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Chair

Mr. Mervin Tweed

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Tuesday, December 4, 2007

•(0910)

[English]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)): Good morning, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 5.

Pursuant to the order of reference of Monday, October 29, 2007, we are continuing with Bill C-8, an act to amend the Canada Transportation Act on railway transportation.

Joining us today we have Helena Borges, director general, surface transportation policy, and Alain Langlois, legal counsel.

As previously agreed upon, we're going to move forward with the clause-by-clause. I believe that currently there are two amendments that are out there, so I hope everybody has those in front of them.

Barring any questions or any concerns, I think we'll proceed.

(Clauses 1 and 2 agreed to)

(On clause 3)

The Chair: On clause 3, there is an amendment from the government side, and I'll go to Mr. Jean.

Mr. Brian Jean (Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities): Thank you, Mr. Chair.

Actually, this amendment was proposed by the government only as a matter of certainty to ensure that we would avoid any possible litigation in the future. Indeed, under section 7, this makes for certainty that it does not apply to rates for the movement of traffic so that the department....

Ms. Borges, if you want to give more certainty on it.... It's more of a certainty aspect, creating clarity for both shippers and the railroad companies so we can avoid litigation in the future.

The Chair: Ms. Borges.

Ms. Helena Borges (Director General, Surface Transportation Policy, Department of Transport): Alain.

Mr. Alain Langlois (Legal Counsel, Legal Services, Department of Transport): Thank you.

This section, as was said by the minister when he appeared, was drafted to allow shippers to challenge ancillary charges that are charged by railways above and beyond the freight rate that railways always charge to the shippers for the movement of the goods. This section was never drafted to allow shippers to challenge the freight rate. For freight rate, the FOA is the appropriate remedy.

The problem is that in the industry, railways and shippers use the word "charge" in various ways. So the government motion is only to clarify that it doesn't alter the scheme. The scheme remains as is. It's only to clarify that this remedy is not intended, was never designed, and is not to apply to the freight rate for the movement of traffic.

(Amendment agreed to) [See *Minutes of Proceedings*]

(Clause 3 as amended agreed to)

(Clauses 4 to 6 inclusive agree to)

(On clause 7)

The Chair: We have an amendment in clause 7 from Monsieur Laframboise.

Mr. Jean.

Mr. Brian Jean: I'm wondering if we could put that off until Monsieur Laframboise attends, to the end of the....

The Chair: Monsieur Carrier.

[Translation]

Mr. Robert Carrier (Alfred-Pellan, BQ): I can speak to it.

[English]

The Clerk of the Committee (Ms. Bibiane Ouellette): You need unanimous consent for a member other than the—

The Chair: If Monsieur Carrier wants to present it on Monsieur Laframboise's behalf, we have to have unanimous consent of the committee for him to do that.

Is there unanimous consent? There is.

Monsieur Carrier.

[Translation]

Mr. Robert Carrier: Thank you, Mr. Chairman.

The purpose of the amendment that Mr. Laframboise has introduced on behalf of the Bloc Québécois is really to clarify the wording of the clause that states that the conditions apply to everyone. The words "all of them" could be understood as meaning only those that have made an offer or those representing the same class of shippers. For that reason, we move that the word "equally" be added. In that way, this will apply to all those belonging to the same class of shippers, not just to those that have grouped together to prepare a complaint.

[English]

The Chair: Are there any comments?

Mr. Jean.

Mr. Brian Jean: I understand the purpose is that, but I would suggest that the intended purpose would have a consequence that is not necessarily advantageous, in that it would restrict who actually could apply for the remedy. In fact, it would make it almost impossible for someone to receive the remedy.

I received an e-mail from Bob Ballantyne, who appeared before us. It's not in both official languages, so I'd like to read it, if I may, into the record. Is that possible, Mr. Chair?

The Chair: It's possible. It can be read.

Mr. Brian Jean: Ladies & Gentlemen: We understand that the Bloc is proposing an amendment to put the "which will apply equally to all" phrase in Bill C-8. The CRS group has sent the following message to TRAN requesting that this amendment be voted down. If there is anything you can do on this matter to retain the wording of Bill C-8 as has been discussed over the past weeks, that would be appreciated. The CRS group have agreed not to oppose the amendment that the government will propose, but this Bloc amendment is strongly opposed by the shipper community.

