Federal Court of Appeal  Cour d'appel fédérale

Date: 20161101

Docket: A-214-15

Citation: 2016 FCA 266

CORAM: **TRUDEL J.A.**
BOIVIN J.A.
DE MONTIGNY J.A.

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY

Appellant

and

CANADIAN TRANSPORTATION AGENCY and
CANADIAN PACIFIC RAILWAY COMPANY

Respondents

Heard at Ottawa, Ontario, on October 4, 2016.

Judgment delivered at Ottawa, Ontario, on November 1, 2016.

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: TRUDEL J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

BOIVIN J.A.

I. Introduction

[1] The Canadian National Railway Company (CN) appeals a decision dated December 18, 2014 rendered by the Canadian Transportation Agency (the Agency). The decision at issue, referenced as Decision No. 451-R-2014, is entitled "Determination by the Canadian Transportation Agency of the Western Grain Maximum Revenue Entitlements for the movement

of western grain by prescribed railway companies for crop year 2013-2014" (the 2013-2014 MRE Decision). As part of this decision, the Agency found that CN exceeded the Maximum Revenue Entitlement (MRE) imposed by the *Canada Transportation Act*, S.C. 1996, c. 10 (the Act) for moving western grain during the 2013-2014 crop year. The Agency ordered CN to pay the overage along with a penalty, totalling $5,231,011, to the Western Grains Research Foundation.

[2] Both the Agency and the Canadian Pacific Railway Company (CP) are named as respondents in this appeal.

[3] For the following reasons, the appeal should be dismissed without costs.

II. Contextual Observations

[4] In the course of their operations, railway companies such as CN and CP regularly interchange traffic with each other in order to commence, continue or complete a rail movement.

[5] Switching is a trade practice in the railway industry whereby Carrier A (the switching carrier) shuttles goods belonging to a shipper that has contracted with Carrier B (the linehaul carrier) a short distance to that carrier. This practice allows railway companies to enhance efficiency and service offerings by enabling shippers to drop off or pick up goods at a competitor's hub when it is necessary or more convenient to do so. When this occurs, the linehaul carrier pays the switching carrier an amount for the rail car movement between the interchange point and its origin of destination. If specific interchange conditions provided under

the Act are met, this interchange of traffic is called interswitching and it is governed by the *Railway Interswitching Regulations*, S.O.R./88-41 (Interswitching Regulations). The Interswitching Regulations set statutory rates that the switching carrier may charge the linehaul carrier for interswitching services. They also prescribe the distance zones within which interswitching may occur. When the same practice occurs outside the prescribed zone, it is called "exchange switching". Exchange switching is not captured by the Interswitching Regulations, but is governed by contracts between the carriers.

[6] In 2000, sections 150 and 151 of the Act came into effect and a MRE (revenue cap) program was instituted. The objective was to reform the western grain handling and transportation system from a regulated model to a more deregulated model. The reform was also implemented to maintain a level of rate protection for shippers while permitting greater flexibility for the railways to price their western grain transportation services.

[7] Sections 150 and 151 of the Act provide that the Agency, in its economic regulator capacity, assesses the prescribed railway companies' MRE and western grain revenue for each crop year. CN and CP are the only prescribed railway companies. A western grain "movement" either begins or ends at Thunder Bay or Armstrong, Ontario, and either begins or ends in Churchill, Manitoba or a port in British Columbia. Section 151 sets out the formula the Agency must employ to calculate a prescribed carrier's MRE. The formula is composed of base year and workloads statistics as well as a volume-related composite price index (VRCPI), which the Agency determines annually, four months before the crop year. Pursuant to subsection 150(2) of the Act, if a prescribed railway company's revenue for the movement of grain in a given crop

year, as determined by the Agency, exceeds the company's MRE for that year, the company has to pay out the excess amount and any penalty that may be specified in the regulations.

[8] Also in 2000, the Agency initiated consultations with its stakeholders – including CN and CP – and provided a consultation document as to how revenue, mileage and tonnage relating to interswitching and exchange switching ought to be calculated under the MRE (Agency Consultation Document dated November 24, 2000, Appeal Book, Tab. 6).

