PROCEEDINGS —

Twenty-fourth Annual Meeting

Volume XXIV • Number 1 1983

TRANSPORTATION RESEARCH FORUM

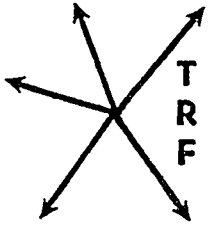
PROCEEDINGS —
Twenty-fourth Annual Meeting

Theme:

"Transportation Management, Policy and Technology"

November 2-5, 1983
Marriott Crystal City Hotel
Marriott Crystal Gateway Hotel
Arlington, VA

Volume XXIV • Number 1 1983



TRANSPORTATION RESEARCH FORUM

Rate Arbitration and Reparations In Canadian Transport Legislation

by Richard Lande, Leslie Lovell,* Brian Murray* and Kevin Tansey**

IN THE SUMMER of 1980, Transport Canada circulated a discussion paper on legislative proposals regarding freight rates.[1] During 1980 and 1981, representatives from Transport Canada and the Canadian Transport Commission wrote to and visited the provinces, the major railways and shippers' associations in order to understand their respective positions on the desirability of incorporating rate arbitration and/or reparations into Canadian transportation law. Toward the end of 1981, Transport Canada published two papers which concluded that no legislative amendments on the above subjects should be implemented.[2]

The support which has been given to the concepts of rate arbitration and reparations stems from a dissatisfaction on the part of certain rail shippers with the present rate appeal mechanism under Section 23 of the **National Transportation Act**.[3] The Section 23 appeal constitutes the major exception to the pricing freedom which was allowed to Canadian railways in 1967.[4] Section 23 gives the Canadian Transport Commission the authority to order the roll-back of any freight rate which has been proven to be prejudicial to the "public interest." Since 1967 there have been no more than five major rail Section 23 appeals which have involved industry-wide protests against excessive rail rate levels or rate discrimination.[5]

Various shippers' associations have publicly complained about the lengthy delays and great expense necessary to bring about a section 23 appeal.[6] They proposed rate arbitration as a less formal, quicker and inexpensive means by which small shippers could achieve redress from excessive freight rates. Although there have been many descriptions of the proposed "rate arbitration tribunal," we shall use the outline given by the Council of Forest Industries as an example.[7]

According to COFI, rate arbitration should only be initiated if the parties have already attempted to negotiate the freight rate(s). A full-time administrator appointed by the CTC would decide whether the criterion of full negotiation had been met.[8] Either the railway, an individual shipper, or a shippers' association would be able to request arbitration. Within ten days of the request for arbitration, the administrator must select an arbitrator who is acceptable to both parties. If the disputants cannot agree after two attempts, to name an acceptable candidate, then the administrator's third nomination would be bind. ing.[9]

Each party is allowed but not required, to use legal counsel, and the arbitrator shall in all cases have legal assistance made available to him by the CTC. Government representatives should not become involved in the arbitration process unless invited by one of the disputing parties.[10]

COFI states that it is imperative for a limit of 30 days to be imposed during which the arbitration must be concluded, unless both parties agree to an extension. This 30-day period will begin from the date when the arbitrator accepts the case and will not be extended unless both parties agree.[11]

COFI does not recommend that there be any appeal from the arbitrator's decision. Furthermore, the arbitrator must decide in favour of either the railway's statement of what the rate should be, or the shipper's position, there being no allowance for a compromise solution.[12]

Lastly, COFI does not believe that the above-described arbitration mechanism should replace the Section 23 appeal, but suggests instead that a shipper have a choice between the two recourses.[13]

The Canadian Manufacturers Association submitted views on rate arbitration which were similar in many respects to the format described by COFI. For example, the CMA believed that the arbitrator should be obliged to choose either the carrier's rate or the shipper's rate. This "either/or" position would, it was claimed force serious negotiations beforehand.[14] However, there were important differences as well. The CMA did not believe that the administrator should appoint an arbitrator on whom the parties didn't agree. Furthermore, they said that legal counsel should not be used by the parties. Also, Section 23 appeals of arbitration awards would be possible.[15]

