Federal Court Cour fédérale

Date: 20201204

Docket: T-36-20

Citation: 2020 FC 1119

Ottawa, Ontario, December 4, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This is a case about missing bolts.

[2] When a railway line is constructed with conventional jointed track, the rail joints – the points where two lengths of rail meet – are connected by joint bars. Joint bars are held in place by bolts. Track Safety Rules adopted by Transport Canada specify (among many other things)

the minimum number of bolts required to connect two lengths of rail: one bolt in each rail for joints on Class 1 track (the class of track that carries only very slow moving trains) or two (for Classes 2 through 5 track). This rule serves as a design specification, a construction specification, and a maintenance specification.

[3] Typically, there would be over 1000 joint bolts in a single mile of conventional jointed track of Class 2 through 5.

[4] The heavy load of trains running on railway tracks puts immense pressure on joint bars and the bolts holding them in place. This pressure can cause bolts to break. Environmental temperature can also have an impact as joint bars expand and contract with changes in the temperature. Vibration from passing trains can also cause bolts to loosen and eventually fall off. As a result of all of these things, joint bolts will break or go missing through the normal use of railway tracks. Consequently, identifying and replacing broken or missing joint bolts is a routine part of track maintenance.

[5] In the fall of 2016, Transport Canada concluded after inspecting two sections of track in Alberta belonging to the Canadian National Railway Company ("CN") that what it considered an unusually large number of bolts were missing: 34 in a 25 mile section of the Brazeau Subdivision and 11 in a 20 mile section of the Camrose Subdivision. This led Transport Canada to serve CN with a notice of violation under the Administrative Monetary Penalties ("AMP") regime set out in the *Railway Safety Act*, RSC 1985, c 32 (4th Supp) ("*RSA*").

[6] As the name suggests, the AMP regime is an administrative method of enforcement based on financial penalties for specified types of contraventions as an alternative to the prosecution in court of offences under section 41 of the *RSA*, which carry potential terms of imprisonment as well as significant monetary fines. Measures short of a notice of violation such as letters of non-compliance and letters of warning can also be employed under the AMP regime, depending on the circumstances.

[7] The notice of violation originally issued to CN was amended subsequently. The amended notice alleged with respect to each of the two sections of track in question (one being Class 2, the other Class 3) that CN had failed to maintain the track in accordance with the rule requiring that joints be bolted with at least two bolts in each rail and that CN had thereby violated section 17.2 of the *RSA*. (In relevant part, section 17.2 of the *RSA* provides that no railway company shall maintain a railway otherwise than in accordance with the Track Safety Rules.) The notice also assessed monetary penalties against CN totalling $117,332.16.

[8] Apparently this is the first time Transport Canada has pursued a notice of violation relating to missing joint bolts against a railway company.

[9] The AMP regime provides for a right to request a review of the notice of violation. This review is conducted by way of a hearing before a single member of the Transportation Appeal Tribunal of Canada (“TATC”). The “review” is effectively a trial of the charge. The Minister of Transport has the burden of establishing on a balance of probabilities that the party named in the

notice has committed the alleged violation: see section 40.16 of the *RSA* and section 15(5) of the *Transportation Appeal Tribunal of Canada Act*, SC 2001, c 29 ("*TATCA*").

[10] CN requested a review. The review hearing took place on January 24 and 25, 2018. Two witnesses testified for the Minister and one for CN. A number of documentary exhibits were also filed.

[11] For reasons dated October 22, 2018, the TATC member concluded that the Minister had proven the violation charged and upheld the monetary penalty assessed by the Minister. CN had raised a defence of due diligence but it was rejected by the member.

[12] The AMP regime also provides for a right to appeal a review determination. The appeal is heard by an appeal panel of the TATC. The appeal panel "may dispose of the appeal by dismissing it or by allowing it and, in allowing the appeal, the panel may substitute its decision for the determination." See section 40.19 of the *RSA.*

[13] CN appealed the review determination to the appeal tribunal. The appeal was heard by three members of the TATC on March 21, 2019. The appeal was based on the record of the review proceeding; no additional evidence was tendered by either party. Among other things, CN contended that the review member had erred in his interpretation of the requirements of the Track Safety Rules and in rejecting the defence of due diligence.

[14] For reasons dated December 6, 2019, the appeal panel dismissed the appeal and upheld the administrative monetary penalty. The appeal panel agreed with the review member's interpretation of the requirements of the Track Safety Rules. The appeal panel also agreed with the review member in rejecting CN's defence of due diligence, albeit for different reasons.

[15] CN now applies for judicial review of the decision of the appeal panel under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[16] For the reasons that follow, this application must be allowed. While I agree with the respondent that the appeal panel's interpretation of the requirements of the Track Safety Rules is reasonable, I agree with the applicant that the panel's assessment of the defence of due diligence is unreasonable.

II. BACKGROUND

A. *Track Safety Rules*

[17] The *Rules Respecting Track Safety*, also known as the Track Safety Rules, came into effect on May 25, 2012. As provided for by section 19 of the *RSA*, they were developed by the Railway Association of Canada and its members (including CN Rail) and then approved by the Minister of Transport, thereby becoming part of the legal framework governing railway safety under the *RSA*.

[18] For its part, the *RSA* sets out the following objectives in section 3 of the Act:

3 The objectives of this Act are to	**3** La présente loi vise à la réalisation des objectifs suivants :
(a) promote and provide for the safety and security of the public and personnel, and the protection of property and the environment, in railway operations;	**a)** pourvoir à la sécurité et à la sûreté du public et du personnel dans le cadre de l'exploitation ferroviaire et à la protection des biens et de l'environnement, et en faire la promotion;
(b) encourage the collaboration and participation of interested parties in improving railway safety and security;	**b)** encourager la collaboration et la participation des parties intéressées à l'amélioration de la sécurité et de la sûreté ferroviaires;
(c) recognize the responsibility of companies to demonstrate, by using safety management systems and other means at their disposal, that they continuously manage risks related to safety matters; and	**c)** reconnaître la responsabilité qui incombe aux compagnies d'établir, par leurs systèmes de gestion de la sécurité et autres moyens à leur disposition, qu'elles gèrent continuellement les risques en matière de sécurité;
(d) facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing enhancement of railway safety and security.	**d)** favoriser la mise en place d'outils de réglementation modernes, flexibles et efficaces dans le but d'assurer l'amélioration continue de la sécurité et de la sûreté ferroviaires.

