TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Citation: *City of Ottawa carrying business as Capital Railway v. Canada (Minister of Transport)*, 2019 TATCE 38 (Review)

TATC File No.: H-0029-43

Sector: Rail

BETWEEN:

City of Ottawa carrying business as Capital Railway, Applicant

- and -

Canada (Minister of Transport), Respondent

Heard in: Ottawa, Ontario, on March 27–28, 2019

Before: Mark Conrad, Member

Rendered: September 5, 2019

REVIEW DETERMINATION AND REASONS

Held: The Minister of Transport has proven, on a balance of probabilities, that Capital Railway violated section 17.2 of the *Railway Safety Act*. The imposition of an administrative monetary penalty is confirmed.

The total amount of $56,250 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

I. BACKGROUND

[1] By Notice of Violation (Notice) dated March 14, 2018 and pursuant to paragraph 3(1)(b) of the *Railway Safety Administrative Monetary Penalties Regulations*, and procedures in sections 40.14 to 40.22 of the *Railway Safety Act (RSA)*, Transport Canada (TC) assessed a monetary penalty of $56,250 against the City of Ottawa carrying business as Capital Railway (hereinafter Capital Railway) for an alleged contravention, as noted in Schedule A:

> On or about November 23, 2017, on the Ellwood Subdivision in or near Ottawa, Ontario, the City of Ottawa carrying business as Capital Railway (Capital Railway), operated railway equipment on a railway otherwise than in accordance with Rule 439 of the *Canadian Rail Operating Rules* that apply to Capital Railway, when it failed to stop train C7 at signal 28 East displaying Stop, thereby violating section 17.2 of the *Railway Safety Act*.

[2] Included with the Notice was a chronology of events indicating the dates on which Capital Railway has previously violated (or is alleged to have violated) Canadian Rail Operating Rule (CROR) 439, including:

a. November 18, 2015;

b. December 24, 2015;

c. September 16, 2016 (two violations in the same train movement); and

d. May 3, 2017.

[3] In September 2017, Capital Railway was assessed, and paid, an administrative monetary penalty (AMP) of $42,708.06 for a previous CROR 439 violation (Exhibit M-14). This was paid in full on October 15, 2017 (Exhibit M-15, page 3).

[4] Capital Railway, by letter dated April 16, 2018, made a request to the TATC for a review of TC's decision of March 14, 2018.

[5] Capital Railway operates a commuter rail service over approximately eight kilometres of track. The line serves Carleton University, a shopping mall in a densely populated neighbourhood, and a major employment centre (Exhibit A-4). It identifies itself as unique in several aspects:

a. It is a light rail operation utilizing only one crew member to operate the train;

b. It utilizes bus operators as train operators; and

c. It is the only known North American railway to utilize an Indusi train brake system, intended to provide an additional layer of safety in the event of human or other error.

II. LEGAL FRAMEWORK

[6] Section 17.2 of the *RSA* provides that "no railway company shall operate or maintain a railway … and no local railway company shall operate railway equipment on a railway, otherwise than in accordance with a railway operating certificate and … with the regulations and the rules made under sections 19 and 20 that apply to the company".

[7] Paragraph 3(1)(b) of the *Railway Safety Administrative Monetary Penalties Regulations* provides that a violation to a rule in force under section 19 or 20 of the *RSA* may be proceeded with as a violation in accordance with sections 40.13 to 40.22 of the *RSA*, therefore, CROR 439 is a designated provision for which the AMP regime of the *RSA* applies.

[8] Item 6 of Part 1, Schedule 1 of the *Railway Safety Administrative Monetary Penalties Regulations* names section 17.2 as a designated provision for which the AMP regime of sections 40.13 to 40.22 of the *RSA* apply.

[9] Transport Canada claims that Capital Railway violated CROR 439, which states:

> Stop – Stop.
>
> OPTIONAL: Unless required to clear a switch, crossing, controlled location, or spotting passenger equipment on station platforms, a movement not authorized by Rule 564 must stop at least 300 feet in advance of the STOP signal.

[10] CROR 564 reads (in part) as follows:

> **564. Authority to Pass Stop Signal**
>
> (a) A train or transfer must have authority to pass a block signal indicating Stop.

