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ASSESSOR OF AREA 26 - PRINCE GEORGE

v.

NORTHWOOD PULP & TIMBER LTD.

BRITISH COLUMBIA COURT OF APPEAL (CA 003352) Vancouver Registry

Before MR. JUSTICE A. B. B. CARROTHERS, MR. JUSTICE E. E. HINKSON AND MR. JUSTICE W.A. CRAIG

D.W. Shaw, Q.C. for the appellant Northwood Pulp & Timber Ltd.
J.K. Greenwood for the respondent Assessor of Area 26 - Prince George

Reasons for Judgment of Mr. Justice Carrothers (Oral) March 24, 1986

This appeal has its genesis in a case stated to the Supreme Court of British Columbia by the Assessment Appeal Board of British Columbia ("the Board") pursuant to s. 74 (2) of the *Assessment Act* at the requirement of the Assessor of Area #26, Prince George ("Assessor") and seeking the opinion of the court on two questions which can, for our purposes, be paraphrased as follows:

> 1. Did the Board err in law in its interpretation of the relevant statutes in determining that Northwood Pulp & Timber Ltd. ("Northwood") is a "railway corporation" and therefore entitled to reduced taxation in respect of its railway track in place.
>
> 2. If Northwood is a "railway corporation" did the Board err in law in holding that the expression "track in place" includes not only the rails and ties but also the prepared site to which the rails and ties are affixed?

A brief outline of facts gleaned from the stated case would assist in the understanding of the matter of interpretation of the phrase "track in place of a railway corporation". Northwood operates a pulp mill in the Prince George Assessment Area. To service this mill, Northwood owns and operates a private railway line, running approximately 12 1/2 miles between the pulp mill and interchanges with the railway lines of British Columbia Railway and Canadian National Railways. The design, location, construction and operation of the Northwood railway line comes under the scope and purview of the *British Columbia Railway Act*. Northwood owns the locomotives, rolling stock and other equipment to operate the Northwood railway line, which it operates with its own employees. Northwood does not use its railway line for hire, that is, it is not a common carrier. The relevant section of the *Assessment Act* is s. 27(1)(b), and it reads as follows:

> 27.(1) Notwithstanding Section 26(2), the actual value of the following shall be determined using rates prescribed by the commissioner:
>
> (b) *the track in place of a railway corporation* inclusive of all structures, directions and things other than buildings and those things set out in section 16(1)(c) necessary for the

> operation of the railway, whether the track is on a public highway or on a privately owned right of way; (my emphasis of the phrase to be construed)

McLachlin, J., as she then was, held that the use of an adjective, such as “railway", in describing the company's major business or undertaking is common in our language and is understood in ordinary parlance to denote the essential purpose for which the company in question operates. The principal activity of Northwood the production of pulp and pulp products and the trackage in question is operated only as an adjunct to its principal business. McLachlin, J. concluded that Northwood is not a "railway corporation" in the ordinary and popular sense of that term. McLachlin, J. also applied the principle of construction that where possible a statute ought to be construed so that no clause, sentence or word is superfluous, void or insignificant. Section 27(1)(b) of the *Assessment Act* refers to "track in place of a railway corporation". McLachlin, J. reasons that the Legislature could have used the phrase "track in place" without more, so the obvious and only apparent function of the words "of a railway corporation" is to restrict the ambit of the special status granted to "track in place" by the statute.

For these two basic reasons, McLachlin, J. concluded that the special status conferred on "track in place of a railway corporation" by section 27(1)(b) of the *Assessment Act* applies only to corporations operating a railway as a major business and does not encompass private railways ancillary to other business endeavours and not operated as a common carrier. She answered the first question postulated by the stated case in the affirmative. Having done so, it was not necessary for her to consider the second question.

In granting Northwood leave to appeal from the judgment of McLachlin, J. pronounced December 3, 1985, Anderson, J.A. ordered that the second question be argued on the hearing of this appeal in addition to the point which was decided by McLachlin, J.

With respect to the first question, the appellant, Northwood, argues that McLachlin, J. erred in her interpretation of the expression "railway corporation" as being one which operates a railway as its major endeavour and that the expression “railway corporation" in the context of section 27 of the *Assessment Act* does not encompass or denote a company which owns and operates a railway as contemplated by and regulated under the *Railway Act* as an adjunct to its main business and operations. Despite the able submissions of Mr. Shaw, I am not persuaded that there was any error in this respect, indeed I agree with McLachlin, J.'s line of reasoning, and I consider that this ground of appeal fails.

With respect to the second question it is now rendered hypothetical by the answer to the first question, and I would think that there is bound to be a better case in the future upon which to interpret the extent of what is denoted by the phrase "track in place". I would decline to do so on this appeal.

For these reasons, I would dismiss the appeal.

HINKSON, J.A.: I agree.
CRAIG, J.A.: I agree.
CARROTHERS, J.A.: The appeal is dismissed.