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B.C. TRANSIT

v.

**ASSESSOR OF AREA 9 – VANCOUVER
and
ASSESSOR 10-BURNABY-NEW WESTMINSTER**

Supreme Court of British Columbia (84/3430) Vancouver Registry

Before: MR. JUSTICE J.G. RUTTAN

Victoria January 23, 1985

Allan L. Cox, Q.C. for the Appellant
J.E.D. Savage for the Respondents

Reasons for Judgment

February 4, 1985

This is a reference by way of Stated Case pursuant to s. 74 (2) of the *Assessment Act*, at the request of the appellant B.C. Transit, whereby the Board of Appeal seeks the opinion of the court on certain questions of law, set out below, in respect of which the agreed material facts are as follows:

1. The purpose and object of B.C. Transit is to provide and maintain public passenger transportation systems in the Province by means of transit service agreements. The public passenger transportation systems provide a public service which is financed partly by way of passenger fares and primarily by way of subsidies from the Province and local governments.
2. B.C. Transit is in the process of constructing an Automated Light Rapid Transit System (the "A.L.R.T.").
3. The A.L.R.T. is a grade separated passenger line utilizing lightweight self propelled coaches which run on steel wheels along steel rails. The coaches draw electric power for their linear induction motors from a power rail.
4. The A.L.R.T. system uses a route which goes under downtown Vancouver and thereafter continues to New Westminster mainly on overhead structures. The A.L.R.T. system will not interconnect with other rail systems, and it is intended that the coaches will run at intervals ranging from 1 $\frac{3}{4}$ minutes to 5 minutes along the 21.4 kilometre line which will have 15 stations.
5. B.C. Transit uses and holds property along the A.L.R.T. line for various enterprises as set out in the decision of the Assessment Appeal Board in this matter.

The relevant portion of the Regulations is headed as follows:

Class 2-Utilities

2. Class 2 property shall include only land or improvements, or both, used or held for the purposes of, or for purposes ancillary to, the business of

(a) transportation by railway, . . .

The Questions come before the court as follows:

1. Did the Assessment Appeal Board err in law in deciding that the Appellant's Automated Light Rapid Transit System was a "railway" for the purpose of being classified as Class 2-Utilities pursuant to B.C. Regulation No. 438/81?

2. If the Assessment Appeal Board was not in error in finding that the Appellant's Automated Light Rapid Transit System was a railway, was the Assessment Appeal Board in error in finding that the Appellant used or held its property for "the business of" transportation by railway?

Question No. 2 (supra) was answered by me in the negative in court.

"The business" of transportation by railway is synonymous with occupation or service of transportation. I adopt and follow the reasoning of the Board at page 6 as follows:

Despite the appellant's apparent argument that Transit does not function like a "business", it nevertheless is one. Further, to again quote the appellant, "The purpose and object of Transit is to provide and maintain public passenger transportation systems in the Province. . ." Thus, the appellant is in the business of transportation of passengers by various means, one of which is railway.

We are left therefore with Question No. 1, which comes down to the question:

Is the appellant's automated light rapid transit system a railway for the purpose of being classified as Class 2-Utilities pursuant to B.C. Regulation No. 438/81.

Before the Board the appellant argued that the subject properties could not be classified as "utilities", because they did not fall within the general meaning of a "utility". This submission was not pursued before this court, but in any event I would dismiss it for the same reasons given by the Board at page 3 of their judgment, which reads as follows:

In the Regulation, the word "utilities" is a heading used to provide a title to those items enumerated individually from (a) to (e) for the purposes of the application of the statute and regulations, and may or may not have any relationship to a "utility" in the common sense of the term. The subject property is to be classified as "Class 2- Utilities" if it falls within the parameters established by the Regulation.

Finally, it is submitted by the appellant that the appellant's automated light rapid transit system is not a railway. These Regulations, submits the appellant, were drawn at a time prior to the invention of this transportation system. Allegedly these Regulations were intended to cover the traditional railway systems such as the C.P.R. and C.N.R. which involved heavy cars hauled by locomotives moving freight, passengers, baggage and express loads over long distances on rail systems which inter-connect with other rail systems to the extent that you end up with a trans-continental or trans-provincial capacity. Such is the type of system a person ordinarily would think of when referring to a railway. In contrast the transit system relies on a new technology which more closely resembles a bus system, even though it runs on rails, and is designed only to move people as a supplement to the existing bus trolley system. It resembles the trolley bus system rather than a railroad.

In court, both counsel cited definitions of "railway" in dictionaries such as Webster's and the Oxford English Dictionary. The appellant in particular quoted from Webster a definition of "street railway" as a line operating street cars or buses as distinct from its definition of "railway" and "railroad".

However, the respondent also quoted Webster in defining "railway" as "railroad, especially a railroad operating with light equipment within a small area".

In Webster we also find definitions of "elevated railroad" or "railway" as an "urban or interurban railroad (way), operating chiefly on the elevated structure"; and "subway" as usually electric underground railway.

The appellant further submits that in the *Assessment Act* s. 16 suggests a distinction is to be drawn between railways and tramways. But the heading above s. 16 refers only to the annual statements by railway or tramway corporations, which are required to deliver or cause to be delivered to the Commissioner returns in respect of each municipality. Railways or tramways are not distinguished by definition in the *Assessment Act*, but in the *Transit Act*, R.S.B.C. 1979, c. 421, "rail transit system" is defined in these words to mean:

a public system for transportation of passengers and goods by railway which, on the commencement of service which produces revenue, becomes a public passenger transportation system for all purposes under this Act;

This describes and defines the system that we have here in the A.L.R.T.

The words "tram road, tramway and railroad" were discussed at length in the case of *Blackpool and Fleetwood Tramroad Company v. Thornton Urban District Council* (1907) A.C. 568. I quote from the judgment of Sir Gorell Barnes at pages 575-576:

It is practically impossible to find any physical difference between this tramroad and what is popularly understood as a railway of the ordinary character, and no difference in that respect was suggested by counsel for the respondents. but they contended that it was not a railway for all purposes. Physically it seems to me that it is a railway; it is a road containing rails on which vehicles must travel in the ordinary way in which railway traffic is conducted.

So here as the Board states in its judgment, there are no qualifications in any of the statutes by which we might understand that the terms used have any special meaning or that the railway indicated is exclusive of some installations which have or lack certain characteristics.

I adopt and follow the conclusion of the Board where it says:

The words in the Regulation appear clear and unambiguous, and any inclination to expound those words in other than their natural and ordinary sense must be resisted. The Board finds that the A.L.R.T. roadbed, "guideways", and trackage constitute a "line of track providing a runway for wheels"; and that the total A.L.R.T. system constitutes a system of tracks for cars which transport people. Thus, both definitions of railway are satisfied;

I hold that the Board did not err, and Question No. 1 should be answered in the negative.

By agreement there will be no order as to costs.