III. DISCUSSION AND ANALYSIS

[11] The main issue is whether Capital Railway failed to stop at least 300 feet in advance of the Stop signal on the Ellwood Subdivision in or near Ottawa, Ontario, without having the authority to pass a stop signal and unless being required to clear a switch, crossing, controlled location, or spotting passenger equipment on station platforms. This would constitute a violation of CROR 439.

[12] If the Minister of Transport demonstrates that Capital Railway is in violation of CROR 439, has Capital Railway established a defence of due diligence and were there mitigating factors not taken into account by the Minister in assessing the penalty?

A. Was there a violation of CROR 439?

[13] Pursuant to subsection 40.16(4) of the *RSA*, the burden is on the Minister to establish the violation. The standard of proof is on the balance of probabilities, as per subsection 15(5) of the *Transportation Appeal Tribunal of Canada Act.*

[14] In support of proving the violation, the representative for the Minister of Transport introduced as evidence:

a. Exhibit M-1; the Daily Notification Report prepared by the Transportation Safety Board (TSB) and provided daily to Transport Canada's Rail Safety division referencing the incident of November 23, 2017;

b. Exhibit M-4; interview notes of Mr. Mario Morales taken by TC Rail Safety Inspectors Michael Melville and Guy Ethier. Mr. Morales was the Relief Light Rail Operator

(RLRO) of train C7 on November 23, 2017 which was alleged to be in violation of Rule 439 that day; and

c. Exhibit M-5; interview notes of Mr. Scott Yeldon taken by Inspectors Melville and Ethier. Mr. Yeldon was the on-duty Capital Railway supervisor on November 23, 2017.

[15] The applicant's representative introduced as evidence Exhibit A-1, Closed Caption Television Video (CCTV) of the incident.

[16] The TSB report (Exhibit M-1) identifies that "Capital Railway reports commuter assignment, proceeding south on the Elwood Sub., with a self-propelled cab car, proceeded past signal 28 indicating STOP at Mile 2.8…". The report also indicates the occurrence took place on November 23, 2017 at 17:54, and further identifies this to be a situation of a "movement exceeds limits of authority" (meaning the train did not have proper authority to proceed past the signal). Suzanne Madaire-Poisson of Transport Canada testified that Capital Rail acknowledged the violation by reporting it to the TSB. Ms. Madaire-Poisson also noted that admitting to the violation does not necessarily entail admitting responsibility for the violation.

[17] Inspector Melville testified that he was informed of the incident by Capital Railway itself, as well as via the TSB daily report.

[18] Introduced into the evidentiary record as Exhibit M-4 were post-incident interview notes of Inspectors Melville and Ethier asking RLRO Morales "when did you realize that you passed signal 28 displaying stop?" Mr. Morales responded he became aware of this when he was shown the video by the superintendent. The "superintendent" is in reference to a supervisory staff member at Capital Railway.

[19] In questions 21 and 22 of Exhibit M-4, Mr. Morales is asked if he called the Rail Traffic Controller (RTC) and, if affirmative, what the RTC said to him. Mr. Morales indicated he did call the RTC after the Indusi system stopped his train and that he requested authority to proceed. He makes no mention of contacting the RTC for permission to proceed through the stop signal prior to doing so. Mr. Morales instead states his recollection was that it was a permissive signal.

[20] Within Exhibit M-5, Mr. Yeldon is asked by Inspectors Melville and Ethier, "how did you become aware that C7 passed signal 28 displaying stop?" He responds that his first notification was from a member of the ground crew who called him on the cell phone.

[21] Introduced as Exhibit A-1 into the evidentiary record by Capital Railway was CCTV video taken on the day and time of the incident at Confederation Station. It clearly shows a Capital Railway train, identified as train C7 by the applicant, coming to a stop, and then proceeding through a red, non-permissive (stop) signal.

[22] Capital Railway did not contest that the incident occurred and that CROR 439 was violated. With the introduction of Exhibit A-1, they demonstrated that the violation had, in fact, occurred.

[23] The Minister of Transport has demonstrated, on a balance of probabilities, that Capital Railway train C7 was in violation of CROR 439 on November 23, 2017 as identified in the

Notice of Violation issued by the Minister of Transport. Train C7 proceeded through signal 28 without proper authority to do so.

B. Prevention and training efforts – did Capital Railway display due diligence?

[24] To support its claim of due diligence, the applicant argued that it maintains its fleet in a compliant manner, trains its staff to meet requirements and that it implemented the Indusi train brake system.

