

58, 1949

In the Privy Council.

No. 13 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 SAS-
KATCHEWAN,
Intervenants.

CASE OF THE RESPONDENT, THE ATTORNEY-GENERAL OF BRITISH COLUMBIA.

1. This is an appeal of the Canadian Pacific Railway Company by special leave from the judgment of the Supreme Court of Canada confirming the judgment of the Court of Appeal for British Columbia, given upon a reference directed to that Court by the Lieutenant-Governor of British Columbia. The question asked upon the reference was:—

Record.

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

p. 3, l. 5.

The answer of four members of the Court, as set out in the judgment of Robertson, J.A., was in the affirmative without qualification. O’Halloran, J.A., dissented.

pp. 17-23.

pp. 10-16.

2. The “Hours of Work Act,” as it appears in chapter 122 of the “Revised Statutes of British Columbia, 1936,” limits the hours of work of certain employees (including some categories of hotel employees) to

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Record. eight hours in the day and forty-eight hours in the week. The amending Statute of 1946, chapter 34, reduced the weekly maximum to forty-four hours, effective as of July 1st, 1946.

pp. 1-2. 3. The Order of Reference sets forth the facts upon which the judgment was given. In brief the order discloses that the Appellant, a Dominion incorporated railway company, operates a line of railway across Canada and also owns and operates the Empress Hotel, a public hotel at Victoria, British Columbia, for the purposes of its lines of railway and steamships and for the comfort and convenience of the travelling public.

Appendix, 13.) 4. The Railway Company has power under its special Statute of 1902 (2 Edw. VII, chap. 52) to own and operate hotels as well as other businesses. 10

5. Further, it appears from the Order of Reference that by a "collective agreement" dated March 16th, 1945, purporting to be made under the "Wartime Labour Relations Regulations," being P.C. 1003 passed by the Governor-General in Council, the Railway Company and its employees agreed upon a forty-eight-hour work-week.

6. The Court of Appeal held (O'Halloran, *J.*, dissenting) that:—

- 21, 1. 23.
p. 22. (a) The Hotel is not a part of the Appellant's railway even though it is owned and operated by a railway company which has statutory power to own and operate hotels. 20
- 22, 1. 12. (b) The fact that the Hotel is operated for the "purposes of the railway" does not make it part of the railway.
- 22, 1. 35.
p. 23. (c) The "Hours of Work Act" which regulates the hours of work of hotel employees is within the legislative competence of the Province and is not in conflict with Dominion legislation.

. 5-9. 7. Further, the Court of Appeal unanimously held that there is no conflict between P.C. 1003 and the "Hours of Work Act" and that they can be read together, the former giving the employees' representatives the right to enter into agreements respecting conditions of employment and the latter enactment prescribing the maximum hours of work which can be worked by employees. 30

Appendix, 32.) 8. Some time after the delivery of the judgment of the Court of Appeal and before the appeal to the Supreme Court of Canada had been heard, the Parliament of Canada enacted section 27A of the "Canadian National Canadian Pacific Act, 1933," which purports to directly regulate the hours of work of the employees of the Appellant railway company in its hotels.

. 115-146. 9. The Railway Company's appeal to the Supreme Court of Canada was unanimously dismissed and it was held that:—

- (a) The "Hours of Work Act" comes within the classes of the subjects assigned exclusively to the Legislature of the Province. Record.
p. 116, ll. 8-17;
p. 126, l. 19.
- (b) The Empress Hotel is not a part of a "railway" within the meaning of section 92 (10) (a) of the "B.N.A. Act," notwithstanding that the operation of hotels is within the Railway Company's statutory powers. p. 117, l. 29,
to p. 118;
p. 124, l. 25,
to p. 125;
p. 130, ll. 16-18;
p. 137,
l. 17, to p. 138,
l. 22.
- (c) Legislation regulating hotels and hotel employees is not legislation "necessarily ancillary" to the legislative powers of the Dominion over railways so as to justify Dominion legislation in this respect. p. 118, l. 42;
p. 126, l. 17,
to p. 127, l. 8;
p. 133, ll. 22-37;
p. 143,
l. 31, to p. 144,
l. 34.
- (d) The Empress Hotel has not been declared a "work for the general advantage of Canada" under section 92 (10) (c) of the "B.N.A. Act" so as to bring the Hotel within the exclusive legislative jurisdiction of Canada. p. 119, ll. 6-35;
p. 127,
l. 9, to p. 128
p. 131, l. 1, to
p. 133, l. 21;
p. 138, l. 23,
to p. 140, l. 21
- (e) Section 27A of the "Canadian National Canadian Pacific Act, 1933 (Canada)," chapter 33, as enacted by 1947 (Canada) chapter 28, is *ultra vires* in so far as it purports to deal with hotel employees. p. 120, l. 29,
to p. 121;
p. 125, l. 27,
to p. 127, l. 8
p. 133, ll. 38-43;
p. 146,
l. 35, to p. 144
- (f) P.C. 1003 does not apply to employees of the Hotel because the Hotel does not fall within the class of subjects described in paragraph 3 (1) (a) or (b) of the Order which defines its scope and application. The only argument addressed to the Supreme Court of Canada by the Appellant to support the application of P.C. 1003 to the Empress Hotel was that it fell within the above paragraphs which set out that the Order applies to:—
 (a) Subjects ordinarily within the legislative jurisdiction of Canada, including railways, etc.
 (b) Undertakings or businesses essential to the efficient prosecution of the war, which includes the transportation business. p. 134, ll. 1-6
- (g) There is no conflict between P.C. 1003 and the "Hours of Work Act" (per Kerwin, J.). p. 119, l. 36,
to p. 120, l. 2

10. The Attorney-General of British Columbia submits that the answer given to the question by the Court of Appeal and by the Supreme Court of Canada is right for the reasons given by the Court of Appeal and by the Supreme Court of Canada, and that this appeal should be dismissed for the following among other

REASONS.

- (1) Because the "Hours of Work Act" comes within the classes of subjects assigned exclusively to the Legislature of the Province.
- (2) Because the regulation of the hotel business is a matter of local concern or interest and is not a matter of national concern.

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- (3) Because the Empress Hotel is not a part of a "railway" within the meaning of section 92 (10) (a) of the "B.N.A. Act," notwithstanding that the operation of hotels is within the Railway Company's statutory powers.
- (4) Because legislation regulating hotels and hotel employees is not legislation "necessarily ancillary" to the legislative power of the Dominion over "railways" so as to justify Dominion legislation in this respect.
- (5) Because the Empress Hotel has not been declared a work "for the general advantage of Canada" under section 92 (10) (c) of the "B.N.A. Act" so as to bring the hotel within the exclusive legislative jurisdiction of Canada. 10
- (6) Because section 27A of the "Canadian National Canadian Pacific Act, 1933 (Canada)," chapter 33, as enacted by 1947 (Canada) chapter 28, is *ultra vires* in so far as it purports to deal with hotel employees.
- (7) Because P.C. 1003 does not apply to employees of the Hotel, because the Hotel does not fall within the classes of subjects described in paragraph 3 (1) (a) or (b) of the Order which defines its scope and application. 20
- (8) Because there is no conflict between P.C. 1003 and the "Hours of Work Act."

J. W. DE B. FARRIS.
H. ALAN MACLEAN.

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CHEWAN,

Intervenants.

CASE OF THE RESPONDENT,
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OF BRITISH COLUMBIA

GARD, LYELL & CO.,
47, Gresham Street, E.C. 2.