

Western Grain Transportation Act

duty. We know that over the years the provisions under the Railway Act to regulate and put sanctions on the railways have not been used. Since this has not been done and the Government is either incapable or unwilling to attack its friends financially since it may need the money, we believe that if these sanctions are to be provided under this legislation they should apply only to the railways.

Motions Nos. 37 and 38, in anticipation of the defeat of Motion No. 36, make two conditions. If Clause 18(1)(c) through 18(1)(g) remain as is, Motion No. 37 and Motion No. 38 put conditions on these sanctions. First, they require that if participants other than the railways are affected, sanctions should apply in such a way as not to hurt the other participants financially. Motion No. 38 states that if the sanctions are established—

—such awards and sanctions shall not involve the allocation of railway cars nor affect the quota system of the Canadian Wheat Board.

Even the quota system of the Canadian Wheat Board is largely dependent on its authority to assign cars.

It is interesting to note that during the committee hearings the Hon. Member for Kindersley-Lloydminster (Mr. McKnight) strongly supported the idea of Motion No. 37 and Motion No. 38, which I hope the Conservatives will continue to support if they decide not to support Motion No. 36, saying that there is a real danger in this clause of the Administrator being able to change the allocation of cars and the quota system in a way which could partially destroy the grain transportation system.

Hon. Ray Hnatyshyn (Saskatoon West): Mr. Speaker, I wish to make a few comments on these amendments. First I wish to point out that at least Motion No. 37 is a belated attempt on the part of the NDP to cover up a faux pas which it had perpetuated in the committee stage. At that time the NDP had a completely different position in terms of the kinds of sanctions that were going to be imposed on producer-owned grain companies and pools in particular. They indicated that any sanctions that were to be imposed with respect to unsatisfactory performance would be pecuniary.

We now see the NDP attempting to cover their tracks in the House as a result of the very negative feedback it received from western producers when it brought in this amendment at committee stage. It is nice to see the NDP following the leadership displayed by my colleagues in our Party at the committee stage in order to have a proper perspective since it was the Conservatives who moved at committee stage that sanctions not be pecuniary as far as the pools and producer-owned grain companies were concerned.

That was a very important consideration because Members will understand that when we are dealing with sanctions against producer-owned companies, we are really penalizing the producers.

I wanted to deal with the general thrust of some of these amendments since this is our first opportunity to look at some of the provisions of Clause 18 which deal with the concept of sanctions against the railways, for failure, among other things,

to perform to the expectations placed upon them under legislation and by the Government of the day. This particular part of the legislation has been subject to very serious attack by almost everyone who is knowledgeable in this particular area. I suggest it is one of the greatest flaws in this legislation. Legislatively speaking, it is one of the most cockamamie set of provisions I have seen in attempting to bring some accountability in the future to any group. In terms of its legislative wording, it is almost unenforceable.

I want to bring to the attention of the House some of the evidence which we received in the course of the committee hearings. First, let me point out that Clause 18(1)(e) provides:

• (1230)

(e) develop a notional scheme of—

I underline the word notional.

(i) sanctions applicable to the railway companies, and

(ii) awards and sanctions applicable to such system participants, other than the railway companies, as the Administrator considers appropriate.

You may ask yourself, Mr. Speaker, as a student of legislation, what does this concept “notional” mean after all? I know that if you were thinking of this word, it means very little at law indeed. It is the most arbitrary term one can think of. The Deputy Minister on behalf of the Department of Transport was questioned with respect to the meaning of this particular subclause. At page 133 of the committee hearings held on September 8, 1983 Mr. Kroeger, in responding to questions put by my colleague, the Hon. Member for Portage-Marquette (Mr. Mayer), stated:

That is the analogy that underlies the concept of a system of awards and sanctions. First of all, you design a hypothetical or notional set of awards and sanctions and then you match those against the performance of system participants in ensuing weeks and months. Then at the end of six months you conclude that this would have involved withholding X millions from CN, or that it might have involved some type of penalty vis-a-vis Manitoba pool elevators. You look at those results and say, well, that really does not make any sense in relation to what actually happened and why, so we had better change our system of awards and sanctions in the following ways and let us see how that works against grain movements in the ensuing six months, and you would go on correcting the elements of your awards and sanction system until, if all went well, you would arrive at something that really did seem to make sense. But if all went badly, at the end of the three years you would probably report to the minister that this was unworkable.

I want you to ask the question rhetorically, Mr. Speaker. If this is the Government's view of the operation of that particular sub-provision of this Bill, God help the western producer with respect to his ability to expect any sort of accountability on the part of the railways for their operation.

This is the objection brought forward time after time after time. People in western Canada, the grain producers, are being asked to buy a pig in a poke. They are being asked to embrace enthusiastically some crazy concept of accountability to which the Deputy Minister gives what I would term an equivocal answer. He has not the foggiest idea of what these concepts and sanctions are going to be. The Deputy Minister is an intelligent man. He is a person who has spent his life in the Public Service and who has been thinking seriously about this matter night and day over the course of months and I would