[25] The Minister argued that Capital Railway offered minimal training specific to signal recognition and situational awareness, and that it did not establish a proper system to prevent commission of the violation and take reasonable steps to ensure the effective operation of the system.

[26] The applicant introduced into the evidentiary record "O-Train Light Rail Project" (Exhibit A-4). This document, prepared by TC as part of its Urban Transportation Showcase Program, identified the O-Train project (which is Capital Railway) as being unique in that it was the first time passenger rail services had been operated by a single operator, and the first time trains had been driven by bus operators. The document further stated that the 28 bus drivers selected to serve as Light Rail Operators (LROs) for the project received six weeks of training through CANAC, a consulting firm associated with CN Rail (page 3). This was followed by a period of mentoring. The document also speaks to the Indusi train brake system (page 4) as follows:

> A German-designed Indusi automatic braking system was installed – the first time such a system had been used in North America. The Indusi system is computerized and consists of track magnets and speed monitoring devices on the trains. If the train is moving too fast, the braking system … initiates the brakes automatically. The Indusi system works with the ABS system so that proper train separation is maintained.

[27] The document (on pages 5 and 6) identifies results of the O-Train light rail project, including:

i. daily ridership;
ii. revenues and costs;
iii. on-time performance;
iv. cost per mile of track;
v. vehicle efficiency;
vi. modal shift;
vii. potential avoided costs; and
viii. recognition.

[28] Within the results section of Exhibit A-4, there is no consideration of rules compliance, safety, or situational awareness by the crew. This document is dated 2005 (with an addendum dated 2008) and is non-technical in nature. It does not speak to the capacity of the Indusi system,

its limitations, or the situations in which an operator could override the system. No expert witness was called to testify as to the constraints, application or limitations of the system.

[29] Given the lack of corroborating expert testimony or technical documentation introduced into the evidentiary record regarding the Indusi system, I am left with little choice but to give very limited weight to the non-technical material provided.

[30] The applicant's representative also introduced Maintenance Inspection Records, Train C7, into the evidentiary record as Exhibit A-2. This document, outlining maintenance inspection requirements by Capital Railway, speaks to the daily mechanical checks undertaken by staff on motive equipment and, in one element, the Indusi system itself. While a well-defined maintenance program is desirable and this exhibit may speak to a systematic maintenance program, it does not speak to a systematic operational program for training and monitoring of LROs to comply with signal rules and, as such, is given limited weight.

[31] The Minister's representative introduced into the evidentiary record as Exhibit M-2 a letter written by Inspector Melville to Capital Railway following the November 23, 2017 incident. Among other items requested, Inspector Melville asked for:

a. records supporting efficiency testing for the operator of C7 for the past six months prior to this incident; and

b. qualification and training records for the operator of C7.

[32] In response, and tabled as evidence by the Minister's representative, Inspector Melville received:

a. Operator Morales' training record (Exhibit M-6). This half page document outlined all training between November 19, 2006 and May 11, 2017 and included approximately 190 hours of LRO-related training. While it serves as a list of the training taken by Mr. Morales, it does not provide details as to the nature of the training itself, or how Mr. Morales performed on this training. Additionally, there is no indication as to the nature of the testing and evaluation processes used, nor does it include the six-week CANAC course that the first LROs employed by Capital Railway (per A-4) were required to complete in 2005.

b. course results for select Capital Railway employees undertaking CROR recertification training (Exhibit M-7). This one-page document identified that Mr. Morales passed his recertification and that he obtained the lowest scores among his class of nine on both of the signal quizzes that were provided, prior to passing with a final test grade of 100% – the same grade as all eight of the other students.

c. an agenda for an eight-hour course provided by Capital Railway on November 1, 2017 (Exhibit M-8). This untitled document identifies several learning items, including among others; fire safety training, a visit to a simulator, radio etiquette, brake tests and emergency brake activation prevention. While many items could possibly pertain to signal recognition, no documentation as to what they actually entailed was introduced into the evidentiary record and no witness testimony was provided to further the Tribunal's understanding of this document. Additionally, Mr. Morales' training record (M-6) does not list this course.

d. mentor observation sheets dated October 2 and October 6, 2017 (Exhibit M-9). These two-page documents of on-board efficiency testing of Mr. Morales do not appear to have any mention of signal recognition but focus instead on train speeds and braking. While both are important aspects of train operation, and in some manners tie in with signal compliance, they do not speak directly to the rule infraction at hand.