[9] Following this consultation, the Agency issued a decision on March 16, 2001, concluding that interswitching revenue falls within the definition of "grain movement" under the Act (the Agency's 2001 Decision, Appeal Book, Tab. 7). As a result, pursuant to the adopted methodology, the switching carrier must include its interswitching revenues in its total revenue for the purposes of determining its annual MRE. In addition, the linehaul carrier is required to include the entire grain movement, including the interswitching portion, in its MRE and may deduct the sum paid to the switching carrier from its revenues. However, the tonnage (item E of the formula at section 151 of the Act) associated with interswitching movements is excluded from the Agency's calculation of CN and CP's revenue cap. Though the Agency recognized that the chosen methodology would attribute a disproportionate share of revenue to the switching carrier, the Agency assumed that any imbalance would be corrected or significantly attenuated by reciprocal interswitching between CN and CP; this prediction did not materialize. Indeed, CN performed more interswitching services than CP every year since the MRE program began (Revenue Cap Switching Table, Appeal Book, Tab. 30).

[10] Ever since the MRE program was implemented in 2001, and more particularly between 2008 and 2011, CN has raised concerns with the Agency's methodology and had claimed that its costs incurred by performing switching are not adequately accounted for in its revenue entitlement.

[11] In 2011, the Agency set up a new process for taking comments, suggestions and complaints regarding the crop year in progress. The new process set timelines for submitting issues to the Agency and materiality thresholds that would determine which issues would be considered.

[12] CN again raised the interswitching revenues issue in August 2011. It proposed two options to remedy the problem: either exclude interswitching revenues from the MRE or modify the VRCPI to include interswitching mileage and tonnage. The Agency rejected both options in its letter of September 30, 2011 (Agency Letter Decision dated September 30, 2011, Appeal Book, Tab. 21 at p. 170). The Agency rejected the first option because it had already considered and discarded in favour of the current system in 2001. It also dismissed the second option on the basis that an interswitching movement is not a standalone "movement of grain" within the meaning of section 150 of the Act, but is an "operational component" that complements the linehaul carrier's overall movement. An appeal from the Agency's decision was dismissed by this Court in 2012.

[13] On January 14, 2014, the Agency issued a letter to CN and CP informing them, among other things, that any methodological or interpretation issues relating to the 2013-2014 crop year

MRE determination were to be forwarded to the Agency by April 30, 2014 according to the practice the Agency established in 2011 (Agency Letter, Appeal Book, Tab. 24).

[14] By the deadline of April 30, 2014, no stakeholders had submitted new issues to be considered regarding its 2013-2014 crop year MRE determinations. The Agency accordingly applied the same MRE formula for the 2013-2014 crop year that it had used since 2001.

[15] On August 14, 2014, three and a half months after the April 30 deadline, CN submitted a request for reconsideration under section 32 of the Act with respect to interswitching revenues under the MRE program. It stated that the Agency's methodology would cost CN $4 million in revenue.

[16] On September 30, 2014, the Agency responded to CN's application dated August 14, 2014 and advised that it would initiate a fresh industry-wide consultation process in this regard to determine whether the MRE methodology needed to be modified (Agency Email to Industry Participants dated September 30, 2014, Appeal Book, Tab. 27).

[17] On December 18, 2014, the Agency issued the decision in dispute (the 2013-2014 MRE Decision) in which it concluded that CN had exceeded its MRE by $4,981,915. It ordered CN to pay that sum to the Western Grains Research Foundation, along with a $249,096 penalty. As part of its decision, the Agency made note of CN's August 14, 2014 submissions on interswitching revenues. It stated that "the Agency intends to rule on this matter prior to the beginning of the 2015-2016 crop year, after consultation with all interested parties" (para. 12).

[18] On February 27, 2015, CN was granted leave to appeal the 2013-2014 MRE Decision pursuant to subsection 41(1) of the Act.

[19] On September 18, 2015, after consultation with the stakeholders, the Agency issued Decision No. 305-R-2015 (the 2015 Decision) that discontinued the methodology used since 2001 with respect to interswitching and adopted a new methodology: the "Equivalent Tonne Approach". This new approach allows the switching carrier to retain some of the revenues accrued from switching movements. The Agency was of the view that this new approach would alleviate the imbalance between CN and CP (paras. 90-101).