The Canadian Pulp and Paper Asso-

**Canadian Pacific Railway, Montreal, Quebec, Canada.*

ciation position on the rate arbitration process also differed in some important aspects from the COFI proposal. The CP&PA suggested that either party have the right to apply to the Railway Transport Committee for a review of the arbitrator's decision.[16] The CP&PA also proposed that the arbitrator have the right to order the production of railway costs, on a confidential basis. They recommended that the arbitrator' award be in effect for one year, like agreed charges, but that the arbitrator not have the authority to compel the shipper to transport a specified percentage of volume by rail.[17]

Although neither CMA nor CP&PA thought that the arbitration mechanism should replace the maximum rate section in the Railway Act,[18] Transport Canada suggested the following way in which this might be achieved.[19] A shipper wishing to make use of rate arbitration would declare himself captive, but this declaration of captivity could be limited to a particular route or destination.[20] The shipper would then be required to offer 100% of whatever traffic he had declared captive for shipment by rail for a period of at least one year. In return, the shipper would have access to binding arbitration if rate negotiations were not successful; the arbitration process would however only affect the goods which had been declared captive.

The submission of the Province of Alberta agreed with the idea of a shipper's declaring himself captive for a particular commodity and route(s), but suggested that this be done only after rate negotiations had failed.[21] Alberta also suggested that the administrator should determine whether the shipper's position was "reasonable," before accepting the case for arbitration.[22]

In weighing the desirability of a rate arbitration mechanism, the following difficulties must be addressed:

Firstly, there exists the danger that rate arbitration will replace rate negotiation, the latter practice having proven itself the very foundation upon which an efficient Canadian transportation system has developed since 1967. The opportunity for shippers to "try their luck" at getting a lower freight rate from an arbitrated decision should not be allowed to undermine the negotiation process, which is presently working well. The **National Transportation Act** encourages freight rates to be set at levels determined by market forces and by modal competition. For a rate to be determined by a person, such as the arbitrator, other than the actual parties to the movement is a form of rate regulation, which the NTA wished to preserve only in exceptional circumstances.

Secondly, the arbitrator should be provided with specific guidelines as to what would constitute a valid claim. Otherwise, in deciding whether a rate is excessive or not, an arbitrator could choose any one of a number of possible criteria; an undesirable precedent might be created. A clearly-defined burden of proof would lead both parties to understand what was required of them, and this would result in fewer claims and shorter hearings.

Thirdly, it seems inequitable to allow a shipper to choose between two judges, especially when the appeal recourses are dissimilar. If rate arbitration is supposed to co-exist with section 23 applications, then a shipper may choose between an informal and short enquiry or an in-depth and lengthy analysis of the complaint in question, the scope of the respective decisions being the same. On the one hand, the shipper faces an informal 30-day arbitration proceeding, the decision of which cannot be appealed. On the other hand, he may choose the section 23 claim which would involve considerable time[23] and expense and be susceptible to various appeals up to and including the Supreme Court of Canada. Who, realistically, would have an interest in going the section 23 route?

Lastly, it is questionable as to whether a 30-day arbitration hearing would be sufficient, or even whether written submissions could satisfactorily represent all the vital considerations which the arbitrator would be called upon to analyze in order to make his or her decision. As will be seen in greater detail in that part of this paper concerning reparations, the reason why the major section 23 applications have involved several months of hearings was the complex relationship between rate levels in different geographic regions and the multiplicity of rate-related issues which arose. Because of this inter-relationship between rates, we must ask whether one arbitration decision to lower one freight rate could not have a disequilibriating impact on an entire rate grouping, involving hundreds of similar commodity rates from different origins to different destinations.

The case for reparations involves the proposal that Canadian Railway legislation be amended so that shippers are compensated for overpayments where a freight rate is found to be too high.[24] One of the strongest proponents of this concept has been the Canadian Pulp and Paper Association.[25]

The CP&PA stated that neither the **Railway Act** nor the **National Transportation Act** contain provisions for refunds

to shippers where rail rates are lowered or disallowed by the CTC. They said that the absence of provisions for refunds discourages railways from settling disputes quickly and encourages prolonged litigation.[26] They submitted that this inequity could be alleviated if the existing legislation were amended to empower the CTC to order refunds (including interest) from the date on which the section 23 applications were filed. In other words, let us presume a section 23 case lasted three years (after all subsequent Court appeals had elapsed) and the CTC decided that a given freight rate which was the object of the section 23 complaint, was excessive by $1 per ton mile. The railways would then be ordered to refund those shippers who had successfully taken the section 23 case for the difference between the corrected CTC rate, and the "excessive" rate which the shippers had been paying during the 3 years of litigation, plus interest.

