
ACCESS DISPUTES RESOLUTION COMMITTEE

MINUTES OF THE 2ND MEETING HELD ON 14TH NOVEMBER 1994, BOARDROOM, RAILTRACK HQ

Present:

Terry Worrall, Director Safety, BRB (Chairman)
Bob Urie, Director, N.E. TOC
Ian Braybrook, Director, Loadhaul
Lloyd Rodgers, Gatwick Express
Nigel Fulford, Great Western
Philip O'Donnell, Head of Passenger, Railtrack
Robert Watson, South Zone, Railtrack

In attendance:

Martin Shrubsole, BRB HQ
Chris Blackman, Railtrack HQ

Terry Worrall was welcomed to his first meeting of the Committee.

2.1 Minutes of the Meeting held on 1st November 1994

2/1.1 Correction

Minute 1.1, 3rd line; the word "arbitration" should be substituted for "adjudication".

2/1.2 Matters Arising

Minute 1.3 Chairmanship

Noted that by the year end there should be a clearer idea of workload for the Committee; agreed that it should be an objective to be in a position to make nominations for a permanent appointment by then.

Minute 4

Noted the matter has not yet been raised with OPRAF. It was clear that the Regulator would want to consult widely on the relevant issues, and accordingly it would be prudent for the Committee to keep OPRAF informed.

2/2 Committee Membership: Appointment of Representatives/Alternates

The position on identities of alternates and membership of the Timetabling Committee is as follows:-

<u>ACCESS DISPUTES RESOLUTION COMMITTEE MEMBER</u>	<u>ACCESS DISPUTES RESOLUTION COMMITTEE ALTERNATE</u>	<u>TIMETABLING COMMITTEE MEMBER</u>	<u>TIMETABLING COMMITTEE ALTERNATE</u>
Richard George Bob Urie Ian Braybrook Lloyd Rodgers Philip O'Donnell John Ellis	Nigel Fulford Dick Fearn Julian Worth Adrian Shooter Grahame Cooper Robert Watson	Nigel Fulford Mike Hodson Martin Idale Tony Crabtree Philip O'Donnell Robert Watson	tba tba Graham Laycock Simon Taylor Nick Fulcher Geoff Appleby

2/3 Report of Meeting with the Regulator on 7.11.94

The Committee noted the Regulator's view that the procedure should be vetted by lawyers and, indeed, both BR and Railtrack had asked their lawyers to scrutinise the procedures and processes drafted for dealing with Agenda Item 4 below. The Committee expressed concern at the proposition that the Clerk of the Committee should be a lawyer. The Committee's view is that it should be seen as an operational committee deciding on railway matters, and able to resolve issues quickly in a practical way. They accepted that their activities should be able to stand up to scrutiny, and it would be proper to have access to legal advice on issues before each meeting.

Martin Shrubsole confirmed that the question of amendments to the Access Conditions had been raised, and the view that the Annex as well as Part D may be subject to proposals for change.

2/4 Process and Procedures Document

The Committee tabled the paper from Chris Blackman and Martin Shrubsole on processes and rules of proceedings for the Timetabling Committee, and elected to scrutinise it paragraph by paragraph. The Committee noted that its decisions on the document would be subject to full scrutiny by BRB and Railtrack lawyers.

Clause A 2.1

It was noted that there was no provision for the Independent Station Operators to be represented on the Timetabling Committee. So far as the need for representation on the Access Disputes Resolution Committee is concerned, Philip O'Donnell observed that platforming matters are for access contracts and the issue of ISOs is irrelevant; indeed, he perceived the inclusion of such references to be a possible mistake in drafting.

Clause A 2.2

Following lengthy discussion about representation it was agreed that this clause should read "the members of the Timetabling Sub-Committee shall be as determined by the individual members of the Access Disputes Resolution Committee". The Committee agreed that the lawyers needed to ensure that the wording implied that each member of the main Committee 'nominated' one individual member of the Timetabling Sub-Committee.

Clause A 2.4

The Committee considered the desirability of reviewing the representation after the first round of referrals for the May 1995 timetable, but concluded that it would stress to the Regulator its view that the particular representatives initially appointed should run as members until 1st April 1996 except as determined otherwise by the Access Disputes Resolution Committee.

In view of the amendments made to A2.3, the wording of the last sentence needs review. Martin Shrubsole and Chris Blackman were remitted to address this with the lawyers, and also how people would "leave" the Committee.

Clause A 2.8 and 2.10

The Committee considered propositions (a) (b) (c):-

(a) The Committee endorsed the proposal for deletion of 2.8.1 (iii) and 2.10;

(b) The Committee decided to retain Clause 2.8.5 but to delete the phrase "by one representative of the parties insurers and,"

(c) The Committee endorsed the proposal to delete 2.8.2.