[19] Section 3 of the Track Safety Rules sets out the scope of the Rules as follows:

3.1 These rules prescribe minimum safety requirements for federally regulated standard gauge railway track.	3.1 Le présent règlement indique les prescriptions minimales à observer sur une voie ferrée à écartement

	normal et sous réglementation fédérale.
3.2 The rules specify the limits of certain track conditions existing in isolation. A combination of track conditions, none of which individually amounts to a deviation from the requirements in these rules may require remedial action to provide for safe operations over the track.	3.2 Ces prescriptions s'appliquent à certaines anomalies de voie prises individuellement. En présence d'un ensemble de ces anomalies, dont aucune ne déroge individuellement aux présentes prescriptions, il faut parfois prendre des mesures correctives propres à assurer la sécurité de la circulation sur la voie considérée.
3.3 A railway may adopt additional or more stringent requirements than those contained in these rules.	3.3 Tout chemin de fer peut se fixer des exigences supplémentaires ou plus sévères que celles prévues aux présentes.

[20] Section 4 specifies the application and the purpose of the Rules as follows:

4.1 These Rules apply to all federally regulated railway companies operating on standard gauge track.	4.1 Le présent règlement s'applique à tous les chemins de fer sous réglementation fédérale exploitant un réseau à écartement normal.
4.2 The purpose of these Rules is to ensure the safe operation of movements on standard gauge track owned by, operated on or used by a railway company.	4.2 Le présent règlement a pour but de garantir la sécurité des mouvements circulant sur les voies à écartement normal qu'un chemin de fer possède, exploite ou utilise.

[21] Section 6 describes the responsibility of railway companies under the Rules in relevant part as follows:

6.1 The railway company shall ensure that a track	6.1 Le chemin de fer doit s’assurer qu’un inspecteur ou

inspector or track supervisor shall undertake track inspection at such frequency and by such a method as to ensure the line of track is compliant with the TSR and is safe for all movements at the authorized speed.	superviseur de la voie effectue l'inspection des voies à des intervalles et selon des méthodes garantissant que la voie est conforme au RSV, et qu'elle est sécuritaire pour tout mouvement circulant à la vitesse permise.
6.2 Where a line of track is not in compliance with the requirements of these Rules, the railway company shall immediately:	6.2 Lorsqu'une voie est dans un état non conforme aux présentes prescriptions, le chemin de fer doit immédiatement :
(a) Bring the line of track into compliance; or	a) rétablir la conformité de la voie; ou
(b) Halt operations over that line of track.	b) en interrompre l'exploitation.
. . . .	. . . .
6.4 When any person, including a contractor for a railway company, performs any function required by these rules, that person is required to perform that function in accordance with these rules.	6.4 Quand une personne, y compris un entrepreneur du chemin de fer, accomplit toute fonction exigée par le présent règlement, elle est tenue de se conformer au RSV dans l'exécution de cette fonction.

[22] The foregoing provisions are all found in Part I – General of the Track Safety Rules. The Track Safety Rules themselves are found in Part II. This part is divided into six subparts dealing with, respectively, Roadbed, Track Geometry, Track Structure, Track Appliances and Track Related Devices, and Inspection.

[23] Section V of Subpart D (Track Structure) deals specifically with Rail Joints. It provides among other things as follows:

(d) In the case of conventional jointed track, each rail must be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track.	d) Dans le cas des joints éclissés, poser au moins deux boulons sur chaque rail sur les voies de catégories 2 à 5, et poser au moins un boulon sur chaque rail, sur les voies de catégorie 1.

[24] Finally for present purposes, Subpart F of the Track Safety Rules deals with track inspections. It prescribes that track of the types at issue here must be inspected visually at least twice weekly. The purpose of the inspections is "to ensure the track is compliant with the TSR and is safe for all movements at the authorized speed" (section 2.1). Among other things, the Rules state that, unless otherwise indicated, "each Visual Track Inspection must be made on foot or by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect and evaluate the track for compliance to the TSR" (section 2.4(a)). As well, "mechanical, electrical and other track inspection devices may be used to supplement Visual track inspections" (section 2.4(c)). The Track Safety Rules also specify minimum frequencies for electronic geometry inspections and for rail flaw inspections. Under section 1.3 of Subpart F, "if the person making the inspection finds a deviation from the requirements of the TSR, that individual must immediately initiate remedial action."

B. *Notice of Violation*

[25] By Notice of Violation dated February 5, 2017, CN was alleged to have violated section 17.2 of the *RSA* by having operated railway equipment on the Brazeau and Camrose Subdivisions otherwise than in accordance with the *Rules Respecting Track Safety*. The notice was amended subsequently to charge CN with having failed to maintain railway work in

accordance with the *Rules Respecting Track Safety*, as opposed to having operated railway equipment.

[26] Specifically, the amended Notice of Violation set out the alleged offences as follows:

> - On or about October 19, 2016 on the Brazeau Subdivision between approximately mile 0 to mile 25, in the Lacombe County, near Blackfalds, Alberta, the Canadian National Railway failed to maintain railway work in accordance with Part II Subpart D section V subsection (d) of the *Rules Respecting Track Safety* when each rail was not bolted with at least two bolts at each joint in Classes 2 through 5 track thereby violating section 17.2 of the *Railway Safety Act*
>
> Administrative monetary penalty: $45,833.04
>
> - On or about October 20, 2016 on the Camrose Subdivision between approximately mile 75 and mile 95.1, in the city of Camrose, Alberta, the Canadian National Railway failed to maintain railway work in accordance with Part II Subpart D section V subsection (d) of the *Rules Respecting Track Safety* when each rail was not bolted with at least two bolts at each joint in Classes 2 through 5 track thereby violating section 17.2 of the *Railway Safety Act*
>
> Administrative monetary penalty: $71,499.12

[27] Since the quantum of the monetary penalties is not in issue in this application, it is not necessary to explain how Transport Canada arrived at these figures.

