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**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.

December __, 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 48 (TATC File No. RW-0048-41) (the “**Decision**”). The Transportation Appeal Tribunal of Canada (the “**Tribunal**”) rendered the Decision on November 17, 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 July 17, 2020, the Applicant was served with a Notice of Violation for an alleged violation of section 17.2 of the *Railway Safety Act*, RSC 1985, c 32 (4th Supp).

5. The Notice of Violation alleged that, on or about August 18, 2019, the Applicant breached Rule 439 of the *Canadian Rail Operating Rules* and therefore violated section 17.2 of the *Railway Safety Act*.

6. The Notice of Violation imposed a total administrative monetary penalty of \$74,800.00.

7. The Applicant requested a review of the Notice of Violation on August 4, 2020. A single member of the Tribunal (“**Review Member**”) rendered a decision on December 24, 2021 (“**Review Determination**”), finding that the Applicant violated

section 17.2 of the *Railway Safety Act* but reducing the penalty from \$74,800.00 to \$33,760.00. In the Decision, the Tribunal dismissed the Applicant's appeal of the Review Determination and upheld the administrative monetary penalty of \$33,760.

Grounds for Relief

8. The grounds for the application are:

- (a) The Tribunal erred by upholding the Review Member's factual findings regarding the actions the Review Member found the Applicant should have taken to prevent the violation. In particular, the Tribunal:
 - (i) erred in its application of the correctness standard of review; and
 - (ii) erred in accepting the Review Member's findings despite the lack of evidence on the record to support such findings.
- (b) The Tribunal erred in its review of the Review Member's use of evidence of other unproven and unrelated allegations. In particular, the Tribunal:
 - (i) erred by identifying and applying the wrong standard of review to the question of the relevance of the evidence;
 - (ii) erred in concluding that the evidence was relevant to the defence of due diligence; and
 - (iii) erred in concluding that the Review Member's consideration of and reliance upon that evidence in assessing the defence of due diligence was reasonable.
- (c) The Tribunal erred in law and mixed fact and law in its review of the Review Member's articulation and application of the test for due diligence. In particular, the evidence on the record was not reasonably capable of supporting the Review Member's finding that the Applicant

did not take all reasonable steps to prevent the violation.

- (d) As a result of these errors, the Tribunal ultimately erred in dismissing the Applicant's appeal; and
- (e) 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 12th day of December, 2023.

MLT Aikins LLP

Per: _____


Jessica Buhler
Counsel for the Applicant,
Canadian National Railway Company

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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