

Railway Act

expense of joining these points by a continuous railway line around the lake.

In 1942 the Board of Transport Commissioners for Canada granted CP Rail permission to abandon parts of its railway line system between Lardeau and Gerrard, B.C., that extended north from Kootenay Lake. Prior to the abandonment approval, the CP general solicitor had advised the Board that CP would continue to operate the boat and barge service to Lardeau as before, and the company did so for 33 years until July 31, 1975, when CP Rail decided to discontinue its barge service between Procter, Kaslo, and Lardeau on Kootenay Lake.

The Canadian Transport Commission was requested to order CP Rail to reinstate the barge service. After a preliminary examination, the Railway Transport Committee of the CTC indicated that it did not have jurisdiction over the barge service and that it could not, therefore, require CP Rail not to discontinue the service.

Due to the expressed concern of interested parties, including the hon. member for Kootenay West (Mr. Brisco), the Railway Transport Committee issued a notice on November 18, 1975, stating it would reconsider the matter and inviting all interested parties to make written representation:

on the general subject of the extent of the committee's jurisdiction in so far as it relates to rail barges and . . . whether or not a rail barge is a "branch line or segment thereof" pursuant to section 252 of the Railway Act.

I understand that several submissions, notably those from the hon. member and the government of British Columbia, supported the position of the CTC and jurisdiction.

Mr. Brisco: And the Government of Canada.

Mr. Benjamin: Who wrote that for you?

Mr. MacGuigan: On the other hand, CP Rail, CN, and the Minister of Transport for the province of Quebec argued the contrary, that the Commission did not have jurisdiction.

On October 18, 1976, the Railway Transport Committee issued its decision stating reasons why it had full jurisdiction to deal with the discontinuance of the CP Rail barge service on Kootenay Lake and, as a result, ordered CP Rail to resume the operation.

CP Rail appealed this decision of the Railway Transport Committee to the Federal Court of Appeal. The court heard arguments in Vancouver and, on September 30, 1977, held that the Railway Transport Committee of the CTC was without jurisdiction to order CP Rail to reinstate and resume rail barge service on Kootenay Lake.

The Attorney General of Canada (Mr. Basford) then sought leave of the Supreme Court of Canada to appeal the judgment of the Federal Court of Appeal, and leave to appeal was granted last December 14 by the Supreme Court of Canada.

The jurisdictional question is a difficult one, and I certainly share the concern of the hon. member for Kootenay West about the problem which this jurisdictional question has created on Kootenay Lake. The bill as written, however, creates

[Mr. MacGuigan.]

certain difficulties in a number of areas which make it inadvisable to proceed with it, especially in light of the fact that we are now awaiting a decision from the Supreme Court of Canada in the matter.

The principle underlying the purpose of Bill C-213 has merit in attempting to clarify a Railway Transport Committee jurisdictional question. The specific case of the CP Rail barge service on Kootenay Lake would be a desirable area for the jurisdiction of the Railway Transport Committee of the CTC.

There is a need for this jurisdiction, despite the fact that CP Rail operated a barge service connecting its railway lines in the Kootenay area for about 40 years, and, after abandoning some of its railway lines in 1942, continued to provide the barge service for another 35 years.

In the absence of regulatory provisions, it is conceivable that CP Rail could have decided, for valid reasons of its own, to discontinue the service many years before it actually chose to do so in July, 1975.

In offering the barge service to connect its railway lines, CP Rail likely created an expectation of transportation service on the part of shippers and receivers in the area and elsewhere. This in turn may have directly stimulated investments in local industrial opportunities. Without appropriate regulatory mechanisms in place to guard against a unilateral decision to discontinue a service without adequate substitute services in place, the local and other interested party investments could have been seriously jeopardized.

Without adequate regulation, only a moral obligation would rest on CP Rail, and therefore it is indeed important to ascertain whether obligation is imposed on CP Rail under the jurisdiction of the Board of Commissioners.

At first glance, the wording of Bill C-213 appears to satisfy the intention to provide the CTC with appropriate jurisdiction over ferries and barges used to transport railway cars. The bill, however, intends to amend a definition of "railway", a term used extensively throughout the Railway Act in which major sections deal with the provisions for construction and commencement of operations.

The wording of any amendment does not clearly ensure that only certain specific rail car ferry services come under the abandonment jurisdiction of the CTC, so as to avoid any implication that the CTC will regulate the abandonment of automobile ferry services or intraprovincial barge and ferry services which are not related to federally regulated railways.

There is good reason to believe that the present definition of "railway" may already be broad enough to include the rail barge, but we have to await the decision of the Supreme Court of Canada on this point.

● (1722)

One other possible problem with the proposed amendment is how it would apply to certain east coast ferry services. We particularly wish to consider carefully what regulatory authority the Canadian Transport Commission should be given in this area in view of the constitutional obligations of the federal