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Chair

Mr. Larry Miller

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● (1545)

[*English*]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): We'll call the meeting to order.

I'd like to welcome back our witnesses again today. With your indulgence, I'd like to move into orders of the day and on into clause-by-clause. If everybody remembers, clause 1 is postponed until the end of the proceedings. How far we get today will be up to all of you.

With that, could we move to clause 2?

Mr. Mike Sullivan (York South—Weston, NDP): Are we not going to have any more discussions with the witnesses?

The Chair: I thought we had a pretty good discussion.

An hon. member: I was going to ask one more question.

The Chair: Make it very brief then.

Mr. Mike Sullivan: We can tie it into one of the clauses, if you like.

The Chair: If it's connected to a clause.

(Clauses 2 to 7 inclusive agreed to)

(On clause 8)

The Chair: We do have amendment LIB-1 on clause 8. The note says it's nearly identical to amendment NDP-1. The analyst notes that although the content is similar, the changes sought in a different part of the bill should be considered as different enough to proceed with both.

Mr. Goodale.

Hon. Ralph Goodale (Wascana, Lib.): Could I speak to this for a moment, Mr. Chair?

A number of witnesses appeared before us, particularly from the shippers. They indicated their desire for more detail in the legislation to describe some of the parameters around what the service obligations would cover. That's what this amendment is attempting to do. The distinction between this proposal from my colleague Mr. Coderre and a proposal later on from the NDP is the location in the legislation where it would be more appropriate to consider this amendment.

In our view, it fits better in clause 8 than in clause 11, which is the other proposal from the NDP. The positioning of this has indeed been discussed with a number of the witnesses, and the consensus was that it would be better to provide this detail in the context of clause 8. Accordingly, I would move this on behalf of Mr. Coderre.

The Chair: Is there any further discussion?

(Amendment negatived [See *Minutes of Proceedings*])

(Clauses 8 to 10 inclusive agreed to)

(On clause 11)

The Chair: Clause 11 is the big one. We have quite a number of amendments in it. The first one is NDP-1. Is there any discussion?

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin (Trois-Rivières, NDP): Thank you, Mr. Chair.

Basically, our amendment is much like the one made by the Liberals. First, we might wonder whether its proposed additions deserve to be passed. Clearly, we will no longer have any choice about our position because the amendment to clause 8 has just been negatived. Nevertheless, I feel that the amendments proposed by the Liberals and the New Democrats make perfect sense. They improve the bill considerably.

If we want to grant Minister Lebel one of the wishes he made when he met us, it would be to establish an arbitration panel. It would not be called on a lot, because a way would be found to arrange for the parties to mutually resolve their differences, both past and future. However, I feel that the provisions we are adding, namely paragraphs (*a*), (*b*), (*c*), (*d*) and (*e*), would go a long way to solving the problem of bottlenecks at the arbitration panel because a good number of the conditions would be already specifically written into the bill and would mean that everyone, whatever side they were on, would know what the issues were. When agreements are signed, everyone will know exactly what everything means and, if they have to go to arbitration, it will also make the arbitrator's work a lot easier. The arbitrator will know exactly what he has to decide on and which elements have been met and which have not. There will be no need to reinvent the wheel each time. By adding these provisions, precedents will be set in advance, as it were. There will already be conditions that will frame the rulings the arbitrator must make.

I will not reread these five conditions, because I assume you have them in writing. But I feel that they will improve the bill substantially, because they will allow the parties to collaborate in a healthier way. That is why we are proposing the five additions to clause 11.

Thank you, Mr. Chair.

● (1550)

[*English*]

The Chair: Thank you.

Mr. Sullivan.

Mr. Mike Sullivan: This is one of the places I wanted to ask our witnesses about.

We talked a little in the meeting before the break about what Transport Canada understands are service obligations. Transport Canada already has a definition, if you will, of what service obligations are, and I would like some more specifics from them as to what this would do relative to what Transport Canada understands our service obligations to be already. Are they defined somewhere? Are they redefined by this? What is the effect of trying to be more specific here with regard to how Transport Canada already deals with the notion of service obligations exactly?

Ms. Annette Gibbons (Director General, Surface Transportation Policy, Department of Transport): The understanding is that service obligations are terms related to the receiving, loading, carrying, unloading, and delivering of the traffic, which, as we explained at a previous meeting of the committee, is what is defined in section 113 of the act. The definition of service obligations is different case by case, depending on the specific situation of an individual shipper.