C. *Evidence at the Review Hearing*

(1) The Camrose Subdivision

[28] The Camrose Subdivision is a section of CN Class 3 track that goes through the town of Camrose, Alberta. On June 22, 2016, Transport Canada Railway Safety Inspector Julien Leger

carried out an inspection of part of the Camrose Subdivision. CN Track Supervisor Jeremy Mathers as well as an Assistant Track Supervisor accompanied him during the inspection. (Inspector Leger had previously worked for CN as a track inspector under Supervisor Mathers.) The three travelled along the tracks together in a Transport Canada track assessment vehicle. They began the inspection at mile 95.11 and headed in decreasing mileage for approximately 24.7 miles. A total of 27 rail joint bolts were found to be missing in the section of track they inspected. Each missing bolt was replaced as the inspection proceeded. Inspector Leger asked Supervisor Mathers when that portion of track had last been inspected. Supervisor Mathers told him that it had been inspected on June 18, 2016 – that is, four days earlier.

[29] Inspector Leger expressed his concern about the number of missing bolts they had found. Supervisor Mathers said CN would conduct a "blitz" on other portions of the Camrose Subdivision the next day to identify and correct any deficiencies. At Inspector Leger's request, Supervisor Mathers provided him with a copy of the results of the blitz after it was conducted. Those results indicated what Transport Canada considered to be a high number of missing bolts in the other sections of the Camrose Subdivision. The report also confirmed that CN had remedied the deficiencies immediately by replacing missing bolts as they were found.

[30] On October 13, 2016, CN carried out an electronic joint bar inspection of the same section of the Camrose Subdivision that had been inspected on June 22, 2016. Three loose bolts and 16 missing bolts were identified. Any problems identified during the inspection were rectified at the time.

[31] Inspector Leger had originally planned to re-inspect the Camrose Subdivision on October 19, 2016, but CN could not accommodate him until the next day because it was doing work on the track. As a result, and as described below, he decided to inspect the Brazeau Subdivision that day instead. (CN called evidence at the review hearing that, despite what Transport Canada appears to have thought, the work it was doing on the Camrose Subdivision on October 19th did not involve inspecting for missing track joint bolts; rather, it was a general capital expenditure inspection.)

[32] The next day, October 20, 2016, Inspector Leger inspected the same section of the Camrose Subdivision as he had inspected in June. He travelled in a Transport Canada track inspection vehicle with a CN employee driving. Supervisor Mathers was with them for part of the time. As they drove along the track, Inspector Leger did a visual inspection of the joint bars from the passenger seat. If he noticed what appeared to be a missing bolt, they would stop the vehicle, get out and examine the joint bar more closely. During the inspection, he identified 11 missing bolts on 11 different joint bars. Whenever a bolt was found to be missing, it was replaced by the CN employee. Inspector Leger prepared a report of the results of his inspection.

(2) The Brazeau Subdivision

[33] The Brazeau Subdivision is a section of CN Class 2 track located north of Red Deer, Alberta. Between October 15 and 18, 2016, Sperry Rail, a third party contracted by CN to perform track inspections, conducted an inspection of the Brazeau Subdivision between miles 0 and 25. Sperry inspected the track with x-ray equipment looking for rail flaws. The inspection vehicle was also equipped with a camera for photographing joint bars to check for cracks or

missing bolts. Four missing bolts were identified on October 15th and another 20 missing bolts were identified on October 18th.

[34] Meanwhile, on October 16, 2016, a CN track inspector had conducted an inspection of the Brazeau Subdivision between miles 0 and 65.41. No missing bolts were reported. (It is not clear whether the inspector was actually inspecting for missing bolts or for something else.)

[35] On October 19, 2016, Transport Canada Inspector Leger conducted an inspection of the Brazeau Subdivision between miles 0 and 25. He travelled in a Transport Canada track assessment vehicle with a CN employee driving. As they travelled along the track, Inspector Leger did a visual inspection of the joint bars from the passenger seat. If he noticed what appeared to be a missing bolt, they would stop the vehicle, get out and examine the joint bar more closely. Inspector Leger identified 34 missing bolts on 34 different joint bars in this section of track. Whenever a bolt was found to be missing, it was replaced by the CN employee. Inspector Leger prepared a report setting out the results of the inspection.

(3) Transport Canada's Expectations

[36] Suzanne Madaire-Poisson, the Chief of Compliance and Safety (Rail Safety Directorate) with Transport Canada testified for the Minister at the review hearing.

[37] According to Ms. Madaire-Poisson, she had consulted with two technical experts with Transport Canada and they had found the number of missing bolts being reported on the Camrose Subdivision to be "abnormally" high. Work had been undertaken by Transport Canada

to provide CN with a letter of warning concerning the high number of bolts that were found missing in the June inspection. However, this was overtaken by events when the results of the October 2016 inspections of the Camrose and Brazeau Subdivisions were submitted. Following a review of those results, Transport Canada determined that the appropriate way to address what appeared to be an ongoing issue with high numbers of missing joint bolts was to serve a notice of violation on CN in relation to the Camrose and Brazeau Subdivisions.

[38] Ms. Madaire-Poisson testified that she also consulted with a colleague in the region in which the two subdivisions are located to determine what would be considered a "normal" result from an inspection there. She was advised that since regular train operations can cause bolts to come loose or to break, this could be expected to occur between the requisite twice-weekly visual track inspections. Specifically, she was told that one could expect to find one or two missing bolts for every 100 miles of jointed mainline track and that this would not raise questions or concerns about track maintenance practices. The Minister did not call any evidence to explain how this expectation was determined.

[39] In cross-examination, Transport Canada Inspector Leger acknowledged that he had not heard of this expectation before and he was not aware of the basis for it.

(4) CN's Evidence of Due Diligence

[40] John Robinson, Assistant Chief of Engineering with CN, testified on behalf of CN. He had been employed by CN for 38 years in a variety of rail construction, maintenance and

inspection roles. He confirmed that CN conducted the basic twice-weekly visual inspections required by the Track Safety Rules on the two sections of track in question.