It was agreed to recommend amendment of 2.8.3 to read "notwithstanding where one of its employers or Directors is a member of the Committee, a party to a dispute must send a representative

to attend that part of the Committee meeting at which that dispute is considered.”

The Committee endorsed the proposed deletion of 2.8.7 and the replacement by the wording shown in the paper.

Clause A 5.4

The Committee, addressing propositions d) and e), considered that attempting to preserve confidentiality would fetter the Committee with restrictions and make the whole process more difficult. Moreover, if justice is to be done then there is a need for general openness, although it was recognised that there could be instances where the preservation of a degree of confidentiality was vital to a company’s commercial business. The Committee concluded that proposition (d) should prevail, with the word “invariably” replaced by “normally”, and that proposition (e) should be added to (d), preceded by the words “However, exceptionally”

The Committee then discussed the paradox that a party may not be able to identify other parties in the dispute because of the confidentiality clause (D2.2.2), and therefore agreed that the responsibility of ensuring that papers are served on all parties to a dispute should be that of the Secretary to the Committee. In this respect Clause D2.2.2 (b) provides appropriate protection and exemption.

However, a party may wish to preserve confidentiality, and, in the event of a Committee being unwilling to accept such a request for confidentiality in relation to a hearing, then the Train Operator concerned should have the option to withdraw.

The Committee agreed that these issues should be discussed with the Regulator.

Action: Martin Shrubsole and Chris Blackman

Clause A 5.9

The Committee agreed that it was essential to reach a resolution of a dispute and accordingly clause 5.9(iii) is unnecessary. It noted that, in the case of a decision being put to the vote, it might not be possible to obtain a unanimous verdict; in such cases the Chairman would make a ruling under 5.9 (ii).

Any decision of the Sub-Committee will normally be advised by the Chairman to the parties at the meeting, and subsequently confirmed in writing.

Clause A 5.11

The Committee considered the proposed content of the minutes and agreed that there should be (f) a full record of the meeting made for the Committee, which they must approve, and secondly (h) a record and reasons of the determinations would be circulated to the industry.

A copy of the approved Minutes shall be sent to the Regulator.

Clause A 5.12

The Committee proposed that the word “date” in the third line should be replaced by the word “communication”.

Clause A 5.13

There was discussion about alternative treatment of the results of a vote, such as a simple majority, which could potentially mean that Railtrack would be continually outvoted. On the other hand, with a 75% majority rule, Railtrack with 2 potential votes have effectively a power of veto. However the Committee noted that it would need to recognise the futility of voting on party lines and set itself to reach positive soundly based decisions, or otherwise lose credibility.

It was agreed that further consideration of the merits or otherwise of a 75% majority requirement were inappropriate until the circumstances for use arose and the clause were tested.

The Committee wish to reserve the right to come back with a further view on the application of 5.13 in the future in the light of experience.

Part B Timetable Appeal

The Committee considered the timescales for a bidder making a challenge to a proposed change to the applicable rules of plan and concluded that it is in the interest of all industry parties for this to be done as soon as possible. In particular, it recommended that it is done within 5 days of the start of the bidding cycle , instead of being left until the end of the bidding cycle as is now shown in the conditions. The present position leaves resolution far too late in the process and could sterilise the second iteration while any referrals are heard by the Timetabling Committee.

Clause A 5.5

The Committee endorsed propositions (j) (k) (l) and (m).

Clause A 5.2

The Committee noted that if the Vice-Chairman were chairing the Committee he would not have the right to vote. Therefore, for such meetings at which a Vice-Chairman would take the chair, it was considered that his alternate may be present at the meeting and able to vote. This proposition would be discussed with the Regulator and BR / RT lawyers.

Action: Martin Shrubsole and Chris Blackman

2/5 Timescales for appeals procedures.

The Committee noted the paper tabled by Chris Blackman. It endorsed paragraph 3.3 and determined that immediate priority should be given to hearing appeals concerning Rules of the Route and Rules of the Plan.

It noted the timescales in Part 2 but considered that insufficient account had been taken of the need to obtain information from other parties.

Action: Chris Blackman

The Committee agreed that an advice note would be sent immediately to all industry parties giving notice that the Timetabling Committee will meet to consider referrals on Thursday 1st December. In the meantime there would of course be further discussions with the Regulator to resolve outstanding issues on process and procedure.

Action: Chris Blackman

2/6 Date of Next Meeting

The next meeting would be fixed for late afternoon/evening in the next 7-10 days and would be a meeting of the ADRC with members of the Timetabling sub-Committee invited to attend as observers. It was also thought appropriate for members of ADRC to "sit in" on the first Timetabling sub-Committee.

Action: Martin Shrubsole and Chris Blackman