In terms of a mechanism for having a sense of the full scope of what it might encompass, there's lots of jurisprudence, through the courts, but in particular through the Canadian Transportation Agency decisions on section 113 through the complaint mechanism that shippers currently have under section 116 of the act.

The Chair: Thank you.

Mr. Mike Sullivan: So would any of these that are defined in the proposal from the NDP be unreasonable to be included in a definition of service obligations?

I guess the purpose of the amendment is to make it very clear what it is, and from your answer just now...because it's on a case-by-case basis, the shippers have advised us that they have difficulty getting past the railway assumption that nothing is a service obligation.

Would these amendments make it more clear what an arbitrator would be dealing with in terms of what the railroad's service obligations would be?

Ms. Annette Gibbons: Because the agency currently administers the act, and with the current obligation on railways to provide adequate and suitable accommodation for the receiving, loading, and unloading, using those terms that are currently in the act, the agency has experience in determining what service obligations would apply case by case when a shipper complains under the current Canada Transportation Act.

There is that knowledge of what different service obligations may be in a particular case, established through all those cases done over the years. It would be the expectation that when a shipper comes forward for arbitration, the knowledge of what the specific service obligation should be in a case will be very much in line with earlier decisions of the agency. Based on the vast gamut of things that you outlined here, if they apply in a particular case, it would be expected that the arbitrator would be able to impose any of those obligations.

Mr. Mike Sullivan: How would that knowledge be transferred from Transport Canada's knowledge bank, if you will, to an arbitrator?

Ms. Annette Gibbons: It's through the agency's knowledge bank.

Mr. Mike Sullivan: Sorry, the agency's knowledge bank.

Ms. Annette Gibbons: The agency will be supporting the arbitrator. The agency will be providing expert advice to the arbitrator as that person makes decisions.

Mr. Mike Sullivan: And that's clear in the act itself?

Ms. Annette Gibbons: Yes.

The Chair: Mr. Goodale.

Hon. Ralph Goodale: Mr. Chairman, I have just one follow-up question. I won't ask the same question seven different times.

To illustrate the point, can you give us an example of in what circumstances it would be inappropriate for a service agreement to deal with the quantity, condition, and types of rolling stock to be provided by the railway company?

● (1555)

Ms. Annette Gibbons: I would say that without taking any specific one of those items, there's a very long list of various types of service obligations here.

Hon. Ralph Goodale: There are seven.

Ms. Annette Gibbons: Yes, and it may be that one or more of those do not apply in a particular case. It may be that the condition of cars is not really a matter of great importance to a particular shipper because it doesn't matter what the condition is for the goods they're shipping. It may be the case that cycle times or dwell times really don't matter for a particular shipper. In that case, the arbitrator would say they're not going to rule on that and will rule on other matters that are more important to that shipper.

Hon. Ralph Goodale: To help us understand this practically, can you give me one example of where a dwell time or an estimated time of arrival or the condition of a car would be irrelevant?

Ms. Annette Gibbons: Dwell time may be irrelevant if a shipper is not overly concerned about exactly when the goods reach destination. That may be an area where there's flexibility for that shipper, and they trade that flexibility to get something else that is more important to them.

Hon. Ralph Goodale: But by an overwhelming majority they told us it was important to them.

Ms. Annette Gibbons: As a group, these are the types of things they're looking to see, but what I'm saying is for an individual case, it may not be a factor of great importance for an individual shipper.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Mr. Chair.

I am trying to understand, because the answers so far have not been clear. If you look at the general wording of the amendment, before paragraphs (*a*) to (*f*), you will see the words:

For the purposes of this Division and without restricting the generality of the term, "service obligations" includes obligations in respect of:

That does not mean we are putting a straitjacket on any potential arbitrator. If you will excuse the bad pun, we are laying the track so that situations can be clear before they ever get to a conflict situation.

I have a hard time seeing how one of these provisions could not apply in any given contract or could pose a problem. In that case, it could just not be used. Does the fact of including it in the bill create a problem in any future arbitration situation?

Mrs. Annette Gibbons: One of the things I commented on in one of my two other appearances before the committee is that the government's approach in this bill is more general in terms of the obligations and the way they are described. The approach used in new clause 169.31 mirrors the one in section 113 of the act. The decision was made to follow the same approach.

