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CANADIAN NATIONAL RAILWAY COMPANY

v.

ASSESSMENT COMMISSIONER

Supreme Court of British Columbia (X506/59)

Before: MR. JUSTICE A.D. MACFARLANE

July 6, 1959

L.H. Wilson for the Appellant
John R. Lakes for the Respondent

Reasons for Judgment

This matter comes before me by way of a case stated by the Assessment Appeal Board. The subject of the assessment consists of the railway right-of-way owned by the Canadian National Railway Company in the District of Matsqui and is a strip of land 13.25 miles long, approximately 100 feet wide, containing an area of 163.085 acres. The assessment of improvements, tracks, etc., on the land is not in question.

The statement of facts on the stated case contains the following:

> 3. The Assessor made the assessment by determining an average market value of the general area through which the railway runs at $340 per acre, reducing the same to 60 per cent of that figure or $204 per acre and allowing a further discount of 20 per cent for plottage and restriction of title, leaving an assessed value of $160 per acre. There was no precise evidence of the location of all the lands included in the basic average obtained.
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> 4. The company prepared a weighted arithmetic mean average of the property north and south of the right-of-way, being lands adjacent to and adjoining the said right-of-way which averaged an assessed value of $76.45 per acre and applied 40 per cent thereto for restricted use and plottage, resulting in a net figure of $45.87 per acre.
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> 5. The Board allowed the company's appeal and held that the fundamental basis for assessing railway right-of-way lands must be based upon the weighted arithmetic mean average of the assessed value of lands to the north and south of the right-of-way throughout the municipality and that the resulting value be reduced by 40 per cent to allow for restriction of title, restriction of use and plottage. The exact weighted arithmetic mean average was to be determined by the parties. The Board made this decision notwithstanding the fact that a large proportion of the right-of-way is adjacent to lands used for farming purposes assessed under special provisions of the *Municipal Act*. The Board's decision is filed herewith.

The question submitted is as follows:

> "1. Was the Board right in directing that the assessed value of the company's right-of-way should be based on the assessed value of all lands adjoining the right-of-way even though the majority of such lands are assessed as farm lands?"

The preliminary objection was taken that the question involved consideration not of a point of law but of fact, or at most mixed law and fact, as it dealt with the factual material taken into consideration by the Assessment Appeal Board in arriving at the value of the land and not with the interpretation of some provision in the Statute. I think, in fact, it may trench on both and perhaps might be described more exactly as a question of mixed law and fact. I did not rule on the objection but heard argument on the matter generally when the points raised by preliminary objection were argued further.

It appears clear that where railway lands are situated within a municipality, the assessed value of such lands shall be determined in accordance with the *Municipal Act*. Lands under the *Municipal Act* shall be assessed at their actual value. Under the *Municipal Act*, the Assessor may take into consideration certain matters specified "and any other circumstances affecting the value." I do not think that section 328 (1) was intended to set out a fixed and immutable procedure. It allows consideration to be given to present use as well as other factors, but I think the section is clearly permissive. Section 330 (4) provides that, notwithstanding section 328, land classified by the Assessor as farm land while so classified shall be assessed at the value which the same has for such purpose without regard to its value for other purposes, and he is given power by 330 (1) to classify land of 5 or more acres in area as farm land. I do not find anything in the provisions to which I was referred which restricts the Assessor in the method he employs in the valuation of such land. Here the method employed by the Assessor and approved by the Board was to relate this land to the land surrounding it in order to arrive at its value making allowances, modified, it is true, by the Board. I do not think I need discuss the mechanics of arriving at the value. If the land consisted of a short strip I do not see how it could be argued that its actual value would differ from similar strips on each side of it, except for allowances which are made in the procedure followed.

Counsel for the appellant says that the cases cited to me have no relation to the points raised here. I think they have. As to the method used and the fact that an Appellate Court will not query a Board's findings as to the method of assessment employed but only as to whether or not that method is right in law, see *The Queen* v. *Penticton Sawmills* (1954) 11 W.W.R. (N.S.) 351 at page 352. As to the interpretation of section 37 (1) being permissive see *Vancouver* v. *Township of Richmond* (1958) 17 D.L.R. (2d) at page 548. As the cases cited have been so much discussed, I do not propose to discuss them further. If pressed I would hold that the questions raised here are questions of fact. I am satisfied on the merits that the Assessment Appeal Board approached the matter not only on a proper but on an equitable basis, and I would answer the question asked in the affirmative.

Costs to the respondent.