[33] Inspector Melville, in his testimony, indicated he believed all six Capital Railway signal incidents involved the use of full-time Light Rail Operators, while Ms. Madaire-Poisson testified that she believed they were all Relief Light Rail Operators – operators who would normally drive buses, as opposed to those with permanent duties operating the trains. The evidentiary record (Exhibit M-13, Rail Safety checklist) notes that a commonality with all but one of the incidents investigated is that the train operators were not exclusively assigned to train operations and that the majority of the violations, including this one, involved employees not assigned to train operations. So while there is discrepancy within the evidence and testimony as to the status of the train operators – permanent train operators or relief – the record is clear that Mr. Morales was a relief operator (M-4). In light of the submitted evidentiary record, Ms. Madaire-Poisson's testimony, and evidence that Mr. Morales was identified as a relief operator, I give diminished weight to Inspector Melville's statement that all six operators were full-time rail operators and accept that some, perhaps all, were RLROs.

[34] The Minister introduced into the evidentiary record the following correspondence concerning previous violations:

a. Letter of Concern (Exhibit M-10) issued to Capital Railway from Inspector Melville, dated December 14, 2014 (clarified on the record to indicate the date contained a typo and the year should have indicated 2015). The letter noted the inspector's concern that a Capital Railway train passed signal 28 indicating "stop" on November 18, 2015;

b. A notice under *RSA* subsection 31(1) (Exhibit M-11) issued by Inspector Melville to Capital Railway dated January 20, 2016, stating that a threat to safe railway operations exists. The notice identifies the inspector's safety concerns following two incidents:

    i. November 18, 2015, where a Capital Railway train passed signal 28 displaying "stop" without authority and the operator did not report the stop signal violation and was allowed to continue without further authority; and

    ii. December 24, 2015, where a Capital Railway train passed signal 70W displaying "stop" and the operator indicated his situational awareness was compromised by an emergency brake application.

c. a notice under *RSA* subsection 31(1) (Exhibit M-12) issued by Inspector Melville, dated October 6, 2016, identifying his safety concerns with an incident on September 16, 2016 where Capital Railway train C5 encountered a switch problem, was authorized to move in a reverse direction, but subsequently passed two signals indicating "stop" without proper authority. The notice, as well as the testimony of Inspector Melville, confirmed that in both instances, the operator nullified the automatic emergency stop feature known as the Indusi system. Inspector Melville also noted that he assessed the action plan provided back to him by Capital Railway and that "at the time it was satisfactory";

> The notice specified that "When encountering an unusual operational situation, Capital Railway operating personnel do not adequately apply existing operating practices and procedures in a manner that is consistent with safe railway operations. As a result, the safe movement of trains is being compromised on the Capital Railway Ellwood Subdivision";

d. an undated Notice of Violation (Exhibit M-14) issuing an administrative monetary penalty in the amount of $42,708.06 to Capital Railway for an infraction of CROR 439 on May 3, 2017 (Ms. Madaire-Poisson testified that the Notice was issued in September 2017).

[35] Towards a defence of due diligence, the applicant cited, among others, *Ontario (Labour) v. Black & McDonald Limited*, 2009 CanLII 39996 (ON SC) (*Black & McDonald*); *R. v. Gulf of Georgia Towing Co. Ltd.*, 1979 CanLII 483 (BC CA) (*Gulf of Georgia Towing*); and *Canadian Pacific Railway v. Canada (Minister of Transport)*, 2018 TATCE 23 (Review). The applicant argued it maintains its fleet in a compliant manner, trains its staff to meet requirements and, in maintaining the Indusi train brake system, has implemented an additional layer of safety to counteract inevitable human error.

[36] The Minister's representative argued that Capital Railway does not meet the standard of establishing due diligence in that it offered minimal training specific to signal recognition and situational awareness. In support of its argument, the Minister cited, among others, *Cando Rail Services Ltd. v. Canada (Minister of Transport)*, 2019 TATCE 3 (Appeal) *(Cando)*; *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299 *(R. v. Sault Ste. Marie)*; *R. v. Alexander*, 1999 CanLII 18928 (NL CA); and *Canadian National Railway Company v. Canada (Minister of Transport)*, 2019 TATCE 5 (Appeal).