I think that my colleague, Mr. Langlois, wants to add something.

Mr. Alain Langlois (Senior Legal Counsel, Team Leader Modal Transportation Law, Department of Transport): As I mentioned when I first appeared here on this bill, the first subsection of the clause, without restricting the generality of what follows, sets out what constitutes a service obligation. But courts currently consider that the title covers only the category included in the statements that follow. In the case of this clause, a court of law is going to consider the term "service obligations", as found in the first paragraph, to be part of the category of the elements listed in paragraphs (*a*) to (*f*), even if it is stated that it should not be limiting.

Clearly, the longer the list—and the case law on this is quite clear—the more the courts tend to think that it must form a similar category, given that Parliament took the time to create the list. Having a long list is a danger in legal terms. This list is quite long. For example, a shipper making a request that does not directly match what is in the list could be told, either by people from the railways or by a court of law, that what he is asking for is not covered by the term "service obligations", precisely because of the list.

I can see another danger with this list. In paragraph (*d*), we find a formulation that is universally used elsewhere. It talks about the furnishing of adequate and suitable accommodation for the carriage, unloading and delivering of the traffic. Those terms are used everywhere in the act to refer to the railways' service obligations.

I feel that the legal problem that this provision creates is this. If what is in paragraph (*d*) is interpreted as a general obligation and what is in paragraphs (*a*),(*b*), (*c*), (*e*) and (*f*) is interpreted as a more specific obligation, it is considered that paragraphs (*a*), (*b*), (*c*), (*e*) and (*f*) do not include what is otherwise covered by paragraph (*d*).

If other provisions of the act refer to the overall obligation, a court of law is going to consider that Parliament is not talking for the sake of hearing its own voice and that, if it has put a shade of difference between what is in paragraph (*d*) and what is in paragraphs (*a*), (*b*), (*c*), (*e*) and (*f*), it is because the latter are not reflected in what is listed in paragraph (*d*). That can cause problems elsewhere in terms of applying the act. I am speaking more specifically about shippers who will transport their goods under the general service obligation set out in section 113 of the act, and not by contract as provided for in those provisions.

● (1600)

Mr. Robert Aubin: Can I ask one last question?

[*English*]

The Chair: We seem to be on a merry-go-round here.

[*Translation*]

Mr. Robert Aubin: I just want to take advantage of your legal experience and ask you this question.

If we kept only the general paragraph, would the provisions that would have disappeared end up appearing in the case law as cases were dealt with?

Mr. Alain Langlois: Yes, when the provisions set out a long list of elements, the choice that Parliament has to make is always a risky one. Do you prefer to define almost everything that you want to cover in a concept that you are trying to establish, or do you want to leave something else aside? That risk, which is political more than it is legal, must be assessed at the time the act is drafted. The risk will never go away.

[*English*]

The Chair: Mr. Sullivan, go ahead.

Mr. Mike Sullivan: Can we go at it from the obverse? If the bill is left alone, could a shipper in an arbitration proceeding insist that dwell times be part of the service obligations required for the arbitrator to put into a service level agreement, or is it the subject of debate, as it is today? Because that's what the shippers are telling us: they have all kinds of difficulties with what is "adequate and suitable service obligation". If they come to the arbitrator and say, "We must have a dwell time", can the carrier say, "Well, it's not defined, so you don't get it"?

Ms. Annette Gibbons: The shipper certainly could ask for that. We fully expect there will be cases where that kind of service obligation would be requested, and then the arbitrator in a decision, we believe, has the full authority to address that element of service. Now, whether the arbitrator chooses to in a particular case is up to the arbitrator, depending on the circumstances of the case.

Mr. Mike Sullivan: So the lack of definition doesn't actually restrict the arbitrator—

Ms. Annette Gibbons: No.

Mr. Mike Sullivan: —from taking one side or the other. That arbitrator could—and I'm glad you're saying this for the record—in fact insist that dwell times and estimated times, all of the things mentioned here, and I won't read them out loud, but we know what they are in the proposal, could all be part of a service level agreement and could be part of what the agency would consider appropriate items in defining "adequate and suitable service obligations".

Ms. Annette Gibbons: Yes.

The Chair: All those in favour of the amendment?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We have amendment NDP-2.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Mr. Chair.