[20] Although the 2015 Decision – and thereby the new methodology – applied to the 2014-2015 crop year, it was not applied to the 2013-2014 crop year for which CN was assessed and penalized in the 2013-2014 MRE Decision.

[21] It is noted that the 2015 Decision is not the subject of this proceeding. CN's appeal before this Court only concerns the 2013-2014 MRE Decision.

III. Issues

(1) Is the Agency's interpretation and application of the MRE provisions reasonable?

(2) Did the Agency violate CN's procedural fairness rights in rendering the 2013-2014 MRE Decision?

IV. Standard of Review

[22] An appeal to this Court under subsection 41(1) of the Act is restricted to legal and jurisdictional challenges. Given the limited grounds for appeal under subsection 41(1), "question of law" has been given a liberal interpretation to include what might otherwise be considered a mixed question of fact and law so long as there is "enough of a legal component" to the issue raised (*Northwest Airlines Inc. v. Canadian Transportation Agency*, 2004 FCA 238 at para. 28, 325 N.R. 147).

[23] The Agency's findings of facts benefit from a privative clause by virtue of section 31 of the Act which states that factual findings made within its jurisdiction are "binding and conclusive". Given the specialized nature of the Agency, this Court has made it clear that deference is owed to the Agency on mixed questions of fact and law or when its applies provisions of the Act, its home statute (*Canadian National Railway Company v. Canadian Transportation Agency*, 2010 FCA 65 at paras. 27-29, [2011] 3 F.C.R. 264; *Canadian National Railway Company v. Canadian Transportation Agency*, 2010 FCA 166 at paras. 19-21, [2010] F.C.J. No. 815; *Canadian National Railway Company v. Canadian Transportation Agency*, 2008 FCA 363 at para. 51, 383 N.R. 349).

[24] As for the procedural fairness issue raised in this appeal, it will be reviewed on the correctness standard (*Canadian National Railway Company v. Canada (Transport, Infrastructure and Communities)*, 2012 FCA 240 at para. 1, 435 N.R. 377 [*CN v. CTA 2012*];

Canada (Citizenship and Immigration) v. Khosa, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339; *Mission Institution v. Khela*, 2014 SCC 24 at para. 79, [2014] 1 S.C.R. 502).

V. Analysis

A. *Is the Agency's interpretation and application of the MRE provisions reasonable?*

[25] CN primarily submits that the Agency's interpretation of "movement of grain" within the meaning of subsection 150(1) of the Act to include interswitching revenues is premised on an erroneous interpretation of this term and constitutes an error. CN contends that the provisions of the Act should be construed so as to consider an interswitching movement as a separate, standalone movement of grain and not as forming part of a broader rail movement. Subsection 150(1) of the Act prohibits prescribed railway companies from exceeding the MRE for a crop year in the following terms:

150 (1) A prescribed railway company's revenues, as determined by the Agency, for the movement of grain in a crop year may not exceed the company's maximum revenue entitlement for that year as determined under subsection 151(1).	150 (1) Le revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole, calculé par l'Office, ne peut excéder son revenu admissible maximal, calculé conformément au paragraphe 151(1), pour cette campagne.

[26] CN's criticism of the Agency's interpretation and application of the Act echoes its enduring disagreement with the Agency. However, I must recall that in its first decision regarding the MRE program issued in 2001 (Agency's 2001 Decision, Appeal Book, Tab. 7), the Agency rejected the interpretation that CN still advances to this day. In that decision, the Agency refused to exclude interswitching (and exchange switching) revenues from the MRE on the basis

that interswitching operations are an integral part of the "grain movement". "Movement" is defined at section 147 of the Act:

movement, in respect of grain, means the carriage of grain by a prescribed railway company over a railway line from a point on any line west of Thunder Bay or Armstrong, Ontario, to (a) Thunder Bay or Armstrong, Ontario, or (b) Churchill, Manitoba, or a port in British Columbia for export, but does not include the carriage of grain to a port in British Columbia for export to the United States for consumption in that country; (*mouvement du grain*)	*mouvement du grain* Transport du grain par une compagnie de chemin de fer régie sur toute ligne soit dans le sens ouest-est à destination de Thunder Bay ou d'Armstrong (Ontario), soit au départ de tout point situé à l'ouest de Thunder Bay ou d'Armstrong et à destination de Churchill (Manitoba) ou d'un port de la Colombie-Britannique, pour exportation. La présente définition ne s'applique pas au grain exporté d'un port de la Colombie-Britannique aux États-Unis pour consommation. (*movement*)

[27] The Agency's 2001 Decision was not appealed.

