

Railway Act

Hon. Member for Humboldt—Lake Centre. As many people could speak to the motion as would like to speak to it and then we could get on to the business of eventually passing the motion to encourage the Government to act in this way.

I am told that the railways have pointed out, in responding to the existence of this motion, that in the case of liability where there is a claim on the basis of negligence, there is no specific limit under the law in the establishment of a financial settlement. This may be true, but the important thing to remember is that even if this is so, the onus is on the farmer, or whoever lost property as a result of the fire, to establish, according to Subsection 338(2), that the railway was in fact negligent. In addition to the likelihood of its being very expensive, as well as very lengthy, it would be extremely difficult to establish in court negligence on the part of the railway. I need not remind you, Mr. Speaker, that the railway can well afford to wait a long time and may well be in no great hurry to settle any of these court cases. As well, the railway can afford to hire very high-priced lawyers to make its case, while the individual farmer, or a group of farmers, who may be the victims of fire started by trains going through their property, are hardly in the same position.

I believe that what we have before us makes eminently good sense. I would be very surprised if anyone were to speak against it. Perhaps at some future point when the time for debate has expired, we could make parliamentary history and vote, I would hope unanimously, to pass this motion to encourage the Government to respond to this particular need and, in doing so, resound to the clear will and expression of the House in this particular matter.

Mr. David Kilgour (Parliamentary Secretary to Minister of Transport): Mr. Speaker, I listened with interest to the remarks of the Hon. Member. On this issue he makes a good deal of sense. I hope that what I say will neither subtract from nor differ from his remarks drastically. The Canadian Railways in recent years have a safety record second to none. I wonder if you know, Mr. Speaker, that CP Rail has been the safest railway in North America for each of the last four years, while CN Rail has been in the top six for the same period. We have a railway system of which we can be truly proud.

If the Hon. Member thinks it is the regulatory system which has produced that record, I can assure him that what we are doing is not changing the regulatory system. As I have said about 90 times, I think, we are only dealing with economic regulatory reform. We are not dealing with safety reform. There are about 11,000 people working in the Department involved in safety in the three modes of transportation.

● (1710)

The railways built the nation and they continue to perform a vital role in the Canadian economy. The railways are safe indeed and we have an excellent base from which to work. One can never be satisfied that one is doing enough where safety is concerned. Notwithstanding the 11,000 people who work in the area and the more than \$1 billion that is being spent on

safety in Canada each year at the federal level, there are a number of areas in which legislative changes can help to improve the safety of the system.

Railway safety is regulated through the provisions of the Railway Act. This legislation has evolved from the early days of the Canadian railway system and encompasses a wide range of issues including economic regulation and corporate powers. The safety provisions are in certain aspects outdated and combined with many other non-safety items.

Let me give you an example of that, Mr. Speaker. As evidence of the antiquated aspects of the Railway Act, there are provisions regarding the weight and composition of steam locomotive bells and requirements regarding the oiling of locomotives which became redundant about 100 years ago. Other non-essential items include sections of the Act which specify that telegraph poles should be set vertically wherever possible and that they should be painted in urban areas.

Section 338 of the Railway Act establishes the liability of railway companies for fires started by railway locomotives. Where the railway has used "modern and efficient appliances" and has not otherwise been guilty of any negligence the compensation for property damage by fires started by locomotives is limited to \$5,000, which is what the debate today is all about. This section of the Railway Act was first written before 1910 and was subsequently revised in 1919. At the time it was considered appropriate to establish liability for fires in the Act because the early steam engines were prone to setting fires, even when operated with all due regard to safety in accordance with proper operating procedures, and because insurance was not widely held by property owners. Of course, that has long since changed.

It is true that fires still originate on railway property. But if they do they are more likely to be caused by sparks generated by train brakes or by wayside maintenance activities than by locomotives, although diesel locomotives have been known to emit sparks which start fires. Section 338 has been used in a more general sense in relation to fires started by trains, without determining whether or not they originated from the locomotive.

In so far as regulatory control over railway company activities is concerned, Section 221 of the Railway Act gives the Canadian Transport Commission the power to make orders and regulations governing prevention and control by railway companies of fires along railway rights of way.

Section 338 of the Railway Act does not prevent or prejudice any action or claim against a railway company for failure to use "modern and efficient appliances" or for other negligence relating to fires. Therefore, with the exception of this section, there is no legislated limitation on railway company liability.

It is difficult to see any reason why claims for damage caused by fires originating on railway property should not be handled through the courts as civil cases. A person whose property is damaged by a fire started by a railway company