[41] Mr. Robinson testified that missing joint bolts can be detected during these twice weekly visual inspections but they can also be missed from time to time due to the speed track inspection vehicles usually travel at or because of a lapse in the inspector's concentration on the joint bars as the vehicle approaches them one after the other.

[42] Mr. Robinson also explained that, depending on the circumstances, CN also conducts a variety of other specific types of track inspections including track geometry, joint bar recognition using cameras, rail flaw detection using x-ray, walking inspections, and so on. Even if they are not looking specifically for missing joint bolts, they can be discovered in the course of these other inspections.

[43] Mr. Robinson confirmed that any time a missing joint bolt is discovered, it is replaced immediately by the inspectors themselves or by a work crew. If for some reason this could not be done, the section of track would be protected with a slow order until the deficiency was rectified. If more missing joint bolts are discovered than would typically be expected in a section of track, a work crew would be sent out specifically to look for and replace missing bolts.

[44] Mr. Robinson also described the training and supervision provided to CN track inspectors.

[45] Mr. Robinson confirmed that joint bolts break or come loose due to the normal use of railway tracks. The more traffic there is on a given track, the greater the likelihood that this will happen. He had performed or been present for thousands of track inspections. In his experience dealing with missing joint bolts, as long as they were not finding more than one or two missing bolts per mile, there would not be an issue as far as Transport Canada inspectors were concerned. He testified that he did not understand how Transport Canada had now come up with using one or two missing joint bolts per 100 miles of track as the benchmark, as had been related by Ms. Madaire-Poisson.

[46] Mr. Robinson testified that he was unaware of a derailment ever having been caused by a missing joint track bolt. In his opinion, a single missing joint bolt would not pose a safety risk.

[47] Mr. Robinson was not cross-examined.

[48] Julien Leger, the Transport Canada inspector who testified for the Minister (and who, it will be recalled, had himself worked as a track inspector for CN), agreed in cross-examination that when he worked there, CN took track inspection very seriously, it was a robust process, and safety was a “number one” priority for CN. He also agreed that he would expect to find missing bolts when he did his track inspections. Like Mr. Robinson, he was unaware of a derailment ever having been caused by missing joint bolts.

D. *The Review Determination*

[49] The review member concluded on the basis of the evidence presented that the Minister had proven the alleged violations with respect to both the Brazeau and the Camrose Subdivisions. Indeed, there was no dispute that the bolts were missing from the two subdivisions, as alleged by the Minister.

[50] With respect to the requirements of the Track Safety Rules relating to rail joints, the member found as follows:

> It is the experts of the North American rail industry that determined and stipulated in the Rules that "In the case of conventional jointed track, each rail must be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track" (Part II, Subpart D, rule V(d)). Had the industry determined that less than the stipulated number of bolts was also safe, the industry would have included exemptions or different requirements under this Rule.

[51] With respect to CN's defence of due diligence, the member found as follows:

> Safety is paramount for the Canadian public, the industry and its employees. Although CN did demonstrate through its testimony and evidence that they have a good safety record and a program to ensure track safety, such as bolt blitzes and regular and special track inspections, these elements do not exempt them from complying with the *Rules Respecting Track Safety* or the *Railway Safety Act*.

[52] The member also upheld the amounts of the monetary penalties.

III. DECISION UNDER REVIEW

[53] CN appealed the review member's determination on four grounds:

a) the review member misinterpreted the *Rules Respecting Track Safety* by concluding that a single missing bolt is automatically a violation of the rules;

b) the review member erred in concluding that the Minister discharged his burden of proof for the alleged violation;

c) the review member erred in rejecting the defence of due diligence by moving from a strict liability to absolute liability; and

d) the review member erred in refusing to review the amount of the monetary penalty in the absence of evidence for two of the aggravating factors.

[54] The appeal panel rejected all four grounds of appeal.

[55] The appeal panel agreed with the review member that the Track Safety Rules clearly state the physical condition of a safe rail structure. Part II, Subpart D, rule V(d) is unambiguous about the minimum number of joint bolts that are required. There is no allowance for any lower number of bolts than the minimum stated.

[56] The appeal panel also found that the Minister had established the deficiency set out in the Notice of Violation on a balance of probabilities. It deferred to the review member's finding that there was no evidence "to dispute or disprove" that there were missing bolts on the portions of

the track in question. The appeal panel did not accept CN's argument that the delict is not simply for there to be missing bolts but, rather, to fail to replace missing bolts immediately upon discovering that they are missing. (CN had argued on appeal that the review member erred in concluding that the Minister had discharged his burden of proof because there was no evidence that CN had neglected to take corrective action upon discovering that bolts were missing.)

[57] Further, the appeal panel agreed with the review member in rejecting the defence of due diligence, although for different reasons than those given by the review member. The appeal panel held as follows:

> While the appellant did present the methodologies used by CN in track inspections, the appeal members were not presented with CN inspection reports that documented the efforts to identify the missing bolts, an issue that was also noted by the reviewing member. The appeal members conclude that there was no sufficient or compelling evidence presented to demonstrate that the appellant had exercised all reasonable care and, on the basis of a standard of correctness, this ground of appeal is denied.

[58] The appeal panel specifically noted that the evidence of its practices provided by CN compared unfavourably with that provided by the defendant in *Cando Rail Services Ltd v Canada (Minister of Transport)*, 2019 TATCE 3 (Appeal). There, the company had made out a defence of due diligence by demonstrating that it had a "comprehensive safety-first system within their operating practices" which included not only training "but also the monitoring of the effectiveness of the work undertaken, as well as reviewing the documentation associated with work accomplished by employees." (The delict at issue there was the failure of an employee to set a hand brake on a parked rail car that was loaded with asphalt. The car rolled away from where it had been parked and proceeded uncontrolled through the City of Regina for 2.7 miles.

The TATC appeal panel in that case concluded that the railway company was not liable for violating the *Canadian Rail Operating Rules* and section 17.2 of the *RSA* because it had taken all reasonable steps to train its employees in the safe positioning of rail cars.)

[59] Finally, the appeal panel upheld the amounts of the monetary penalties assessed by the Minister.