In order to see whether the proposed concept of reparations would be appropriate as an amendment to the present Canadian transportation regulatory framework, three major section 23 applications will be analyzed: the **Quebec Newsprint Case**, the **Rapeseed Case** and the **Woodpulp Parity Case.** After the issues, positions taken by the parties, and decisions of these three cases have been described in some detail, it will then be possible to draw certain conclusions as to whether such concepts as reparations and rate arbitration would have been a viable alternative had they existed previously.

The **Quebec Newsprint Case**[27] centered around a group of newsprint mills known as the "Grand'Mere Group," located primarily in Southern Quebec, who shared common rates on newsprint movements into the United States. The applicants complained to the CTC that the freight rates given to them by Canadian railways to the major newsprint-consuming points in the U.S. were consistently higher for similar distances than the rates which were given by U.S. rail carriers to competing U.S. mills located in Maine and the southern States. In other words, they claimed that these U.S. mills, who were their competitors, had a significant advantage over the Grand'Mere Group because of the uncompetitive Canadian freight rate structure. The applicants alleged that because of these excessive rates, the Canadian share of what had been a traditionally Canadian-supplied U.S. market was in decline. They also alleged that Western Canadian rate bases were lower than for Eastern Canada.

The Canadian railways contended that the newsprint rates were market-related and were at a level which allowed them to be competitive in the U.S. market. They argued that the decline in the U.S. market share by the Quebec newsprint mills was primarily due to increased domestic production of newsprint in the United States, not Canadian freight rates. The railways pointed out that although the Canadian share of the U.S. newsprint market had not kept pace with the percentage growth of that market, total Canadian newsprint shipments had increased.

The railways added that to lower the rates would only have the effect of causing the U.S. railways to in turn reduce their domestic rates, which would not result in any improvement in the relative position of the Canadian mills. The railways attempted to demonstrate that newsprint does not always move to market from origins with the lowest freight rate; there are other factors such as customer preference, availability of supplies, long-term contracts and newspaper ownership of mills. The railways argued that since 1934 the selling price of newspaper had increased by over 300%, while the average freight rate had gone up only between 137% and 192%.

As with most legal disputes, the arguments by both parties centered around the factual data which had been submitted into evidence. For example, the railways stated that the data which the applicants had presented was incomplete because there had been no rate comparison of the newsprint mills in Nova Scotia, New Brunswick, Ontario and Quebec (known as the Grand'Mere Arbitrary Group). Furthermore, the railways contended that it was unfair to conclude, as the applicants had done, that all rates from the Grand'Mere Group were consistently higher than from the Official Territory since the destinations used were mostly border points.[28] The railways presented an alternative sample of destinations where it was found that rates from Canadian mills were higher than their U.S. counterparts only 48% of the time. Lastly, the railways criticized the data which had been supplied by the applicants on the grounds that the latter had used basic rates whereas incentive and water-competitive rates constituted by far the major portion of the traffic.

The decision rendered, as well as the subsequent appeal, were both in favor of the Canadian railways' position. It was held that the loss of market share experienced by the Grand'Mere Group was due to factors other than transportation costs. Foremost among these factors was

the construction of new newsprint mills in the Southern U.S. The Canadian Transport Commission did not find that there existed an overall rate disadvantage between Canadian and Maine newsprint mills. More importantly, they did not find that the existing rate structure of Canadian rail freight rates was prejudicial to the "public interest." In conclusion, the existing newsprint rate structure was not shown to be damaging to the prospects for the continued growth of the newsprint industry in Eastern Canada.[29]

The Rapeseed Case[30] involved four Western Canadian rapeseed crushers from Manitoba, Saskatchewan and Alberta who claimed that their rail transportation costs for rapeseed oil and meal were substantially higher than those applicable to their competitors in Eastern Canada.[31] They claimed that the failure on the part of the railways to give rapeseed meal and oil the same domestic and export rates as the raw rapeseed product itself, would discourage the processing of rapeseed in Western Canada. They stated that it was cheaper to transport rapeseed to Eastern Canadian and off-shore crushing plants for processing, than it was to crush the rapeseed in the West and transport the products to the consuming markets. The applicants also emphasized their dependence on the Eastern Canadian market.

