

employees. The union is very concerned about the sweeping powers and the harsh provisions set out in the offences clause of Bill C-105, clause 41. In our view this clause of the bill, *vis-à-vis* employees of the railway companies, raises the possibility of elevating employment misconduct and offences to the level of offences under the Criminal Code of our country with the applicable criminal sanctions. This is an unprecedented and unwarranted intrusion into the employment relationship of the railway companies and their employees. We wish to emphasize the simple and undisputed fact that there is a dearth of substantial evidence to justify these draconian provisions.

The Canadian Railway Labour Association is opposed to the principle on which this clause is based. Mandated fines and prison sentences for railway employees who contravene regulations, orders, directives or rules is unnecessary, harsh, counterproductive and impractical. Why now, after 100 years?

The proposed legislation will permit the railways, either by the rule-making process or simply by reference, to introduce rules which only by degree are relevant to the safe operation of the railways. As we understand it, these rules, when incorporated by reference pursuant to the Railway Safety Act, will have the same force as a regulation. In addition, clause 46 of the bill exempts almost all orders, rules, et cetera, including rules introduced by the railways and incorporated by reference, from the provisions of the Statutory Instruments Act.

The legislation mandates fines and prison sentences for employees on conviction of any violation of these, in many cases, company rules. A minor company rule vaguely linked to safety can be given the force of law by incorporation by reference pursuant to clause 48, without being examined pursuant to the provisions of the Statutory Instruments Act. Our association finds this aspect of the legislation completely unacceptable.

It may be that the broad scope of clause 46 of the legislation—which deems the various regulations, orders and rules incorporated by reference to be statutory instruments for the purposes of the Statutory Instruments Act—is improper. The Statutory Instruments Act is a basic piece of legislation enacted for a specific purpose. That purpose, in our opinion, should not and cannot be obviated by the legislative drafting mechanism of “deeming a variety of regulations, directives, orders, et cetera, to be *de facto* statutory instruments.” The basic intent of a statute of Parliament cannot be avoided by another statute by this simple drafting mechanism. The Canadian Railway Labour Association asks the Senate to investigate the legality and propriety of this aspect of the legislation.

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The Canadian Railway Labour Association strongly recommends that the longstanding practice of enforcing the rules by the disciplinary procedures available in the normal employer-employee relationship be maintained. The addition of possible monetary fines and prison sentences proposed by the legislation for rule violations places railway employees in a double jeopardy situation. An employee will not only be disciplined by the railway or lose his employment for a rule violation, he will

now also be subject to prosecution. In our opinion this is unnecessary and draconian and should be corrected by the Senate.

The situation will be further exacerbated, since there is no provision in the legislation to protect a railway employee who brings an unsafe practice or a possible rule violation to the attention of his supervisor if the supervisor chooses to ignore the advice or orders the employee to continue with his duties in violation of the rule or unsafe condition. The employee is placed in a catch-22 situation. If the employee disobeys the instructions of his supervisor, he can be suspended and disciplined for insubordination—the arbitral concept of “obey and grieve later.” If the employee, on the other hand, continues the unsafe practice or rule violation, he is subject to criminal prosecution. This could result in a monetary fine or even a prison sentence, pursuant to the Railway Safety Act. This is not only an unjust situation but one which, in the long term, is not conducive to operating efficiency or safety. The Canadian Railway Labour Association urges the Senate to examine this aspect of the legislation very closely and to introduce the necessary amendments.

Our recommendation is that monetary fines and imprisonment should, if required in the legislation at all, be strictly confined to convictions as a result of violations covered by the Criminal Code. We are not convinced that monetary fines constitute an effective way to ensure that the railways conform to the regulations and enforce an acceptable level of safety. If monetary fines are too low, then it could become more economical, in the long term, for the railways simply to pay the fine, when a violation is discovered, than to invest the capital on the technological devices or operational procedures required to ensure an acceptable level of safety. All of the employees think of safety now—they have done that for 100 years. I do not know why we need legislation like this.

Obviously, the government is convinced that railway safety can be ensured by the threat of monetary fines as a deterrent. In our opinion, based on this approach to railway safety, the fines proposed by the legislation for violation by the railways are not large enough to achieve the deterrent envisaged. Our association will leave it to the judgment of the Senate to decide what level of monetary fine for violations of the railway will prove to be an effective deterrent. In our opinion it is a judgment call.

We note that subclause 41(6) seems to contemplate an employee's being responsible for all reasonable costs and charges in the event that such employee is convicted of an offence that really could amount to no more than inadvertence or negligence on behalf of an employee in his everyday employment responsibilities. The logical extension of such a provision would place each and every employee of the railway companies in jeopardy of being responsible for the massive costs that are involved in almost any railway incident or accident, however minor. An employee could end up losing his home and his life savings and be placed in debt for the rest of his life as a result of a simple error in judgment while performing his everyday employment duties. Such a possibility