[37] With respect to *Black & McDonald*, the applicant notes the finding that "(t)he fact that an accident occurred does not necessarily lead to the conclusion that every precaution reasonable in the circumstances…were not taken". I concur – the presence of non-compliance does not negate that due diligence may have been present.

[38] With respect to *R. v. CPR, Jackson and McClelland*, 2018 BCPC 181 (CanLII), the applicant notes the finding that "the defence of due diligence involves consideration of what a reasonable person would have done in the circumstances".

[39] In *R. v. Sault Ste. Marie*, the seminal case on due diligence, the Supreme Court found that a defence of what a reasonable man would have done in the circumstances at hand would be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the event.

[40] With *R. v. Sault Ste. Marie*, the Minister noted the court found:

> Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system.

[41] The Minister's representative noted that in *Cando*, the appeal panel discussed what was required to meet the standard set for due diligence in *R. v. Sault Ste. Marie*, as follows (para. 50):

> …there was extensive evidence tendered relative to Cando's approach to safety matters. The training, administrative procedures and periodic efficiency testing of employees performing their duties demonstrate the existence of a robust training program and task auditing procedures. These were all systematically and comprehensively documented throughout the relevant time period and filed as evidence of the pre-event corporate safety culture and practices. … There was clear and specific evidence filed by Cando of its rigorous training, testing, monitoring and follow-up … specifically on the proper braking requirements for the positioning and parking of railcars. Monthly and employee-specific reports were completed on an ongoing basis, and these were filed by Cando in support of it having undertaken the requisite due diligence.

[42] In the case at hand, Capital Railway submitted no documentation into the evidentiary record as to the training, monitoring or task-auditing procedures, nor did they call any witness to speak to these matters. The Minister's representative did introduce four documents provided by Capital Railway pertaining to its training and monitoring.

[43] With respect to the course results, the agenda for the single eight-hour course, and the two mentor observation sheets, these limited documents do not constitute a "proper system to prevent commission of the offence." In fact, they point to a fragmented and non-systematic approach to training and do not demonstrate efficacy of the system. The frequency of past CROR 439 violations speaks to a training system that is not functioning as intended, particularly given Capital Railway's full knowledge of past crew difficulties in complying with this rule.

[44] Using the standard set out in *R. v. Sault Ste. Marie* and as applied in *Cando*, I do not see in the evidentiary record, or in witness testimony, anything that points towards a "comprehensively documented" training program, and no "clear and specific evidence" of a "rigorous training, testing, monitoring and follow-up". Given particularly that Capital Railway makes use of Relief Light Rail Operators who normally operate bus service, one would expect a rigorous and ongoing training program that is clearly targeted to areas of need, thoroughly documented, frequently monitored and followed up with specific focus on areas of demonstrated compliance challenges. This is of greater importance given that at least some of the incidents involved RLROs.

[45] The Minister's representative relied on *Canadian National Railway Company v. Canada (Minister of Transport)*, 2019 TATCE 5 (Appeal). CN had received an AMP for unnecessary operation of railway warning devices (flashing lights and gates) that blocked a highway in Rivers, Manitoba. In applying the standard set out in *R. v. Sault Ste. Marie*, the appeal panel found:

> CN failed to set up a proper and effective safety system to deal with a safety problem in Rivers that it knew had occurred and, without more robust action, could happen again in the course of normal day-to-day operations. Upon receipt of the Operations Inspection Summary Report, CN ought to have immediately set up a specific training program that educated or re-educated employees on the need for compliance with rule 103.1(e) at that location.

[46] In the matter at hand, I find that Capital Railway did not, upon occurrence and re-occurrence of the same rule violation, set up a specific training program targeted at educating or re-educating employees with respect to CROR 439.

[47] With respect to *Gulf of Georgia Towing*, the applicant's representative argued that human error is inevitable, and that Capital Railway's Indusi system was designed to counteract such error. He quoted the court's decision which stated "that due diligence under the circumstances here might include specific written instructions, maybe locking devices for other valves, possible alarm systems". The court found:

> [13]… this company did not make adequate provisions in its systems or otherwise to prevent a spill caused by a valve being open that should not have been open. I think that the length that the employer must go to will depend on all the circumstances including the magnitude of the damage that will be done in the event of a mistake and the likelihood of there being a mistake For fuel barges, if one does nothing but hire careful people, train them carefully and tell them not to leave valves open, inevitably a valve will be left open.