The Canadian railways responded by stating that the rate which was given to the Eastern Canadian processor of raw rapeseed was a water-competitive rate and no similar modal competition existed for rapeseed meal or oil. They argued that the applicants already enjoyed the benefit of low statutory and market competitive rates on rapeseed products and it would not be in the "public interest" to reduce them further.

There were several intervenors in the Rapeseed Case. The Governments of Alberta, Manitoba and Saskatchewan supported the applicants' position by stating that rapeseed processing benefits both the national and regional public interest since the applicants compete with imported oils and protein meal. They contended that because of the difference in rates between transporting rapeseed to the East and transporting rapeseed meal and oil eastward, Western crushers were being disadvantaged.

The Provinces of Ontario and Quebec intervened in support of the railways' position. The Government of the Province of Ontario stated that the application would have a detrimental effect on crushers of rapeseed and soya beans located in Toronto and Hamilton. The Government of the Provinces of Quebec stated that they were encouraging the growth of the rapeseed industry within the Province, and the section 23 application, if successful, would disturb the existing balance between Western Canadian rapeseed processors and Eastern Canadian processors of soya beans and other vegetable oil seeds.

Three Ontario soya bean crushers and Canlin Ltd. of Montreal also intervened in support of the railways. They argued that the section 23 appeal was aimed at bettering the applicants' competitive position vis-à-vis the Eastern crushers. They argued that the Western crushers had increased their volume from 25% to 35% during the five years prior to the application, while soya bean oil crushed in Eastern Canada had dropped from 40% to 33%.

The Western crushers amended their application during the course of the hearing so as to request that the rates for rapeseed meal and rapeseed oil moving east and west for export and east for domestic consumption should be set at the lowest contemporary rate rather than at the statutory rate.[32]

In its decision, the CTC ordered the railways to reduce the domestic rates on rapeseed meal from Thunder Bay to points in Ontario, Quebec and the Maritimes.[33] The CTC did not, however, change the rates for rapeseed oil to Eastern Canada. Insofar as export rates were concerned, the CTC directed the railways to submit a new export rate structure to the Railway Transport Committee.

The Western Crushers and Prairie Provinces subsequently filed an appeal with the Governor-in-Council.[34] They argued that a substantial error had been made in not granting domestic movements of rapeseed oil a reduced rate. The Federal Cabinet decided to order minimum compensatory rate levels to be established for both rapeseed meal and oil.[35]

The **Woodpulp Parity Case**[36] involved 16 woodpulp mills from Western Canada complaining about the higher level of freight rates which they were paying for transportation of woodpulp from Western Canadian origins to various U.S. destinations. They claimed that the rate levels which northwestern U.S. woodpulp mills were paying to U.S. railways for transportation to the same U.S. destinations were significantly lower and made them uncompetitive as a result.[37] The applicants demonstrated that Western Canadian woodpulp mills must compete with northwestern U.S. mills for the sale of woodpulp in the U.S. They argued that the pulp and paper industry in Western Canada is a very significant

economic factor in the economy because of jobs and revenues and therefore depriving the woodpulp mills of their ability to compete was prejudicial to the "public interest." Secondly, the applicants argued that their woodpulp rates had been on a par with those of the northwestern U.S. mills for over 60 years. During that period, woodpulp rates from Western Canada had always been subjected to the same Ex Parte rate increases or reductions as those applied to rates from northwestern U.S. mills. In requesting "parity," the Western Canadian mills were asking not only that the Canadian rate changes which had occurred in 1976 be withdrawn, but also that there be uniform application of future rate changes to ensure that the rate relationship between the applicants and their northwestern U.S. counterparts remain the same.

