, dated June 6, 1941, as amended, or a Board of Conciliation appointed under the Industrial Disputes Investigation Act, has been established to inquire into or

20 to investigate or report on any dispute between an employee and his employer in connection therewith and whether or not such Commission or Board has made any report thereon.

(Amended by Order in Council P.C. 1727, Mar. 13, 1944.)

36. Any person who incites, encourages or aids any employer to do or to omit to do any act or thing in contravention of this Order or any employee to go on or to continue on strike in contravention of this Order shall be guilty of an offence and liable upon summary conviction to a fine of not more than Three Hundred Dollars.

30 *(Amended by Order in Council P.C. 1727, Mar. 13, 1944.)*

37. No prosecution shall be commenced in respect of any offence or offences under this Order or in respect of any offence or offences committed under the Wartime Wages and Cost of Living Bonus Order (Order in Council, P.C. 8253, of October 24, 1941), or the Wartime Wages Control Order, except with the consent in writing of the Minister of Labour and such consent shall be sufficient if it purports to be signed by the Minister of Labour and if the name of the accused is set out therein and if it indicates that the Minister of Labour has consented to the prosecution of the said person under this Order or under the said

40 Orders for an offence or offences.

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38. Any document purporting to contain or to be a copy of any bylaw, direction or order of the National Board, or of any Regional Board, and purporting to be signed by the Chairman or Vice-Chairman of any such Board or by the Chief Executive Officer or Secretary of the National Board, or Chief Executive Officer of a Regional Board, shall in any proceedings under this Order be evidence of the bylaw, direction or order therein contained or of which it purports to be a copy.

(Amended by Order in Council P.C. 1727, Mar. 13, 1944.)

39. The Minister of National Revenue shall, pursuant to section 8 (b) of the Excess Profits Tax Act and subsection (2) of section 6 of the Income War Tax Act, disallow as an abnormal expense the amount of any wages found by him to have been paid, or certified to him by the National Board as having been paid, in contravention of any of the provisions of this Order or of the Wartime Wages Control Order. 10

40. (1) Where a person has entered into a munitions contract which provides, in effect, that such person shall be paid the cost of carrying out the contract or any part thereof with or without a profit or fee, or that the prices specified in the contract may be adjusted or reduced to an amount which represents the cost of the services to be carried out or rendered under the contract plus a fair and reasonable profit, if such person makes any payment of wages to any of his employees engaged in carrying out the work under such contract at a rate in excess of the single rate or range established under this Order for the occupational classifications in which such employees are employed, such person shall not be entitled under the contract to a payment in respect of the amount of increase in cost occasioned by reason of such payment and the amount of such increase shall not be deemed to constitute part of the cost of the contract or in any way be taken into consideration in calculating such cost or the profit or fee, if any, to be paid to such person under the contract. 20 30

(2) "Munitions Contract" in this section has the same meaning as in section 13 of the Department of Munitions and Supply Act, as amended, and this section shall be read and construed as one with such section.

41. This Order shall have full force and effect notwithstanding any Dominion or Provincial Statute or Law.

SCHEDULE A

40

Rules for Establishment of Rates or Ranges of Rates

1. In these rules unless the context otherwise requires words and expressions have the same meaning as in Part II of the Order

and a reference to a rule by number means such rule in this Schedule.

Establishment of Wage Rates

TIME RATES

SINGLE TIME RATES

2. (1) Where there is a previous authorized single time rate payable for an occupational classification, the employer shall establish a single time rate for the classification in the place of such rate by adding to the previous authorized single rate.
- 10 (a) if it is an hourly rate—the amount arrived at by dividing the amount of previous authorized bonus by the number of normal working hours in each week;
- (b) if it is a daily rate—the proportionate daily amount of the previous authorized bonus;
- (c) if it is a weekly rate—the amount of the previous authorized bonus;
- (d) if it is a monthly rate—the amount arrived at by multiplying the previous authorized bonus by four and one-third.
- 20 2. A rate established in accordance with paragraph (1) of this rule shall be established at the nearest cent unless by established practice the employer's wage rates are fixed at the nearest half cent in which case it shall be established at the nearest half cent.

RANGES OF TIME RATES

3. Where there is a previous authorized range of time rates for any occupational classification, the employer shall establish a range of time rates for the classification in the place of such range, by adding to the highest and the lowest rate in the previous
- 30 authorized range, the amount which would be added to each such rate under rule 2 if each such rate were a single time rate.

AUTHORIZED BONUSES IN DIFFERENT AMOUNTS

4. Where an employer pays previous authorized bonuses of different amounts to employees in any one occupational classification

- (a) if the previous authorized rate for the classification is a single time rate—the employer shall establish a range of time rates for the classification in the place of such single rate, the lowest rate in the range to be established

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by adding the lowest amount of previous authorized bonus to the previous authorized single rate and the highest rate in the range to be established by adding the highest amount of previous authorized bonus to the previous authorized single rate;

- (b) if there is a previous authorized range of time rates—the employer shall establish a range of time rates for the classification in the place of such range, the lowest rate of the range to be established by adding the lowest authorized bonus to the lowest rate in the previous authorized range and the highest rate in the range to be established by adding the highest authorized bonus to the highest rate in the previous authorized range, 10

in the manner prescribed in rule 2 as if each such rate were a single time rate.

INCENTIVE RATES

5. Where there is a previous authorized single incentive rate or a previous authorized range of incentive rates for an occupational classification the employer shall establish a single incentive rate or range of incentive rates for the classification by incorporating into the previous authorized single rate or the rates in the previous authorized range the previous authorized bonus in such manner as will 20

- (a) result in the employees therein continuing to receive as wages for equal service performed during normal working hours substantially the same amount of compensation as they would have received if the payment to them of the previous authorized rate or range and previous authorized bonus had been continued, and
- (b) not result in an appreciable increase in the employer's labour cost of production per unit represented by payment of the previous authorized rate or range and the previous authorized bonus to employees therein. 30

COMBINED RATES

6. Where there is a previous authorized single incentive rate or range of incentive rates and a previous authorized single time rate or range of time rates for any occupational classification

- (a) where the said rates or ranges are payable in the alternative to employees in the classification and are not payable simultaneously in respect of the same work done, 40 the employer shall establish rates or ranges for the

classification in the place of such rates or ranges by incorporating the previous authorized bonus into each such rate or the rates in each such range in accordance with the foregoing rules as if such rate or range were a separate rate or range to which the relevant foregoing rules were applicable.

- (b) in any case other than that set out in paragraph (a) the employer shall establish rates or ranges in the place of such rates or ranges in accordance with rule 5 as if it was applicable in respect of both such rates or ranges.

EXHIBIT No. 2

WARTIME LABOUR RELATIONS REGULATIONS
P.C. 1003

AT THE GOVERNMENT HOUSE AT OTTAWA

THURSDAY, *the 17th day of February, 1944.*

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS it is deemed to be in the public interest, especially during the war period and more particularly in industries essential to the prosecution of the war, that employers and employees collaborate for the advancement of the enterprises in which they are engaged;

That employers and employees should freely discuss matters of mutual interest with each other;

That differences between employers and employees should be settled by peaceful means; and

That both employers and employees should be free to organize for the conduct of negotiations between them and that a procedure should be established for such negotiations;

AND WHEREAS it is therefore deemed necessary by reason of the war, for the security, defence, peace, order and welfare of Canada and for the effective prosecution of the war, that regulations be made in respect of such matters.

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour and under the authority of the War Measures Act, chapter 206 of the Revised Statutes of Canada, 1927, is pleased to make the regulations hereto attached and they are hereby made and established accordingly.

A. D. P. HEENEY,

Clerk of the Privy Council.

SHORT TITLE

1. These regulations may be cited as the Wartime Labour Relations Regulations.

INTERPRETATION

2. (1) In these regulations unless the context otherwise requires,

- (a) “appropriate War Labour Board” means, in connection with any matter the National War Labour Board or the Regional War Labour Board that has jurisdiction in the matter under the Wartime Wages Control Order, 1943;
- (b) “Board” means the Wartime Labour Relations Board established by these regulations;
- 10 (c) “certified bargaining representative” means a bargaining representative certified by the Board under these regulations;
- (d) “collective agreement” means an agreement in writing between an employer or an employers’ organization on the one hand and a trade union or an employees’ organization on the other hand containing provisions with reference to rates of pay, hours of work or other working conditions;
- (e) “Conciliation Board” means a Board appointed by the Minister under section fourteen;
- 20 (f) “employee” means a person employed by an employer to do skilled or unskilled manual, clerical or technical work; but does not include
- (i) a person employed in a confidential capacity or having authority to employ or discharge employees; or
- (ii) a person employed in domestic service, agriculture, horticulture, hunting or trapping;
- (g) “employer” means a person employing more than one employee and includes
- 30 (i) the National Harbours Board; and
- (ii) any other body incorporated to act as an agent of His Majesty in right of Canada except any such body whose employees are entitled to a cost-of-living bonus under the order made by the Governor in Council on the twenty-sixth day of August, nineteen hundred and forty-one, for the payment of a cost-of-living bonus to employees of the Government of Canada (P.C. 6702), as amended;
- 40 but does not include His Majesty or any person or corporation acting for or on behalf or as an agent of His Majesty except as hereinbefore expressly provided;

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- (*h*) “employers’ organization” means an organization of employers formed to regulate relations between employers and employees;
- (*i*) “employees’ organization” means an organization of employees formed to regulate relations between employers and employees;
- (*j*) “lockout” includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to accept terms of employment; 10
- (*k*) “Minister” means the Minister of Labour for Canada;
- (*l*) “prescribed” means prescribed by the Board;
- (*m*) “strike” or “to go on strike” includes the cessation of work by a body of employees acting in combination or a concerted refusal or a refusal under a common understanding of a number of employees to continue to work for an employer done to compel their employer, or to aid other employees to compel their employer, to accept terms of employment; 20
- (*n*) “trade union” means a provincial, national or international employees’ organization, or a local branch chartered by, and in good standing with, such an organization;
- (*o*) a reference to a section by number only is a reference to the section in these regulations bearing that number and a reference to a subsection by number only is a reference to the subsection bearing that number in the section where the reference occurs;
- (*p*) words importing the masculine gender include corporations, trade unions, employees’ organizations and employers’ organizations as well as females. 30

(2) No employee shall cease to be such within the meaning of these regulations by reason only of his ceasing to work as the result of a lockout, strike or his wrongful dismissal.

APPLICATION

3. (1) These regulations apply in the case of employees
- (*a*) who are employed upon or in connection with a work, undertaking or business that is ordinarily within the

legislative authority of Parliament, including, but not so as to restrict the generality of the foregoing,

- 10 (i) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime;
- (ii) lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting any province with any other or others of the provinces, or extending beyond the limits of the province;
- (iii) lines of steamships between a province and any British or foreign country;
- (iv) ferries between any province and any British or foreign country, or between two provinces; and
- (v) such works as, although wholly situate within the province, have been or may be declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces;
- 20 (b) who are employed upon or in connection with a work, undertaking or business that is essential to the efficient prosecution of the war; or
- (c) whose relations with their employers in matters covered by these regulations are ordinarily within the exclusive legislative jurisdiction of a provincial legislature to regulate and to whom these regulations have been applied by the provincial legislature in respect of their relations with their employers;

30 and to the employers of all such employees in their relations with such employees and to trade unions, employees' organizations and employers' organizations composed of such employees or employers.

(2) For the purposes of this section, the employees employed in a work, undertaking or business described in Schedule A to these regulations, and no others, shall be deemed to be employed in connection with a work, undertaking or business that is essential to the efficient prosecution of the war.

(3) Schedule A to these regulations may be amended, either by the addition or deletion of a class of employees, by an order
40 made by the Governor General in Council.

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(4) If a provincial legislature applies these regulations to any employees as provided for in paragraph (c) of subsection one, every person on whom duties are imposed and in whom powers are vested by these regulations shall perform and exercise such duties and powers with reference to such employees and their employers and trade unions, employees' organizations, and employers' organizations composed of such employees and employers in all respects as in the case of employees mentioned in paragraphs (a) and (b) of subsection one and their employers and employees' organizations and trade unions and employers' organizations composed of such employees and employers. 10

RIGHTS OF EMPLOYEES AND EMPLOYERS

4. (1) Every employee shall have the right to be a member of a trade union or employees' organization and to participate in the lawful activities thereof.

(2) Every employer shall have the right to be a member of an employers' organization and to participate in the lawful activities thereof.

(3) Where bargaining representatives have been certified under section eight, the bargaining representatives or the employees' employer may, in accordance with the procedure hereinafter set out, enter into negotiations with a view to the completion of a collective agreement between the employer concerned on the one hand and the trade union or employees' organization on the other hand. 20

CERTIFICATION OF BARGAINING REPRESENTATIVES

5. (1) The employees of any employer may elect bargaining representatives by a majority vote of the employees affected.

(2) If the majority of the employees affected are members of one trade union, that trade union may elect or appoint its officers or other persons as bargaining representatives on behalf of all the employees affected; for the purpose of this section, an employee shall be deemed to be a member of the trade union if he has in writing requested the trade union to elect or appoint bargaining representatives on his behalf. 30

(3) Where more than one employer and their employees desire to negotiate a collective agreement, the employees of such employers may elect bargaining representatives by a majority vote of the employees affected of each employer, or, if the majority of the employees affected of each employer are members of one trade union that trade union may elect or appoint its officers or 40

other persons as bargaining representatives on behalf of all the employees affected.

(4) If in accordance with established trade union practice the majority of a group of employees who belong to a craft by reason of which they are distinguishable from the employees as a whole, are separately organized into a trade union pertaining to the craft, such trade union may elect or appoint its officers or other persons as bargaining representatives on behalf of the employees belonging to that craft. Where any group claims and is entitled to the rights conferred by this subsection, the employees comprising the craft shall not be entitled to vote for any of the purposes of collective bargaining with that employer, except when the collective bargaining is in respect only of the craft to which they belong; nor shall they in any manner be taken into account in the computation of a majority in respect of any matter regarding which they are not entitled to vote.

(5). Two or more trade unions may, by agreement, join in electing bargaining representatives on terms consistent with these regulations.

6. When bargaining representatives have been elected or appointed, application may be made to the Board by or on behalf of such representatives for their certification as the bargaining representatives of the employees affected.

7. Upon such application the Board shall by an examination of records, by a vote or otherwise, satisfy itself that an election or appointment of bargaining representatives was regularly and properly made, and in the case of a trade union, that the trade union acted with the authority of the majority of the employees affected as prescribed by subsection two of section five, and that the unit of employees concerned is one which is appropriate for collective bargaining; and if the Board is not so satisfied, it shall reject the application.

8. (1) Where the Board is satisfied that the bargaining representatives have been duly elected or appointed, it shall certify them as bargaining representatives and shall specify the unit of employees on whose behalf the representatives so certified are authorized to act, and a collective agreement negotiated by such representatives shall be binding on every employee in the specified unit of employees.

(2) When bargaining representatives have been certified by the Board, the Board shall notify the applicants and the employer concerned of the certification.

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9. At any time after the expiry of ten months of the term of a collective agreement, whether entered into before or after the effective date of these regulations, the employees affected may elect new bargaining representatives in the manner provided in section five and application may be made to the Board by or on behalf of such bargaining representatives for their certification. Upon receipt of such application the Board shall deal with the same as in the case of an initial application for certification under the regulations. If on such application the Board certifies new bargaining representatives, they shall be substituted for the previous bargaining representatives of the employees affected as a party to the agreement in question, and as such may give notice of the termination thereof as provided for in the agreement or under these regulations. 10

NEGOTIATION OF COLLECTIVE AGREEMENT

10. (1) When bargaining representatives have been certified under these regulations they may give the employer concerned, or the employer concerned may give the bargaining representatives, ten clear days' notice requiring that he or they, as the case may be, enter into negotiations with a view to the completion of a collective agreement. 20

(2) The parties shall negotiate in good faith with one another and make every reasonable effort to conclude a collective agreement.

(3) At the request of the bargaining representatives they may be accompanied during the negotiations by officers or agents of the trade union or employees' organization concerned.

(4) No collective agreement containing wage provisions shall be executed insofar as it involves any change in existing wage rates or other wage provisions until the appropriate War Labour Board has approved any such change, but it may nevertheless be executed as to the other provisions before such approval is received. 30

(5) Every party to a collective agreement and every employee upon whom a collective agreement is made binding by these regulations shall do everything he is, by the collective agreement, required to do and shall abstain from doing anything he is, by the collective agreement, required not to do.

11. If negotiations for an agreement have continued for thirty days and either party to the negotiations believes that an agreement will not be completed in a reasonable time, it may so advise the Board indicating the difficulties encountered and may ask the Board to intervene with a view to the completion of an agreement. 40

12. (1) Upon receipt of advice under section eleven, the Board shall refer the matter to the Minister, who shall, within three days instruct a conciliation officer to confer with the parties and attempt to effect an agreement.

(2) A conciliation officer who has been instructed to confer with the parties under subsection one of this section, shall, within fourteen days of receiving his instructions, or within such longer period as the Minister may allow, report to the Minister setting out in full:—

- 10 (a) the matters, if any, on which the parties cannot agree and his recommendations with regard thereto;
- (b) the terms, if any, upon which the parties have agreed; and
- (c) whether, in his view, an agreement might be facilitated by appointment of a Conciliation Board.

13. (1) If a conciliation officer who has been instructed to confer with the parties recommends the appointment of a Conciliation Board, the Minister shall forthwith appoint a Conciliation Board consisting of three members appointed by the Minister after consultation with the parties as required by section 20 thirty.

(2) A Conciliation Board appointed under this section shall, upon its appointment, endeavour to effect an agreement between the parties on the matters on which they have not agreed and in any event, shall report the result of its endeavours and its findings and recommendations to the Minister within fourteen days of the appointment of the chairman thereof, or within such longer period as may be agreed upon by the parties or as may be allowed by the Minister.

30 14. If a Conciliation Board's report to the Minister shows that it has been unable to effect an agreement between the parties, the Minister shall cause a copy thereof to be sent forthwith to the parties and to the Board, and he may publish it in such manner as he thinks fit.

DURATION AND RENEWAL OF AGREEMENTS

15. No collective agreement shall be made for a term of less than one year, but where the term of an agreement is more than one year, the agreement shall contain or be deemed to contain a provision for the termination thereof at any time after one year 40 on two months' notice by either party thereto.

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16. Either party to a collective agreement may, on ten clear days' notice, require the other party to enter into negotiations for the renewal of the agreement within the period of two months prior to the expiry date, and both parties shall thereupon enter into such negotiations in good faith and make every reasonable effort to secure such a renewal.

