



TRANSPORTATION

Appeal from Canadian Transportation Agency decision (Letter Decision No. CONF-11-2018) holding that appellant breached its level of services obligations pursuant to *Canada Transportation Act*, S.C. 1996, c. 10, s. 113(1) in failing to repair railway line damaged by flood — Appellant federally regulated railway company — Railway only link to town of Churchill — Appellant declaring *force majeure* following preliminary damage assessment prepared by engineering firm AECOM — Announcing that operation on line to be suspended indefinitely — Stating that unable to resume services on line due to enormous cost of repairing damage — Railway line later repaired, now operational — Agency stating that, while *force majeure* can justify reasonable pause, railway company only permanently relieved of its service obligations by following transfer, discontinuance process under Act — Indicating that question of breach turning on length of reasonable pause — Ordered appellant to complete repairs, resume operations as expeditiously as possible — Whether Agency erring in holding that railway company cannot be indefinitely exempted from its service obligations under Act without following transfer, discontinuance process — Reasonableness inherent limitation on scope, effect of level of services obligations under s. 113(1) — Railway company cannot be compelled to bankrupt itself to meet all public demand for its services — Accordingly, reasonableness may require indefinite pause on railway company's level of services obligations if alternative option means compelling company to bankrupt itself — Questions about applicability of transfer, discontinuance provisions not necessarily engaged once railway operations ceasing indefinitely — Transfer, discontinuance provisions in Act, Part III, Division V applying to situations quite different than one appellant finding itself in — Specifically, Division V applying when railway company *intending* to discontinue railway line — Discontinuance process one that railway company, in normal course of things, deliberately choosing to embark on — Key question arising out of May 2017 *force majeure* event, appellant's financial circumstances relating to length of reasonable pause, specifically, whether appellant entitled to indefinite pause under circumstances — Agency erring in requiring appellant to initiate transfer, discontinuance process as condition precedent to being granted indefinite pause in its service obligations — This was mischaracterization of applicable legal test — Railway company's financial situation central consideration in determining what Agency can reasonably require of company with respect to its level of services obligations — Failure to account for appellant's financial situation amounting to error of law — Not enough for Agency to note importance of considering railway company's financial situation in determining duration of reasonable pause — Appeal allowed.

HUDSON BAY RAILWAY COMPANY V. ROSNER (A-267-18, 2021 FCA 147, Nadon J.A., reasons for judgment dated July 20, 2021, 19 pp.)