In fact it goes on to say to the Standing Committee on Transport, Infrastructure and Communities, from Bob Ballantyne:

We recently learned of a proposed amendment to Bill C-8, specifically to clause 7 by the replacement of line 5 on page 5 with: "which apply equally to all of them". Please be advised that the Coalition of Rail Shippers, representing 80% of the Canadian revenues of CN and CPR, has the strongest possible objection to this amendment as it would serve to defeat the effectiveness of the multi-party FOA provision which is critically important to the rail shipper community.

And it goes on.

In essence, they are very much opposed to it for the same reasons the department is: it would restrict the ability of people to receive the remedies suggested.

The Chair: Monsieur Carrier.

Mr. Brian Jean: I'd be happy to table this.

[Translation]

Mr. Robert Carrier: The reasons why Mr. Ballantyne is objecting to our amendment are not obvious to me. Does this mean that he does not want the regulations to apply to all the people in his industry, but only those who have organized and taken the trouble to file a grievance with the department?

I believe that's a restrictive position, in that only the best organized individuals would be able to benefit from these regulations. That would suit them, but some would be excluded and others would not be reached. I believe that's not fair to the industry as a whole. It would be good to hear the opinions of departmental representatives concerning the application of these regulations.

• (0915)

Mr. Alain Langlois: Thank you.

The arbitration remedy applies to applicants who are parties to an arbitration, whether we're talking about an individual or group arbitration. The remedy, in other words the decision rendered by the arbitrator, applies solely—and that's the intent—to applicants, that is to say either to the shipper or to the group of shippers making an application.

It would really be very difficult to extend the scope of the arbitration to the industry as a whole, for a number of reasons. Many

members of the industry could file an application for arbitration. Imagine that two shippers file an application for arbitration respecting a rate or price for a subdivision in Saskatchewan. The decision could never apply to the industry as a whole. Certain shippers in the industry could be in Alberta, Ontario or Quebec.

The remedy that applies to the industry is provided for in clause 3 of the bill, which concerns incidental charges. If CN, CP or federal railways file a tariff, that tariff will apply to the industry as a whole, without distinction. Under a new section, an application could be made with the agency, and the agency's decision would compel the railways to amend their tariff. As the tariff already applies to the industry, the effect of the agency's decision would definitely be felt in the industry as a whole. The arbitrary remedy is much more circumscribed. It enables shippers to establish a specific transport contract. From a legal standpoint, I don't see how it would be possible to extend the scope of the remedy determined by the arbitrator to the industry as a whole.

If the purpose of the amendment were to expand the scope of the clause, I must say that I think it produces the contrary effect. It restricts it. The inclusion of the word "equally" in subsection 169.2 (2) would have the effect of compelling shippers to prove to the agency, before the arbitration standard is admissible, that the effect of the arbitrator's decision applies identically to all shippers party to the final offer. In practical terms, that's impossible. That will never happen. No two shippers request transportation services from the railways in the same way, use the same services, ship the same volumes or the same products.

[English]

The Chair: Monsieur Carrier, thank you. I have two other people, but I think you want to ask your question.

[Translation]

Mr. Robert Carrier: I'd like to supplement the explanation.

In cases where user fees were disputed, the study that the department concerned would conduct on the matter might result in an agreement or negotiation, and that could be beneficial for everyone. If it were established that a given price should be billed rather than another and that the merits of that decision were clarified, I don't see why the industry as a whole should continue to accept the former tariff without discussion. In my view, the decision could very well apply to rail service users as a whole.

• (0920)

Mr. Alain Langlois: To the extent that it is "a charge", you are correct, and that is why a new remedy is introduced in clause 3 of the bill. A distinction has to be drawn between the price, which is the amount billed by the railway to transport a good from point A to point B, and "a change", which represents everything the railway will build beyond that base price.

As regards charges, the remedy introduced is that provided for in clause 3 of the bill. That remedy enables shippers to challenge those charges. To the extent that the agency is of the view that "the charge" is unreasonable or that the terms associated with the charges are unreasonable, it will compel the railway to change its tariff. That decision will apply to the industry as a whole. That is the essence of the remedy provided for in clause 3 of the bill.