IV. ISSUES AND STANDARD OF REVIEW

[60] This application raises two main issues:

(a) Did the appeal panel err in its understanding of the requirements of the Track Safety Rules pertaining to rail joint bolts?

and

(b) Did the appeal panel err in rejecting CN's defence of due diligence?

[61] The parties agree, as do I, that the second issue should be determined on a reasonableness standard. However, they disagree with respect to the standard of review applicable to the first issue. The applicant submits that it should be determined on a correctness standard while the respondent submits that reasonableness is the applicable standard here as well. I agree with the respondent.

[62] The applicant contends that a correctness standard is required to give effect to the proper role of the appeal panel in answering once and for all questions of fundamental importance such

as the requirements of the Track Safety Rules. According to the applicant, there can be only one answer to the question: "What do the Track Safety Rules require?" If the review member did not arrive at that answer, it is the appeal panel's responsibility to correct the error. Equally, according to the applicant, if the appeal tribunal did not arrive at that answer, it is the reviewing court's responsibility to correct the error.

[63] It may be helpful to begin by considering how the appeal tribunal determines appeals brought to it from review decisions made by single members of the TATC.

[64] Apart from what may be implied by the proceeding being characterized as an "appeal", the *RSA* is silent about the standard the appeal panel should apply in determining appeals from the decisions of review members of the TATC. As noted above, section 40.19 of the Act simply states that the appeal tribunal "may dispose of the appeal by dismissing it or by allowing it and, in allowing the appeal, the panel may substitute its decision for the determination."

[65] The *TATCA* sheds slightly more light on the nature of an appeal to that body. Section 14 of that Act states:

An appeal shall be on the merits based on the record of the proceedings before the member from whose determination the appeal is taken, but the appeal panel shall allow oral argument and, if it considers it necessary for the purposes of the appeal, shall hear evidence not previously available.	L'appel porte au fond sur le dossier d'instance du conseiller dont la décision est contestée. Toutefois, le comité est tenu d'autoriser les observations orales et il peut, s'il l'estime indiqué pour l'appel, prendre en considération tout élément de preuve non disponible lors de l'instance.

[66] Before the appeal panel, the parties agreed that the issues of whether the review member erred in his understanding of the requirements of the Track Safety Rules or erred in rejecting the defence of due diligence should be determined on a correctness standard. The appeal panel concurred. The parties also agreed that the issue of whether the review member erred in upholding the quantum of the monetary penalty should be determined on a reasonableness standard. Again, the appeal panel concurred. The parties disagreed, however, with respect to the standard the appeal panel should apply in determining whether the review member erred in finding that the Minister had discharged his burden of proof for the alleged violation. CN contended that it should be determined on a correctness standard while the Minister contended that a reasonableness standard should be applied. The appeal panel agreed with the Minister.

[67] I pause at this point to make two observations. First, as framed by the applicant, this last issue has always been closely tied to the issue of what the Track Safety Rules require. According to the applicant, against the backdrop of the proper interpretation of the Track Safety Rules – where, according to the applicant, the delict is to fail to take immediate remedial action when missing bolts are discovered – the evidence was insufficient to prove the alleged violation. However, there has never been any dispute with respect to the underlying facts relied on by the Minister – namely, that 34 bolts and 11 bolts were missing from, respectively, sections of the Brazeau and Camrose Subdivisions at the material time. Consequently, apart from the issue of what the Track Safety Rules require, there is no suggestion that the appeal panel (or the review member, for that matter) erred in concluding that the Minister had discharged his burden of proof for establishing the alleged violation.

[68] Second, the parties and the appeal panel all appear to have conceived of the role of the appeal panel in terms more commonly associated with judicial review (i.e. as applying standards of correctness or reasonableness depending on the issue) rather than the usual appellate standard of review (i.e. as applying standards of correctness or palpable and overriding error depending on the issue): see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 37. Be that as it may, it is clear that what the parties as well as the appeal panel are talking about is when the appeal panel does or does not owe deference to the review member's determinations. No issue is raised here concerning the appeal panel's understanding of its role.

[69] On this application, the applicant submits that I should apply a correctness standard in reviewing the appeal panel's interpretation of the requirements of the Track Safety Rules because that is the standard the appeal panel applied to the review member's determination. Alternatively, the applicant submits that in this case the choice of standard of review is immaterial because there is only one reasonable interpretation of the provision – namely the one it advances: see *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 38.

[70] I do not agree that the standard of review applicable in an internal appeal under the *RSA* necessarily carries over to an application for judicial review of an appeal panel's determination. On the contrary, the fact that the legislature has allocated primary decision-making authority in this field to the TATC rather than to a court is a design choice that a reviewing court must respect by avoiding undue interference with the administrative decision maker's discharge of its functions: see *Vavilov* at para 30. This rationale applies with at least equal force when the legislature has also provided for an appeal of the first-instance decision within the same

administrative tribunal and it is the decision of the appeal panel that is subject to judicial review. The very fact that the legislature has made this design choice justifies a default position that a reviewing court should show deference to the administrative decision maker by reviewing the merits of its decision on a reasonableness standard: again, see *Vavilov* at para 30. This is consistent with this Court's understanding of the applicable standard of review pre-*Vavilov*: see *Canada (Attorney General) v Friesen*, 2017 FC 567 at para 47.

[71] The Supreme Court of Canada also held in *Vavilov* that the presumption that reasonableness is the applicable standard of review with respect to the merits of an administrative decision is subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (at para 10). In my view, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review with respect to all aspects of the merits of the appeal panel's decision, including the interpretation of the Track Safety Rules. Consequently, and contrary to the applicant's submission, it is not my role to determine for myself what the Track Safety Rules require and then assess the appeal panel's conclusion against this (cf. *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 34 and 50; and *Vavilov* at para 54). Rather, my role is limited to determining whether the appeal panel unreasonably concluded that the review member understood the requirements of the Track Safety Rules correctly.

[72] As noted, there is no dispute that a reasonableness standard applies to the appeal panel's decision to reject CN's defence of due diligence. Accordingly, the question I must answer in that

respect is whether the appeal panel unreasonably determined that the review member correctly rejected the defence of due diligence.