GRIEVANCE PROCEDURE

17. Where an employee alleges that there has been a misinterpretation or a violation of a collective agreement, the employee shall submit the same for consideration and final settlement in accordance with the procedure established by the collective agreement, if any, or the procedure established by the Board for such case; and the employee and his employer shall do such things as are required of them by the procedure and such things as are required of them by the terms of the settlement. 10

18. (1) Every collective agreement made after these regulations come into force shall contain a provision establishing a procedure for final settlement, without stoppage of work, on the application of either party, of differences concerning its interpretation or violation. 20

(2) Where a collective agreement does not provide an appropriate procedure for consideration and settlement of disputes concerning its interpretation or violation thereof, the Board shall, upon application, by order, establish such a procedure.

UNFAIR PRACTICES

19. (1) No employer shall dominate or interfere with the formation or administration of a trade union or employees organization or contribute financial or other support to it; but an employer may, notwithstanding the foregoing, permit an employee or representative of a trade union or an employees' organization to confer with him during working hours or to attend to the business of the organization or union during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction of wages in respect thereof. 30

(2) No employer or employers' organization, and no person acting on behalf of same shall

(a) refuse to employ any person because the person is a member of a trade union or an employees' organization;

(b) impose any condition in the contract of employment seeking to restrain an employee from exercising his rights under these regulations; or 40

- (c) seek by intimidation, by dismissal or threat of dismissal, by any other kind of threat, by the imposition of a pecuniary or other penalty, or by any other means whatsoever, to compel an employee to abstain from becoming or continuing to be a member or officer or representative of a trade union or an employees' organization, or from exercising his lawful rights;

but nothing in these regulations shall be interpreted to affect, otherwise than as expressly stated, the right of an employer to
 10 suspend, transfer, lay off, or discharge employees for appropriate and sufficient cause.

20. (1) No person shall, with a view to compelling or influencing a person to join a trade union or employees' organization, use coercion or intimidation of any kind, but this subsection shall not be construed to prohibit the inclusion of any provision in a collective agreement.

(2) Except with the consent of the employer, no trade union or employees' organization, and no person authorized by the union or employees' organization to act on its behalf, shall attempt, at
 20 the employee's place of employment during his working hours, to persuade an employee to join the trade union or employees' organization.

(3) No trade union or employees' organization and no person acting on its behalf shall support, encourage, condone or engage in a "slowdown" or other activity designed to restrict or limit production; but this provision shall not be interpreted to limit a trade union's legal right to strike and a thing required by a provision in a collective agreement for the safety or health of the employees shall be deemed not to be a "slowdown" or de-
 30 signed to restrict or limit production.

(4) No trade union or employees' organization, and no person acting on its behalf, shall participate in, or in any way interfere with, the formation or administration of an employers' organization.

STRIKES AND LOCKOUTS

21. (1) No employee shall go on strike until

(a) bargaining representatives have been elected or appointed for the employees affected; and

40 (b) an attempt has been made to effect an agreement under sections eleven and twelve, and fourteen days have elapsed since the Conciliation Board reported to the Minister.

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(2) Where an application has been made under these regulations for the certification of bargaining representatives, the employer of the employees affected shall not declare or cause a lockout of the employees until an attempt has been made to effect an agreement under sections eleven and twelve, and fourteen days have elapsed since the Conciliation Board reported to the Minister.

(3) No employer who is a party to a collective agreement shall declare or cause a lockout and no employee bound thereby shall go on strike during the term of the collective agreement. 10

(4) Where a dispute has arisen by reason of a change in the existing terms of employment proposed by the employer, the employer shall not, without the consent of the employees affected, make such change effective until a period of two months has elapsed from the date when the employer notified the employees of such proposed change.

(5) Nothing in these regulations shall be interpreted to prohibit the suspension or discontinuance of an industry or of the working of any persons therein for a cause not constituting a lockout or a strike. 20

INFORMATION

22. (1) Each of the parties to a collective agreement shall forthwith upon its execution file one copy with the Board.

(2) The Board may require any employers' organization or trade union or local branch thereof, or an employees' organization affected by any application for certification of bargaining representatives, or affected by an existing collective agreement, to file with the Board:

(a) a statutory declaration stating the names and addresses of its officers; or 30

(b) a copy of its constitution and by-laws.

(3) Every employers' organization, trade union and employees' organization shall furnish to its members within three months of the end of its fiscal year a statement of its income and expenditures, and if required by the Board shall file a copy thereof with the Board for its information.

ADMINISTRATION

Wartime Labour Relations Board

23. There shall be a Board which shall be known as the Wartime Labour Relations Board and shall consist of a chairman, 40 vice-chairman, and not more than eight other members.

24. (1) The members of the Board shall be appointed by the Governor in Council and shall hold office during pleasure.

(2) The head office of the Board shall be in Ottawa.

(3) A majority of the members of the Board shall constitute a quorum and in the absence of the chairman the vice-chairman shall act as chairman.

(4) A decision of the majority of the members of the Board present and constituting a quorum shall be the decision of the Board, and in the event of a tie the chairman or acting chairman shall have a casting vote.

(5) The Board and each member thereof shall have the powers of a Commissioner under Part I of the Inquiries Act.

(6) The Board and each member thereof may receive and accept such evidence and information on oath, affidavit or otherwise as in its or his discretion it or he may deem fit and proper whether admissible as evidence in a court of law or not.

(7) The Board shall determine its own procedure but shall in every case give an opportunity to all interested parties to present evidence and make representations.

20 (8) Each member of the Board shall, before acting as such, take and subscribe before the Clerk of the Privy Council and shall file in the office of the said Clerk an oath of office in the following form:—

“I do solemnly swear that I will faithfully, truly and impartially to the best of my judgment, skill and ability, execute and perform the office of member of the Wartime Labour Relations Board and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board.
30 So help me God.”

25. (1) If a question arises under these regulations as to whether:

(a) a person is an employer or employee;

(b) the unit of employees appropriate for collective bargaining is the employer unit, craft unit, plant unit or a subdivision thereof;

(c) an organization of employees or employers is a trade union, employees' organization or employers' organization;

40 (d) an agreement is a collective agreement;

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(e) an employer, or certified bargaining representatives of employees, is negotiating in good faith;

the Board shall decide the question and its decision shall be final and conclusive for all the purposes of these regulations.

(2) If a question set out in subsection one arises in any legal proceedings, the Justice or Justices of the Peace, Magistrate, Judge or Court before whom it arises shall, if the question has not been decided by the Board, refer the question to the Board and defer further proceedings until the Board's decision is received.

(3) Any document purporting to contain or to be a copy of any regulation, direction, or order of the Board and purporting to be signed by a member of the Board or by an officer thereof shall be accepted by any court as evidence of the regulation, direction, or order therein contained or of which it purports to be a copy. 10

26. (1) The Board may, by order, delegate to any person, board or association all or any part of its jurisdiction relating to any particular matter.

(2) The Board may, by order, revoke any delegation made under this section and thereupon the jurisdiction so delegated shall revert in the Board. 20

27. (1) The Board may, with the approval of the Minister make such regulations as may be necessary to enable it to discharge the duties imposed upon it by these regulations and to provide for the supervision and control of its officers, clerks and employees.

(2) The Board may prescribe anything, which, under these regulations, is to be prescribed.

(3) The Board, with the approval of the Minister, may appoint an executive committee to exercise its powers subject to such directions or conditions as the Board may specify. 30

28. (1) The members of the Board shall be paid such salaries as may be fixed by the Governor in Council and such expenses as may be incurred by them in the discharge of their duties.

(2) The Board may appoint an officer to be the Chief Executive Officer of the Board who shall be paid such salary as may be fixed by the Governor in Council.

(3) The Department of Labour shall furnish such technical and clerical assistance to the Board as may be possible, and the Board may, with the approval of the Governor in Council, employ 40

such other officers and employees as may be necessary for the conduct of its business and may fix their remuneration.

CONCILIATION OFFICERS AND BOARDS

29. When he instructs a conciliation officer under section twelve, the Minister shall forthwith notify the parties thereof.

30. (1) Before appointing a Conciliation Board under section thirteen, the Minister shall by notice require each of the parties to the negotiations to recommend one person to be a member of the Conciliation Board within seven days of receipt of the notice; and the Minister shall, at the expiration of the said period, appoint two members, in his opinion, representative of the different points of view involved, after considering the recommendations, if any, received within the said period.

(2) The two members of the Conciliation Board appointed pursuant to subsection one shall, within five days of the day on which the last of them is appointed, recommend a third person to be a member and chairman of the Conciliation Board; and the Minister shall, on the expiration of the said period, appoint a person to be a third member and chairman of the Conciliation Board after considering the recommendation if received within the said period.

(3) No person

(a) who has any pecuniary interest in the matters referred to the Board; or

(b) who is acting, or has, within a period of six months preceding the date of his appointment, acted in the capacity of solicitor, legal adviser, counsel or paid agent of either of the parties;

shall act as a member of a Conciliation Board.

30 (4) When the Conciliation Board has been appointed, the Minister shall forthwith deliver to it a statement of the matters referred to it.

(5) Upon a person ceasing to be a member of a Conciliation Board before it has completed its work, the Minister shall appoint a member in his place in the same manner as the person who ceased to be a member was appointed.

(31) (1) A Conciliation Board and each member thereof shall have the powers of a Commissioner under Part I of the Inquiries Act.

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(2) A Conciliation Board and each member thereof may receive and accept such evidence and information on oath, affidavit or otherwise as in its or his discretion it or he may deem fit and proper whether admissible in evidence in a court of law or not.

(3) Each member of a Conciliation Board shall, before acting as such, take and subscribe before a person authorized to administer an oath or affirmation, and file with the Minister, an oath or affirmation in the following form:

“I do solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability, execute and perform the office of member of the Conciliation Board appointed to.....and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. So help me God.”

(4) The chairman may fix the time and place of sittings of a Conciliation Board after consultation with the other members of the Board; and he shall notify the parties as to the time and place so fixed.

(5) A Conciliation Board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

(6) The chairman and one other member of a Conciliation Board shall be a quorum but, in the absence of a member, the others shall not proceed unless he has been given reasonable notice of the sitting.

(7) The decision of a majority of the members present at a sitting of a Conciliation Board shall be the decision of the Conciliation Board and in the event of a tie, the chairman shall have a casting vote.

(8) The report of the majority of its members shall be that of the Conciliation Board.

(9) After a Conciliation Board has made its report, the Minister may direct the Conciliation Board to reconsider and amplify or clarify any part thereof.

(10) After a Conciliation Board has made its report, the Minister shall send a copy thereof to the employer or employers' organization and to the trade union or employees' organization.

32. The Minister may provide a Conciliation Board with a secretary, stenographer, and such clerical or other assistance as to the Minister seems necessary for the performance of its duties.

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33. Every person who is summoned by a Conciliation Board or a member thereof and duly attends as a witness shall be entitled to an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits in the superior courts in the province where the inquiry is being conducted, and in any event, he shall be entitled to not less than four dollars per day.

34. A Conciliation Board, or a member thereof, and, on being authorized in writing by the Conciliation Board, any other person,
 10 may, without any other warrant than this section at any time, enter a building, mine, mine-workings, ship, vessel, factory, workshop, place, or premises of any kind wherein or in respect of which an industry is carried on, or work is being or has been done or commenced, or any matter or thing is taking place or has taken place, concerning the matters referred to the Conciliation Board, and may inspect and view any work, material, machinery, appliance or article therein, and interrogate any persons in or upon
 20 any such place, matter or thing hereinbefore mentioned; and no person shall hinder or obstruct the Board or any person authorized as aforesaid in the exercise of a power conferred by this section or refuse to answer an interrogation made as aforesaid.

35. (1) The members of Conciliation Board shall be remunerated for their services as follows:—

To a member other than the chairman, an allowance of five dollars a day for not more than three days during which he is engaged in considering the recommendation of a person to be the third member of the Board;

To each member of the Board, including the chairman, an allowance at the rate of twenty dollars for each day he is present
 30 when the Board sits and for each day necessarily spent travelling from his place of residence to a meeting of the Board and returning therefrom.

(2) Each member of a Conciliation Board is entitled to his actual necessary travelling expenses for each day that he spends in travelling from his place of residence to a meeting of the Board and returning therefrom.

(3) All expenses of a Conciliation Board, including expenses for transportation incurred by the members thereof or by persons engaged, under its orders, in making investigations under
 40 these regulations, salaries of employees and agents, and fees and mileage to witnesses, shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the Board and forwarded by the chairman to the Minister.

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(4) The chairman shall forward to the Minister a detailed certified statement of the sittings of the Board, and of the members present at each sitting.

GENERAL

36. (1) The Minister may appoint or constitute administrative officers or agencies in any province and delegate to them such of his powers under these regulations as in his opinion is necessary for their proper administration.

(2) The Minister may with the approval of the Governor in Council, enter into an agreement with the government of any province to provide for the administration within that province of these regulations or any part thereof and such agreement may provide 10

(a) the manner in which the Minister shall exercise the powers conferred on him by subsection one in respect of matters in that province;

(b) for the transfer to the government of the province or some person or persons specified by the government of the province, of all or any part of the jurisdiction in respect of matters within that province conferred on the Board by these regulations, and for a procedure whereby an appeal may be had to the National Board from a decision made in the exercise of the jurisdiction so conferred; and 20

(c) for reimbursement of the province in respect of expenses so incurred.

37. (1) The Minister may determine the salaries, fees and expenses to be paid to persons performing services under these regulations except where otherwise provided.

(2) The administrative expenses of the Board, other than the salaries and usual travelling expenses of departmental employees, shall be paid out of the War Appropriation. 30

ENFORCEMENT

38. Every person, trade union or employers' or employees' organization to whom an order is issued or who is required to do or abstain from doing anything by or pursuant to these regulations shall obey such order or do or abstain from doing such thing as required.

39. For the purpose of these regulations and of any proceedings taken thereunder, any notice or other communication sent 40

through His Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

40. Every employer who declares or causes a lockout contrary to these regulations is guilty of an offence and liable upon summary conviction to a fine of not more than five hundred dollars for each day or part of a day that the lockout exists.

41. (1) Every employee who goes on strike contrary to these regulations is guilty of an offence and liable upon summary conviction to a fine of not more than twenty dollars for each day or part of a day that he is on strike.

(2) Every trade union and every other employees' organization that authorizes a strike contrary to these regulations is guilty of an offence and liable on summary conviction to a fine of not more than two hundred dollars for each day or part of a day that the strike continues.

42. Every person, trade union, employees' organization or employers' organization who contravenes any of the provisions of these regulations is guilty of an offence, and unless some penalty is expressly provided by these regulations for such contravention, liable on summary conviction, if an individual, to a penalty of not more than one hundred dollars, and if a corporation, employers' organization, employees' organization or trade union, to a penalty of not more than five hundred dollars.

43. Every person is guilty of an indictable offence and liable to a fine not exceeding five thousand dollars, and not less than five hundred dollars or to imprisonment for a term not exceeding five years and not less than six months, or to both such fine and such imprisonment, who corruptly

(a) makes any offer, proposal, gift, loan or promise, or gives or offers any compensation or consideration, directly or indirectly, to a person concerned in the administration or enforcement of these regulations or having or expected to have any duties to perform thereunder, for the purpose of influencing such person in the performance of his duties; or

(b) being a person concerned in the administration or enforcement of these regulations or having or expected to have any duties to perform thereunder, accepts or agrees to accept or allows to be accepted by any person under his control or for his benefit any such offer, proposal, gift, loan, promise, compensation or consideration.

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44. (1) Every person is a party to and guilty of an offence under these regulations who

- (a) actually commits it;
- (b) does an act for the purpose of aiding any person to commit the offence;
- (c) abets any person in commission of the offence; or
- (d) counsels or procures any person to commit the offence.

(2) If an employers' organization, corporation, trade union or employees' organization is guilty of an offence under these regulations, any officer of the employers' organization, corporation, trade union or employees' organization who assented to the commission of the offence is a party to and guilty of the offence. 10

45. No prosecution for an offence under these regulations shall be instituted except by or with the consent of the Board, evidenced by a certificate signed by or on behalf of the chairman of the Board, and in exercising its discretion as to whether any such consent should be granted, the Board may take into consideration disciplinary measures that have been taken by an employers' organization or a trade union or employees' organization against the accused. 20

46. The Minister may, notwithstanding any other provision in these regulations, instruct a conciliation officer to investigate any situation which in his opinion may be detrimental to the effective utilization of labour in the war effort.

MISCELLANEOUS

47. No proceeding under these regulations shall be deemed invalid by reason of any defect of form or any technical irregularity.

48. (1) The Industrial Disputes Investigation Act shall, except as to matters pending when these regulations come into force, be of no effect while this order is in force. 30

(2) The following Orders in Council are hereby revoked:—

- (a) The Order in Council made on the seventh day of November, nineteen hundred and thirty-nine, extending the application of the Industrial Disputes Investigation Act (P.C. 3495) as amended; and
- (b) The Order in Council made on the first day of December, nineteen hundred and forty-two, permitting employees of Crown companies to be members of trade unions (P.C. 10802). 40

(3) The following Orders in Council extending or varying the wartime application of the Industrial Disputes Investigation Act are hereby suspended to the extent that they are inconsistent with these regulations but shall otherwise remain in effect:—

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(a) The Order in Council made on the sixth day of June, nineteen hundred and forty-one (P.C. 4020) as amended; and

10 (b) The Order in Council made on the sixteenth day of September, nineteen hundred and forty-one (P.C. 7307) as amended.

49. These regulations shall come into force on a day to be fixed by the Governor in Council.

SCHEDULE A

1. A work or undertaking engaged in mining or smelting operations;
2. A work, undertaking or business engaged in manufacturing or assembling aircraft parts;
3. A work, undertaking or business engaged in manufacturing or assembling tanks or universal carriers;
- 20 4. A work, undertaking or business engaged in manufacturing or assembling automobile or truck parts;
5. A work, undertaking or business engaged in smelting or refining aluminum;
6. A work, undertaking or business engaged in refining or producing oil or petroleum products;
7. A work, undertaking or business engaged in producing or processing natural or synthetic rubber;
8. A work, undertaking or business engaged in manufacturing chemicals for war purposes;
- 30 9. A work, undertaking or business engaged in producing or manufacturing steel for war industry or war purposes;
10. A work, undertaking or business engaged in building or construction or demolition projects under a contract or subcontract, intended for the use of His Majesty in right of Canada, including the construction, erection, repair, improvement or extension of buildings, aerodromes, harbours, dockyards, roads, defence fortifications, or other naval, military or air force works;

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11. A work, undertaking or business engaged in shipbuilding, including shipbuilding accessories;
12. A work, undertaking or business engaged in the production of machinery, arms, shells, ammunition, explosives, implements of war, or naval, military or air stores;
13. A work, undertaking or business engaged in transportation or communication;
14. Public Service utilities, including gas, electric, water and power works, telegraph and telephone lines.