Clause 7 of the bill concerns arbitration. It must be understood that arbitration enables a shipper immediately, or a group of shippers in the future, to tell the railway that, apart from the charges, they do not agree on the transportation contract, the package that will enable the shipper to transport its goods from point A to point B. That includes the prices, charges and terms of service. A shipper may consider that, to transport its goods from point A to point B, it would like the railway to bill it at such and such a rate for such and such a service and to be able to pay a given amount for incidental charges.

The arbitrator will have to examine the offers of the two parties and select one of them. If it chooses the shipper's offer, that offer becomes the transportation contract that applies between the parties for one year, in the case of an individual arbitration, or for five years in the case of a joint arbitration.

It would not be possible to apply that decision to the industry as a whole because the decision is specific to the group of shippers filing the application. Such a decision will in fact be specific to each of the shippers that file the application. The shipper will say that it is transporting goods from point A to point B, stating the distance and volume of those goods, and that it needs this service with these charges. The application of this decision to the entire industry would not be legally possible.

[English]

The Chair: Mr. Jean, and then Mr. Fast.

Mr. Brian Jean: Actually, I will defer to Mr. Masse.

The Chair: Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

I just want to make committee members aware that I can't keep up to my e-mail coming in about the amendment. The Western Grain Elevator Association, Cargill Limited, Canadian Dehydrators Association, Canadian Forest Products Ltd., Tolko Industries Inc., Millar Western Forest Products Ltd., the Coalition of Rail Shippers, and the Propane Gas Association of Canada are sending in correspondence saying they're opposed to this amendment. I want to let the committee members know that.

The Chair: Thank you.

Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

All I wanted to say was that the whole purpose for this legislation was to ensure that the shippers didn't have disproportionate costs that they would incur in getting these disputes settled. The word "equally" introduces so much ambiguity into the amendments that are before us that there's a virtual guarantee the shippers are going to end up spending many years in court litigating this whole issue of what does the word "equally" mean, and what does it apply to? In the end, the shippers may actually end up with a result they did not want. That we have this negative response from virtually the whole industry on this amendment I think speaks clearly to the fact that this is a word we don't want to insert.

I understand where Mr. Carrier is coming from. We share his sentiments and we want to make sure the shippers are treated fairly across the board. But given the fact that Canada is so diverse, one specific industry may have different circumstances in different

regions of the country. Because of that, applying a ruling or an application equally across the country would really be counter-productive.

I would encourage Mr. Carrier to perhaps withdraw this amendment, if he would. I believe it's actually working against what he's trying to achieve.

The Chair: Are there any other comments?

(Amendment negatived)

(Clause 7 agreed to)

(Clauses 8 and 9 agreed to)

● (0925)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill, as amended, carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill, as amended, to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill, as amended, for the use of the House at report stage? My advice is that it may not be necessary, simply because it is a very small amendment.

I will ask again, but think of a tree.

Shall the committee order a reprint of the bill, as amended, for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you. It shall be reprinted, but it will be on recycled paper.

I thank you for your good work on this bill.

Just for the information of the committee, on Thursday of this week we will be dealing with railway safety—that's Mr. Bell's motion—and we will have Transport Canada officials in here to answer questions.

On Tuesday, December 11, I'm asking for a subcommittee meeting, so there'll be no transportation meeting that day other than for those who are on the subcommittee. And I'm hoping that on Thursday, December 13, we'll either deal with the infrastructure programs or with the introduction of the bill that's currently before the House, Bill C-23.

Go ahead, Mr. Carrier.

[Translation]

Mr. Robert Carrier: I thought the infrastructure study wasn't on the agenda for next Thursday as initially planned. Is that what you mentioned?

[*English*]

The Chair: I said it would either be one or the other. If Bill C-23 is put forward to this committee, we will deal with it on Thursday, but if it's not available to us, we will deal with the infrastructure.

[*Translation*]

Mr. Robert Carrier: We think it's important not to delay the infrastructure study, which was already scheduled. If we could maintain this study, then we could start the study of Bill C-23, if necessary.

Do we agree on that?

[*English*]

The Chair: I will see that the subcommittee addresses that next Tuesday. We have an understanding that as bills are referred to this committee, they take priority, but I'll certainly see that it's brought up at the Tuesday meeting.

Is that all good? All right.

With that, the meeting is adjourned.

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