If we have just rejected amendment 1 because of the fact that the general title is the best legal protection, the best way to avoid restricting the work, I imagine that, logically, we should accept amendment 2.

Actually, the term "operational terms", which occurs in this bill, needlessly restricts the elements that form part of an agreement about levels of service. In my opinion, if we follow the same reasoning, we should give the agency or the arbitrator more latitude by using the word "terms" rather than the phrase "operational terms". The latter seems clearly to restrict the jurisdiction.

● (1605)

[*English*]

The Chair: Sorry, did you have a question? I was talking to the clerk.

Mr. Mike Sullivan: If the previous discussion was that by making a smaller term, in other words, "adequate and suitable service obligations", is better than listing them.... Here we've suggested that "terms" is better than "operational terms". Can you explain to us why it's not? If broader is better, why is broader not better here?

Ms. Annette Gibbons: The use of the word "operational" was very deliberate, to ensure that the scope of the provision covers a very wide range of service terms, but it did not cover absolutely everything in the possible universe of terms that may be put forward by a shipper. As we mentioned the last time at this committee, there was a decision to not allow terms related to financial penalties to be subject to the decision of the arbitrator by broadening the phrase to "terms" as opposed to "operational terms". Then that would be within the scope.

There was also a question with respect to other terms that may come up, other terms that are found in contracts. Again, there the intention was not to capture every possible contractual term that a shipper may propose, but rather to stick to those terms that are really related to railway service.

The Chair: Okay.

Mr. Mike Sullivan: So is the obverse true, that the railway can't impose terms on the shipper that aren't operational terms?

Ms. Annette Gibbons: I'm not sure exactly what kinds of terms you're referring to.

Mr. Mike Sullivan: If the carrier decides to impose a term that is not an operational term on the shipper in return for having gone to arbitration, or whatever, that isn't covered by this because we've limited it to operational terms that can be dealt with by the arbitration, not other terms such as whether it was just a "continue operating" service. That's a term, but it's not an operational term. It could abandon the line.

Ms. Annette Gibbons: In the case of abandonment, the act recognizes that abandonment takes place and prescribes a process that railways must follow if they wish to abandon. Obviously, there's no desire to create an inconsistency with the current regime governing rail-line abandonments.

Mr. Mike Sullivan: The other point is that an internal dispute resolution mechanism or something to deal with *force majeure* or any of those kinds of things that are normally in agreements between parties cannot be included in this; they can't be part of an arbitrated decision.

Mr. Alain Langlois: I think we discussed *force majeure*, either last time or the first time around. I strongly believe *force majeure* is captured by an operational term. If we tell a railway company to pick up the car on a Monday, Tuesday, or Wednesday, part of an operational term will be that they shall not pick up the car on these days if the following events occur. To me, that's an operational term. There's no ambiguity, no doubt that this is covered.

What's meant to be left out by restricting it to operational terms—as Annette was saying, a deliberate restriction was made—was to leave the non-service obligation aspect of the relationship between the railways and the shippers to be dealt with by the arbitrator. For example, a dispute resolution clause, a liability clause, a mediation clause that would normally be found in agreements, the choice of what law applies in case of dispute—all these clauses you would normally find in a contract were meant to be left outside the scope of the arbitrator's discretion. Essentially, this provision allows the arbitrator to establish the obligation of the railways, but that's the extent of the arbitrator's discussion. He sets the obligation that the railway must comply with in providing adequate and suitable accommodation to the shippers.

● (1610)

The Chair: Before we go to Mr. Goodale, I have a note that I should have read before.

First of all, we need a mover for each amendment, so I'm going to take it, Mr. Goodale, that you would have moved the first one in LIB-8, and if two members...Mr. Aubin and Mr. Sullivan are nodding their heads.

Mr. Robert Aubin: So moved.

Mr. Mike Sullivan: So moved.

The Chair: Also, just a note that amendment NDP-2 is identical to amendment LIB-2, and if NDP-2 is moved, which it is, LIB-2 cannot be proceeded with. A vote on NDP-2 applies to NDP-5, NDP-6, and NDP-7, what have you. Just so you know that.

Mr. Goodale.

Hon. Ralph Goodale: Mr. Chairman, the issue I want to raise here for just a moment is whether or not this whole process could end up being stymied by the parties not being able to agree on things that are terms, but not operational terms. The legislation purports to say that a shipper is entitled to a level-of-service agreement. If that level-of-service agreement, which consists of both terms and operational terms, cannot be negotiated between the parties, then certain things, operational terms, can be referred to arbitration. But terms that are not operational terms cannot be.