10

Exhibit No. 3
P.C. 6893
Amending
P.C. 1003
Sept. 1, 1944

EXHIBIT No. 3

EXTRACT

CANADIAN WAR ORDERS AND REGULATIONS
OTTAWA, CANADA, SEPTEMBER 11, 1944Order in Council amending Wartime Labour Relations
Regulations, P.C. 6893

AT THE GOVERNMENT HOUSE AT OTTAWA

Friday, the 1st day of September, 1944.

PRESENT:

HIS EXCELLENCY

20

THE GOVERNOR GENERAL IN COUNCIL:

Whereas the Minister of Labour reports that the Wartime Labour Relations Board has recommended the amendment of the Wartime Labour Relations Regulations, Order in Council P.C. 1003 of February 17, 1944, as hereinafter set forth;

That there has been consultation with the Ministers of Labour of the provinces concerned with reference to the said amendment; and

That it is necessary by reason of the war for the security, defence, peace, order and welfare of Canada and for the efficient prosecution of the war that provision be made accordingly;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, is pleased to amend the said regulations, and they are hereby amended as follows:—

1. Section fifteen is rescinded and the following substituted therefor:

“(15) Every collective agreement, whether made before or after the effective date of these Regulations, shall be deemed to run for a period of not less than one year from its operative date and shall not be capable of cancellation by the parties within that period without the consent of the Board; and when any such collective agreement is expressed to run for more than one year, it shall contain or be deemed to contain a provision for the termination thereof at any time after one year from its operative date on two months’ notice by either party thereto.”

2. Section sixteen is renumbered as subsection one of section sixteen and the following is added as subsection two of section sixteen:

“(2) Where either party to a collective agreement has required the other, pursuant to subsection one, to enter into negotiations for the renewal of the agreement, sections eleven, twelve, thirteen and fourteen shall apply to such negotiations for the renewal of the agreement as in the case of negotiations for a collective agreement.”

3. Paragraph (b) of subsection three of section forty-eight is rescinded.

His Excellency in Council is further pleased to revoke and doth hereby revoke Order in Council P.C. 7307, of September 16, 1941, establishing regulations with a view to the avoidance of industrial strife.

A. D. P. HEENEY,
 Clerk of the Privy Council.

EXHIBIT No. 4

BRITISH COLUMBIA ORDER-IN-COUNCIL 1408.

Approved and ordered this 14th day of September, A.D. 1944.

"W. C. WOODWARD"

Lieutenant-Governor.

At the Executive Council Chamber, Victoria.

Present:

The Honourable

Mr. Hart

in the Chair.

Mr. Pearson

10

Mr. Carson

Mr. Perry

To His Honour

The Lieutenant-Governor in Council:

The undersigned has the honour to report

THAT Section Six (6) of the "Wartime Labour Relations Regulations Act" being Chapter 18 of the Statutes of 1944 provides that when the Dominion Regulations are amended, varied or added to by His Excellency the Governor-General in Council the Lieutenant-Governor in Council may make regulations for the purpose of the said Act designed to give effect to such amendments, variations, or additions, in the application of the Dominion Regulations enacted by the said Act, 20

AND THAT on the first day of September, A.D. 1944 by Order in Council P.C. 6893 His Excellency the Governor-General in Council did amend, vary and add to the Dominion Regulations by rescinding Section Fifteen (15) thereof and by substituting therefor a section worded as follows:—

"15. Every collective agreement, whether made before or after the effective date of these Regulations, shall be deemed to run for a period of not less than one year from its operative date and shall not be capable of cancellation by the parties within that period without the consent of the Board; and when any such collective agreement is expressed to run for more than one year, it shall contain or be deemed to contain a provision for the termination thereof at any time after one year from its operative date on two months' notice by either party thereto."

and by re-numbering Section Sixteen (16) thereof as subsection one (1) of Section Sixteen (16) and adding as subsection two 40

(2) of Section Sixteen (16) the following:—

“(2) Where either party to a collective agreement has required the other, pursuant to subsection one, to enter into negotiations for the renewal of the agreement, Sections eleven, twelve, thirteen and fourteen shall apply to such negotiations for the renewal of the agreement as in the case of negotiations for a collective agreement.”,

and by rescinding paragraph (b) of subsection three of Section forty-eight (48).

10 AND THAT the Order in Council made by the Lieutenant Governor in Council on the twenty-ninth day of August, A.D. 1944, and numbered 1311 to give effect to such amendments, variations and additions was premature,

AND TO RECOMMEND THAT, pursuant to Section 6 of the said Act the following Regulation be made, namely:—

“Effect is given to the amendments, variations and additions made to the Dominion Regulations by P.C. 6893 made the first day of September, A.D. 1944, in the application of the Dominion Regulations enacted by the said Act.”

20 AND TO RECOMMEND THAT the said Order in Council made on the twenty-ninth day of August, A.D. 1944, and numbered 1311 be revoked.

DATED this 12th day of September, A.D. 1944.

“Geo. S. Pearson”
 Minister of Labour.

APPROVED this 12th day of September, A.D. 1944.

“John Hart”
 Presiding Member of the Executive Council.

EXHIBIT No. 5.

Exhibit No. 5
Order
Wartime
Labour
Relations
Board
Mar. 16, 1945

ORDER OF WARTIME LABOUR RELATIONS BOARD
Certifying Bargaining Representatives dated March 16th, 1945
WARTIME LABOUR RELATIONS BOARD
(National)

IN THE MATTER OF

Canadian Brotherhood of Railway Employees & Other
Transport Workers, Empress Div. 276
Petitioner

and 10

Canadian Pacific Railway Company (Empress Hotel)
Victoria, B.C.
Respondent

WHEREAS an application dated January 29, 1945, for the investigation and certification of bargaining representatives pursuant to Section 6 of the Wartime Labour Relations Regulations, P.C. 1003, has been filed with the Wartime Labour Relations Board (National) in connection with the above-mentioned matter:

AND WHEREAS it has been determined to the satisfaction 20 of the Wartime Labour Relations Board (National) that the majority of the employees employed by the respondent company in the Empress Hotel at Victoria, B.C., except as hereinbelow mentioned, have authorized the Canadian Brotherhood of Railway Employees and Other Transport Workers, Empress Division 276, to choose bargaining representatives on their behalf;

AND WHEREAS it has been further determined that the said union has properly chosen as its bargaining representatives, Miss May Foster and Messrs. A. E. Veronneau, Arthur Crewe and Hugh A. Allison; 30

THEREFORE, the Wartime Labour Relations Board (National) does hereby certify to all parties concerned that the above-named bargaining representatives chosen as aforesaid and the said union are the properly chosen bargaining representatives for the employees of the Empress Hotel of the respondent company except the

manager,
manager's secretary,
chef,

Chief engineer,
head housekeeper,
head porter,

assistant accountant,
 house officer,
 steward's clerk and
 timekeeper,
 food checkers,
 social hostess,
 accountant's clerk,
 two assistant managers,
 accountant,
 10 manager of Crystal
 Gardens,
 head electrician,
 head housewoman,
 head telephone operator,
 assistant accountant and night
 auditor,
 assistant head waiter,
 timekeeper,

kitchen steward,
 chief clerk,
 accountant's stenographer,
 office manager,
 Chief steward
 laundry superintendent,
 head waiter,
 head bellman,
 head gardener,
 chief cashier,
 assistant chief steward,
 food controller,
 assistant manager of
 Crystal Gardens,
 invoice clerks,
 night watchman and second
 cook;

and such bargaining representatives may give the employer con-
 20 cerned, or be given by the employer concerned, ten clear days'
 notice in which to enter into negotiations with a view to the com-
 pletion of a collective agreement.

ISSUED at Ottawa this 16th day of March, 1945, and signed
 on behalf of the Wartime Labour Relations Board (National)
 by its Chief Executive Officer.

(Sgd.) M. M. MacLean
 Chief Executive Officer.

CWR/KAY

EXHIBIT No. 6

ORDER of NATIONAL WAR LABOUR BOARD

dated August 2, 1945

IN THE MATTER of the Wartime Wages Control Order, 1943,
P.C. 9384,

and

IN THE MATTER of an application by Canadian Pacific Rail-
way Company, Montreal, P.Q., employer, for permission to ad-
just certain working conditions affecting compensation of occu-
pational classifications engaged at the Railway's Royal Alexan- 10
dra Hotel, Winnipeg, Manitoba; Hotel Saskatchewan, Regina,
Saskatchewan; Palliser Hotel, Calgary, Alberta; and Empress
Hotel, Victoria, British Columbia, in accordance with provisions
of proposed collective agreements to be entered into with author-
ized bargaining representatives of employees and affiliated Locals
of Canadian Brotherhood of Railway Employees and Other
Transport Workers.

Finding and Direction

The National War Labour Board having considered the
above mentioned application, and having found that adjustment 20
of working conditions affecting compensation of occupational
classifications as requested by the application would be fair and
reasonable and consistent with the intent of Wartime Wages Con-
trol Order, 1943, P.C. 9384.

The National War Labour Board, therefore, authorizes Cana-
dian Pacific Railway Company, with effect not earlier than from
the first payroll period beginning on or after July 24, 1945, (date
of application) to adjust working conditions affecting compensa-
tion of employees in occupational classifications engaged at the
said Hotels as set forth in Articles of respective collective agree- 30
ments as stated in Exhibit 1 attached hereto and forming part
hereof.

(Sgd.) R. H. Neilson

Chief Executive Officer,
National War Labour Board.Ottawa, Ontario,
August 2, 1945.

Case File 2N-1088.

EXHIBIT 1 to the Order of NATIONAL WAR LABOUR
BOARD dated August 2, 1945.

Exhibit No. 6
Finding and
Direction of
National War
Labour Board
Aug. 2, 1945
(Contd.)

Article 7, Clause (f)

“If in an emergency an employee is required to work through his meal period such time shall be paid for at pro rata rate and twenty (20) minutes in which to eat, without deduction in pay shall be afforded at the first opportunity.”

Article 8, Clause (a)

10 “Except as otherwise provided, time worked by proper authority by employees on regular assignment in excess of eight (8) hours continuous with, before or after the regularly assigned hours of duty, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half time.”

Article 8, Clause (e)

20 “Regularly assigned employees notified or called to perform work not continuous with, before or after the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one half time shall be allowed on the minute basis. Employees may, if conditions justify, be compensated as if on continuous duty. This paragraph does not apply to employees who are stopped before leaving home.”

Article 9, Clause (a)

“Regularly assigned employees shall be assigned a regular seventh day off duty each week, Sunday if possible. Such seventh day off duty may, if necessary, be reassigned on forty-eight (48) hours’ notice.”

Article 9, Clause (b)

30 “If required, to work on such regularly assigned seventh day off duty, employees shall be paid at the rate of time and one-half time on the actual minute basis, with a minimum of two (2) hours at time and one-half, for which two (2) hours service may be required.”

Article 10, Clause (a)

“When an employee is temporarily assigned to a higher rated position and is required to fulfill all the duties and responsi-

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bilities of that position, he shall receive the higher rate for the full day if the temporary assignment is for four (4) hours or more. Should the temporary assignment be less than four (4) hours, he shall receive the rate of his regularly assigned position. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

An employee assisting a higher rated employee due to a temporary increase in the volume of work or when relieving on assigned day off does not constitute a temporary assignment."

10

(Sgd.) R. H. N.

EXHIBIT No. 7

CANADIAN PACIFIC RAILWAY COMPANY

AGREEMENT

GOVERNING RATES OF PAY AND WORKING
CONDITIONS OF THE EMPLOYEES OF THE
EMPRESS HOTEL (Victoria, B.C.)

IN THE CLASSIFICATIONS AS DESIGNATED HEREIN

ARTICLE 1

This agreement entered into between the Canadian Pacific
10 Railway Company (Empress Hotel) and the bargaining repre-
sentatives of the employees consisting of Mr. A. E. Veronneau,
Miss M. Foster, Mr. A. Crewe and Mr. H. A. Allison (subject to
any change of any representative employee of which due notifi-
cation is given) and the Canadian Brotherhood of Railway Em-
ployees and Other Transport Workers, as certified by the War-
time Labour Relations Board (National) under date of March
16th, 1945, becomes effective September 1, 1945, and will remain
in effect for one year; and thereafter subject to thirty days' notice
in writing from either party.

20

ARTICLE 2

Scope

The word "employee" as used in this agreement shall be un-
derstood to mean any employee (male or female) holding senior-
ity under the terms of this agreement, subject to the exceptions
as hereinafter provided.

EXCEPTIONS

| | |
|---------------------------|--------------------------|
| Manager | Assistant Accountant and |
| (2) Assistant Managers | Night Auditor |
| Manager's Secretary | Invoice Clerks |
| 30 Office Manager | Timekeeper |
| Social Hostess | Food Controller |
| Chief Clerk | Steward's Clerk and |
| Chief Cashier | Timekeeper |
| Accountant | Food Checkers |
| Assistant Accountant | Head Telephone Operator |
| Accountant's Clerks | Head Bellman |
| Accountant's Stenographer | House Officer |

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| | |
|------------------------------|------------------------|
| Night Watchman | Swimming Instructor— |
| Chef | Crystal Garden |
| Second Cook | Head Housekeeper |
| Head Waiter | Head Housewoman |
| Assistant Head Waiter | Chief Engineer |
| Chief Steward | Head Electrician |
| Assistant Chief Steward | Laundry Superintendent |
| Kitchen Steward | Head Gardener |
| Manager—Crystal Garden | Head Porter |
| Asst. Manager—Crystal Garden | |

10

In applying the rules governing seniority and promotion, it is agreed that when vacancies occur in the positions of Assistant Housekeepers or Front Office Clerks (other than Cashiers) the Hotel Management shall have the right to fill such vacancies, without regard to seniority or necessity of bulletining, with employees from any section of this or other hotels. However, when a vacancy occurs and the Hotel Management desires to do so, then the vacancy shall be bulletined and filled according to the provisions of this agreement. It is also understood that when the Hotel Management and the employees affected are mutually agreed, it will be permissible to exchange Assistant Housekeepers or Front Office Clerks (other than Cashiers) as between Company hotels, either for temporary or permanent periods. 20

ARTICLE 3

Seniority Grouping

For the purposes of promotion and seniority, employees shall be grouped as follows:

1. Clerical staff including Cashiers and Telephone Operators as one group.
2. All employees of the Service Department including Valet 30 as one group.
3. All employees of the Chef's Department as one group.
4. All Employees of the Steward's Department, Catering Department and Crystal Garden, excepting Room Service, Telephone Operator, Gardeners, Cashiers and Crystal Garden Maintenance Men, as one group.
5. All employees of the Housekeeper's Department as one group.
6. All employees of the Engineer's Department including Engineers, Firemen, Truck Driver, Coal Hauler, Electricians, 40 Troublemens, Plumbers and Boiler Room Mechanic, as one group.

7. All employees of the Maintenance Department including Carpenters, Upholsterers, French Polisher, Painters and Crystal Garden Maintenance Men, as one group.

8. All employees of the Laundry Department, excepting Laundry Clerk, as one group.

9. All Gardeners and Groundsmen as one group.

10. All other employees as one group.

ARTICLE 4

Seniority

10 (a) The seniority of all employees occupying positions covered by this agreement at the date of this agreement becoming effective shall be from the date they last entered the service of the Hotel Department of the Canadian Pacific Railway Company.

A seniority roster of all employees in each Seniority Group showing name and date of entry into the service in a position covered by this agreement will be posted in a place accessible to those affected.

20 A new employee will not be regarded as permanently employed until after six (6) months' accumulative service. The name of an employee shall be placed on the seniority list immediately upon being employed in a position covered by this agreement and, if retained, will rank on the seniority list from such date. An employee having less than six (6) months' accumulative service will be considered as on probation and shall hold no rights under the promotion rules of this agreement and, if found unsuitable, will not be retained in the service of the hotel.

30 (b) Rosters shall be revised and posted in January of each year and shall be open to correction for a period of sixty (60) days on presentation in writing of proof of error by an employee or his accredited bargaining representatives. Unless by mutual agreement between the Hotel Manager and the accredited bargaining representatives of the employees, seniority standing shall not be changed after becoming established by being posted for sixty (60) days without protest. Copy of the roster will be furnished the local accredited bargaining representatives of the employees.

40 (c) Seniority of employees shall be confined to the respective Seniority Group in which employed and, except as otherwise provided, employees transferring from one Seniority Group to another shall rank from the date of transfer on the seniority roster to which transferred.

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(d) Employees who have prior to the effective date of this agreement or who may subsequent thereto be promoted to an official or excepted position shall retain their rights and continue to accumulate seniority in the Seniority Group from which promoted. Employees promoted or transferred to other positions not covered by other wage agreements shall retain their rights and continue to accumulate seniority in the Seniority Group from which promoted or transferred. Except as may be mutually agreed an employee accepting transfer to a position covered by another wage agreement will lose his seniority rights after six (6) months. Should any position referred to in this paragraph be discontinued, the employee affected may within thirty (30) days from date of discontinuance of such position exercise his seniority rights to any position in his Seniority Group which he is qualified to fill, and failing to do so, will forfeit his seniority and his name will be removed from the seniority list. 10

(e) An employee who has been discharged and who is subsequently returned to the service in a position covered by this agreement, unless reinstated with his former seniority standing will only be allowed seniority from the date of his return to the service. An employee who is not reinstated with his former seniority standing within one (1) year of the date of his discharge may only be so reinstated by agreement between the Hotel Manager and the accredited bargaining representatives of the employee. 20

(f) Employees accepting seasonal or temporary positions at other hotels of the Company may do so for a period up to nine (9) months without loss of seniority. Such employees must return to their former positions at, or prior to, the expiration of such nine (9) months' period, unless held by the hotel management at a seasonal hotel to perform work directly connected with the continued operation of such hotel, and including repair of equipment, alterations or construction, or forfeit their seniority rights under this agreement, providing they can hold work in their Seniority Group. Employees returning to their former positions may, within ten (10) days after their return, exercise their seniority rights to any positions bulletined during their absence. In the event of their former positions being non-existent, they shall be allowed to exercise their seniority rights within their Seniority Group, displacing a junior employee providing they have sufficient ability to perform the work. 30 40

ARTICLE 5

Bulletining and Filling Positions

(a) New positions, or vacancies of a known duration of thirty (30) days or more will be promptly bulletined for a period

of five (5) days in the Seniority Group in which they occur and if there is a successful applicant appointment will be made within three (3) days thereafter. Employees desiring such positions will, within the said five (5) day period, file their applications with the designated hotel officer; pending appointment the senior qualified employee available desiring the vacancy shall be appointed to the position. In the event of no application being received from employees in the Seniority Group where the vacancy occurred with sufficient qualifications and ability to perform the
 10 work, an employee in another group will be given preference in filling the position if qualified. When assigned to it and provided such position is a permanent one, such employee shall, subject to Paragraph (i) of this article, be transferred with full seniority. It is understood that in such cases where more than one such application is being considered the position will be awarded to the senior of such applicants, qualifications and ability being sufficient.