The railways stated that they were opposed to parity unless competitive circumstances warranted it; the revenue requirements for Canadian railways were different than for U.S. roads. Furthermore, they argued that the applicants were actually at an advantage over their northwestern U.S. competitors when the rate of exchange and currency surcharge were taken into account.[38] Lastly, the railways maintained that the Canadian Transport Commission's jurisdiction was limited since it could not impose a joint international rate upon a foreign carrier nor require a foreign carrier to enter into such rate. The railways alleged that the applicants had failed to show a diminution in Canadian woodpulp tonnage shipped to the U.S. as a result of the 1976 rate changes. They concluded by stating that if this section 23 case were successful, it could establish a dangerous precedent applicable to commodities other than woodpulp.[39]

The decision of the CTC ordered the railways to restore parity. The CTC concluded that there had been a long-standing rate relationship between woodpulp mills in Western Canada and those in northwestern U.S. which had been maintained by a uniform application of rate increase or decrease. The Commission did not accept the railways arguments concerning currency exchange due in part to the fact that the railways are protected by the 60/40 currency exchange surcharge.[40]

Following this decision the railways appealed to the Federal Court of Canada, Appeal Division, but were not successful.[41]

Several attempts were made by the Canadian railways to get U.S. roads' approval to one plan or another before parity was restored.[42]

In conclusion, the above analysis of the **Quebec Newsprint Case**, the **Rapeseed Case** and the **Woodpulp Parity Case** raised two questions with regard to the desirability of an amendment to section 23 of the **National Transportation Act** so as to include the concept of reparations. Firstly, a substantial portion of the major section 23 cases which have been dealt with by the Canadian Transport Commission have involved international traffic. The **Quebec Newsprint Case** and **Woodpulp Parities Case** are prime examples.[43] In the event the CTC would accord reparations to a shipper due to an "excessive" international rate increase, would there not be the danger that the Canadian railroads would be obliged to pay the full refund, even though they had only participated in a part of the movements?

Secondly, there is the question of whether the "public interest" criterion of the section 23 application lends itself to a reparations judgement. For example, in the **Rapeseed Case** one of the principle arguments was the development of the rapeseed crushing industry in the provinces of Manitoba, Saskatchewan and Alberta. Similarly, in the **Woodpulp Parity Case**, the applicants stressed that their industry was necessary to the well-being of Western Canada. The type of public interest issue which the Railway Transport Committee of the CTC is called upon for damages where a refund plus interest must be given from the date of the suit filing. The proposal to include reparations within section 23 of the NTA is based on the premise that the shipper can establish damages. It is doubtful whether this premise can be interwoven with the "public interest" criterion which, as we have seen above, is essential to the section 23 recourse.

FOOTNOTES

1. Transport Canada, **Discussion Paper on Legislative Proposals Regarding Railway Freight Rates**, March 24, 1980. In addition to dealing with the subject of the arbitration process for settling rate disputes, this paper also analyzed maximum rate regulation and international rate regulation.
2. Transport Canada, **Initiatives Regarding Railway Freight Rates**, Dec. 14, 1981, and Transport Canada, **Reparations and Railway Freight Rate Disputes**, Dec. 22, 1981. In lieu of legislative change, these papers recommend a speedier section 23 appeal procedure, a greater mediation role by the CTC, and a further review after three years.
3. **National Transportation Act**, 1966-67, c.69, Chapter N-17.
4. Other regulatory restrictions on the freedom of railways to price their freight rates according to market demand include sections 276 and 278 of the **Railway Act** R.S., c.234, Chapter R-2.