[73] Reasonableness review focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The decision maker's reasons should be read in light of the record and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-95). When considering whether a decision is reasonable, "the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). Before setting aside a decision on the basis that it is unreasonable, the reviewing court "must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). The burden is on the applicant to demonstrate that the decision is unreasonable (*ibid.*).

[74] I note one final point in connection with the issues and standard of review engaged in this application. Along with the issues stated above, the applicant also makes the specific submission that the appeal panel erred in finding that "rail joints that are not properly maintained can fail and have caused derailments" in the absence of any evidence to support this finding. The respondent concedes that there was no evidence before the appeal panel that improperly maintained rail

joints “have caused derailments.” The respondent contends, however, that this error is “merely superficial or peripheral to the merits of the decision” and is not “sufficiently central or significant to render the decision unreasonable” (cf. *Vavilov* at para 100). Whether this is the case will be addressed below.

V. ANALYSIS

A. *Did the appeal panel err in its understanding of the requirements of the Track Safety Rules pertaining to rail joint bolts?*

[75] The Track Safety Rules are not a statute but the parties agree, as do I, that they should be interpreted in accordance with the modern principle of statutory interpretation. That is to say, their words must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26, both quoting E. Driedger, *Construction of Statutes* (2nd ed 1983), at 87). Here, of course, “the Act” is the Track Safety Rules. As well, it is not the intention of Parliament that must be discerned but, rather, the intention of the Railway Association of Canada in drafting the Rules and the intention of the Minister in approving them. Nevertheless, the “modern” principle of interpretation still applies. As with discerning the legislative intent behind a statute, the intention of the Railway Association of Canada and of the Minister must be determined “in light of the purpose of the provision and the entire relevant context” (*Vavilov* at para 118).

[76] Primary responsibility for carrying out this interpretive exercise rests with the TATC: initially the review member, then the appeal panel. The Supreme Court held in *Vavilov* that while such an exercise conducted by an administrative decision maker may look quite different from that of a court, both must apply the modern principle when interpreting statutory provisions (*Vavilov* at para 119). Thus, the appeal panel's task was "to interpret the contested provision in a manner that is consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue" (*Vavilov* at para 120).

[77] As explained above, the reviewing court's role is to determine whether the appeal panel's interpretation of the Track Safety Rules is unreasonable. The reviewing court does not undertake a *de novo* analysis of the question of the meaning of paragraph (d) or ask itself what the correct answer is (*Vavilov* at para 116). Instead, "just as it does when applying the reasonableness standard to questions of fact, discretion or policy, the court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached" (*ibid*.).

[78] It can happen that an administrative decision maker, in interpreting a statutory provision, fails to consider a pertinent aspect of its text, context or purpose. Not every such omission will be fatal to the reasonableness of the interpretation the decision maker adopted. If, however, "it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances" (*Vavilov* at para 122). Thus, the critical questions on review are, first, whether there is such an omission

and, second, if there is, "whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker" (*ibid*.).

[79] The applicant raises a two-fold argument against the appeal panel's interpretation of paragraph (d) of Section V of Subpart D (Track Structure) of the Track Safety Rules: first, it is impossible for a railway company to comply with the paragraph as interpreted and, second, the interpretation renders the responsibility of railway companies under Part I, Section 6, of the Track Safety Rules meaningless. According to the applicant, properly understood, the delict alleged in the Notice of Violation is not (as the appeal panel found) simply for there to be bolts missing but, rather, for the company to have failed to immediately take remedial action to bring the track back into compliance with the Rules by replacing missing bolts when they are discovered or to take appropriate precautionary measures until the known deficiency is rectified (e.g. a slow order with respect to a section of track where a joint bolt was held in place by fewer than four bolts). Put another way, the applicant submits that the requirements of paragraph (d) must be read in conjunction with the responsibility of railway companies to inspect their rail works and to take remedial action immediately when deficiencies are discovered. It would only be when a railway company fails to do so that it would commit an offence under section 17.2 of the *RSA* for having failed to maintain a railway work in accordance with the Track Safety Rules.

[80] I do not agree that this is a reasonable interpretation of either paragraph (d) of Section V of Subpart D (Track Structure) of the Track Safety Rules or section 17.2 of the *RSA*.

[81] In my view, the appeal panel reasonably determined that paragraph (d) means just what it says – that sections of Class 2 through 5 railway must be joined with a minimum of two bolts in each rail – and that, consequently, any rail joint on Class 2 through 5 railway that has fewer than this minimum number of bolts is not in compliance with paragraph (d). Importantly, as the appeal panel noted, paragraph (d) is the minimum requirement that the railway industry itself proposed to the Minister. The words used in paragraph (d) are precise and unequivocal and it was entirely reasonable for the appeal panel to rely on their ordinary meaning (cf. *Vavilov* at para 120). The applicant has not presented any reason to think that the appeal panel misunderstood what the industry meant by the provision or that its interpretation is inconsistent with the context or the purpose of the provision – namely, to "prescribe minimum safety requirements for federally regulated standard gauge railway track" (Track Safety Rules, Part I, section 3.1). In short, the applicant has not persuaded me that the appeal panel failed to consider a pertinent aspect of the text, context, or purpose of the provision.

[82] In my view, the applicant's argument that the appeal panel's interpretation puts railway companies in an impossible position rests on an equivocation between a particular track joint not being in compliance with the Track Safety Rules because a bolt is missing and a railway company not being in compliance with these Rules in a way that would give rise to liability under section 17.2 of the *RSA*. It was common ground that, through the normal use of railway tracks, joint bolts will break or come loose and fall out and will need to be replaced. The appeal panel's interpretation of paragraph (d) entails only that a track joint missing the number of bolts specified in paragraph (d) is not in compliance with that paragraph. It does not entail that a railway company is for that reason alone not in compliance with the Track Safety Rules and that

it has therefore contravened section 17.2 of the *RSA*. Contrary to the applicant's submission, the ongoing responsibility of railway companies under Part I, Section 6, of the Track Safety Rules to inspect tracks to ensure compliance and to take remedial action when required is not vitiated by the appeal panel's interpretation of paragraph (d). Rather, the compliance of track joints with paragraph (d) is simply one of the things railway companies must inspect for and, when required, to take immediate action to rectify. Thus, I do not accept the applicant's argument that the appeal panel's interpretation of paragraph (d) is inconsistent with, or somehow failed to take into account, Part I, Section 6, of the Track Safety Rules. These are two separate issues.