(b) Appointments shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall pre-
 20 vail. The Hotel Manager shall be the judge, subject to appeal as a grievance within seven (7) days of the appointment being made.

(c) When more than one vacancy or new position is bulletined at the same time, employees shall have the right to bid on any or all, stating preference. Bulletins shall show title, rate of pay, hours of service, nature of duties, and, if temporary, the approximate duration.

(d) New positions of indefinite duration need not be bulletined until expiration of thirty (30) days from date created.

(e) Copies of bulletins and names of applicants for new po-
 30 sitions or vacancies shall be furnished the local accredited bargaining representatives of the employees.

(f) Temporary positions and vacancies of less than thirty (30) days duration shall be filled without the necessity of bulletin by the senior employee having the qualifications and ability and who makes application therefor within the first six (6) days. In the application of this rule regularly assigned employees will only be permitted to exercise their seniority rights on temporary vacancies when an increase in rate is involved, or when it is known that the vacancy will be for more than six (6) working
 40 days.

NOTE: A "temporary vacancy" is defined as a vacancy in a position caused by the regularly assigned occupant being absent from duty or temporarily assigned to other duties.

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(g) An employee who is assigned to a temporary vacancy or position shall at the expiration of such temporary employment be returned to his regularly assigned position.

(h) Employees on return from leave of absence may within five (5) days thereafter exercise their seniority rights to any positions bulletined during such absence, qualifications and ability being sufficient, and employees so displaced will be permitted to exercise their seniority in their Seniority Group to any position they are qualified to fill.

(i) An employee who is assigned by bulletin to a position shall be given reasonable time in which to qualify, the length of time (not exceeding thirty (30) days) depending upon the character of the work. An employee failing to qualify will be returned to his former position without loss of seniority. 10

(j) When the regularly assigned starting time of a position is changed two (2) hours or more or the rate of a position is changed, such position shall be declared vacant and bulletined to the Seniority Group. The occupant of the position will be permitted to exercise his seniority rights to any position which he is qualified to fill displacing a junior employee. 20

(k) When vacancies occur in excepted positions, as specified in Article 2, Clause (a), employees holding seniority rights under this agreement, who make application, shall be given due consideration.

ARTICLE 6

Staff Reduction, Displacement and Recall to Service.

(a) In reducing forces seniority in the respective groups shall govern. Employees whose positions are abolished or who are displaced may exercise their seniority rights over junior employees subject to fitness and ability to perform the work. Such employee shall make his choice in writing within five (5) days and must commence work on the position of his choice within thirty (30) days unless prevented by bona fide illness or other cause for which leave of absence has been granted. An employee who fails to make his choice within five (5) days will only be entitled to take spare work or displace the junior regularly assigned employee in the Seniority Group. An employee who fails to commence work on the position within thirty (30) days (unless prevented as above) shall have his name removed from the seniority list. 30 40

When reducing forces, as much advance notice as possible will be given the employees affected.

(b) In increasing forces or when vacancies occur employees will be returned to the service in the order of their seniority, qualifications being sufficient. Employees desiring to avail themselves of this rule must file their names and addresses with the proper hotel officer. Employees failing to report for duty or give satisfactory reasons for not doing so within seven (7) days from the date of notification by direct contact, registered mail or telegraph will be considered out of the service.

10 (c) Laid-off employees when qualified shall be given preference of employment in filling new positions or vacancies in other than their own Seniority Group when no qualified laid-off employees are available in such group. An employee engaged under this rule in another Seniority Group will, subject to the provisions of rule (b) and (d) of this article, accumulate seniority in such group only from the date he starts work therein.

(d) A laid-off employee who is employed in another Seniority Group or elsewhere at the time he is notified to report for duty may, without loss of seniority, be allowed ninety (90) days in which to report provided:—

- 20
1. that it is definitely known that the duration of the work will not exceed ninety (90) days, and
 2. that laid-off employees in the same Seniority Group are available, and
 3. that written application for allowance of such time is made to the proper hotel officer immediately on receipt of notification to resume duty.

ARTICLE 7

Hours of Service and Meal Period

30 (a) Except as otherwise provided eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work and forty-eight (48) hours shall constitute a week's work.

(b) Where work is of an intermittent character, there being no work for periods of more than one (1) hour's duration, split trick assignments may only be established by mutual agreement between the Hotel Manager and the local accredited bargaining representatives of the employees.

40 NOTE: This rule, except as may be otherwise mutually agreed, may be applied only to the staffs of the Catering Department, Chef's Department, Steward's Department, Housekeeper's Department, Service Department, Staff Waitress, Cashiers and Crystal Garden.

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Split trick assignments in the Catering Department and for Staff Waitress will be confined to not more than three (3) tours of duty, a total of eight (8) hours work, within a spread of fourteen (14) consecutive hours in any day.

Split trick assignments in the Chef's Department, Steward's Department, Housekeeper's Department and Service Department will be confined to not more than two (2) tours of duty, a total of eight (8) hours work, within a spread of twelve (12) consecutive hours in any day.

Split trick assignments for Cashiers will be confined to not more than two (2) tours of duty, on alternate days, within a spread of fifteen (15) consecutive hours in any such day. 10

Split trick assignments for the Crystal Garden will be confined to not more than two (2) tours of duty, a total of eight (8) hours work, within a spread of ten (10) consecutive hours in any day.

(c) Where it has been the practice for employees to work less than eight (8) hours per day or less than forty-eight (48) hours per week, that practice shall be continued, unless changed on account of conditions beyond the control of the hotel. It is understood, that where conditions occasionally necessitate, employees working such reduced hours may be required to work extra hours, but overtime shall not accrue until after forty-eight (48) hours service has been performed in any one week. 20

Where it can be arranged and when the interests of the hotel will not suffer thereby, it shall be permissible for hourly rated employees who do not wish to work on Saturday afternoons to work the time so lost during the preceding five (5) days of the week, the hours so established to be equivalent to a total of forty-eight (48) hours for the week (in a six (6) day assignment). Time worked in any one (1) day in excess of the hours so established shall be considered as overtime. 30

Where the interests of the hotel will not suffer thereby, Saturday afternoon may be allowed monthly rated employees, in which event service in excess of eight (8) hours per day in the previous five (5) days may be required, the hours so established to be equivalent to a total of forty-eight (48) hours for the week (in a six (6) day assignment). Time worked in any one (1) day in excess of the hours so established shall be considered as overtime. 40

(d) Regularly assigned employees who report for duty on their regular assignments shall be permitted to complete their

assignment unless they lay off of their own accord, in which event they shall be allowed actual time worked at pro rata rate.

(e) When a meal period is allowed, it shall not be less than thirty (30) minutes nor more than one (1) hour, unless otherwise mutually arranged.

Employees shall not be assigned a meal period between the hours of ten (10) p.m. and six (6) a.m.

Employees may be assigned to work eight (8) consecutive hours and allowed twenty (20) minutes in which to eat without
10 deduction of pay.

(f) If in an emergency an employee is required to work through his meal period, such time shall be paid for at pro rata rate and twenty (20) minutes in which to eat, without deduction in pay shall be afforded at the first opportunity.

(g) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected. The starting time of an employee shall be the same as far as possible on all days of the week.

20 (h) Where there are positions of the same occupational classification working on different assigned hours in a day it will be permissible, where desired by the employees, to work swing shifts, changing from one shift to the other once each week.

(i) Employees who are not regularly assigned who are called in to work, except to relieve on regular assignments, shall be paid at pro rata rates with a minimum of three (3) hours each time required to commence work. The meal period provided for in Paragraph (e) of this Article shall not be considered a break.

ARTICLE 8

30

Overtime and Calls

(a) Except as otherwise provided time worked by proper authority by employees on regular assignment in excess of eight (8) hours continuous with, before or after the regularly assigned hours of duty, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half time.

(b) Time worked in excess of the regularly assigned hours due to the application of seniority rules or to changing shifts where such changes in shifts are mutually arranged shall be paid at pro rata rates.

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(c) No overtime shall be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable. Overtime will not be allowed unless claim is made to the proper hotel officer within forty-eight (48) hours of time service is performed.

(d) Employees shall not be required to suspend work during regular hours to absorb overtime.

(e) Regularly assigned employees notified or called to perform work not continuous with, before or after the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one half time shall be allowed on the minute basis. Employees may, if conditions justify, be compensated as if on continuous duty. This paragraph does not apply to employees who are stopped before leaving home. 10

(f) Regularly assigned employees temporarily assigned to duties as Waiters or Waitresses on special functions during their regular working hours will be paid in addition to their regular rate of pay as follows:—

| | | |
|---------------------------|-----|----|
| Breakfast functions | 75c | 20 |
| Luncheon functions | 75c | |
| Dinner functions | 75c | |

(g) In computing hourly pro rata overtime rate for monthly rated employees, divide the annual salary by two thousand five hundred and four (2,504) hours, which is three hundred and thirteen (313) days multiplied by eight (8) hours each. Punitive hourly overtime rate will be at one and one-half times the pro rata rate so determined.

Fractions of one-half cent and over shall be as one cent; fractions of less than one-half cent shall be dropped. 30

ARTICLE 9

Assigned Day Off Duty

(a) Regularly assigned employees shall be assigned a regular seventh day off duty each week, Sunday if possible. Such seventh day off duty may, if necessary, be reassigned on forty-eight (48) hours' notice.

(b) If required to work on such regularly assigned seventh day off duty, employees shall be paid at the rate of time and one-half on the actual minute basis, with a minimum of two (2) hours at time and one-half, for which two (2) hours service may be required. 40

ARTICLE 10

Relief, New Positions and Transfers

(a) When an employee is temporarily assigned to a higher rated position and is required to fulfill all the duties and responsibilities of that position, he shall receive the higher rate for the full day if the temporary assignment is for four (4) hours or more. Should the temporary assignment be less than four (4) hours, he shall receive the rate of his regularly assigned position. Employees temporarily assigned to lower rated positions shall
 10 not have their rates reduced.

An employee assisting a higher rated employee due to a temporary increase in the volume of work or when relieving on assigned day off does not constitute a temporary assignment.

(b) Employees promoted or engaged temporarily account other employees being off duty without pay shall receive the rate applicable to the position on which employed.

(c) When additional positions are created in the same classes and in the staffs herein provided for, compensation for them shall, subject to mutual agreement, be fixed in conformity
 20 with that specified for similar positions covered by this agreement in which the duties are relatively the same.

(d) Employees covered by this agreement who may be requested to transfer temporarily to some other hotel or resort shall be free to accept or reject such request.

ARTICLE 11

Training for Promotion

Employees shall be encouraged to learn the duties of other positions and reasonable opportunities shall be afforded them to learn the work of such positions in their own time, and during
 30 the regular working hours when it will not unduly interfere with the performance of their regularly assigned duties. The proper hotel officer may arrange with the interested employees to exchange positions for short temporary periods without affecting the rates of the employees concerned.

ARTICLE 12

Rehabilitation

(a) When mutually agreed between the proper hotel officer and the accredited bargaining representatives of the employee, an employee who has become unfit to follow his usual occupation
 40 may be placed in a position covered by this agreement which he

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is qualified to fill, notwithstanding that it may be necessary to displace an able-bodied employee to provide suitable employment for him. An employee placed in another Seniority Group shall accumulate seniority in such group only from the date he starts work therein.

(b) In dealing with incapacitated employees, seniority (as determined by service upon which seniority for the purpose of this agreement has been established) shall govern in respect of preference of shift and employment.

(c) An employee placed in a position under the provisions 10 of this Article shall not be displaced by an able-bodied employee so long as he remains in such position. Should he subsequently recuperate he shall be subject to displacement, in which case he shall exercise his seniority rights to a position he is qualified to fill in the Seniority Group where placed, or he may return to the group from which he came with his former seniority standing.

(d) Full particulars of each case, subject to the rules of this Article, shall be furnished the accredited bargaining representatives of the employees prior to an appointment being made.

ARTICLE 13

20

Discipline and Grievances

(a) An employee disciplined, or who considers himself unjustly treated, shall have a fair and impartial hearing, provided written request is presented to his immediate superior within five (5) days of the date of advice of discipline, and the hearing shall be granted within five (5) days thereafter.

(b) A decision shall be rendered within seven (7) days after the completion of hearing. If an appeal is taken, it must be filed with the next higher officer and a copy furnished the officer whose decision is appealed within five (5) days after the date of decision. The hearing and decision on the appeal shall be governed 30 by the time limits of this and the preceding section.

(c) At the hearing or on appeal the employee may be assisted by one or more fellow employees or one or more of the accredited bargaining representatives, if he so desires.

(d) The right of appeal by employees or accredited bargaining representatives of employees, in regular order of succession and in the manner prescribed, up to and inclusive of the General Manager of Hotels, is hereby established.

Prior to the adjudication or final disposition of any griev- 40 ances by negotiations between the accredited bargaining repre-

sentatives of the employees and the General Manager of Hotels, there will be neither a shutdown of the Hotel nor a suspension of work by the employees.

(e) On request the accredited bargaining representatives of the employees shall be shown all the evidence in the case.

(f) If the final decision decrees that charges against the employee were not sustained, the record shall be cleared of the charges; if suspended or dismissed, the employee shall be returned to former position and paid for all time lost.

10 (g) Should an employee believe he has been unjustly dealt with, or that any of the provisions of this agreement have not been complied with, and if it is not possible to adjust the matter directly, the procedure for adjustment shall be as follows: first by the employee, or the local accredited bargaining representative of the employees, to the officer immediately in charge; after that, to the Hotel Manager. Any further appeal may be made by the accredited bargaining representatives of the employees to the next higher officers of the Hotel Department in their regular order.

20 **ARTICLE 14**
Attending Court

Employees required by the Hotel Manager to attend court or other public investigations will be paid schedule rates for time lost and will be reimbursed actual reasonable expenses when away from home. In such cases the witness fees shall go to the Company.

ARTICLE 15
Free Transportation and Leave of Absence

30 (a) Transportation shall be granted in accordance with the standard regulations of the Company.

(b) Employees shall be granted free transportation over the Company's lines and leave of absence without pay to attend general meetings upon proper request being made and if the requirements of the service permit.

(c) Employees, at the discretion of the Company, may be granted not more than three (3) months' leave of absence. Permission must be obtained in writing and unless employees so furloughed report for duty on or before expiration of such furlough, their names shall be removed from the seniority list. If they
40 return to work thereafter such employees shall rank as new em-

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ployees, provided, however, such furlough may be extended by application in writing to the proper officer in ample time to receive permission or return to duty at the expiration of leave, or absolute proof furnished of bona fide sickness preventing such return.

ARTICLE 16

Service Letters

(a) Persons entering the service of the hotel will, within thirty (30) days from employment, have returned to them all service cards and letters of recommendation which they have submitted as references, except those addressed to or issued by the Company. 10

(b) An employee who is dismissed, or terminates his employment after giving due notice will, on request, be given the usual certificate of service and will be paid any compensation due him as soon as possible.

ARTICLE 17

Vacations

It is agreed that the existing practices under which annual vacations with pay to hotel employees are allowed in the various classifications covered by this agreement will be continued. 20

ARTICLE 18

General

(a) "Ability", "merit", "fitness" and "qualifications" as used throughout this agreement shall be understood to mean—ability to efficiently perform the duties of the position and where required to deal with the public the requisite appearance, temperament and aptitude.

(b) An employee transferred by the direction of the hotel management to a position that necessitates a change of a residence will receive free transportation for himself, dependent members of his family and household goods in accordance with the Company's regulations, and will suffer no loss of time in consequence thereof provided authorized time therefor is not exceeded. 30

(c) The retroactive effect in respect to any compensation involved in the settlement of a dispute involving compensation shall in all circumstances be limited to a period of not more than sixty (60) days prior to the date a claim was submitted in writing.

(d) A Waiter or Waitress shall not be held responsible for lost meal checks that have not been personally signed for by such employees but will be held responsible for the full amount of meal checks for which they have signed.

(e) Unless negligence is established employees will not be required to pay for lost, broken or damaged equipment.

(f) Locker and washroom facilities shall be provided and maintained in a clean, sanitary condition by the hotel.

(g) Employees required to wear uniforms shall be supplied
10 with same free of charge. Necessary valet and laundry service
for such uniforms will be supplied by the hotel.

(h) Where it has been the practice to supply employees with suitable work clothing or uniforms, this practice will be continued. Cap, coat and trousers for the male employees and appropriate clothing for the female employees in the Chef's Department shall be supplied. In all cases such clothing shall be provided free of charge.

(i) Employees will not be permitted to wear uniforms ex-
cept while on duty and will be held responsible for the proper care
20 thereof.

(j) A bulletin board for the posting of notices of interest to the employees shall be provided by the hotel; such notices, except those in connection with the calling of bona fide meetings and matters of a similar nature, shall be subject to the approval of the Hotel Manager.

ARTICLE 19

Interpretations

All questions arising with respect to the application or interpretation of the provisions of this agreement shall be referred
30 through the proper officers of the Hotel Department to the Department of Personnel.

Interpretations when agreed upon will be issued by the Department of Personnel and signed by the signatories to the agreement.

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ARTICLE 20

Wage Scale

FOR THE CANADIAN PACIFIC RAILWAY
COMPANY (EMPRESS HOTEL):

(sgd.) J. K. Hodges
Manager.

APPROVED (sgd.) H. F. Mathews
General Manager of Hotels.

FOR THE EMPLOYEES:

CERTIFIED BARGAINING REPRESENTATIVES: 10

(sgd.) A. Crewe

Local Chairman, C.B. of R.E. &
O.T.W.

(sgd.) Leon Hutzulak

Committeeman, C.B. of R.E. & O.T.W.

APPROVED (sgd.) H. A. Chappelle
General Representative, Canadian
Brotherhood of Railway Employees
and Other Transport Workers. 20

APPROVED (sgd.) A. R. Mosher
National President, C.B. of R.E. &
O.T.W.

EXHIBIT No. 8

Exhibit No. 8
 Dominion
 Order in
 Council
 P.C. 7414
 Dec. 28, 1945

DOMINION ORDER-IN-COUNCIL, 28th December, 1945, passed under "THE NATIONAL EMERGENCY TRANSITIONAL POWERS ACT, 1945," continuing in force Orders-in-Council made under "THE WAR MEASURES ACT."