[28] Following the Agency's 2001 Decision, the issue of interswitching has remained a friction point between CN and the Agency. CN requested on several occasions that the Agency review its methodology as it relates to interswitching. CN argued notably that the methodology used by the Agency is unfair, detrimental to its interest, and inconsistent with the Act. Specifically, in the context of the 2010-2011 MRE determinations, CN attempted to have the Agency revise its interpretation and application of interswitching under the MRE and raised many points alluded to in this appeal. The Agency rejected CN's proposed methodology and maintained the *status quo* for its treatment of interswitching (Agency Letter Decision dated September 30, 2011, Appeal Book, Tab. 21 at p. 171). CN appealed on that occasion to this Court. CN's appeal was dismissed in *CN v. CTA 2012* at para. 9:

> As for the issue of the definition of a grain movement, it was first raised by CN when it referred to the Agency's 2001 decision to support its contention that interswitching movements are grain movements for the purposes of the revenue cap formula. The Agency's response simply made the point that the determination that a particular segment of grain movement comes within the statutory definition does not amount to saying the segment taken alone constitutes a grain movement, a term which is defined at s. 147 of the Act. There is no basis for saying that the Agency decided against further consultation on a basis not previously raised by the parties.

[29] Despite the fact that the Agency's interpretation and application of the Act has withstood this Court's scrutiny, counsel for CN devoted significant time to this issue at the hearing. There was not, however, any convincing basis given to interfere with the Agency's determination. The Agency has repeatedly held that switching services complement the larger part of a movement. Its interpretation and application of its own statute regarding interswitching is a possible and acceptable outcome in light of the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[30] CN also submits that the Agency erred in law by including interswitching revenue for the purposes of its revenue cap determinations. However, a reading of section 151 of the Act does not support this contention. Indeed, had Parliament intended to exclude interswitching revenue from the MRE determinations, it would have mentioned it expressly in the Act as it did when it excluded the revenue associated with running rights (paragraph 150(3)(*c*) of the Act).

[31] In short, CN has failed to establish that the Agency's interpretation and application of the Act are unreasonable.

B. *Did the Agency violate CN's procedural fairness rights in rendering the 2013-2014 MRE Decision?*

(1) Consideration of the treatment of interswitching revenue

[32] CN submits that by refusing to address the interswitching question raised in its section 32 application in the context of the MRE determinations for the 2013-2014 crop year, the Agency committed a breach of procedural fairness.

[33] The difficulty with CN's argument is that it filed its submissions on August 14, 2014, *i.e.* three and a half months after the April 30, 2014 deadline. CN nonetheless insists that although its submissions were made belatedly, the Agency should have addressed the key issue of interswitching for the 2013-2014 crop year. This contention is unsustainable considering that the Agency clearly communicated that issue regarding the MRE methodology had to be submitted by April 30, 2014. Moreover, I note that CN requested in its letter dated August 14, 2014 a review of policy for the 2014-2015 crop year, not the 2013-2014 crop year. The Agency also informed CN that its submissions would not be resolved in time for the 2013-2014 crop year determination, and that its request for reconsideration of the methodology would be addressed for the 2014-2015 year (Agency Decision No. LET-R-69-2014, Appeal Book, Tab. 26 at pp. 190, 191). In these circumstances, CN's argument cannot succeed as it amounts to claiming that the Agency failed to consider submissions that were not properly before it.

