

e-document	T-2052-23-ID 1	É
I	FEDERAL COURT	M
S	COUR FÉDÉRALE	I
S		S
U		
E	September 29, 2023	
D	29 septembre 2023	
Robert Mvondo		
SSK	1	

Form 301 – Rule 301 APPLICATION

Court File No.: _____

FEDERAL COURT

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE
GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

September 28, 2023

Issued by: _____

Address of local office:

Federal Court
363 Broadway, Suite 400
Winnipeg, MB R3C 3N9

TO: **Attorney General of Canada**
Prairie Regional Office - Saskatoon
Department of Justice Canada
Saskatoon Square
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Telephone: (306) 518-0800
Fax: (306) 975-4030
Email: agc_pgc_saskatoon@justice.gc.ca

Transportation Appeal Tribunal of Canada
344 Slater Street
15th Floor, Suite 200
Ottawa, ON K1A 0C2
Telephone: (613) 990-6906
Fax: (613) 990-9153
Email: info@tatc.gc.ca

APPLICATION

1. This is an application for judicial review in respect of *Canadian National Railway Company v Canada (Minister of Transport)*, 2023 TATCE 40 (TATC File No. RW-0037-41) (the “**Decision**”). The Transportation Appeal Tribunal of Canada (the “**Tribunal**”) rendered the Decision on August 31, 2023, and communicated it to Canadian National Railway Company (the “**Applicant**”) on the same date.

2. The Applicant makes this application for:

- (a) an order pursuant to section 18.1(3) of the *Federal Courts Act*, RSC 1985, c F-7 quashing and/or setting aside the Decision;
- (b) an order pursuant to rule 400 of the *Federal Courts Rules*, SOR/98-106 granting the Applicant its costs of this application; and
- (c) any other remedy that this Honourable Court deems just and reasonable.

3. The grounds for the application are as follows.

Background

4. On March 29, 2019, the Applicant was served with a Notice of Violation for alleged violations of section 17.2 of the *Railway Safety Act*, RSC 1985, c 32 (4th Supp).

5. The Notice of Violation alleged that:

- (a) on or about July 10 and 11, 2018, the Applicant breached Part II Subpart D Section II.(d) of the *Rules Respecting Track Safety* (the “**Rules**”) and therefore violated section 17.2 of the *Railway Safety Act* (the Crosstie Violations); and
- (b) on or about July 11, 2018, the Applicant breached Part II Subpart D Section V.(d) of the Rules and therefore violated section 17.2 of the *Railway Safety Act* (the Missing Bolts Violation).

6. The Notice of Violation imposed a total administrative monetary penalty of \$133,248.36.

7. The Applicant requested a review of the Notice of Violation on April 29, 2019. A single member of the Tribunal dismissed CN's request for review on January 14, 2022 ("**Review Determination**"). In the Decision, the Tribunal dismissed the Applicant's appeal of the Review Determination and upheld the administrative monetary penalty.

Grounds for Relief

8. The grounds for the application are:

- (a) The Tribunal erred in law in its articulation and application of the defence of due diligence. In particular, the Tribunal:
 - (i) erred in law by incorrectly stating and applying the test for due diligence; and
 - (ii) erred in law by failing to identify the appropriate standard of care;
- (b) Further, and in the alternative, the Tribunal ignored or misapprehended the evidence and unreasonably concluded that the Applicant had not established the defence of due diligence;
- (c) As a result of these errors, the Tribunal ultimately erred in dismissing the Applicant's appeal; and
- (d) Such further and other grounds as may appear from the Certified Tribunal Record or as counsel may advise and that this Honourable Court may permit.

9. This application will be supported by the following materials:

- (a) The Affidavit(s) of a representative(s) of the Applicant;

- (b) Certified Tribunal Record of the Tribunal; and
- (c) Such further and other materials as counsel may advise and this Honourable Court may permit.

10. The Applicant requests, pursuant to Rule 317 of the *Federal Court Rules*, that the Tribunal send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Tribunal to the Applicant and to the Registry: all documents created, considered, submitted to or relied on by the Tribunal in rendering the Decision.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 28th day of September, 2023.

MLT Aikins LLP

Per: 

Kristen MacDonald
Counsel for the Applicant,
Canadian National Railway Company

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	MLT Aikins LLP
Lawyer in charge of file:	Kristen MacDonald
Address of legal firm:	1201, 409 3rd Avenue S, Saskatoon SK S7K 5R5
Telephone number:	(306) 975-7100
Fax number:	(306) 975-7145
Email address:	kmacdonald@mltaikins.com
File No.	4476.169