5. In the **Summary of Section 23 Applications**, Traffic & Tariffs Branch, Canadian Transport Commission, March 1982, 26 section 23 appeals are listed from April 1970 to Nov. 1981. However, many of these applications required no decision as they were settled out of court. Others involved individual shipper complaints on such subjects as private siding fees and demurrage charges.
6. **Position Paper—Rail Rate Arbitration**, Council of Forest Industries of British Columbia, July 31, 1980, page 9. **A User's Point of View**, Kevin B. Doyle, President, Sultran Ltd., Western Canadian Transportation Congress, Edmonton, Sept., 1982, page 5. **A Transportation Policy Framework**, Joseph Macaluso, President, The Coal Association of Canada, Western Canadian Transportation Congress, Edmonton, Sept. 1982, page 10.
7. **Position Paper—Rail Rate Arbitration**, Council of Forest Industries of British Columbia, July 31, 1980, page 9.
8. Ibid, page 4.
9. Ibid, page 6.
10. Ibid, page 7.
11. Ibid, page 7.
12. Ibid, page 8.
13. Ibid, page 6.
14. **Proposals for Arbitration of Transportation Rate Disputes**, Transport Canada, Table 1, August 2, 1979. These views were apparently taken during discussions of Bill C-33 and C-20 and may no longer represent the position of the CMA. For further reference, **Submission by CMA on Bill C-33**, June 1977 and **Submission of CMA to the House of Commons Committee of Transport and Communications on Bill C-20**, Feb. 1979.
15. Ibid.
16. **Preliminary Position on Arbitration Proposals**, Canadian Pulp and Paper Association, National Transportation Policy Committee, Sept. 28, 1979.
17. Ibid.
18. Sec. 278 of the **Railway Act** provides shippers, who are captive to the rail mode with a right of redress to the Canadian Transport Commission so as to have their freight rates lowered, if the latter are above a cost-related "ceiling."
19. Supra 1, pages 12 and 13.
20. Conversely, the shipper could declare his whole operation captive, which would mean that he would have to offer all of his traffic to the rail mode for 1 year, in exchange for the right to arbitrate.
21. **Response to Transport Canada's Discussion Paper**, Alberta Economic Development, Transportation Services, Dec. 8, 1980, page 5.
22. Ibid, page 7.
23. For example, the Prince Albert Pulp Co. Case and the Rapeseed Case each took 3 years from the date of the application to the date of the decision. The Woodpulp Parity Case took over 5 years.
    The length of section 23 applications led the CTC to propose more stringent delays in its revised **"General Rules of the Canadian Transport Commission,"** Nov. 23, 1981. Under these proposed amendments, the CTC would be required to determine whether or not a prima facie case had been made, within 45 days of the close of pleadings if a public hearing is held. The CTC would then be bound to set the time and place of a hearing as to the merits within 70 days of the prima facie determination. Its decision on the merits of the application would have to be issued within 60 days following the close of hearings.
    At the time of the publication of this paper, the revised "General Rules" had not yet been published in the Canada Gazette.
24. Reparations is primarily of concern vis-a-vis section 23 applications. It has also been suggested in the context of rate arbitration. However, since the rate arbitration mechanism, as proposed, is only 30 days in length, the overpayment or underpayment would not be that significant. Furthermore, section 23 applications do not allow a rail carrier to claim that the freight rate is too low and therefore the shipper should compensate for the difference retroactively, whereas rate arbitration would theoretically permit this.
25. **Discussion Paper on Legislative Proposals**, Canadian Pulp and Paper Association, submitted by Howard Hart, President, Nov. 7, 1980.
26. Ibid, page 5.
27. **Anglo-Canadian Pulp and Paper Mills Ltd., et al.** Date of application—May 7, 1970. Decision rendered—March 25, 1977.
28. For rate-making purposes the U.S. rate bureaus have divided their country into segments, the Official Territory comprising the New England States and the Southern Territory, comprising much of the southern states. It should be noted, however, that many of the borderline points which were cited in rate comparisons by the Grand'Mere Group were considered Official Territory when coming from Canada but were redesignated Southern Territory when coming from the south due to an historical anomaly. A lower rate scale applies within the South, than applies from the South to Official Territory. This led to a difference in interpretation by the parties as to whether the U.S. rate comparisons were valid.
29. The CTC decision as to the Quebec newsprint rate structure was rendered after a similar decision from the Interstate Commerce Commission had found that joint international through rates on newsprint from origins in Eastern Canada to points in the United States had not been shown to be unjust or unreasonable nor were they preferential nor otherwise unlawful. This ICC decision was rendered in December, 1975.
30. **Saskatchewan Wheat Pool, AGRA Industries Ltd., Co-Op Vegetable Oils Ltd. and Western Canadian Seed Producers Ltd.**, date of application Oct. 14, 1970; date of decision June 27, 1973; application to Governor-in-Council March 1974; Federal Cabinet decision, April 1976.
31. When the applicants mentioned their Eastern Canadian competitors they were referring primarily to Canlin Ltd. of Montreal which was the only Eastern processor crushing rapeseed into meal and oil in significant volumes at that time. Canlin Ltd. purchased seed in Western Canada and moved it in box cars on a combination of the Crow rate to Thunder Bay and agreed charge rate eastward to Montreal.
32. This was due to a concern on the part of the applicants that the statutory rate which formed a part of the Rapeseed rate to Montreal might not be compensatory, as well as the uncertainty as to whether the CTC had the authority to enlarge the scope of the statutory rates.
33. The decision of the CTC with regard to domestic rapeseed meal rates east of Thunder Bay set a new rate to Montreal equal to the existing rate on raw rapeseed published in Canlin Ltd.'s agreed charge. To all other destinations in Quebec, Ontario and the Maritimes, the CTC established new lower domestic rapeseed meal rates based on an arbitrary over the railways' feed grain rates.
34. Section 64 of the **National Transportation Act.**
35. In virtue of Order-in-Council P.C. 1976—894, dated April 13, 1976, the CTC was instructed to establish minimum compensatory rates on rapeseed meal and rapeseed oil moving for export, as well as for the domestic movement of Rapeseed oil to Eastern Canada, and on that portion of domestic rapeseed meal rates east of Thunder Bay or Armstrong, Ontario. (Rapeseed meal moves at 1½¢ over the Crow rate to Thunder Bay and Armstrong.)
    In compliance with P.C. 1976—894, the CTC prescribed minimum compensatory rates for the above-noted movements of meal and oil by CTC Order No. R-23976, dated November 26, 1976, following their evaluation of joint