(2) Fairness of Agency's procedure

[34] CN acknowledges that it did not request a reconsideration of the methodology before the April 30, 2014 deadline. However, it argues that it would have been an "impossible task" to accurately calculate interswitching revenues for the crop year by that date, even considering the VRCPI and historical trends. CN further submits that it could not have known until July 31, 2014 whether its revenue for the year would exceed its MRE and thus could not have known whether its concerns would meet the materiality threshold set up by the Agency in order to request a revision of the methodology for the 2013-2014 crop year (CN's Memorandum of Fact and Law at para. 46). On that basis, CN contends that it was precluded from meeting the April 30 deadline and, as a result, has lost its right of appeal. In other words, counsel for CN argues that the Agency's process is designed to be "appeal proof", and is thus unfair.

[35] CN's unfairness contention must fail as well.

[36] By 2010, the MRE program had been in existence for ten (10) years. Acknowledging that a number of issues were arising out of the administration of the MRE program (Agency Decision No. LET-R-212-2010) and with a view to enhancing the program's effectiveness and predictability for all parties involved, the Agency set out the procedure that it would follow in administrating the MRE program going forward.

[37] This new process set timelines for submitting issues to the Agency and materiality thresholds. The Agency only agreed to consider changes to its procedure and methodology if an

issue is material and adopted a framework to this end (Agency Decision No. LET-R-57-2011 and Agency Decision No. LET-R-100-2011). Specifically, it was determined that a material issue is one that generally results in a potential financial impact greater than $1,000,000. If a potential issue is determined to be material, the Agency undertook to evaluate it according to non-exhaustive factors: (i) whether the issue has already been thoroughly addressed by the Agency; (ii) whether an alternative methodology may be superior to the one in place; and (iii) whether new industry practices have emerged that have never been considered and that require an interpretation within the MRE program. It was also determined that policy and methodology already in place would remain in effect until a decision has been made on the material issue (Agency Decision No. LET-R-57-2011).

[38] Furthermore, according to the Act, the Agency must determine each prescribed railway's MRE by December 31 of each year, five months after the end of the crop year in question (July 31). The December 31 deadline is imposed upon the Agency by statute and admits of no discretion to extend it (subsection 150(5) of the Act). As a result, and in an effort to streamline the MRE process, the Agency invites stakeholders, including CN and CP, to submit issues of methodology or interpretation by April 30 of every year. This provides the Agency with a reasonable timeframe to address potential material issues in its revenue entitlement decisions.

[39] Also, the VRCPI is issued each year by April 30 with the specific objective of allowing the railway companies to plan operations for the upcoming crop year (Agency Decision No. LET-R-212-2010, Appeal Book, Tab. 15 at pp. 107, 109). The VRCPI is used in conjunction

with historical trends, and their attendant projections, to estimate interswitching revenue and cost.

[40] By any measure, the MRE determination process is complex and involves extensive consultation with the railway companies to arrive at an accurate calculation (2015 Decision, Supplementary Appeal Book, Tab. 1, p. 21 at para. 117, and Agency Decision No. LET-R-69-2014, Appeal Book, Tab. 26 at p. 191). The railway companies must remit detailed traffic submissions to the Agency. The Agency must then verify whether the traffic qualifies as western grain "movement", and if not, make the necessary adjustments. For instance, a minor adjustment was in fact required for the 2013-2014 crop year, resulting in about 2,100 tonnes decrease to CN's reported tonnage (2013-2014 MRE Decision at para. 5).

[41] Against this background, I find that the Agency followed a fair procedure for hearing and addressing the complaints of its stakeholders, including CN's, by way of consultation. There has been no breach of procedural fairness, and as a result there is no reason for this Court to intervene.

VI. CP's submissions

[42] CP's sole concern was that, in the event that this Court ordered the Agency to apply any methodology other than the one originally applied to the 2013-2014 MRE determination, it should specify that it only applied to CN's MRE, not CP's.

[43] Given the above, this point is moot.

VII. Conclusion

[44] For these reasons, the appeal should be dismissed. Since neither the Agency nor CP requested costs, none should be awarded.

"Richard Boivin"
J.A.

"I agree
Johanne Trudel J.A."

"I agree
Yves de Montigny J.A."