P.C. 7414

AT THE GOVERNMENT HOUSE AT OTTAWA

Friday, the 28th day of December, 1945.

Present:

10 HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

Whereas the National Emergency Transitional Powers Act, 1945, comes into force on the first day of January, 1946, and by its terms provides that on and after that day the war shall for the purposes of the War Measures Act be deemed no longer to exist;

And whereas under section 4 of The National Emergency Transitional Powers Act, 1945, the Governor in Council may, without prejudice to any other power conferred by that Act, order
 20 that orders and regulations lawfully made under the War Measures Act or pursuant to authority created thereunder in force immediately before the day The National Emergency Transitional Powers Act, 1945, comes into force shall, while that Act is in force, continue in full force and effect subject to amendment or revocation thereunder;

And whereas section 12 of the Interpretation Act provides that where an Act is not to come into operation immediately on the passing thereof and confers power to make any order, that power may, unless the contrary intention appears, so far as may
 30 be necessary or expedient for the purpose of making the Act effective at the date of the commencement thereof, be exercised at any time after the passing of the Act, subject to this restriction, that any such order shall not come into operation until the Act comes into operation;

And whereas it is necessary and expedient for the purpose of making The National Emergency Transitional Powers Act, 1945, effective at the date of the commencement thereof that those

Court of Appeal

Exhibit No. 8
Dominion
Order in
Council
P.C. 7414
Dec. 28, 1945
(Contd.)

orders and regulations made under the War Measures Act or pursuant to authority created thereunder in force immediately before the first day of January, 1946, should be in full force and effect from such commencement and that there should be no cessation in the operation of such orders and regulations resulting from the War Measures Act (sections 3, 4 and 5 thereof) ceasing to operate;

Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the powers conferred by the National Emergency Transitional Powers Act, 1945, is pleased to order and doth hereby order that all orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day The National Emergency Transitional Powers Act, 1945, comes into force shall, while that Act is in force, continue in full force and effect subject to amendment or revocation under that Act. 10

A. D. P. HEENEY,
Clerk of the Privy Council.

EXHIBIT No. 9

Exhibit No. 9
 Finding and
 Direction of
 National War
 Labour Board
 April 1, 1946

ORDER OF NATIONAL WAR LABOUR BOARD

dated April 1, 1946

IN THE MATTER of the Wartime Wages Control Order, 1943,

P.C. 9384, as amended,

and

IN THE MATTER of a joint application by Canadian National
 Railways and Canadian Pacific Railway Company, Montreal,
 P.Q., employers, and Canadian Brotherhood of Railway Employ-
 10 ees and Other Transport Workers, representing employees, for
 permission to adjust wage rates of occupational classifications
 covered by collective agreement engaged in the operation of cer-
 tain hotels owned and operated jointly and separately by the Rail-
 way Companies.

Finding and Direction

The National War Labour Board having considered the
 above mentioned application, and all parties having an interest
 herein having been given opportunity to make representations
 in regard thereto, and the Board having found that:

- 20 (a) It has not been shown that within the meaning of the
 Order existing wage rates of the occupational classifi-
 cations covered by the application are 'Low' in compari-
 son with wage rates generally prevailing for the same
 or comparable occupational classifications in the same
 localities;
- 30 (b) it has been submitted that pursuant to the provisions of
 Section 20(1)(a) of the Order, as amended, there is
 "such other basis" as to make it "reasonable in the cir-
 cumstances" that adjustment of wage rates as proposed
 by the application should be authorized; particularly so
 inasmuch as the proposed adjustment of wage rates is
 in accordance with agreement between representatives
 of the Railways and of the Employees as a result of col-
 lective bargaining undertaken at the suggestion of the
 Board following consideration of an earlier ex-parte
 application dated October 1, 1945, on behalf of the em-
 ployees;
- 40 (c) the Railways have undertaken that the particular ad-
 justment of wage rates requested by the application, if
 authorized, will not be used as the basis for any appli-
 cation to the Wartime Prices and Trade Board for

Court of Appeal

Exhibit No. 9
 Finding and
 Direction of
 National War
 Labour Board
 April 1, 1946
 (Contd.)

authority to increase rates of their hotel charges to the public;

- (d) it has not been determined that within the provisions of the Order, as amended, the adjustment of wage rates as proposed in the circumstances can properly be authorized with retroactive effect beyond February 15, 1946, and in respect of this feature of the application the Board must necessarily reserve its decision;
- (e) in view of all the conditions involved it would be reasonable and consistent with the intent of Wartime Wages Control Order, 1943, P.C. 9384, as amended, to authorize the Railways to adjust wage rates of their occupational classifications as requested by the application, effective from February 15, 1946. 10

The National War Labour Board, therefore authorizes Canadian National Railways and Canadian Pacific Railway Company, with effect from February 15, 1946, to increase by Twelve Dollars and Forty-eight (\$12.48) cents per month, existing authorized established wage rates of occupational classifications covered by collective agreements engaged at the undermentioned hotels operated by the Railways namely: 20

Canadian National Railways:

Chateau Laurier Hotel, Ottawa, Ont.
 Prince Arthur Hotel, Port Arthur, Ont.
 Fort Garry Hotel, Winnipeg, Man.
 Prince Edward Hotel, Brandon, Man.

Canadian Pacific Railway Company:

Royal Alexandra Hotel, Winnipeg, Man.
 Hotel Saskatchewan, Regina, Sask.
 Palliser Hotel, Calgary, Alta.
 Empress Hotel, Victoria, B.C. 30

Joint Canadian National and Canadian Pacific Railways:

Hotel Vancouver, Vancouver, B.C.

and in respect of the question of retroactivity of the increase in wage rates as authorized to October 1, 1945, as requested by the application, the Board reserves its decision.

(sgd.) R. H. Neilson
 Chief Executive Officer,
 National War Labour Board.

OTTAWA, Ontario.
 April 1, 1946.
 Case File 3N-49.

EXHIBIT No. 10

ORDER of NATIONAL WAR LABOUR BOARD

dated May 18, 1946.

Exhibit No. 10
Supplementary
Finding and
Direction of
National War
Labour Board
May 18, 1946

IN THE MATTER of the Wartime Wages Control Order, 1943,
P.C. 9384, as amended.

and

IN THE MATTER of a joint application by Canadian National
Railways and Canadian Pacific Railway Company, Montreal,
P.Q., employers, and Canadian Brotherhood of Railway Em-
10 ployees and Other Transport Workers, representing employees,
for permission to adjust wage rates of occupational classifica-
tions covered by collective agreement engaged in the operation of
certain hotels owned and operated jointly and separately by the
Railway Companies.

Supplementary Findings and Direction

The National War Labour Board having further considered
the above mentioned application, and having found that as stated
in Item (b) of its Finding and Direction dated April 1, 1946, the
proposed adjustment of wage rates as therein authorized is in ac-
20 cordance with agreement between representatives of the Railways
and of the employees following collective bargaining undertaken
at the suggestion of the Board in a communication dated October
12, 1945, after its consideration of the exparte application sub-
mitted by the employees under date of October 1, 1945, and hav-
ing regard to all of the conditions involved, it would be reason-
able and consistent with the intent of Wartime Wages Control
Order, 1943, P.C. 9384, as amended, to authorize the Railways to
make effective from October 1, 1945, the adjustment in wage
rates as covered by Finding and Direction as mentioned.

30 The National War Labour Board, therefore, authorizes Cana-
dian National Railways and Canadian Pacific Railway Company,
in view of the special conditions applicable, to amend the effective
date of the Board's Finding and Direction dated April 1, 1946,
so as to make effective from October 1, 1945, the increase in wage
rates of occupational classifications therein provided for.

(Sgd.) W. H. Ley,
for R. H. Neilson,

Chief Executive Officer,
National War Labour Board.

OTTAWA, Ontario.

40 May 18, 1946.

Case File 3N-49.

In the Supreme Court of Canada
ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

Appellant

AND:

THE ATTORNEY-GENERAL OF BRITISH
COLUMBIA

10

Respondent

AND:

THE ATTORNEY-GENERAL OF CANADA

Intervenant

No. 10

CERTIFICATE OF SOLICITOR

I, James Arthur Wright, hereby certify that I have personally compared the annexed print of the case in appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals. 20

DATED at Vancouver, B.C., this 17th day of November,
A.D. 1947.

“J. A. Wright”
A Solicitor for the Appellant.

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR
 BRITISH COLUMBIA

BETWEEN :

CANADIAN PACIFIC RAILWAY COMPANY

Appellant

AND :

THE ATTORNEY-GENERAL OF BRITISH
 10 COLUMBIA

Respondent

AND :

THE ATTORNEY-GENERAL OF CANADA

Intervenant

No. 11

CERTIFICATE OF REGISTRAR

I, the undersigned Registrar of the Court of Appeal for
 British Columbia, DO HEREBY CERTIFY that the annexed
 20 case on pages 1 to 105, inclusive, is the case stated by the parties
 pursuant to Section 68 of the Supreme Court Act and the Rules
 of the Supreme Court of Canada in the appeal herein to the
 Supreme Court of Canada.

AND I DO FURTHER CERTIFY that Canadian Pacific
 Railway Company, the appellant herein, has given proper se-
 curity to the satisfaction of a Judge of the Court of Appeal for
 British Columbia, as required by Section 70 of the Supreme
 Court Act, being the sum of Five hundred (\$500.00) Dollars
 of lawful money of Canada, deposited with the Registrar of the
 30 said Court of Appeal, a copy of the Certificate of the Registrar
 as to the deposit of security, and a copy of the Order of the
 Honourable The Chief Justice approving the said security being
 found at pages 24 and 25 respectively of the said case.

*Supreme Court
of Canada*

No. 11
Certificate of
Registrar
(Contd.)

AND I DO FURTHER CERTIFY that the said case contains the Reasons for the Opinions of all the members of the Court of Appeal for British Columbia who were present at the hearing in the said Court of Appeal.

IN TESTIMONY WHEREOF I have hereunto subscribed my hand, and affixed the seal of the said Court of Appeal of British Columbia at Vancouver, B.C., this 18th day of November, A.D. 1947.

“J. F. Mather”
Registrar. 10

B. C. L. S.
\$1.00

Vancouver
Registry
Nov 18 1947

SEAL
Court of Appeal
British Columbia

IN THE SUPREME COURT OF CANADA

SATURDAY, THE 10th DAY OF JANUARY, A.D. 1948.

BEFORE THE HONOURABLE MR. JUSTICE KERWIN,
in Chambers.

CANADIAN PACIFIC RAILWAY,
Appellant,
and

10 THE ATTORNEY-GENERAL OF BRITISH COLUMBIA,
Respondent.

UPON the application of counsel for the Attorney-General of Nova Scotia, in the presence of counsel for the Appellant and Respondent and upon hearing what was alleged by counsel aforesaid:

IT IS ORDERED that leave be granted to the Attorney-General of Nova Scotia to intervene in this Appeal upon terms that the said Attorney-General may be represented by Counsel upon the argument of the Appeal and file a Factum.

20 IT IS FURTHER ORDERED that the Factum of the Attorney-General of Nova Scotia be filed on or before the 31st day of January, A.D. 1948.

AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the Appeal.

(sgd) PAUL LEDUC,
Registrar.

LAW STAMP
\$2.00

RECORD

In the Supreme
Court of Canada

No. 12
Order
Granting
Leave to
Intervene
Nova Scotia
Jan. 10, 1948

RECORD
*In the Supreme
Court of Canada*
No. 13
Order
Granting
Leave to
Intervene
Saskatchewan
Jan. 10, 1948

110
No. 13

IN THE SUPREME COURT OF CANADA
On Appeal from
THE COURT OF APPEAL FOR BRITISH COLUMBIA

THE HONOURABLE } Saturday, the 10th day of
MR. JUSTICE KERWIN } January, 1948.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY, Appellant 10
and
THE ATTORNEY-GENERAL FOR BRITISH COLUMBIA, Respondent
and
THE ATTORNEY-GENERAL FOR CANADA Intervenant

UPON application made by Counsel on behalf of the Attorney-General for Saskatchewan in the presence of Counsel for the Appellant and Respondent and upon hearing read the affidavit of John Wesley Corman filed and upon hearing what was alleged by Counsel aforesaid, 20

IT IS ORDERED that leave be granted to the Attorney-General for the Province of Saskatchewan to intervene in this appeal upon the terms that the Attorney-General be represented by Counsel upon the argument of this appeal and file a factum.

AND IT IS FURTHER ORDERED that the factum of the Attorney-General for the Province of Saskatchewan be filed on or before the 31st day of January, 1948.

AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the Appeal. 30

L.S.
\$2.00
Cancelled

PAUL LEDUC,
Registrar.

IN THE SUPREME COURT OF CANADA

SATURDAY, THE 10th DAY OF JANUARY, A.D. 1948
BEFORE THE HONOURABLE MR. JUSTICE KERWIN

CANADIAN PACIFIC RAILWAY

Appellant,

and

THE ATTORNEY GENERAL OF BRITISH COLUMBIA,

10

Respondent.

UPON the application of counsel for the Attorney-General of Alberta, in the presence of counsel for the Appellant and Respondent and upon hearing what was alleged by counsel aforesaid:

IT IS ORDERED that leave be granted to the Attorney-General of Alberta to intervene in this Appeal upon terms that the said Attorney-General may be represented by counsel upon the argument of the Appeal and file a Factum.

IT IS FURTHER ORDERED that the Factum of the
20 Attorney-General of Alberta be filed on or before the 31st day of January, 1948.

AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the Appeal.

PAUL LEDUC,
Registrar.

RECORD
In the Supreme Court of Canada
No. 14
Order
Granting
Leave to
Intervene
Alberta
Jan. 10, 1948

No. 15
Order
Granting
Leave to
Intervene
Ontario
Jan. 27, 1948

IN THE SUPREME COURT OF CANADA

BEFORE THE HONOURABLE)
MR. JUSTICE KERWIN) TUESDAY, the 27th day
IN CHAMBERS) of January, A.D. 1948.

BETWEEN :

CANADIAN PACIFIC RAILWAY

Appellant

and

10

ATTORNEY-GENERAL OF BRITISH COLUMBIA

Respondent.

UPON the application of Counsel for the Attorney-General of Ontario, in the presence of Counsel for the Appellant and Respondent, and upon hearing what was alleged by Counsel aforesaid:

IT IS ORDERED that leave be granted to the Attorney-General of Ontario to intervene in this appeal upon terms that the said Attorney-General will be represented by Counsel upon the argument of the appeal and file a factum. 20

IT IS FURTHER ORDERED that the factum of the Attorney-General of Ontario be filed on or before the 7th day of February, 1948.

IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the appeal.

(Sgd) PAUL LEDUC,
Registrar.

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE
SUPREME COURT OF BRITISH COLUMBIA

TUESDAY THE 27th DAY OF APRIL, A.D. 1948

PRESENT :

- The Honourable Mr. Justice Kerwin
- 10 The Honourable Mr. Justice Taschereau
- The Honourable Mr. Justice Rand
- The Honourable Mr. Justice Kellock
- The Honourable Mr. Justice Estey

BETWEEN :

CANADIAN PACIFIC RAILWAY COMPANY

Appellant

AND :

THE ATTORNEY-GENERAL OF BRITISH COLUMBIA

Respondent

20 AND :

- THE ATTORNEY-GENERAL OF CANADA
- THE ATTORNEY-GENERAL OF ONTARIO
- THE ATTORNEY-GENERAL OF NOVA SCOTIA
- THE ATTORNEY-GENERAL OF ALBERTA
- THE ATTORNEY-GENERAL OF SASKATCHEWAN

Intervenants

THE APPEAL of the above-named appellant from the judgment of the Court of Appeal for British Columbia pronounced in the above cause on the 27th day of March in the year of our Lord 1947 answering in the affirmative the question,

30 "Are the provisions of the 'Hours of Work Act' being Chapter 122 of the 'Revised Statutes of British Columbia,

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Court of Canada*

No. 16
Formal
Judgment
Apr. 27, 1948
(Cont'd)

1936' and amendments thereto, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent?''

referred to the said Court of Appeal for British Columbia pursuant to the provisions of the Constitutional Questions Determination Act (R.S.B.C. 1936 Ch. 80) having come on to be heard before this Court on the 17th, 18th and 19th days of February in the year of our Lord 1948, in the presence of Counsel as well for the appellant as the respondent and the intervenants, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment, 10

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should be and the same was affirmed and that the said appeal should be and the same was dismissed.

PAUL LEDUC,
Registrar.

No. 17

REASONS FOR JUDGMENT OF MR. JUSTICE KERWIN

This is an appeal from the judgment of the Court of Appeal for British Columbia [1947] W.W.R. 927; [1947] 2 D.L.R. 723, dated 27th March, 1947, answering the following question referred to that Court by Order of the Lieutenant-Governor in Council dated 21st September, 1946, made pursuant to the *Constitutional Questions Determination Act*, chapter 50, of the Revised Statutes of British Columbia, 1936:—

10 “Are the provisions of the ‘Hours of Work Act’ being Chapter 122 of the ‘Revised Statutes of British Columbia, 1936’, and amendments thereto, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent?”

By its terms, the Act applies, *inter alia*, to some classes of persons that are employed by the Company at the Empress Hotel at Victoria, British Columbia, and, among other things, provides for a forty-four hour week. The majority of the Court answered
 20 the question in the affirmative and stated that the whole Act applies. O’Halloran, J.A., dissented and answered the question in the negative.

The Company, incorporated under statutes of Canada, owns and operates in Canada extensive lines of railways from coast to coast, and leases and operates the lines of the Esquimalt and Nanaimo Railway between Victoria and Courtenay on Vancouver Island. It owns and operates lines of steamships, plying between Victoria, on Vancouver Island, and Vancouver on the mainland, and Seattle in the State of Washington. For the purpose of its
 30 lines of railways and steamships and in connection with its said business, the Company built the Empress Hotel at Victoria, which it has operated for over thirty-eight years for the comfort and convenience of the travelling public. The operation of the hotel is a means of increasing passenger and freight traffic upon the Company’s lines of railways and steamships but the hotel also caters to public banquets and permits the use of its hotel ball-room for local functions for reward. In addition to these facts, which are set out in the Order of Reference, it was stated on

*In the Supreme
Court of Canada*

No. 17
Reasons for
Judgment
Kerwin, J.
Apr. 27, 1948
(Cont'd)

behalf of the Company that the Empress is but one of a chain of hotels throughout Canada, which is an integral part of its transportation system; that all employees of the Railway Company at the hotel are entitled to free transportation on the Company's railways; and that these employees are governed by and enjoy the same pension rules and privileges as other employees of the Company.

