TRANSPORTATION

Appeal from Federal Court (F.C.) decision (2016 FC 1190) allowing respondent's application for judicial review of arbitrator's decision regarding level of services agreement between appellant, respondent — Appellant, shipper of grain, respondent unable to negotiate contract for 2015–2016 crop year — Arbitrator imposing terms including future rail car supply for appellant's ongoing traffic requirements, performance standard, force majeure clause — Finding, *inter alia*, that respondent's ability to ration number of cars provided to its customers during peak periods not mandatory part of level of services agreement — F.C. finding that arbitrator failing to take proper account of certain mandatory statutory requirements, ignoring respondent's obligations to other shippers, operational restrictions — Issue at heart of appeal whether reasonable for arbitrator not to include respondent's proposed rationing methodology in level of services agreement — *Canada Transportation Act*, S.C. 1996, c.10, ss. 169.37, 169.38(1) requiring arbitrator to consider each factor enumerated in s. 169.37, to create agreement commercially fair, reasonable to parties — Arbitrator having regard to respondent's obligations to other shippers (Act, s. 169.37(d)), to both parties' operational requirements, restrictions (Act, s. 169.37(f)) — Nothing in Act, Part IV obligating arbitrator to adopt respondent's rationing policy — Reasonable for arbitrator to account for respondent's obligations to other shippers, operational requirements, restrictions without adopting its proposed rationing policy — Arbitrator's decision not completely removing respondent's ability to ration cars — Performance standards clause, force majeure clause both providing flexibility to respondent to adjust number of cars — Reasonable for arbitrator to consider these clauses as sufficient to account for respondent's obligations to other shippers, parties' operational requirements, restrictions — Helpful for arbitrators in future to specify more clearly what should be done to address extraordinary situations beyond formula provided in decision herein during periods of peak demand — Performance standard, force majeure clause adequate in this case — Fair reading of arbitration decision showing that arbitrator considered whether decision commercially fair, reasonable — Appeal allowed.

LOUIS DREYFUS COMMODITIES CANADA LTD. V. CANADIAN NATIONAL RAILWAY COMPANY (A-437-16, 2018 FCA 87, Near J.A., judgment dated May 4, 2018, 16 pp.)