ANNEX

Canada Transportation Act:

31 The finding or determination of the Agency on a question of fact within its jurisdiction is binding and conclusive.	**31** La décision de l'Office sur une question de fait relevant de sa compétence est définitive.
32 The Agency may review, rescind or vary any decision or order made by it or may re-hear any application before deciding it if, in the opinion of the Agency, since the decision or order or the hearing of the application, there has been a change in the facts or circumstances pertaining to the decision, order or hearing.	**32** L'Office peut réviser, annuler ou modifier ses décisions ou arrêtés, ou entendre de nouveau une demande avant d'en décider, en raison de faits nouveaux ou en cas d'évolution, selon son appréciation, des circonstances de l'affaire visée par ces décisions, arrêtés ou audiences.
41 (1) An appeal lies from the Agency to the Federal Court of Appeal on a question of law or a question of jurisdiction on leave to appeal being obtained from that Court on application made within one month after the date of the decision, order, rule or regulation being appealed from, or within any further time that a judge of that Court under special circumstances allows, and on notice to the parties and the Agency, and on hearing those of them that appear and desire to be heard.	**41 (1)** Tout acte — décision, arrêté, règle ou règlement — de l'Office est susceptible d'appel devant la Cour d'appel fédérale sur une question de droit ou de compétence, avec l'autorisation de la cour sur demande présentée dans le mois suivant la date de l'acte ou dans le délai supérieur accordé par un juge de la cour en des circonstances spéciales, après notification aux parties et à l'Office et audition de ceux d'entre eux qui comparaissent et désirent être entendus.
(2) No appeal, after leave to appeal has been obtained under subsection (1), lies unless it is entered in the Federal Court of Appeal within sixty days after the order granting leave to appeal is made.	**(2)** Une fois l'autorisation obtenue en application du paragraphe (1), l'appel n'est admissible que s'il est interjeté dans les soixante jours suivant le prononcé de l'ordonnance l'autorisant.
(3) An appeal shall be heard as quickly as is practicable and, on the hearing of the appeal, the Court may draw any inferences that are not inconsistent with the facts expressly found by the Agency and that are	**(3)** L'appel est mené aussi rapidement que possible; la cour peut l'entendre en faisant toutes inférences non incompatibles avec les faits formellement établis par l'Office et nécessaires pour décider de la question

necessary for determining the question of law or jurisdiction, as the case may be.

de droit ou de compétence, selon le cas.

(4) The Agency is entitled to be heard by counsel or otherwise on the argument of an appeal.

(4) L'Office peut plaider sa cause à l'appel par procureur ou autrement.

147 In this Division,

147 Les définitions qui suivent s'appliquent à la présente section.

…

[…]

movement, in respect of grain, means the carriage of grain by a prescribed railway company over a railway line from a point on any line west of Thunder Bay or Armstrong, Ontario, to

(a) Thunder Bay or Armstrong, Ontario, or

(b) Churchill, Manitoba, or a port in British Columbia for export,

but does not include the carriage of grain to a port in British Columbia for export to the United States for consumption in that country; (*mouvement du grain*)

mouvement du grain Transport du grain par une compagnie de chemin de fer régie sur toute ligne soit dans le sens ouest-est à destination de Thunder Bay ou d'Armstrong (Ontario), soit au départ de tout point situé à l'ouest de Thunder Bay ou d'Armstrong et à destination de Churchill (Manitoba) ou d'un port de la Colombie-Britannique, pour exportation. La présente définition ne s'applique pas au grain exporté d'un port de la Colombie-Britannique aux États-Unis pour consommation. (*movement*)

port in British Columbia means Vancouver, North Vancouver, New Westminster, Roberts Bank, Prince Rupert, Ridley Island, Burnaby, Fraser Mills, Fraser Surrey, Fraser Wharves, Lake City, Lulu Island Junction, Port Coquitlam, Port Moody, Steveston, Tilbury and Woodwards Landing; (*port de la Colombie-Britannique*)

port de la Colombie-Britannique Vancouver, North Vancouver, New Westminster, Roberts Bank, Prince Rupert, Ridley Island, Burnaby, Fraser Mills, Fraser Surrey, Fraser Wharves, Lake City, Lulu Island Junction, Port Coquitlam, Port Moody, Steveston, Tilbury et Woodwards Landing. (*port in British Columbia*)

prescribed railway company means the Canadian National Railway Company, the Canadian Pacific Railway Company and any railway company that may be specified in the regulations; (*compagnie de chemin de fer régie*)

compagnie de chemin de fer régie La Compagnie des chemins de fer nationaux du Canada, la Compagnie de chemin de fer Canadien Pacifique et toute autre compagnie de chemin de fer précisée par règlement. (*prescribed railway company*)