[48] In the matter at hand, I find that the presence of the Indusi system will not prevent the non-compliance. If working as intended, it may reduce the likelihood of a catastrophic outcome resulting from non-compliance, but no evidence was introduced that it would prevent the non-compliance from occurring. While it may function as the "alarm system" identified in *Gulf of Georgia Towing*, evidence was also introduced that the system can be, and was, overridden by operating staff. The ability to override the safety feature in place to minimize the impact of human error speaks to the importance maintaining a fully, properly trained and monitored staff. This is further emphasized by Capital Railway's use of single operator trains, lacking the additional checks and counter-checks provided by a second operator in the cab.

[49] With respect to the Indusi train brake system meeting the test of being an adequate provision to prevent non-compliance,

a. no technical documentation regarding the system was introduced as evidence;

b. no expert witness was called by the applicant to speak to the capacity of the system;

c. the system appears to activate after the non-compliance has occurred and, as such, is not preventative of the non-compliance, although it could reduce the risk of subsequent and more serious incidents;

d. the system can be over-ridden by an operator, thus in part negating the additional layer of safety it may offer, particularly where the operator may have lost situational awareness; and

e. the primary document introduced into the evidentiary record to speak to the Indusi system (A-4) is a general document that does not speak to the system operating capacities.

[50] I do not find that Capital Railway exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. There was little introduced into the evidentiary record that would support the belief that Capital Railway had effectively managed risk related to safety matters, in this case CROR 439 violations by RLROs.

C. Mitigating Circumstances

[51] In determining the value of the AMP, and as described by Ms. Madaire-Poisson during her testimony, the base value of the AMP was established at $75,000 given that this was a

second offence for the same rule. The Minister then has the ability to increase or decrease the value based upon aggravating and mitigating factors. In the matter at hand, Ms. Madaire-Poisson testified that no aggravating factors were assessed, but that four of five possible mitigating factors were found, in that Capital Railway:

a. took reasonable efforts to mitigate the harm from the infraction;

b. provided reasonable assistance to the Minister;

c. brought the violation to the attention of the Minister; and

d. admitted the violation.

[52] These four mitigating factors each resulted in a 6 per cent reduction in the base value of the AMP – a 24 per cent reduction overall. This should have reduced the value of the AMP by $18,000 (from $75,000 to a total of $57,000). However, as Ms. Madaire-Poisson stated, she made a mathematical error and reduced the value to $56,250 – an error in Capital Railway's favour.

[53] Ms. Madaire-Poisson also testified that while the inspector included a fifth mitigating factor in his recommendation, the Indusi system worked as intended; she "didn't consider it as a mitigating factor." However, the applicant argued that the fifth factor should have been considered in the valuation of the AMP.

[54] In the matter at hand, I would be inclined to adjust the monetary penalty downward to reflect, as Inspector Melville noted in his AMP checklist, the Indusi system functioning as intended. However, I must balance this off in consideration of:

a. the lack of expert testimony or technical material being submitted into the evidentiary record on the Indusi system; and

b. the opportunity for an operator to override the system.

[55] Given the above, I concur that the Indusi system should not be considered as a fifth mitigating factor.

[56] As such, no further reductions will be made to the AMP imposed by the Minister on Capital Railway in the amount of $56,250. Capital Railway will, however, continue to benefit from the mathematical error made in the calculation by Transport Canada.

[57] While not a consideration in this determination, I feel it timely to remind both parties of findings and public recommendations from the Transportation Safety Board of Canada, specifically:

a. a general recommendation to the rail industry that "the Department of Transport require major Canadian passenger and freight railways implement physical fail-safe train controls, beginning with Canada's high-speed rail corridors." (TSB R13-01). This recommendation carries an "active" designation from the TSB, which finds the efforts made to date "satisfactory in part"; and

b. "If railways in Canada intend to implement single-person train operations, then they need to examine all the risks and make sure measures are in place to mitigate those risks."

(TSB, Lac-Mégantic Runaway Train and Derailment Investigation Summary, R13D0054).

IV. DETERMINATION

[58] The Minister of Transport has proven, on a balance of probabilities, that Capital Railway violated section 17.2 of the *Railway Safety Act*. The imposition of an administrative monetary penalty is confirmed.

[59] The total amount of $56,250 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

September 5, 2019

(Original signed)

Mark Conrad

Member

Appearances

For the Minister: Eric Villemure

For the Applicant: Stuart Huxley