What if the sticking point between the parties is a term that is not an operational term? That's the thing that is hanging them up. They can't come to an agreement on that. Then the right in the legislation for the shipper to have an agreement is essentially vacuous because the whole process would founder on that point that could not be referred to arbitration. Isn't that a problem?

Mr. Alain Langlois: Not really, in my humble view. If a shipper and a railway can agree on, let's say, choice of law clause—which law, Ontario's or Manitoba's, should apply in the case of a dispute—the shipper has an ability, if they can't get the railway to sign an agreement, to agree to sign an agreement; they still get to arbitration. They get an arbitrator to establish the actual obligation that the railway will have to comply with, notwithstanding the dispute that is ongoing with the railway and the choice of law.

The choice of law can be resolved at the point where a dispute occurs. The railway may refuse to sign an agreement in the absence of a clause that says this is the applicable law. The shipper, being frustrated, may decide to go to arbitration to get an arbitrator to force the railway to comply with the actual obligation set out in the decision of the arbitrator because that's the outcome of the arbitrator's process.

Hon. Ralph Goodale: But if the railway wanted to say they're just not going to agree on choice of law, then there's no agreement and you can't arbitrate.

Mr. Alain Langlois: You can go to arbitration to get the service element established—

Hon. Ralph Goodale: But not the agreement. You don't have an agreement until everything is agreed.

Ms. Annette Gibbons: Mr. Chair, can I just come back to the purpose of this section of the act and the purpose of this provision? It is very much focused on rail service. This section of the act is not intended to cover every possible element of a relationship between a railway and a shipper. It is focused on service. The concerns that have been brought to the government at various stages when this section of the act on railway obligations with respect to service has been under review have always been about service. That is the focus. These provisions are in keeping with the kinds of concerns that people have brought before the government throughout the history, I would say, of having these railway obligations in the act.

The kinds of issues you're raising are not front-and-centre issues, I would say, with the exception of the financial penalties issue and the issue of commercial dispute resolution, having the arbitrator being able to make a decision on that. Those were the two items that were more important, I would say, on par with the kinds of service obligations that are covered under the new provision. It was a policy decision of the government not to include them under the arbitrator's scope. But the other types of issues that you raise are not really major issues that have been brought forward by shippers as a concern.

Just to come back, the intent of this provision was not to try to establish a fully comprehensive contract between railways and shippers that covers everything. It was to focus on service, because that is the area where Parliament has determined there needs to be legislation governing the behaviour of railways.

● (1615)

The Chair: Mr. Sullivan.

Mr. Mike Sullivan: But on the matter of service, there can be nothing in the agreement in terms of penalities or any kind of dispute resolution. If one side or the other—because it's a two-sided agreement—violates the terms of the service level, that can't be done?

Ms. Annette Gibbons: There can be terms with respect to coming back from service failures. Under paragraph 169.31(1)(b), if a railway fails to comply with an obligation imposed by the arbitrator, there are operational terms that can be in the agreement imposed by the arbitrator that deal with how to come back from a service failure. In paragraph 169.31(1)(a), at the very bottom of that paragraph, there is reference to "communication protocols". So there can be some dispute resolution practices and processes covered there, but the actual proposal of having the arbitrator impose external dispute resolution, if there is a service failure in the future, is not covered.

There are aspects of what you're referring to that are covered, but not financial penalties per se and not external dispute resolution processes per se.

Mr. Mike Sullivan: But they're limited to operational?

Ms. Annette Gibbons: They are limited to operational.

Mr. Mike Sullivan: If the railway fails to comply and your grain is destroyed as a result, that's not operational.

Ms. Annette Gibbons: In that case, that would be subject to the administrative monetary penalty scheme.

Mr. Mike Sullivan: But that doesn't help the shipper.

Ms. Annette Gibbons: The shipper can go to the courts.

Mr. Mike Sullivan: Which is where they are today. Okay. So there's no real change.

The Chair: All those in favour of amendment NDP-2?

[*Translation*]

Mr. Robert Aubin: Can we have a recorded vote, Mr. Chair?

[*English*]

The Chair: Mr. Aubin has asked for a recorded vote.