[83] While not expressed in exactly these terms, it appears that the applicant's real concern is that the appeal panel's interpretation creates an offence of absolute liability that is committed the moment a bolt breaks or comes loose. However, paragraph (d) cannot be read in isolation. It must be read in conjunction with section 17.2 of the *RSA*, the provision that creates the offence the applicant was charged with. Doing so is a complete answer to any concern about absolute, instantaneous liability.

[84] The offence of violating section 17.2 of the *RSA* by failing to maintain a railway in compliance with the Track Safety Rules is a public welfare offence. Consequently, unless the provision clearly states otherwise (and it does not), it is an offence of strict liability: see *R v Sault Ste Marie*, [1978] 2 SCR 1299 at 1325-1326. The review member of the TATC, the appeal panel, and the parties all accepted that this is the case.

[85] What this means is that when a defendant who is charged with violating section 17.2 of the *RSA* by failing to maintain a railway in compliance with the Track Safety Rules denies the allegation (as did the applicant), the initial burden is on the Minister to prove the *actus reus* – in this case, that the track joints did not comply with the Track Safety Rules because they were lacking the minimum number of bolts required. The Minister must prove this delict on a balance of probabilities (cf. *TATCA*, section 15(5)). Importantly, there is no need for the Minister to prove the existence of *mens rea* – the existence, that is, of some positive state of mind on the part of the defendant such as intent, knowledge or recklessness. If the Minister proves the *actus reus*, it is then open to the defendant to show that it nevertheless should not be found to have violated section 17.2, either because it had an honest but mistaken belief in facts which, if true, would render the act or omission innocent, or because the deficiency had occurred despite the fact that it had taken all reasonable care to prevent this from happening. The defendant has the burden of establishing this defence on a balance of probabilities. See generally *Sault Ste Marie*, at 1325-1326, and *Lévis (City) v Tétreault*, 2006 SCC 12 at paras 13-19. Where the defendant is a corporation and it defends itself by maintaining it took all reasonable care, it must show that it established "a proper system to prevent the commission of the offence" and that it took "reasonable steps to ensure the effective operation of the system" (*Sault Ste Marie* at 1331).

[86] The responsibility of railway companies under Part I, Section 6, of the Track Safety Rules is an important indication of what due diligence in this context means. However, contrary to the applicant's submission, it has no bearing on the meaning of paragraph (d) or the particular delict alleged in the Notice of Violation.

[87] In the present case, there is no question that the applicant was entitled to, and in fact did, raise the defence that it was not negligent. Whether the appeal panel unreasonably rejected this defence is a different question that I address below.

[88] Viewed against this legal backdrop, there is no basis for the applicant's concern that the appeal panel's interpretation of paragraph (d) and its understanding of the delict alleged in the Notice of Violation makes a railway company absolutely liable for failing to maintain its railway in accordance with the Track Safety Rules any time a track bolt breaks.

[89] It was in connection with the interpretive exercise of determining the meaning of paragraph (d) that the appeal panel stated its finding that "rail joints that are not properly maintained can fail and have caused derailments." As I have already noted, the respondent accepts that there was no evidence before the appeal panel to support the finding that improperly maintained rail joints "have caused derailments." This was an unfortunate error on the part of the appeal panel. Nevertheless, I agree with the respondent that this unsupported factual determination could not have affected the appeal panel's interpretation of what is required by paragraph (d). It is, in other words, "merely superficial or peripheral" to the merits of this part of the decision.

[90] Finally, for the sake of completeness, I note that the appeal panel also found that the discretion vested in the Minister when monitoring compliance with the Track Safety Rules, which includes whether or not to proceed with a notice of violation under the *RSA*, answers the applicant's concern that the Rules had been interpreted in an overly restrictive and unrealistic

way. Since I have found that the availability of a due diligence defence is sufficient to meet the applicant's concern, I do not find it necessary to comment on the issue of prosecutorial discretion.

[91] In sum, the applicant has not persuaded me that the appeal panel's interpretation of paragraph (d) of Section V of Subpart D (Track Structure) of the Track Safety Rules is unreasonable.

B. *Did the appeal panel err in rejecting CN's defence of due diligence?*

[92] To repeat for ease of reference, the appeal panel rejected CN's defence of due diligence for the following reasons:

> While the appellant did present the methodologies used by CN in track inspections, the appeal members were not presented with CN inspection reports that documented the efforts to identify the missing bolts, an issue that was also noted by the reviewing member. The appeal members conclude that there was no sufficient or compelling evidence presented to demonstrate that the appellant had exercised all reasonable care and, on the basis of a standard of correctness, this ground of appeal is denied.

[93] Even though the appeal panel agreed with the review member in rejecting the defence, their respective reasons are quite different. Unlike the appeal panel, the review member had concluded that CN had demonstrated "through its testimony and evidence that they have a good safety record and a program to ensure track safety, such as bolt blitzes and regular and special track inspections." However, the review member found that these elements did not "exempt" CN from the requirements of the Track Safety Rules. The respondent acknowledges that this is a problematic way to conceptualize the defence of due diligence.

[94] The applicant contends that the appeal panel erred by ignoring evidence relevant to its defence of due diligence and its rejection of that defence is therefore unreasonable. While I am not persuaded that the appeal panel simply ignored relevant evidence, I do agree that its determination is unreasonable because the panel failed to account for evidence before it and because it failed to meaningfully come to grips with a key issue raised by the parties (cf. *Vavilov* at paras 126-28).

[95] When the defence of due diligence is raised, the trier must determine what steps a reasonably prudent person (or company) would take to avoid the deficiency in question and whether the defendant had taken those steps. It will not suffice for a defendant simply to show that it acted reasonably in general. Rather, the defendant must establish that it took all reasonable steps to avoid the particular deficiency that is alleged – in the present case, the missing track joint bolts in the Camrose and Brazeau Subdivisions. See *Office of the Superintendent of Bankruptcy v MacLeod*, 2011 FCA 4 at para 33 and the cases cited therein.