Western Division means the part of Canada lying west of the meridian passing through the eastern boundary of the City of Thunder Bay, including the whole of the Province of Manitoba. (*région de l'Ouest*)

région de l'Ouest La partie du Canada située à l'ouest du méridien qui coupe la limite est de la ville de Thunder Bay, y compris toute la province du Manitoba. (*Western Division*)

150 (1) A prescribed railway company's revenues, as determined by the Agency, for the movement of grain in a crop year may not exceed the company's maximum revenue entitlement for that year as determined under subsection 151(1).

150 (1) Le revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole, calculé par l'Office, ne peut excéder son revenu admissible maximal, calculé conformément au paragraphe 151(1), pour cette campagne.

(2) If a prescribed railway company's revenues, as determined by the Agency, for the movement of grain in a crop year exceed the company's maximum revenue entitlement for that year as determined under subsection 151(1), the company shall pay out the excess amount, and any penalty that may be specified in the regulations, in accordance with the regulations.

(2) Si le revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole, calculé par l'Office, excède son revenu admissible maximal, calculé conformément au paragraphe 151(1), pour cette campagne, la compagnie verse l'excédent et toute pénalité réglementaire en conformité avec les règlements.

(3) For the purposes of this section, a prescribed railway company's revenue for the movement of grain in a crop year shall not include

(3) Pour l'application du présent article, sont exclus du revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole :

(a) incentives, rebates or any similar reductions paid or allowed by the company;

a) les incitatifs, rabais ou réductions semblables versés ou accordés par la compagnie;

(b) any amount that is earned by the company and that the Agency determines is reasonable to characterize as a performance penalty or as being in respect of demurrage or for the storage of railway cars loaded with grain; or

b) les recettes attribuables aux amendes pour non-exécution, aux droits de stationnement et aux droits de stockage des wagons chargés de grain que l'Office estime justifié de considérer comme telles;

(c) compensation for running rights.

c) les indemnités pour les droits de circulation.

(4) For the purposes of this section, a prescribed railway company's revenue for the movement of grain in a crop year shall not be reduced by amounts paid or allowed as dispatch by the company for loading or unloading grain before the expiry of the period agreed on for loading or unloading the grain.

(4) Pour l'application du présent article, ne sont pas déduites du revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole les sommes versées ou les réductions accordées par elle à titre de primes de célérité pour le chargement ou le déchargement du grain avant la fin du délai convenu.

(5) For the purposes of this section, if the Agency determines that it was reasonable for a prescribed railway company to make a contribution for the development of grain-related facilities to a grain handling undertaking that is not owned by the company, the company's revenue for the movement of grain in a crop year shall be reduced by any amount that the Agency determines constitutes the amortized amount of the contribution by the company in the crop year.

(5) Pour l'application du présent article, est déduite du revenu d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole la somme qui, selon l'Office, constitue la portion amortie de toute contribution versée par la compagnie, au cours de la campagne, à une entreprise de manutention de grain n'appartenant pas à la compagnie pour l'aménagement d'installations liées au grain si l'Office estime qu'il était raisonnable de verser cette contribution.

(6) The Agency shall make the determination of a prescribed railway company's revenues for the movement of grain in a crop year on or before December 31 of the following crop year.

(6) L'Office calcule le montant du revenu de chaque compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole au plus tard le 31 décembre de la campagne suivante.