Normally the legislation in question comes within the classes of subjects by section 92 of the *British North America Act* assigned exclusively to the legislatures of the provinces — namely, 10
Property and Civil Rights in the Provinces: *In re Legislative Jurisdiction over Hours of Labour* [1925] S.C.R. 505; *Attorney-General of Canada v. Attorney-General for Ontario* (Labour Conventions Case) [1937] A.C. 326 at 350. Does legislation in relation to the hours of labour of employees of the Company at the hotel also fall within the legislative powers given by section 91 to the Dominion Parliament.

The Company and the intervenant, the Attorney-General of Canada, contend that it falls within the expression "Railways" in head 10 of section 92, which by force of head 29 of section 91 20 is transferred to the latter as one of the enumerated heads so as to give the Dominion Parliament the exclusive power to legislate upon the subject: *Montreal v. Montreal Street Railway* (1912) A.C. 333. Head 10 reads as follows:—

"10. Local Works and Undertakings other than such as are of the following Classes:—

- (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province: 30
- (b) Lines of Steam Ships between the Province and any British or Foreign Country:
- (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces."

The majority of the Court of Appeal, and apparently the dissenting judge, considered that the opening words in (a), "Lines of," refer as well to railways, canals and telegraphs as 40

to "Steam or other Ships," but they are certainly inappropriate to canals and, in any event, the natural reading of the clause is to restrict "Lines of" to "Steam or other Ships." Indeed, while in a proceeding of this nature the Court cannot accept an admission upon a question of law, it may be noted that counsel for British Columbia agreed that this is the proper construction. He also stated that he could not rely upon the decision in *Lancashire and Yorkshire Railway v. Liverpool Corporation* [1915] A.C. 152, referred to in the reasons of the majority of the Court of Appeal,
10 and I agree with his submission that that case is of no assistance.

These matters, however, are merely preliminary to the solution of the question whether undertakings such as railways include the business of an hotel proprietor and operator. The Company may under its special Acts engage in many activities and in fact section 8 of chapter 52 of the Dominion Statutes of 1902 provides:

20 "8. The Company may, for the purposes of its railway and steamships and in connection with its business, build, purchase, acquire or lease for hotels and restaurants, such buildings as it deems advisable and at such points or places along any of its lines of railway and lines operated by it or at points or places of call of any of its steamships, and may purchase, lease and hold the land necessary for such purposes, and may carry on business in connection therewith for the comfort and convenience of the travelling public, and may lay out and manage parks and pleasure grounds upon the property of the Company and lease the same from or give a lease thereof to any person, or contract with any person for their use, on such terms as the Company deems expedient."

30 But, while "Undertaking" is not a physical thing, but is an arrangement under which of course physical things are used," *In re Regulation and Control of Radio Communication in Canada* [1932] A.C. 304 at 315, yet, however greatly the operation of the Empress Hotel may contribute to the success of the Company's railway activities, it is impossible to say that an hotel business is part of a railway undertaking within the ambit of head 10.

40 Merely because the Company has been endowed by its creator, the Dominion, with power to enter into various fields of endeavour, it cannot have been intended by the *British North America Act* that all those fields which the Company might choose to occupy should be merged in its main undertaking—railways. The mere fact that it was enabled to venture into other activities does not permit it to claim that because it integrated these activi-

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Apr. 27, 1948
(Cont'd)

ties with those of its main business, the former thus became part and parcel of its railways. While as to one point the decision of the Judicial Committee in *Wilson v. Esquimalt and Nanaimo Ry. Co.*; [1922] 1 A.C. 202, is as to the effect of a declaration by Parliament under paragraph (c) of head 10 of section 92, the remarks of Duff, J., as he then was, speaking on behalf of the Committee, at 207 and 208, are important to the point now under consideration. After pointing out that in 1905, by an Act of Parliament, the "railway" of the Esquimalt and Nanaimo Railway Company was declared to be "a work for the general advantage of Canada" and that the word "railway" in this statute signified by force of s. 2, subsec. 21, of the *Dominion Railway Act* (R.S. Can. 1906, c. 37):

"Any railway which the company has authority to construct or operate, and * * * all branches, sidings, stations, depots, wharfs, rolling stock, equipment, stores, property, real or personal, and works connected therewith, and also any railway bridge, tunnel, or other structure which the company is authorized to construct."

He continues:—

"Upon the passing of the Act of 1905, in virtue of the enactments of s. 91, head 29, and s. 92, head 10, of the *British North America Act*, 1867, the 'railway' of the respondent company passed within the exclusive legislative jurisdiction of the Parliament of Canada and, accordingly, their Lordships think the Legislature of the Province ceased to possess the authority theretofore vested in it under head 10 of s. 92 and head 13 of the same section of that Act, to deprive the railway company of its legal title to any of the subjects actually forming part of the 'railway' so declared to be 'a work for the general advantage of Canada,' and to vest that title in another. It does not follow, however, that lands acquired by the railway company as a subsidy granted for the purpose of aiding in the construction of the railway and not held by the company as part of its 'railway' or of its undertaking as a railway company were withdrawn from the legislative jurisdiction of the Province in relation to 'property and civil rights'; and, in their Lordships' opinion, that authority was, notwithstanding the enactment of the Dominion Act of 1905, still exercisable in relation to such subjects."

For the same reasons the operation of an hotel is not necessarily incidental to a railway undertaking. Such cases as

Canadian Pacific Railway v. Notre Dame de Bonsecours [1899] A.C. 367, *Madden v. Nelson and Ford Sheppard* [1899] A.C. 626, and *Grand Trunk Railway of Canada v. Attorney-General of Canada* [1907] A.C. 65, dealt with things or circumstances applicable strictly to railways and their operation.

It was next contended that the hotel had been declared to be for the general advantage of Canada so as to bring it within clause (c) of head 10 of section 92, and reliance was placed upon sections 5 and 6 of the present *Railway Act*, R.S.C. 1927, chapter 10 170. Section 5 provides in effect that the Act shall apply to all persons, railway companies and railways (with certain exceptions) within the legislative authority of the Parliament of Canada, and section 6 enacts that the provisions of the Act shall, without limiting the effect of section 5, extend and apply to

“(c) every railway or portion thereof * * * and every railway or portion thereof now or hereafter so owned, controlled, leased or operated shall be deemed and is hereby deemed to be a work for the general advantage of Canada.”

We were then referred to subsection 21 of section 2 of the 20 *Railway Act*:—

“(21) ‘railway’ means any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorized to construct; and, except where the context is inapplicable, includes street railway and tramway;”

The contention that “other structure,” of any of the other 30 words, include an hotel cannot prevail as the latter does not fall within the genus of the previously mentioned things which the definition of railway is stated to include. There is no declaration by Parliament under clause (c) of head 10 as to hotels and, on this branch of the matter, the decision in *Wilson v. Esquimalt*, already referred to, is conclusive.

The hours of work and other working conditions of the Company’s employees at the Empress Hotel are included in a collective bargaining agreement negotiated and signed by the bargaining representatives of such employees and the Company 40 and provide, *inter alia*, that the employees shall work a forty-eight hour week. The agreement became effective September 1,

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Court of Canada*

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Apr. 27, 1948
(Cont'd)

1945, for a period of one year and thereafter subject to termination on thirty days' notice in writing from either party, and no notice has been given. Under Dominion Order in Council P.C. 1003 dated 17th February, 1944, the Wartime Labour Relations Board was established by the Dominion. This Order in Council was passed under the authority of the *War Measures Act*, R.S.C. 1927, chapter 206, and continued in effect under *the National Emergency Transitional Powers Act*, 9-10 George VI (1945) (2nd Session) chapter 25, by Order in Council P.C. 7414 and further continued in effect by (1947) 11 George VI, chapter 16. 10
Finally, it was continued in force by Order in Council P.C. 5304, issued December 30, 1947, to March 31, 1948.

In the meantime and in fact prior to the agreement between the Company and its hotel employees, the Province had passed chapter 18 of the Statutes of 1944, by section 4 whereof Dominion Order in Council P.C. 1003, referred to above but called Dominion Regulations in the Act "shall apply in the case of employees whose relations with their employers in matters covered by the Dominion Regulations are ordinarily within the exclusive legis- 20
lative jurisdiction of the Legislature in respect of their relations with their employers and to the employers of all such employees in their relations with such employees and to trade-unions, employees' organizations, and employers' organizations composed of such employees or employers." It is sufficient to say that whatever view may be taken as to the legal power which originally gave the agreement vitality, the latter may now operate only to the extent that it does not conflict with the *Hours of Work Act* as amended.

Finally, reference is made to chapter 33 of 23-24 George V, providing for co-operation between the Canadian National Rail- 30
ways and the Canadian Pacific Railway system, in which "Pacific Railways" is stated to mean the Canadian Pacific Railway Company as owner, operator, manager and otherwise and all other companies which are elements of the Company's transportation, communication, and hotel system. The title of the Act is indicative of its purpose but nothing of importance turns upon its provisions except the words "hotel system" and it is only because of an amendment, chapter 28 of the Statutes of 1947, assented to on June 27th of that year, that the Company suggests the argument now under consideration. By this Act, section 27A (1) 40
is added to the principal enactment and reads as follows:—

"27A. (1) The rates of pay, hours of work and other terms and conditions of employment of employees, of Na-

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tional Railways or Pacific Railways, engaged in the construction, operation or maintenance of National Railways or Pacific Railways shall be such as are set out in any agreements in writing respecting such employees made from time to time between National Railways or Pacific Railways, as the case may be, or an association or organization representing either or both of them, on the one hand, and the representatives of interested employees, on the other hand, whether entered into before or after the commencement of this Act, if such agreements are filed in the office of the Minister of Transport.”

The agreement above referred to has been filed in the office of the Minister of Transport. It will be noticed that this statute was enacted not only after the date of the reference to the Court of Appeal but also after the question had been answered. However, accepting the view that an answer is desired in the light of the present position of affairs it follows from what has already been said that the Dominion statute of 1947 is ineffective so far as concerns any employees of the Empress Hotel.

The appeal is dismissed.

REASONS FOR JUDGMENT OF MR. JUSTICE RAND

The Canadian Pacific Railway Company was incorporated by Dominion charter under the authority of and with the effect declared by chap. 1 of the Statutes of Canada, 1881. Later on, in 1883, chap. 24 purported to declare the railway as a system, including branch lines, to be a work for the general advantage of Canada. Chap. 52 of the statutes of 1902 enacted that:—

“8. The Company may, for the purposes of its railway and steamships and in connection with its business, build, purchase, acquire or lease for hotels and restaurants, such buildings as it deems advisable and at such points or places along any of its lines of railway, and lines operated by it or at points or places of call of any of its steamships, and may purchase, lease and hold the land necessary for such purposes, and may carry on business in connection therewith for the comfort and convenience of the travelling public, and may lay out and manage parks and pleasure grounds upon the property of the Company and lease the same from or give a lease thereof to any person, or contract with any person for their use, on such terms as the Company deems expedient.”

By the Act of 1881 the provisions of *The Consolidated Railway Act, 1879*, are, generally, incorporated into the charter of the company. Section 7 of the Consolidated Act vests the company with authority.

“8. To erect and maintain all necessary and convenient *buildings*, stations, depots, wharves, and fixtures, and from time to time to alter, repair or enlarge the same, and to purchase and acquire stationary or locomotive engines and carriages, waggons, floats and other machinery necessary for the accommodation and use of the passengers, freight and business of the railway;”

* * *

“10. To construct and make all other matters and things necessary and convenient for the making, extending and using of the railway, in pursuance of this Act, and of the Special Act.”

In *The Railway Act*, 1919, chap. 170 of the Revised Statutes, 1927, "Special Act" with reference to a railway is defined as meaning "any Act under which a company has authority to construct or operate a railway or which is enacted with special reference to such railway, whether heretofore or hereafter passed * * * ." By section 6 of this Act its provisions extend and apply to

10 “(c) every railway or portion thereof, whether constructed under the authority of the Parliament of Canada or not, now or hereafter owned, controlled, leased, or operated by a company wholly or partly within the legislative authority of the Parliament of Canada * * * ; and every railway or portion thereof, now or hereafter so owned, controlled, leased or operated shall be deemed and is hereby declared to be a work for the general advantage of Canada.”

20 Under these powers, the railway has been established throughout the Dominion and with it a number of hotels. One of them was built about 1909 in Victoria, B.C., a point reached by steamship services of the company as well as by its railway system. The company built the hotel “for the purpose of its lines of railway and steamships and in connection with its said business” and it is operated “for the comfort and convenience of the travelling public.” It “is available for the accommodation of all members of the public as a public hotel.” It “caters for public banquets and permits the use of its hotel ballroom for local functions, for reward.” With 573 rooms, it provides accommodation for large numbers of travellers and tourists from Canada, the United States of America and elsewhere. Its operation is a means of increasing passenger and freight traffic upon the company’s lines of railway and steamships. Meals are prepared and served in the hotel by the catering department. There are also hotel clerks, bookkeepers and other persons engaged in clerical work.

30 The controversy concerns a labour agreement between the employees of the hotel and the company. Under section 6 of the *Wartime Labour Regulations*, made by Order in Council P.C. 1003 dated February 17, 1944, the War Labour Relations Board (National) certified the Canadian Brotherhood of Railway Employees and other Transport Workers, Empress Division No. 276 and certain persons named in the Order, to be the bargaining representatives for the employees except certain of the latter named in the certificate.

 Following that action, a collective agreement was negotiated which became effective on September 1, 1945 to continue for one

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year and thereafter to be subject to termination on thirty days' notice by either party. By this agreement the rates of pay, hours of work and other terms and conditions of employment were dealt with, and it has remained and is now in force.

By chap. 122 of the Revised Statutes of British Columbia (1936) called the *Hours of Work Act* the hours of labour of hotel clerks, including room clerks or persons otherwise engaged in clerical work in hotels, and employees in the catering industry, among others, are prescribed. General administrative powers are given for carrying the provisions of the Act into effect. The question raised is whether or not these provisions apply to and bind the company in respect of such employees and if so, to what extent. 10

The case for the appellant is put on several grounds. It is said, first, that the hotel is an integral part of the railway; that the relations between the company and the hotel employees are matters essential to the management of the entire enterprise; and that consequently they are within the exclusive legislative jurisdiction of the Dominion. If this is not so, then the regulation of the terms of service of the hotel employees is necessarily incidental to railway legislation and Parliament in the exercise of such powers has occupied the field. Finally it is said that the hotel has been declared to be a work for the advantage of Canada, and is so within the same exclusive jurisdiction. 20

The first point involves the view that every authorized activity of the company which may promote the interest of the railway and is carried on under the general administration becomes part of its works and undertaking within the meaning of section 92, (10) (a). The company no doubt is bound to furnish reasonable accommodation to persons who travel on its lines. In the long carriage from the Atlantic to the Pacific reasonable provision of facilities for both food and rest and incidental convenience is an integral part of the service it has undertaken toward the public. It is conceivable, also, that dining rooms and sleeping quarters along its lines, certainly in the early days of its operation, might well have come within its public obligations towards passengers and to have been a necessary part of its railway functions. But I think it impossible to bring this hotel within that accommodation. It is a public hotel to which all travellers have a right of access. It may no doubt serve the convenience of patrons of the company's railway, as well as of the steamship and communication services, for all of which it possesses advertising value as well; but it is a distinct and separate business, not different from 30 40

a score of means by which subsidiary offices having similar effects could be rendered. As a public hotel, the common law obligations would, in the absence of legislation, bind it and it would seem an extraordinary proposition that, so far, the law of innkeepers as the substantive law of this constituent element would now be brought within Parliamentary jurisdiction over railways. But to say that legislation in relation to such collateral adjuncts even in its limited application as here to employees, is railway legislation strictly, is, I think, to confuse the total business of the

10 company with its transportation business. Its corporate organization is a creation of Parliament and under the residual power of section 91 its capacities may be unlimited. But from that source Parliament draws power to deal only with essential corporate incidents; and none of the enumerated heads of section 91 apart from 29 has been suggested as capable of supplementing that power to the extent of supporting any legislation relied on here.

If not railway legislation strictly, can the Dominion enactment dealing with the working hours of these employees be deemed necessarily incidental to railway legislation as that expression is used in: *Attorney-General of Ontario v. Attorney-General of Canada* [1894] A.C. 189; *Attorney-General of Ontario v. Attorney-General of Canada* [1896] A.C. 348 at p. 360; *City of Montreal v. Montreal Street Ry.* [1912] A.C. 333 at p. 343; *Reference re Natural Products Marketing Act* [1936] S.C.R. 398 at p. 414; *Attorney-General of Canada v. Attorney-General of British Columbia* [1930] A.C. 111.

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The legislation is section 27(A) of *The Canadian National-Canadian Pacific Act*, 1933, chap. 33 of the Statutes of Canada (1932-33) enacted by chap. 28 of the Statutes of 1947:—

30 “27A. (1) The rates of pay, hours of work and other terms and conditions of employment of employees, of National Railways or Pacific Railways, engaged in the construction, operation or maintenance of National Railways or Pacific Railways shall be such as are set out in any agreements in writing respecting such employees made from time to time between National Railways or Pacific Railways, as the case may be, or an association or organization representing either or both of them, on the one hand, and the representatives of interested employees, on the other hand, whether entered

40 into before or after the commencement of this Act, if such agreements are filed in the office of the Minister of Transport.

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(2) Nothing in this section shall affect the operation of any other Act of the Parliament of Canada or regulations thereunder."

For the purposes of that section the expression "Pacific Railways" includes the hotels and the hotel department of the company.

No doubt the conception of an articulated organization of many elements all contributing in greater or less degree to a total result is attractive by its symmetry and unity. The analogy of *Toronto Corporation v. The Bell Telephone Company* [1905] 10 A.C. 52 is urged but there the question was simply whether for the purposes of legislation the local telephone services were to be deemed a separate business or whether the entire services were to be taken as one. The true analogy to that case lies in railway operations proper both within and without the provinces. But if a telephone company should embark on the business of manufacturing radio or television receiving sets, a question of a different sort would be presented. As appears from the answers to the Reference on Hours of Labour (1925) S.C.R. 505, general legislation on that 20 subject is prima facie valid either under head 13 or 16 of section 92, and where, as here, those matters are in relation to a public hotel it would be unique that in effect ownership of the hotel would fix its legislative subjection.