[96] What complicates this determination in the present case is that there was no dispute between the parties that joint bolts can go missing between inspections simply because of the normal use of railway tracks. It was common ground that, for this reason, perfect compliance at all times with paragraph (d) (read literally) is not possible. The issue is not so much preventing the deficiency as inspecting for it and rectifying it when it is detected. In this important respect, the deficiency at issue in this case is quite different from those that should not occur at all if proper procedures were followed (e.g. the failure to set a hand brake at issue in *Cando Rail Services Ltd*). Consequently, the deficiency to which due diligence must be directed cannot be

the simple fact that bolts were missing. This cannot be avoided. Rather, it is that more bolts were missing than would be expected to happen through normal use of the tracks between inspections. Only then would questions or concerns arise about the railway company's maintenance practices. The parties disagreed, however, on what this baseline number was.

[97] As set out above, the Track Safety Rules prescribe minimum frequencies for track inspections. Under the Rules, CN was required to do visual inspections of the subdivisions in question at least twice weekly. There is no suggestion that it failed to do so or that it did not do so properly. More broadly, as we have seen, railway companies are required to ensure that tracks are inspected at such frequencies and by such methods as to ensure that the tracks are compliant with the Track Safety Rules and are safe for all movements at the authorized speed: see section 6.1 of Part I and section 2.1 of Part II, Subpart F, of the Track Safety Rules.

[98] There was evidence that missing bolts could be detected when conducting a general visual inspection, when looking for them specifically (e.g. during a "bolt blitz"), and when inspecting for something else (e.g. for cracks in joint bars). While railway companies have an overarching responsibility to maintain their tracks in accordance with the requirements of the Track Safety Rules, it was not disputed between the parties that it is not always possible (or, at least, not feasible) to inspect for missing bolts. For example, there could be no reasonable expectation that a railway company would be inspecting for missing bolts when tracks are snow-covered. But even assuming that the twice-weekly track inspections include inspecting for missing bolts only when it is possible to do so, there is a significant discrepancy between the

positions of the parties regarding what changes it is reasonable to expect to find as a result of normal use of the tracks the next time the track is inspected for missing bolts.

[99] Transport Canada was of the view that, in the region where the subdivisions in question were located, one could expect to find one or two missing joint bolts for every 100 miles of jointed mainline track and this would not raise questions or concerns about track maintenance practices. If correct, this could imply that, other things being equal, if loose or missing joint bolts were being discovered more frequently than this, all reasonable steps were not being taken to maintain the track in compliance with the Track Safety Rules. On the other hand, CN's position was that as a result of normal operations between inspections one could expect to find that one or two bolts had come loose or broken for every mile track and this should not (and until now had not) raise questions or concerns about track maintenance practices. If correct, this could imply that, other things being equal, if loose or missing joint bolts were being discovered less frequently than this, the railway company was not negligent in its maintenance practices (especially considering the negligible risk to safety this small number of missing bolts would pose). As already noted, it was common ground that perfect compliance at all times with paragraph (d) is not possible because deficiencies will arise simply due to normal use of the track between inspections and this alone does not entail that a railway company was not being duly diligent to prevent the delict. But the radically different baselines suggested by the parties give rise to different standards of care and these, in turn, have a direct bearing on whether CN had established its defence of due diligence or not.

[100] Simply put, Transport Canada considered the number of missing bolts to be “abnormally” high. CN did not. The appeal panel had to determine who was right. Unfortunately, it did not do so. (Nor, in fairness, did the review member.)

[101] Without determining a baseline of the number of bolts that could be expected to go missing between inspections because of normal use of the tracks, there is no way to assess, from a due diligence perspective, the significance of the fact that on October 19, 2016, 34 joint bolts were missing from a 25 mile section of the Brazeau Subdivision, or the significance of the fact that on October 20, 2016, 11 joint bolts were missing from a 20 mile section of the Camrose Subdivision. If (as CN contended) this was within the range of what it was normal to expect, it was arguable on this basis alone that CN had not been negligent in its inspection and maintenance of the tracks. Contrary to what the appeal panel thought, there would therefore be no need to delve further into CN’s inspection and maintenance practices to make out a defence of due diligence. On the other hand, if (as the Minister contended) this was an abnormally high number of missing bolts, then (given the burden on CN to establish its due diligence) an adverse inference could reasonably be drawn from the absence of more specific evidence of CN’s inspection and maintenance practices in relation to these two subdivisions. However, in the absence of any determination by the appeal panel with respect to the baseline, the adverse inference it drew from the fact that CN had not provided more evidence about its maintenance and inspection practices is not rationally supported. Consequently, the appeal panel’s decision to reject the defence of due diligence on this basis alone is unreasonable.

[102] Finally, in the absence of a finding on this central issue, it is difficult to determine whether the appeal panel's approach to the defence of due diligence was affected by the erroneous finding that missing joint bolts have caused derailments. While I have concerns in this regard, it is not necessary to come to a definitive conclusion because I am satisfied that the panel's determination with respect to the defence of due diligence is unreasonable for the reasons I have just articulated.

VI. CONCLUSION

[103] For these reasons, the application for judicial review is allowed with costs. The decision of the appeal panel dated December 6, 2019, is set aside and the matter is remitted to the Transportation Appeal Tribunal of Canada for redetermination by a differently constituted panel.

JUDGMENT IN T-36-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed with costs.
2. The decision of the appeal panel dated December 6, 2019, is set aside and the matter is remitted to the Transportation Appeal Tribunal of Canada for redetermination by a differently constituted panel.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-36-20
STYLE OF CAUSE:	CANADIAN NATIONAL RAILWAY COMPANY v ATTORNEY GENERAL OF CANADA

HEARING HELD BY VIDEOCONFERENCE ON NOVEMBER 2, 2020 FROM OTTAWA, ONTARIO (COURT AND RESPONDENT) AND SASKATOON, SASKATCHEWAN (APPLICANT)

JUDGMENT AND REASONS:	NORRIS J.
DATED:	DECEMBER 4, 2020

APPEARANCES:

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