151 (1) A prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year is the amount determined by the Agency in accordance with the formula

$[A/B + ((C - D) \times \$0.022)] \times E \times F$

where

A

is the company's revenues for the

151 (1) Le revenu admissible maximal d'une compagnie de chemin de fer régie pour le mouvement du grain au cours d'une campagne agricole est calculé par l'Office selon la formule suivante :

$[A/B + ((C - D) \times 0{,}022\ \$)] \times$

movement of grain in the base year;

B

is the number of tonnes of grain involved in the company's movement of grain in the base year;

C

is the number of miles of the company's average length of haul for the movement of grain in that crop year as determined by the Agency;

D

is the number of miles of the company's average length of haul for the movement of grain in the base year;

E

is the number of tonnes of grain involved in the company's movement of grain in the crop year as determined by the Agency; and

F

is the volume-related composite price index as determined by the Agency.

E × F

où

A

représente le revenu de la compagnie pour le mouvement du grain au cours de l'année de référence;

B

le nombre de tonnes métriques correspondant aux mouvements de grain effectués par la compagnie au cours de l'année de référence;

C

le nombre de milles correspondant à la longueur moyenne des mouvements de grain effectués par la compagnie au cours de la campagne agricole, tel qu'il est déterminé par l'Agence;

D

le nombre de milles correspondant à la longueur moyenne des mouvements de grain effectués par la compagnie au cours de l'année de référence;

E

le nombre de tonnes métriques correspondant aux mouvements de grain effectués par la compagnie au cours de la campagne agricole, tel qu'il est déterminé par l'Office;

F

l'indice des prix composite afférent au volume, tel qu'il est déterminé par l'Office.

(2) For the purposes of subsection (1), in the case of the Canadian National Railway Company,

(2) Pour l'application du paragraphe (1), dans le cas de la Compagnie des chemins de fer nationaux du Canada :

(a) A is $348,000,000;

a) A est égal à 348 000 000 $;

(b) B is 12,437,000; and

b) B est égal à 12 437 000;

(c) D is 1,045.

c) D est égal à 1 045.

(3) For the purposes of subsection (1), in the case of the Canadian Pacific Railway Company,

(3) Pour l'application du paragraphe (1), dans le cas de la Compagnie de chemin de fer Canadien Pacifique

(a) A is $362,900,000;

a) A est égal à 362 900 000 $;

(b) B is 13,894,000; and

b) B est égal à 13 894 000;

(c) D is 897.

c) D est égal à 897.

(4) The following rules are applicable to the volume-related composite price index:

(4) Les règles suivantes s'appliquent à l'indice des prix composite afférent au volume :

(a) in the crop year 2000-2001, the index is deemed to be 1.0;

a) l'indice pour la campagne agricole 2000-2001 est égal à 1,0;

(b) the index applies in respect of all of the prescribed railway companies; and

b) l'indice est applicable à toutes les compagnies de chemin de fer régies;

(c) the Agency shall make adjustments to the index to reflect the costs incurred by the prescribed railway companies for the purpose of obtaining cars as a result of the sale, lease or other disposal or withdrawal from service of government hopper cars and the

c) l'Office ajuste l'indice afin de tenir compte des coûts supportés par les compagnies de chemin de fer régies, d'une part, pour l'obtention de wagons à la suite de la disposition, notamment par vente ou location, ou de la

costs incurred by the prescribed railway companies for the maintenance of cars that have been so obtained.

mise hors de service de wagons-trémies du gouvernement et, d'autre part, pour l'entretien des wagons ainsi obtenus.

(5) The Agency shall make the determination of a prescribed railway company's maximum revenue entitlement for the movement of grain in a crop year under subsection (1) on or before December 31 of the following crop year and shall make the determination of the volume-related composite price index on or before April 30 of the previous crop year.

(5) L'Office calcule le montant du revenu admissible maximal pour le mouvement du grain de chaque compagnie de chemin de fer régie au cours d'une campagne agricole au plus tard le 31 décembre de la campagne suivante et calcule l'indice des prix composite afférent au volume pour cette campagne au plus tard le 30 avril de la campagne précédente.

(6) Despite subsection (5), the Agency shall make the adjustments referred to in paragraph (4)(c) at any time that it considers appropriate and determine the date when the adjusted index takes effect.

(6) Malgré le paragraphe (5), l'Office effectue les ajustements visés à l'alinéa (4)c) lorsqu'il l'estime indiqué, et détermine la date de prise d'effet de l'indice ainsi ajusté.

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