(Amendment negatived: nays 6; yeas 5)

The Chair: As I already said, amendments NDP-5, NDP-6, and NDP-7 are also defeated with that, so you can strike those off.

Would someone like to move amendment NDP-3 on the floor?

Mr. Robert Aubin: Yes.

The Chair: Is there any discussion?

Mr. Sullivan, I'm waiting.

Mr. Mike Sullivan: This is another situation in which if there is no term governing the determination of whether or not a serious failure has occurred, which can only be done in an operational sense, then we're saying to all the shippers and the railroads that the only place for them to seek recompense is through the court system. I want to just confirm that the only option available to them for damages resulting from failures is the court system.

● (1620)

Ms. Annette Gibbons: That is the direction, yes.

Mr. Mike Sullivan: Thanks.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): In western liberal democracies, where are contract disputes normally decided?

Mr. Alain Langlois: In the courts.

Mr. Pierre Poilievre: In the courts, okay. Thank you.

The Chair: Okay. All those in favour of amendment NDP-3?

[*Translation*]

Mr. Robert Aubin: Can we have a recorded vote, Mr. Chair?

[*English*]

The Chair: You'd like a recorded vote? Okay.

(Amendment negatived: nays 6; yeas 5 [see *Minutes of Proceedings*])

The Chair: We now move on to NDP-4. Would somebody like to move it?

Mr. Mike Sullivan: I'll move it.

The Chair: Is there discussion on the amendment? No.

Mr. Robert Aubin: A recorded vote, please.

(Amendment negatived: nays 6; yeas 5 [see *Minutes of Proceedings*])

The Chair: We now move to LIB-5. I presume, Mr. Goodale, you'd like to move that.

Mr. Ralph Goodale: Yes, I will.

The Chair: Is there discussion on the amendment? No.

Mr. Mike Sullivan: I'd like a recorded vote.

(Amendment negatived: nays 6; yeas 5 [see *Minutes of Proceedings*])

The Chair: We now move to NDP-8. Would someone like to move it?

Mr. Robert Aubin: Yes.

The Chair: Is there discussion on the amendment?

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Mr. Chair.

In moving this amendment, what we want to point out is the importance of allowing shippers to come up with the question or questions at issue.

Once again, I am going to turn to Mr. Langlois for his expertise. In any event, it seems to me hard to justify an arbitrator dealing with points raised by a railway company and that a shipper has not himself included in the matter he wishes to submit to the arbitration panel.

Mr. Alain Langlois: As I mentioned in my last appearance, the act already provides for what your amendment proposes. When a matter is submitted to arbitration, it is the shipper who provides in his submission to the agency the questions that the arbitration has to resolve.

The shipper's submission must include the detailed questions that the arbitrator has to resolve. The offer to the parties, an offer of conditions, is intended to resolve the matters submitted to arbitration by the shipper and not those that the railway company might submit. The act already states that the conditions that the two parties submit are intended to resolve the matters submitted by the shipper. The arbitrator must establish the terms under which the matters submitted to arbitration by the shipper may be resolved, as well as those that have been submitted to arbitration by the agency.

● (1625)

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: All in favour of amendment NDP-8?

Mr. Robert Aubin: A recorded vote, please.

The Chair: We'll have a recorded vote.

(Amendment negatived: nays 6; yeas 5 [See *Minutes of Proceedings*])

The Chair: We'll now move to amendment NDP-9. Would someone care to move it?

Mr. Robert Aubin: Yes.

The Chair: Is there discussion? No.

Mr. Robert Aubin: A recorded vote, please.

(Amendment negatived nays 6; yeas 5 [See *Minutes of Proceedings*])

The Chair: We'll now move to amendment Liberal-9.

My mistake. Liberal-9 can't be moved because it's identical to NDP-9, which was just defeated. We'll now move to amendment Liberal-10.

(On clause 11)

The Chair: Mr. Goodale, would care you to move that?

Hon. Ralph Goodale: Yes, I would, Mr. Chairman.

It's just to make the point once again that the objective here surely should be to be even-handed with respect to both sides in a proceeding that goes before the agency. The shippers had the concern that the results of an arbitration might, hypothetically, provide the railways with a reason for applying new charges against the shippers. This clause is to make it clear that the agency has the authority to rule on that issue and may in fact reduce any charge the railways might impose on the shippers as a result of the decision in arbitration.

