ASSESSOR OF AREA 26 - PRINCE GEORGE

v.

NORTHWOOD PULP & TIMBER LTD.

Supreme Court of British Columbia (A842778) Vancouver Registry

Before: MADAM JUSTICE B.M. McLACHLIN (in chambers)

Vancouver November 19, 1984

J.E.D Savage for the Appellant
D.W. Shaw, Q.C. for the Respondent

Reasons for Judgment December 3, 1984

The respondent Northwood Pulp & Timber Ltd. (Northwood) operates a pulp mill near Prince George, B.C. In connection with its pulp operations it runs its own railway, 12 1/2 miles in length. This railway is used to transport pulp produced in the mill and products necessary to the mill's operations between the mill and the interchange with the B.C. Railway Corporation and the Canadian National Railway Corporation railways.

On April 30, 1984, the Assessment Appeal Board ruled that Northwood was a “railway corporation" and thus entitled to reduced taxation of its railroad pursuant to s. 27 of the *Assessment Act*, R.S.B.C. 1979, c. 21. The Board further ruled that the property which was thus entitled to the reduced taxation, described in the Act as "track in place", included not only the affixed rails and ties, but ballast and all preparations for the site and foundation of the rails. The Assessment Appeal Board has asked this Court for its opinion on these questions by way of stated case. I shall consider each question in turn.

> Did the Assessment Appeal Board Err in Law in its Interpretation of the *Assessment Act*, R.S.B.C. 1979, Ch. 21, and the *Railway Act*, R.S.B.C. 1979, Ch. 354, in Determining that the Company is a "Railway Corporation" and therefore Entitled to the Application of the Commissioner's Rates in Respect of its Track in Place?

The *Assessment Act*, s. 26, prescribes that real property be assessed at actual, or fair market value. Section 27 provides exemptions from this provision for specified types of property, including "the track in place of a railway corporation", stipulating that the "actual value" of this property be determined "using rates prescribed by the commissioner". These rates are considerably lower than those dictated by market value.

The question is whether Northwood's railway falls within the phrase in s. 27, "the track in place of a railway corporation". More particularly, is Northwood a "railway corporation"? In considering this question it must be borne in mind that the onus is on Northwood to demonstrate that it falls within s. 27 of the *Assessment Act*, the provision being one in derogation of the general rates which govern taxation of the majority of citizens: *In Re Sisters of Charity Assessment* (1910) 14 W.L.R. 450, 15 B.C.R. 344 (B.C.C.A.), aff'd. 44 S.C.R. 29.

Counsel for the Assessor submits that s. 27 of the *Assessment Act*, construed in accordance with accepted canons of construction, excludes railroads such as the one operated by Northwood. He further argues that policy considerations based on the public interest in maintaining public railways dictate that the special status conferred by s. 27 not be extended to Northwood's railway operation.

Counsel for Northwood contends Northwood is operating a railway in the full sense of the word, and hence is a "railway corporation" under s. 27 of the *Assessment Act*. He further submits that the appellant has not demonstrated that it was the policy of the Legislature to benefit only public railways, and points out that there may well be a benefit to the public in encouraging the operation of private railways that increase the business of public railway corporations.

OPINION

It is a primary rule of statutory construction that words be construed according to their ordinary and popular meaning, as they would have been understood the day after the statute passed: *Royal Bank of Canada* v. *Eastern Trust Co.*, [1922] 1 D.L.R. (N.S.) 498 at p. 503 (S.C.C.).

Applying this principle to the phrase "track in place of a railway corporation" in s. 27 of the *Assessment Act*, I conclude first that the ordinary and popular meaning of "railway corporation" is a corporation engaged in the operation of a railway as a major business. In my opinion, the phrase "railway corporation" in its ordinary and popular meaning does not connote a corporation which operates a railway only as an adjunct to a principal business of another type. The use of an adjective describing a company's major business is common in our language. Section 27 (1) of the *Assessment Act* refers to "telegraph corporation" and "pipeline corporation" as well as “railway corporation". Phrases such as banking corporation, mining corporation, utility corporation are commonly in use. They are understood in ordinary parlance to denote the essential purpose for which the corporation in question operates.

While Northwood is empowered by its memorandum of incorporation to carry its own produce to market and hence by implication to operate a railway, its principal activity is the production of pulp and pulp products. Its railway is operated only as an adjunct to this, its main business. It follows that it is not a "railway corporation" in the ordinary and popular sense of that term.

A second general principle of construction of importance in this case is the rule that if possible a statute should be construed so that no clause, sentence or word is superfluous, void or insignificant: In *Re Canadian Pacific Railway Company and Rural Municipality of Lac Pelletier*, [1944] 3 W.W.R. 637. It follows that s. 27 of the *Assessment Act* should be interpreted in a way which gives significance to the words “of a railway corporation".

The obvious and only apparent function of this phrase is to restrict the ambit of the special status granted to "track in place" by s. 27. The Legislature could have used the phrase "track in place" without more, in which case all railways would have been entitled to preferential status. Alternatively, it could have referred to the "track in place" of a "corporation" in which case all corporations owning railways would have preferential status. It did neither. The implication is that "railway corporation" does not refer to all persons or all corporations who own railway track, but to a special sub-group of those corporations. That type of corporation must be the one which the ordinary meaning of the phrase suggests-a corporation which operates a railroad as a major endeavour. To accept the respondent's position that any enterprise which owns and operates a railroad falls under s. 27 (b) is to deprive the words "railway corporation" of their full sense and significance and render them superfluous.

For these reasons, I am satisfied that the special status with respect to valuation conferred by s. 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.

I am fortified in this opinion by the view which has been taken in other cases where similar questions have arisen. In *Re Chromasco Ltd. and Walsh et al.* (1983), 42 O.R. (2d) 770 (Ont.H.C.), where the same issue was raised as in the case at bar, it was apparently conceded that a manufacturing company operating a spur-line was not a "railway corporation". Similarly, in In *Re Exmouth Docks Company* (1873), 17 L.R. 181, a company whose principal business was the construction of docks but which was empowered to make a branch railway for purposes connected with docks, was held not to be a "railway company" for purposes of exemption from winding up. In *Royal Bank of Canada* v. *Eastern Trust Co., supra*, a company which had two purposes-mining and railroad undertaking-was held to be a "railroad company" under the *Bankruptcy Act*, the Court noting that the railway purpose was "not a subsidiary one", and that the railway in question carried passengers and freight over a considerable distance. These cases are consistent with the conclusion that a corporation operating a railway as an adjunct to its primary business is not a "railway corporation".

Having concluded that Northwood is not a railway corporation by the application of accepted canons of construction, I find it unnecessary to venture into the uncertain waters of legislative policy.

I conclude that the Assessment Appeal Board erred in law in concluding that Northwood was a railway corporation entitled to application of the Commissioner's Rates with respect to its track in place. The answer to the question posed is "Yes".

In view of my conclusion that the company is not a railway corporation, it is unnecessary for me to consider the second question posed.

Pursuant to the request of counsel, the matter is remitted to the Assessment Appeal Board.

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

It was the unanimous decision of the Court of appeal that the appeal be dismissed with costs as the Court could find no error in the reasons of Madam Justice McLachlin below.

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.