In dealing with this category of Dominion power, it is well to keep in mind the distinction between subject matter and legislation relating to it. Where works or undertakings as such are brought within Dominion jurisdiction, the delimitation of the field for legislative purposes involves the consideration of property and functions which go to make up the specific subject. 30 But the incidental necessity with which we are dealing arises from the exercise of admitted powers and its purpose is to make them effective or to prevent their defeat: that is, that on a fair and reasonable view of the exclusive field, the ancillary provisions are essential to give the main legislation a practical completeness depending on the intimacy of underlying facts and relations: *Grand Trunk Railway Co. v. Attorney-General of Canada* [1907] A.C. 65, where at p. 68 Lord Dunedin says "it cannot be considered out of the way that the Parliament which calls them 40 (railway corporations) into existence should prescribe the terms which were to regulate the relations of the employees to the corporation."

Applying that criterion to the situation of this hotel, I am unable to accept the view that, whether the hotel is considered

alone or as one of a chain or system of hotels, and notwithstanding that the central general administration of all under uniform regulations would be practically convenient and advantageous, an ancillary power even restricted to the limited relations of these employees, can be said to be necessary to obtain the full effect of legislation relating to or to secure a like effect of the substantive law applicable to the company's transportation works or undertaking.

10 The last point is whether the hotel has been the subject of a declaration under section 92, head 10 (c). This arises, it is said, from two legislative sources. The first is the declaration of section 6 of *the Railway Act*, 1919 and its predecessor provisions. The definition of "railway" in section 2(21) of that Act includes "property, real or personal, and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorized to construct." It is argued that the hotel is within either "property" or "works" or "structure." Then, it is said that *The Canadian National-Canadian Pacific Act*, being a special Act and so incorporating the Railway Act of 1919, 20 presents to the provisions of the latter the definition of "Pacific Railways" therein which includes the hotel system; and that the declaration of section 6 of *The Railway Act* automatically embraces that system distributively with the railway proper as a work under section 92(10) (c).

The railway as it originated in 1881 was a "work or undertaking connecting two or more provinces," within head 10 (a). Under 10(c) a work must be wholly confined within one province and at the time within provincial legislative jurisdiction to be the subject of a declaration and the so-called declaration of 1883 30 as well as those later so far as they purport to deal with the railway as a whole have been no more than ineffectual motions. It seems impossible moreover to construe any words in the various definitions of "railway" quoted, such as "property" or "works" or "structures," to include public hotels as such. These words deal with the physical structures of the railway proper; and the legislation of 1902, although said to have provided powers more by way of caution than necessity, supports that view. Whatever may have been the actual situation in Great Britain in 1867 of railway hotels, the history of the railways of the United States, 40 which our own development has followed closely, has never associated hotels with railway functions. I am unable, therefore, assuming that a hotel can be a "work" within 10(c), to agree that the hotel here has been drawn by any of these declarations into the Dominion orbit; and that in conjunction with the legislation of 1933 such a result could have been brought about is, I

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think, somewhat fantastic. The expression "Pacific Railways" is nowhere used in the *Railway Act* and could not be connected with any of its provisions. The relation of special Acts to the *Railway Act* arises under section 3 of the latter which provides that "except as in this Act otherwise provided,

- (a) This Act shall be construed as incorporated with the Special Act; and
- (b) Where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject matter, the provisions of the Special Act shall, 10 insofar as is necessary to give effect to such a Special Act, be taken to override the provisions of this Act."

The purpose of this provision is obvious and it leaves the language of each Act interpretatively unaffected by that of the other.

The appeal should therefore be dismissed.

No. 19

REASONS FOR JUDGMENT OF MR. JUSTICE KELLOCK

The first submission on behalf of the appellant is that by reason of section 91 (29) and section 92(10) (a) of the *British North America Act*, the field covered by the provincial statute here in question, is wholly withdrawn from the legislative jurisdiction of the province, the hotels of the appellant being, it is said, included in the term "railways." It is submitted, and I think correctly, that the words "lines of" with which clause (a) of section 92(10) begins, apply only to "steam and other ships" and not to the other things enumerated in the clause.

In my opinion there is nothing to support the appellant's contention with respect to the import of the word "railways" in the statute. It is railway legislation "strictly so-called" which is here committed to the Dominion; *C.P.R. v. Bonsecours*, [1899] A.C. 367 per Lord Watson at 372. In the first edition of Murray, "railway" is defined as "A line or track consisting of iron or steel rails on which carriages or wagons conveying passengers or goods are moved by a locomotive engine, hence also, the whole organization necessary for the conveyance of passengers or goods by such a line and the company of persons owning or managing it." Sedgewick J. in giving the judgment of himself and Strong C.J., in *Grand Trunk v. James* [1901] 31 S.C.R. 420, said at p. 432:

"Everyone knows what the word 'railway' ordinarily means; ('a way on which a train passes by means of rails'), quoting Huddleston, B., in *Doughty v. Firbank*, 10 Q.B.D., 358 at 359."

Counsel for the appellant sought support for his position in Canadian railway legislation commencing with the Act of 1868, 31 Vict., cap. 68. He referred to section 7, subsections 8 and 10, as illustrating that at the time of the passing of the Constitution Act, "railways" were regarded as inclusive of hotels. Those subsections are as follows:

"7. The Company shall have power and authority:

* * *

(8) To erect and maintain all necessary and convenient buildings, stations, depots, wharves and fixtures, and from

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time to time to alter, repair or enlarge the same, and to purchase and acquire stationary or locomotive engines and carriages, waggons, floats and other machinery necessary for the accommodation and use of the passengers, freight and business of the Railway;

* * *

(10) To construct, and make all other matters and things necessary and convenient for the making, extending and using of the Railway, in pursuance of this Act, and of the Special Act;”

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For my part I find nothing in these subsections which indicate any legislative intention of the character contended for. The words “necessary for the accommodation and use of the passengers, freight and business of the Railway” in subsection 8 do not, in my opinion, apply to the whole of the subsection but only to those items following upon the word “purchase.” In any event there is no evidence that a hotel was a “necessary” building in connection with railways in Canada or elsewhere in 1867 and I think the word “convenient” in subsection 8 is not used in any larger sense than in subsection 10, where it is only what is convenient for the making, extending and using of the “railway” which is authorized. “Railway” is defined in section 5, subsection 16, as “the railway and the works by the Special Act authorized to be constructed.” We have no evidence that up to 1868 any special railway legislation had authorized the construction of a hotel, and I find nothing in the Special Act relating to the appellant, 44 Vict. (1881) *cap.* 1, which contains such authority.

In fact it was not until the Act of 1902, 2 Ed. VII, *cap.* 52, section 8, that the appellant was authorized to operate hotels and to “carry on business in connection therewith for the comfort and convenience of the travelling public.” It is noteworthy that by the following section, section 9, the appellant was also, in order to utilize its land grant, (which by clause 11 of the Schedule to the Act of 1881, extended for twenty-four miles on each side of the “railway”) authorized to engage in general mining, smelting and reduction, the manufacture and sale of iron and steel and lumber and timber manufacturing operations. And by section 11 it was authorized to exercise the powers of an irrigation company. I do not discover in any of this legislation an intention that any of the matters to which the legislation of 1902 extended, was intended to be included in the word “railways” as used in the legislation of 1867. I think this contention fails.

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It is next contended that appellant's hotels, including the Empress, have been declared to be works for the general advantage of Canada within clause (c) of section 92 (10). Counsel for the appellant points first to *The Consolidated Railway Act of 1879*, 42 Vict., cap. 9, section 5 (16), which defines "the railway" as meaning "the railway and the works by the Special Act authorized to be constructed." He then refers to clause 17 of Schedule "A" to the Act of 1881 which provides that the Act of 1879 insofar as applicable and not inconsistent with the provisions of the 1881 legislation and save and except as otherwise therein provided, is incorporated therewith. Down to this point of course there was no authority for the construction of hotels. Next followed the Act of 1902 and cap. 33 of 23-24 Geo. V. Counsel then refers to section 3(a) of R.S.C., 1927, cap. 170, which provides that that statute shall be construed as incorporate with the "Special Act," which by section 2 (28) means "any Act under which the Company has authority to construct or operate a railway, or which is enacted with special reference to such railway, whether heretofore or hereafter passed, and includes (a) all such Acts." It is argued that the result of this legislation is that hotels have become an integral part of the appellant's "railway" and come within section 6(c) of the 1927 Act, which reads as follows:

"6. The provisions of this Act shall * * * extend and apply to * * *

(c) every railway or portion thereof, whether constructed under the authority of the Parliament of Canada or not, now or hereafter owned, controlled, leased or operated by a company wholly or partly within the legislative authority of the Parliament of Canada * * * and every railway or portion thereof, now or hereafter so owned, controlled, leased or operated shall be deemed and is hereby declared to be a work for the general advantage of Canada."

In my opinion there is infirmity in this argument. It is sufficient to refer to one point. "Railway" is defined by section 2(21) as:

"any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorized to construct; and, except where the context is inapplicable, includes street railway and tramway."

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Under clause (c) of section 92 (10) a declaration may be made only with respect to a work "wholly situate within the province," *Toronto v. Bell Telephone Company* [1905] A.C. 52 at 60. The "railway" of the appellant company is not so situate. It is however, sought to read "other structure" in section 2(21) as including a hotel and then to read section 6 (c) as meaning "every railway or every hotel thereof," so that there is a declaration not only as to the whole "railway" which would be ineffective, but also as to each "bridge," "tunnel," "hotel," etc.

In my opinion this is not a legitimate interpretation of the statute. Whatever the words "or portion thereof" apply to, they may not, in my opinion, be applied as appellant seeks. I do not think "structure" is to be read as including such things as hotels or mine buildings or an irrigation work. It is to be noted that, as in the case of section 5 (16) of the Act of 1879, it is only structures which the company is authorized to "construct" which are included. In the legislation of 1902 the company is authorized not only to "build" buildings for hotels but to "purchase, acquire or lease" them. On appellant's contention a hotel built by appellant would be included in the declaration while one purchased or acquired would not. In my opinion the structures included in section 2(21) are limited *ejusdem generis* to the ones specified in the clause. These are clearly limited, to employ the language of Lord Russell of Killowen in *Montreal Trust Co. v. C.N. Ry. Co.* [1939] A.C. 613 at 625: "* * * to the track and its physical appurtenances," unless the context otherwise requires. I see no such requirement in the context here in question. However the argument is put, it comes back to the question of the proper interpretation of the definition section of the Act of 1927 which, in my opinion is to be interpreted as above indicated.

In *Wilson v. Esquimalt* [1922] 1 A.C. 202 also, Duff J., as he then was, in delivering the judgment of the Privy Council dealt with the definition of "railway" in the *Railway Act, 1906*, R.S.C., cap. 37, section 2, subsection 21. After referring to an Act of Parliament of 1905 declaring the railway of the respondent company to be a work for the general advantage of Canada, he said at page 207:

"Upon the passing of the Act of 1905, in virtue of the enactments of s. 91, head 29, and s. 92, head 10, of the British North America Act, 1867, the 'railway' of the respondent company passed within the exclusive legislative jurisdiction

of the Parliament of Canada and, accordingly, their Lordships think the Legislature of the Province ceased to possess the authority theretofore vested in it under head 10 of s. 92 and head 13 of the same section of that Act, to deprive the railway company of its legal title to any of the subjects actually forming part of the 'railway' so declared to be 'a work for the general advantage of Canada,' and to vest that title in another. It does not follow, however, that lands acquired by the railway company as a subsidy granted for the purpose of aiding in the construction of the railway and not held by the company as part of its 'railway' or of its undertaking as a railway company were withdrawn from the legislative jurisdiction of the Province in relation to 'property and civil rights;' and, their Lordships' opinion, that authority was, notwithstanding the enactment of the Dominion Act of 1905, still exercisable in relation to such subjects."

In my opinion therefore there is no basis for the contention of the appellant that with respect to the Empress Hotel such matters as hours of work are within the exclusive jurisdiction of Parliament.

It is, however, submitted that in any event such legislative jurisdiction is nevertheless necessarily incidental to effective legislation by the Dominion on a subject enumerated in section 91 and it is said that the Dominion has by *cap.* 28 of 11 Geo. VI occupied the field.

The authorities on this aspect of the matter are well known and it is not necessary to discuss them at length. In *Montreal v. Montreal Street Railway* [1912] A.C. 333 Lord Atkinson at 344 said with respect to such a contention, "that it must be shown that it is necessarily incidental to the exercise of control over the traffic of a federal railway * * *" that it should have the power in question there. I find no such compelling necessity in the present case. I do not think such legislation is "necessarily incidental to effective legislation by the Parliament of the Dominion" with respect to "railways;" *Attorney-General for Canada v. Attorney-General for Quebec* [1947] A.C. 33 at 43.

If this be so then Parliament may not give itself jurisdiction by enacting legislation such as the Act of 1947, by including in it the employees of the appellant's hotel system and in so far as it purports to do so, the legislation is, in my opinion, ultra vires. We are not called upon to deal with the question of severability, which was not argued.

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The only argument addressed to us by counsel for either of the appellants with respect to P.C. 1003 was founded upon the basis that this order depended for its application upon bringing the appellant's hotel employees within section 3(1) (a) or (b). For the reasons already given this cannot be done and in my opinion therefore the order has no application.

I would dismiss the appeal.

No. 20

REASONS FOR JUDGMENT OF MR. JUSTICE ESTEY
 (concurring in by Mr. Justice Taschereau)

The Government of British Columbia, under the provisions of the *Constitutional Questions Determination Act*, R.S.B.C. 1936, c. 50, submitted to the Court of Appeal of that province the following question:

10 “Are the provisions of the ‘*Hours of Work Act*’ being Chapter 122 of the ‘*Revised Statutes of British Columbia, 1936*’, and amendments thereto, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent?”

The majority of the learned judges of that Court, O’Halloran J.A., dissenting, answered this question in the affirmative. The Canadian Pacific Railway Company appeals from that decision.

20 The *Hours of Work Act* provides that, subject to certain exceptions, the working hours shall not exceed eight in the day and forty-four in the week. The appellant does not dispute that legislation of this type is *intra vires* of the provision but rather contends that it cannot affect the employees in the Empress Hotel, owned and operated as part of its railway and steamship system.

The respondent on its part concedes that the appellant owns and operates a railway throughout Canada which is subject to Dominion legislation only, but contends that its hotels are not a part of its railway within the meaning of section 92 (10) of the *British North America Act*.

The relevant provisions of the *British North America Act* are sections 91 (29) and 92 (10), reading as follows:

30 “91. * * * the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say—

* * *

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

* * *

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say—

* * *

10. Local Works and Undertakings other than such as are of the following Classes:—

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province: 10

* * *

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.”

The appellant's first submission is that hotels are an integral part of its system and included in the term “railway” as that word is used in 92(10) (a). The Privy Council has not defined 20 the word “railway” as used in section 92(10) but has indicated in a general way the meaning of the term when defining the jurisdiction of the Parliament of Canada in the field of railway legislation. Lord Watson in *C.P.R. v. Corporation of the Parish of Notre Dame de Bonsecours* [1899] A.C. 367 at p. 372; 1 Cam. 558 at p. 562, stated:

“The *British North America Act*, whilst it gives the legislative control of the appellants' railway *qua* railway to the Parliament of the Dominion, does not declare that the railway shall cease to be part of the provinces in which it 30 is situated, or that it shall, in other respects, be exempted from the jurisdiction of the provincial legislatures. Accordingly, the Parliament of Canada has, in the opinion of their Lordships, exclusive right to prescribe regulations for the construction, repair, and alteration of the railway, and for its management, and to dictate the constitution and powers of the company; but it is, *inter alia*, reserved to the provincial parliament to impose direct taxation upon those portions of it which are within the province, in order to the raising of a revenue for provincial purposes. It was obviously in the 40 contemplation of the Act of 1867 that the ‘railway legislation,’ strictly so called, applicable to those lines which were placed under its charge should belong to the Dominion Parliament”.

In *Attorney-General for British Columbia v. Canadian Pacific Railway* [1906] A.C. 204; 1 Cam. 624 the Privy Council held that the Dominion Parliament had full power to authorize the taking of provincial Crown lands by the company "for the purposes of this railway." This case was followed in *Attorney-General for Quebec v. Nipissing Central Ry. Co.* [1926] A.C. 715; 2 Cam. 411. In *Grand Trunk Ry. of Canada v. Attorney-General of Canada* [1907] A.C. 65; 1 Cam 636 the Privy Council used the phrase "truly railway legislation" and "truly ancillary to railway legislation." In this Court in *In re Alberta Railway Act* [1913] 48 S.C.R. 9, Duff, J., (later Chief Justice) at p. 38 stated:

"In that view it seems to follow that when you have an existing Dominion railway all matters relating to the physical interference with the works of that railway or the management of the railway should be regarded as wholly withdrawn from provincial authority."

Throughout the foregoing cases the phrases "legislative control of * * * railway *qua* railway," " 'railway legislation' strictly so called," "truly railway legislation," "for the purposes of this railway" indicate that, while the meaning of the term "railway" is not restricted to the roadbed and the rails, it cannot be given a meaning sufficiently wide as to include the term "hotel." Moreover, this seems to be in accord with the definition found in the Oxford Dictionary:

"Railway * * *

* * *

"2. A line or track consisting of iron or steel rails, on which carriages or wagons conveying passengers or goods are moved by a locomotive engine. Hence also, the whole organization necessary for the conveyance of passengers or goods by such a line, and the company or persons owning or managing it."

While it is true that definitions subsequently adopted in railway legislation of Canada cannot affect the meaning of the term "railway" as it appears in the *British North America Act*, it is not without significance to observe that in 1939 the Privy Council referred to the present definition of "railway" (The *Railway Act*, 1927 R.S.C., c. 170, s. 2(21)) as follows:

" 'Railway' is defined by the Act (s. 2, sub-s.21) in such a way as to restrict its meaning, unless the context otherwise requires, to the track and its physical appurtenances." *Montreal Trust Co. v. Canadian National Ry. Co.* [1939] A.C. 613 at 625.

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It would appear, therefore, that neither in legislation, decision nor in the dictionary has the word "railway" acquired a meaning sufficiently broad and comprehensive to include hotels.