It seems a fair thing to do. One would assume that the agency would already take that into account, but in order to make it explicit, this clause would do it, as the last two or three lines read, "the Agency may, on application by the shipper, reduce the amount of the charge if the Agency determines that it"—that is, the charge—"is unreasonable". I think it's a fair thing to include in the legislation, and I would move it.

The Chair: Is there further discussion?

All those in favour of amendment Liberal-10?

(Amendment negatived)

The Chair: Ms. Hughes?

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): I hate to say this, but only five people voted on the Conservative side and five on this side. Mr. Poilievre didn't raise his hand.

Hon. Ralph Goodale: Maybe we should have a recorded vote.

The Chair: Mr. Goodale has asked for a recorded vote.

(Amendment negatived nays 6; yeas 5 [See *Minutes of Proceedings*])

(Clause 11 agreed to)

(Clauses 12 to 14 inclusive agreed to)

The Chair: Shall clause 1, the short title, carry?

Yes, Mr. Goodale.

Hon. Ralph Goodale: I'm just not quite sure if this is appropriate at the short title or clause 1 stage, but I have one further question that I would like to ask our witnesses.

● (1630)

The Chair: Go ahead, Mr. Goodale.

Hon. Ralph Goodale: This has to do with the arbitration proceeding. There was an earlier amendment that proposed putting in the law certain terms with respect to the arbitration proceeding. That amendment was defeated.

My question is this. In terms of the ability of one side or the other in a contract negotiation, or in terms of a commercial relationship between a shipper and a railway, and trying to make sure, which is the objective of this legislation, that the relationship be as even-handed and on as level a playing field as possible, what is the logic of having provisions in the law that would allow railways to unilaterally impose penalties on shippers, penalties that shippers pay to the railways—not to the government, but to the railways—without the shippers having a corresponding right or opportunity?

Where is the balance in that relationship if one side can impose, in effect, damages—called "demurrage"—but the other side cannot?

Ms. Annette Gibbons: The structure of the regulatory framework for railways is that railways publish public tariffs, which outline the conditions under which traffic is accepted and carried. They publish rates and they publish charges. Some of those charges are for activities or situations where there is an expectation of the traffic being loaded within a certain window. If it doesn't happen, then demurrage fees kick in.

That is all disclosed in the public tariffs, the regulatory framework that railways use to communicate with shippers on what the conditions are. All of that is known up front, ahead of time, using that approach.

Hon. Ralph Goodale: What would allow a shipper to say that if you, the railway, tell me the car is going to be here sometime between Thursday and Saturday, and it doesn't get here until a week from Friday, then you owe me so much because I've lost business for those three or four days?

Ms. Annette Gibbons: The act doesn't deal with giving the shipper any particular remedy in terms of seeking that kind of a damage. What it does do is give the shipper a remedy to complain to the agency—that's already in the act—about the service they are receiving and to have the agency adjudicate a decision, which can include ordering the railway to do certain things.

The act includes a remedy on final offer arbitration for shippers who are concerned with rates or other conditions of carriage. The act provides a remedy for shippers to complain about and seek a difference in fees that are charged by railways. Under this new legislative provision in Bill C-52, there now is an opportunity for a shipper to seek sort of a proactive setting out of the entire service relationship as it would like to see it with the railway.

Those are the key remedies. There are many others, but those are the key remedies that are there for a shipper to be able to seek assistance if the commercial relationship is not proceeding the way they would like it to.

Hon. Ralph Goodale: But most of the shippers who appeared before us, and the panel that the government appointed three or four years ago, all concluded that this wasn't working, that the remedies you have described have not adequately levelled the playing field. The minister in his opening remarks said that the playing field was still uneven. And there's no way to balance it up, apparently.

Ms. Annette Gibbons: I can only speak to the purpose of this new measure in Bill C-52, which is to provide an extra tool for shippers beyond the tools that currently exist in the act for shippers to be able to seek the level of service they would like to have from the railway.

The Chair: Thank you.

We'll move on.

Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill for the use of the House at report stage?

Some hon. members: Agreed.

The Chair: And we're done.

Thank you to our witnesses for being here again.

To the committee, there won't be a meeting on Thursday. We do have witnesses coming on our next study. We'll start that next Tuesday, and we'll be carrying forth from there.

Thank you very much. The meeting is adjourned.