

Grain Transportation

grain. At that time, the CTC rejected the application of the hon. member for two very solid reasons. First, the CTC indicated that the government had already been taking measures to try to cope with the problems of grain transportation; it had appointed a grain transportation commissioner. Second—this is a very important legal argument since it goes to the heart and philosophy of what the hon. member is proposing which is why members on this side feel it is unworkable—the application went against the fundamental philosophy of what we feel our boards, agencies and railways should be doing.

The CTC rejected the application based on the *A.L. Patchett & Sons Ltd. v. Pacific Great Eastern Railway Co.*, a 1959 decision of the Supreme Court of Canada. In interpreting Section 262 of the act in question, the court said that the duty of the railway to furnish “suitable accommodation” is not an absolute duty but is one which must be considered in the context of all the other obligations the railways are called upon to fulfil. In other words, the railway does have an obligation to transport grain. The Lord knows that we need those railways to do that. But what happens if their cars are tied up elsewhere? What happens if they can do it only at great economic loss? That is to say, you cannot force a railway, under all circumstances, to do things which are unreasonable.

Mr. Benjamin: The law says you can.

Mr. Peterson: This is what the law has been, as interpreted by the Supreme Court of Canada.

I believe this recognizes the fair combination of what we are trying to achieve in terms of our economic direction. It is an economic direction that recognizes that private enterprise, with its concomitant profit motive, is really the engine of our economy. It is really the incentive which helps individuals to go out and make this a stronger economic country. We do not believe, as does the hon. member opposite, that everything should be nationalized and that we can set up boards and then dictate what they should do in every situation. We still believe that there is room in our economy for the spirit of free enterprise, which necessitates profit. It is this delicate balance that we seek to maintain and it is one which would be offended if this were to go through. In particular, we would be offending the spirit of the Supreme Court of Canada decision in the Patchett case. Another problem arises in this situation.

● (1650)

Mr. Benjamin: We are on section 266 now.

Mr. Peterson: The hon. member for Regina West says, quite correctly, that we are dealing with Section 266 now and not Section 262. In 1979, however, the hon. member went to the CTC with a pig in a poke and was rejected. Now he comes back to us with a pig in a poke and says it is something different. This is the very same type of provision and the same type of approach with which he is asking us to deal at the present time.

One can invoke the name and the excellent report of Mr. Justice Hall who called upon us to take responsible measures

to deal with the question of grain handling. This government is cognizant of that attitude. Unlike the hon. member for Bow River, I do not agree that the member of the other place who is responsible for the Canadian Wheat Board has been derelict in his duties. I would ask the hon. member to speak with the westerners with whom the minister has worked so closely, with the people in Saskatchewan, and with the co-operatives with whom he has been working on a national energy program to help them diversify their investment portfolio and have a greater stake in our energy program. He has been working hard to obtain new transportation facilities.

As every member of this House knows, the government has entered into a co-operative enterprise to provide over 2000 new railway cars for the transportation of grain in this country. In the last election we made a commitment to add increased trackage and we are not ashamed of that. We are happy to work with the farmers and to see that they have the transportation facilities necessary to get their grain to market.

I cannot accept the criticisms levelled by the hon. member for Bow River at our commitment to ensure that western farmers are adequately and properly given their just desserts and the recognition they deserve because of the role they fulfil and have fulfilled for so many years in this country.

There is another, technical reason why we should look again at Section 266, and this goes back to the Supreme Court decision. Section 266 imposes a specific obligation, as was intended. Therefore, in the words of the Supreme Court of Canada, it would override the general obligation that would prevail in any particular or limited situation.

The hon. member for Regina West recognized that Section 266 gives a very large power to the CTC, but he said it was invoked only once, in 1916. It appears that it was invoked in a desperate situation. Section 266 is still on the books. We might ask why there have not been more applications under Section 266. Is this an indication that perhaps what we are doing here is just a little bit of word smithing, substituting one administrative agency for another, without it having any real impact or giving any benefit. We have power under Section 266 to act in an emergency.

I should like to point out that I think we will have a problem if we implement the amendments proposed in this bill. One of the problems which could arise would be the conflicting obligations that might be imposed on a railway. If the hon. member's proposal were accepted, the Wheat Board could supposedly commandeer any car, any railway trackage, any locomotive to move grain at any time it decided to do so. Would it have to decide on other priorities? What would happen to the potash industry? If the cars, the shipping facilities, the dock facilities at the Lakehead or Vancouver were all tied up by potash, what would the position be then? Why is the Wheat Board in any better position to decide on the priorities of the railways than the railways themselves as represented by the Canadian Transport Commission? It has, as commissioners, representatives from all sectors. It can hold public hearings and is delegated to represent the public inter-