
ACCESS DISPUTE RESOLUTION COMMITTEE

Determination No. AD28

(Hearing held at Kings Cross on 17th September 2003)

[Note: the previous published determination is no. AD29 (hearing on 24th April 2003)]

1. The Committee was asked by the claimants, Thameslink Ltd, and South Central, to rule that Network Rail (NRI), in including within Qualifying Expenditure (QX), for the Managed Stations, a charge for HQ accommodation costs for area support staff, in addition to the 6% management charge, had misapplied the terms of the Independent Station Access Conditions.
2. The Committee reviewed its locus in relation to disputes of this nature: in particular that
 - 2.1. the dispute related to the application of Condition 33 of the Independent Station Access Conditions;
 - 2.2. paragraph 33.3(C) of those conditions provides that where the Station Facility Owner and the Passenger Operator “*fail to reach agreement on the amount of the Fixed Charge...the dispute as to that amount may be referred...for determination...by an expert...appointed and acting in accordance with the...Access Dispute Resolution Rules*”;
 - 2.3. the matter in dispute was not one of the amount of the Fixed Charge (i.e. the arithmetic of calculation), but rather a question of principle as to whether a specific head of expenditure (HQ accommodation charges for area support staff) could be proposed for inclusion within QX;
 - 2.4. the parties were insistent that they were not seeking any determination from the Committee in respect of any amount of QX.
 - 2.5. The Committee therefore concluded that, it could legitimately determine the issue as one falling under the jurisdiction of Independent Station Access Condition (ISAC) 53.1, as a matter “*not otherwise provided in these Station Access Conditions*”.
3. The Committee noted the various arguments advanced by the parties in respect of
 - 3.1. the time at which the accommodation charges had first been introduced;
 - 3.2. the manner of their introduction, and the relationship of recent charges to those in earlier years;
 - 3.3. the relationship between QX, and the sums that were included within the Management Charge approved annually by the Regulator; and concluded that these are all matters of process or amount that do not address the matter of principle.
4. The Committee then addressed the operative definitions in paragraph 1.1 of Annex 2: *Qualifying Expenditure* of the ISAC. It noted that the accommodation in question was that needed to provide offices for those Area Support Staff who provided the means by which NRI was able to fulfil certain of its obligations that applied in common to a number of stations. The salient test was whether the provision of such accommodation “*can be properly attributed to the operation of the Station as a railway station*”.

5. The Committee therefore determined that, in principle, the accommodation of staff essential “*to the operation of the Station as a railway station*” was a legitimate head of expenditure that could be proposed for inclusion in QX, whether those staff were located on the Stations in question, or at some remote location.
6. For the avoidance of doubt, this determination only relates to the matter of principle as to whether the accommodation for a specific category of staff MAY be included in QX. Such determination does not address any question of whether a particular figure, either proposed for the future, or raised in the past, meets the criterion for being “*costs and expenses reasonably payable or incurred by the Station Facility Owner*”. Any test of reasonableness in relation to QX relates to a consideration of amount, and as such does not fall within the jurisdiction of this Committee.

Sir Anthony Holland,

Chairman,

17th September 2003