Moreover, the hotel business antedates that of the railway and has generally been regarded as a separate and distinct business. While it is true that for the travelling public hotels are necessary, they are not an essential or an integral part of the means of conveyance. Indeed, it was not until 1902 that the Parliament of Canada enacted *The Canadian Pacific Railway Act, 1902*, (1901-2 S. of C., c. 52) authorizing the company, for the purposes of its railway and steamships and in connection with its business, to acquire and operate hotels. 10

If in fact the company did operate hotels prior to that date, it did so, as was suggested at the hearing, mainly in the mountain sections, in the days before Pullman and dining cars and on a much smaller and entirely different basis from that which the company's hotels are operated today. Moreover, the material indicates that the Empress Hotel was built about thirty-eight years ago and therefore under the authority of the 1902 enactment. The conclusion appears to be unavoidable that hotels are not included under the term "railway" as used in section 92(10) (a). 20

The appellant submits that under section 92(10) (c) the Parliament of Canada by enacting section 6(c) of *The Railway Act, (1927 R.S.C., c. 170)*, has declared the appellant railway "a work for the general advantage of Canada" and that the term "railway" in that declaration includes hotels, and therefore the latter are by virtue of the provisions of 91 (29) and 92(10) (c) of the *British North America Act* under the legislative jurisdiction of the Dominion. *City of Montreal v. Montreal Street Ry.* [1912] A.C. 333; 1 Cam 711; *Wilson v. Esquimalt and Nanaimo Ry. Co.* [1922] 1 A.C. 202; 2 Cam. 244. It therefore becomes pertinent to determine whether hotels are included in this declaration. 30

"6. The provisions of this Act shall, without limiting the effect of the last preceding section, extend and apply to

* * *

(c) every railway or portion thereof, whether constructed under the authority of the Parliament of Canada, or not, now or hereafter owned, controlled, leased, or operated by a company * * * is hereby declared to be a work for the general advantage of Canada." 40

A somewhat similar declaration has been included in all of the railway Acts since 1888 and although the language in successive enactments has varied, it has always been restricted to a declaration with respect to the railway, indeed, in the earlier enactments to the "lines of the railway," and there is nothing in these statutes to suggest that hotels are included under the term "railway." Nor is there anything in the present section 6 (c) to suggest that the word "railway" should be there construed otherwise than as defined in the interpretation section of the present statute, which reads:

"2. In this Act, and in any Special Act as hereinafter defined, in so far as this Act applies, unless the context otherwise requires,—

* * *

(21) 'railway' means any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorized to construct; and, except where the context is inapplicable, includes street railway and tramway."

The appellant submits that although hotels are not specifically mentioned, they are included in either of the phrases "and works connected therewith" or "other structure" as they appear in section 2(21). It is important to note that both of these phrases were part of the definition in the Act of 1888 and that notwithstanding this, Parliament has added many words since that time.

The word "railway" was first defined in *The Railway Act* of 1868 (31 Vict., c. 68, s. 5 (16)):

"5. (16) The expression 'the Railway' shall mean the Railway and works by the Special Act authorized to be constructed."

This definition was substantially repeated until in *The Railway Act*, 1888, (51 Vict., c. 29), "railway" is defined as:

"2. (q) The expression 'railway' means any railway which the company has authority to construct or operate, and includes all stations, depots, wharves, property, and works connected therewith, and also any railway bridge or other structure which any company is authorized to construct under a Special Act."

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In *The Railway Act* of 1892, (55-56 Vict., c. 27) the words "rolling stock" and "equipment" were inserted into this definition after the word "wharfs." In *The Railway Act* of 1903, (1903 S. of C., 3 Edw. VII, c. 58), further additions were made by inserting the words "branches" and "sidings" before the word "stations," the word "stores" after the word "equipment," the words "real or personal" after the word "property" and the word "tunnel" after the word "bridge." Thereafter the definition remained substantially the same until in 1919 (9-10 Geo. V, c. 68, s. 2(21)) the words "and, except where the context is in- 10 applicable, includes street railway and tramway" were added.

This definition is continued in the present Act R.S.C., 1927, c. 170, s. 2(21). It is significant that in 1903 when Parliament deemed it desirable to insert into the definition the words "branches," "sidings," "stores" and "tunnels," it did not include hotels, notwithstanding the fact that in the previous year Parliament had enacted *The Canadian Pacific Railway Act*, 1902 (1901-2 S. of C., c. 52), and thereby for the first time authorized the company to acquire and operate hotels.

If Parliament had intended that these phrases should have 20 been so comprehensive in meaning as to include hotels, these same phrases would have included all the words that have been added since 1888. The history of section 2(21) indicates that Parliament did not entertain any such view and therefore from time to time, and more particularly in 1903, inserted the words above mentioned, all of which indicate that these phrases should be interpreted not to include hotels, but rather in accord with the *ejusdem generis* rule under which, having regard to the enumerations, would not include hotels.

The appellant submits that *The Canadian Pacific Railway* 30 *Act*, 1902, (1901-2 S. of C., 2 Edw. VII, c. 52), and *The Canadian National-Canadian Pacific Act*, 1933, (1932-33 S. of C., 23-24 Geo. V, c. 33), read in association with *The Railway Act* demonstrates that its hotels are included in the railway. The Canadian Pacific Railway Company was incorporated by Special Act of the Parliament of Canada in 1881 (44 Vict., c. 1), and by letters patent under the Great Seal of Canada in the form set out in the schedule of that Act; and by section 17 of *Schedule A* to that Act it is provided that:

"17. '*The Consolidated Railway Act*, 1879,' in so far as 40 the provisions of the same are applicable to the undertaking authorized by this charter, and in so far as they are not inconsistent with or contrary to the provisions hereof, and

save and except as hereinafter provided, is hereby incorporated herewith.”

Then in section 7(10) of “*The Consolidated Railway Act, 1879*,” (1879, 42 Vict., c. 9), the company is authorized:

“7. (10) to construct and make all other matters and things necessary and convenient for the making, extending and using of the railway, in pursuance of this Act, and of the Special Act.”

10 This subsection appears among a large number of subsections detailing powers of the company and immediately follows authority to erect and maintain all necessary and convenient buildings, stations, depots, wharves and fixtures, etc., to make branch lines and to manage same, and it is suggested that this very general language justifies the inclusion of hotels as an integral part of a railway. Clauses of this type following specific authorizations are obviously intended to authorize some matter closely related and necessary to the authority already given, but do not and are not intended to give authority for the undertaking of works such as hotels.

20 Since Confederation successive railway Acts have expressly provided that the provisions thereof are to be read into and form a part of the Special Acts, except in so far as they may be inconsistent with the provisions of the latter. In the present *Railway Act, 1927 R.S.C., c. 170*, it is provided:

“3. Except as in this Act otherwise provided,

(a) this Act shall be construed as incorporate with the Special Act; and

30 (b) where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject-matter the provisions of the Special Act shall, in so far as it is necessary to give effect to such Special Act, be taken to override the provisions of this Act.”

The phrase “Special Act” as used in the above quoted section 3 is defined in section 2(28):

40 “2. (28) ‘Special Act,’ when used with reference to a railway, means any Act under which the company has authority to construct or operate a railway, or which is enacted with special reference to such railway, whether heretofore or hereafter passed, and includes

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- (a) all such Acts,
- (b) with respect to the Grand Trunk Pacific Railway Company, the National Transcontinental Railway Act, and any amendments thereto, and any scheduled agreements therein referred to, and
- (c) any letters patent, constituting a company's authority to construct or operate a railway, granted under any Act, and the Act under which such letters patent were granted or confirmed;''

The Canadian Pacific Railway Act, 1902, (1901-2 S. of C., 10 c. 52) is a Special Act within the meaning of sections 2(28) and 3(a), *supra*, and therefore *The Railway Act of 1927* "shall be construed as incorporate with" it. Sections 6(c) and 2(21), (both already quoted), are therefore to be construed as part of the 1902 Act.

It will be observed that the definition 2(21) applies not only to *The Railway Act* itself, but to any Special Act unless the context otherwise requires. Nothing appears in the context of Section 8 of *The Canadian Pacific Railway Act, 1902*, to justify a construction of the word "railway" as therein used other than 20 as defined in section 2(21). Section 8 reads in part:

"8. The Company may, for the purposes of its railway and steamships and in connection with its business * * * acquire * * * hotels and restaurants * * * and may carry on business in connection therewith for the comfort and convenience of the travelling public * * * "

This section permits and empowers but does not obligate the Canadian Pacific Railway Company to acquire and operate hotels as an essential or an integral part of its railway. The language of the section appears to negative that idea. It 30 provides that "the company may, for the purposes of * * * in connection therewith." This language negatives the appellant's submission and suggests that these hotels may be operated in association with the railway and "for the comfort and convenience of the travelling public," but not as a necessary or indispensable part of the railway and steamship system. Moreover, in this section the phrase "travelling public" is not restricted to those enjoying the company's lines, and while the statute authorizes these hotels for the purpose of its railway and steamship business and to be located as specified, the statute does not 40 limit or give any preference with respect to the accommodation, and indeed, in practice the hotels cater to the public.

The appellant emphasizes the provisions of *The Canadian National-Canadian Pacific Act, 1933* (1932-33, 23-24 Geo. V, c 33), as a Special Act and submits that its provisions support its contention that hotels are included within the term "railway" as used in the declaration embodied in section 6(c). It is an Act respecting the Canadian National Railway Company and to provide for co-operation between the Canadian National Railways and the Canadian Pacific Railway system. If we assume that it is a Special Act as the appellant contends, it does not follow that it includes the hotel system of the appellant so as to bring hotels within the terms of section 6(c). The Act in section 3(g) defines "Pacific Railway" to include the hotel system. It does not follow, however, that this definition, made for the purpose of that Act, alters or changes in any way the definition of the word "railway" in section 2(21) or as it is used in section 6(c), both of which are to be read as parts of the *Canadian National-Canadian Pacific Act*. Moreover, a perusal of 1933 Act, in so far as it affects the appellant company, indicates that its intent and purpose is to assist the appellant and the Canadian National Railways in working out a scheme of co-operation in all of their operations as defined under the respective headings "Pacific Railway" and "National Railway". It does not purport to alter or affect the powers or obligations, nor the general character of the business of the appellant company. It would rather appear that Parliament in 1933 intended that the definition of "Pacific Railway" and "National Railway." It does not purport to alter the relevant sections as they are set out in that Act, but not as applicable to the provisions of *The Railway Act*, though they "shall be construed as incorporate" therewith (section 3, Railway Act, *supra*).

The appellant submits that in any event legislation with respect to its hotels is necessarily incidental or ancillary to effective legislation in respect of its railway system and therefore provincial legislation which may be *intra vires* of the province in general is not applicable to the appellant's hotels. The scope or field of Dominion legislation under this head is indicated in *Attorney-General for Ontario v. Attorney-General for The Dominion*, (Ontario Liquor License Act) [1896] A.C. 348; 1 Cam. 481. In that case the Privy Council pointed out that the framers of the B.N.A. Act contemplated that in the exercise of the enumerated powers under section 91 the Dominion would be called upon to pass legislation necessarily incidental to these powers in relation to matters which *prima facie* were within the exclusive legislative jurisdiction of the province under the enumerated heads of section 92. It was because of this that the concluding part of section 91 was

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enacted providing that any matter included in one of the enumerated classes under 91 should not be deemed to come within the classes enumerated under section 92. At p. 359 (1 Cam. 490), Lord Watson states:

“It also appears to their Lordships that the exception was not meant to derogate from the legislative authority given to provincial legislatures by these sixteen subsections, save to the extent of enabling the Parliament of Canada to deal with matters local or private in those cases where such legislation is necessarily incidental to the exercise of the powers conferred upon it by the enumerative heads of clause 91.” 10

In the application of the foregoing principle the Privy Council has recognized the impossibility of laying down any general principle which would be applicable to all of the specified heads under 91. *John Deere Plow Co. v. Wharton* [1915] A.C. 330; 1 Cam. 806. It has rather indicated that each case must be determined upon its own facts. Notwithstanding this, the judgments already delivered are of assistance in determining the issue in any given case. 20

As already pointed out, the Privy Council in determining the jurisdiction of the Dominion in respect to railways has used such phrases as “*qua* railway,” “railway legislation strictly so called” and “truly railway legislation.” It is the railway as a vehicle of transportation that is envisaged throughout and if legislation with respect to hotels is necessarily incidental thereto it must be within the authorities established that the transportation system would be in respect of its passenger service, in any practical sense, ineffective.

Mr. Justice Duff (later Chief Justice) in *B.C. Electric Rly. Co. v V.V. and E. Rly. & Navigation Co. and The City of Vancouver* [1913] 48 S.C.R. 98, at p. 120 stated: 30

“In this view then in every case in which a conflict does arise the point for determination must be whether there exists such a necessity for the power to pass the particular enactment in question as essential to the effective exercise of the Dominion authority as to justify the inference that the power has been conferred. *The City of Montreal v. The Montreal Street Railway Co.*, (1912) A.C. 333, at pages 342-345.”

The conclusion arrived at by Mr. Justice Duff was accepted 40 by the Privy Council: (1914) A.C. 1067.

In *Attorney-General for Canada v. Attorney-General for British Columbia* [1930] A.C. 111; Plaxton p. 1, the Dominion had by legislation required the operator of a fish cannery to obtain a licence. In support of this legislation it was contended that the operation of canneries and curing establishments were both inseparably connected with the conduct of fisheries as contemplated in section 91 (12), "sea coast and inland fisheries," or that it was reasonably necessary or ancillary to effective legislation under section 91(12). Both conten-
10 tions were dismissed by the Privy Council and the legislation held *ultra vires*. As to the first, it was stated at p. 121, (Plaxton, p. 10):

"In their Lordships' judgment, trade processes by which fish when caught are converted into a commodity suitable to be placed upon the market cannot upon any reasonable principle of construction be brought within the scope of the subject expressed by the words 'sea coast and inland fish-eries.'"

As to the second, at p. 121-2, (Plaxton, p. 11):

20 "It is not obvious that any licensing system is necessarily incidental to effective fishery legislation, and no material has been placed before the Supreme Court or their Lordships' Board establishing the necessary connection between the two subject-matters."

That hotels are from the appellant's point of view desirable and serve a useful purpose may be admitted, but it does not follow that they are essential to the appellant's railway and steamship system in the sense that the latter can only be effective-
30 ly operated and maintained on the basis that legislation with respect to hotels is necessary and incidental to effective railway legislation. That such legislation is necessary and incidental does not appear from the nature and character of the business of the railway and such has not been established as a fact in this particular case.

The foregoing is not affected by the provisions of *an Act to amend the Canadian National-Canadian Pacific Act, 1933*, (1947 S. of C., c 28), which added section 27A providing as follows:

40 "27A. (1) The rates of pay, hours of work and other terms and conditions of employment of employees * * * shall be such as are set out in any agreements * * * made * * * between * * * Pacific Railways * * * and the representatives of interested employees * * *"

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In the view already expressed to the effect that hotels are not included in the term "railway" nor that legislation in respect to hotels is necessarily incidental or ancillary to railway legislation within section 92(10), this section 27A can have no application to hotels, and in so far as it may purport to do so is *ultra vires* of the Parliament of Canada. *City of Montreal v. Montreal Street Ry. Co.*, [1912] A.C. 333; 1 Cam. 711; *B.C. Electric Ry. Co. Ltd. v. V.V. and E. Ry. & Navigation Co.*, [1914] A.C. 1067.

I am therefore in agreement with the majority of the learned judges in the Appellate Court that the question submitted should 10 be answered in the affirmative.

L.S.

AT THE COURT AT BUCKINGHAM PALACE

The 5th day of August, 1948

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. CHANCELLOR OF THE
EXCHEQUER

VISCOUNT HALL

MR. KEY

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 14th day of July 1948 in the words following, viz.:—

20 “WHEREAS by virtue of His late Majesty King Edward the Seventh’s Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Canadian Pacific Railway Company in the matter of an Appeal from the Supreme Court of Canada between the Petitioner (Appellant) and The Attorney-General of British Columbia, The Attorney-General of Canada and The Attorneys-General of Ontario, Nova Scotia, Alberta and Saskatchewan Respondents setting forth: that the Petitioner who is supported by the Respondent the Attorney- General of Canada desires to obtain special leave to appeal from a Judgment of the Supreme Court of Canada dated the 27th April 1948 which dismissed the Petitioner’s Appeal from a Judgment dated the 27th March 1947 of the Court of Appeal of British Columbia which by a majority answered in the affirmative the following question which the Lieutenant-Governor in Council pursuant to the Constitutional Questions Determination Act had referred to the Court of Appeal for hearing and consideration: ‘Are the provisions of the “Hours of Work Act” being Chapter 122 of the “Revised Statutes of British Columbia 1936” and amendments there-
 30 to, applicable to and binding upon Canadian Pacific Railway Company in respect of its employees employed at the Empress Hotel, and if so, to what extent?’: that the matter is of great public importance as is indicated by the fact that the Attorney-General of Canada obtained leave to intervene in the Appeal to the Supreme Court and filed a factum sup-

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porting the Petitioner's Appeal and appeared by Counsel on the argument and later the Attorneys-General of Ontario, Nova Scotia, Alberta and Saskatchewan also intervened filed factums appeared by Counsel and in argument supported the Attorney-General of British Columbia: that in the Court of Appeal of British Columbia Sloan C.J. and Smith and Bird J.J.A. concurred in the Judgment of Robertson J.A. who held that the Empress Hotel is not part of the Petitioner's line of railway and is not therefore within the exclusive legislative jurisdiction of the Dominion although he expressed the opinion that whatever is absolutely necessary for the physical use of the railway is to be treated as part of the railway and that this would include such things as round-houses stations rolling-stock equipment and all other things necessary for the operation of a railway: that O'Halloran J.A. dissented and held that the construction maintenance and operation of the Empress Hotel form an integral part of the 'works and undertakings' of the Petitioner within head 10 of section 92 of the British North America Act and that the Empress Hotel is an integral link in the Petitioner's world ship and rail transportation system: that the Petitioner appealed to the Supreme Court of Canada and while the Appeal was pending the Court of Appeal of Saskatchewan by a Judgment dated the 12th November 1947 in a similar case unanimously held (affirming the trial Judge) that provincial labour legislation did not apply to the Petitioner's employees in Saskatchewan including employees in hotels: that the Court expressly agreed with and adopted the reasoning of the dissenting Judgment of O'Halloran J.A.: that the Supreme Court of Canada unanimously held against the Petitioner: that the judgment of the Supreme Court would prevent working conditions in the Petitioner's hotels throughout Canada from being placed on a uniform basis and would also result in having labour relations under provincial conciliation tribunals in the various provinces so that when a dispute between the Petitioner and its employees other than hotel employees was settled by a Dominion board this settlement could not be applied to hotel employees but settlement of the difference between such hotel employees and the Petitioner would have to be dealt with before conciliation boards in each of the provinces in which the Petitioner operates hotels: that the Petitioner submits that the reasoning of O'Halloran J.A. and of the Courts in Saskatchewan is to be preferred to that of the Judges of the Supreme Court: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Supreme Court dated the 27th April

1948 and for such further or other Order as to Your Majesty in Council may seem just:

10 “THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Canada dated the 27th day of April 1948 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

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 “AND Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

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

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

E. C. E. LEADBITTER.