CP/CN cost submissions based on 1976 cost levels.

36. Sixteen Western Canadian woodpulp mills, date of application Aug. 23, 1977; date of decision, Aug. 17, 1979. CTC Order R-29767 was set aside on June 20, 1980. The decision on the Duncan Bay differential was rendered Dec. 9, 1980 (Order R-31684). On May 5, 1981 CTC Order R-32165 ordered respondents to publish a discount tariff in order to restore parity. CTC Order R-33156 amended the discount tariff on Jan. 20, 1982.
37. With the publication of Supplement 7 to Ex Parte Tariff 318 on April 18/76, Canadian railroads obtained a 7% increase on Woodpulp to U.S. destinations from Western Canada. Originally, this increase was also to accrue to U.S. carriers serving northwestern U.S. woodpulp mills as well. However, a number of U.S. carriers opted out with the end result that only the Canadian carriers allowed the increase to stand. Subsequently, Ex Parte 330 was published which increased the rates for U.S. mills by 5%. In supplement 23 to Ex Parte 330 rates on woodpulp from northwestern U.S. mills were reduced by as much as 7% depending upon destination territory and minimum weights. The end result of these actions left Canadian mills paying rates up to 7% higher on weights of 150,000 lbs. or more, and up to 4% higher on weights of less than 150,000 lbs., depending on destination.
38. They attempted to show that with the U.S. dollar at a 12.375% premium over the Canadian dollar, out of 2500 origin/destination pairs, 52% of the rates were lower for Canadian mills.
39. The eastern U.S. railroads also intervened in support of the Canadian railways arguing primarily that the Canadian Transport Commission lacked jurisdiction, since foreign carriers could not be subjected to a CTC order.
40. The currency surcharge tariff is predicated on the basis that the proportion of the total haul for the carriage of international traffic between Canada and the United States is, on the average, 40% in Canada and 60% in the United States. The payment of the exchange surcharge depends upon whether the U.S. dollar is at a premium in relation to the Canadian dollar and whether freight is collect or prepaid.
41. The only point on which the appeal succeeded was the breach of natural justice that occurred when the railways were denied their right to be heard on the Duncan Bay diversion. This involved the loss of 20,000 tons of woodpulp from Crown Zellerbach in Duncan Bay, B.C. since this mill negotiated a barge rate to Seattle where the woodpulp could then be shipped by rail to final destination. The original order was set aside until another hearing could be held on this point. Subsequently, Order R-31684 was issued replacing all previous Orders and once again requiring the restoration of parity.
42. The railways filed proposals in January of 1981 which called for the U.S. roads to take a 10% increase on woodpulp, with the Canadian roads taking lower increases to bring about parity. The applicant mills objected to these proposals and on February 20, 1981 at a public hearing, the RTC ruled that the proposals did not comply with the Board Order. The railways were advised to take "other tariff action" by March 6. The railways then proposed flagging out of subsequent Ex Parte increases. The mills objected, and the RTC ruled that this method was inadequate. On May 5 the RTC issued Order R-32165 which required the publication of a discount tariff retroactive to March 9.
43. The Prince Albert Pulp Co. Ltd. Case, like the Quebec Newsprint Case involved concurrent petitions to the Interstate Commerce Commission, as well as to the Canadian Transport Commission.