

ACCESS DISPUTE RESOLUTION RULES
ADP 35, 36 AND 38 CONCERNING MANAGED STATION EXPENDITURE

NETWORK RAIL'S STATEMENT CONCERNING ENTITLEMENT TO
INSPECTION AND AS TO THE CORRECT SPLIT BETWEEN
QUALIFYING AND NON QUALIFYING EXPENDITURE

11. THE GOVIA REFERRAL

11.1 Govia claims in respect of all relevant accounting years including 2005/6 and 2006/7. In summary Govia asserts:

11.2 Insurance Costs

- All of the insurance premiums are included in QX for 2006/7 and previous years but for 2007/8 the Respondent accepts that 12% of the premiums relates to non QX. The reduction should apply to the earlier years.
- The value of that percentage has been increased by the introduction of a lower deductible¹ by making a greater number of claims insured, some of which would not have been eligible to be charged to QX because they arise from Network Rail's negligence and are not chargeable to QX.

11.6 Staff Costs

- The 95% QX 5% non QX is unsupported.
- Network Rail's time and motion study² which it will not disclose would show that the division is wrong.

11.7 Inspections

- Network Rail failed to provide access to the underlying contracts in respect ofInsurance.....

12. FIRST'S REFERRAL

12.1 First's Referral is essentially in the same terms as that of Govia save in the following respects:

- First's Referral relates only to the year 2006-7.

13. REMEDIES SOUGHT

13.1 The remedies sought by the Claimants are:

Insurance

- QX be reduced by 12% for all relevant accounting years including 2006/7 (First) and 2005/6 and 2007/8 (Govia).
- Network Rail to reduce the QX further to reflect the impact of the lower deductible the amount to be determined by expert if not agreed.

14. THE UNDERLYING POINTS OF PRINCIPLE AND NETWORK RAIL'S SUBMISSIONS CONCERNING THEM

14.19.1 [deleted]

14.19.2 Staff Costs - Staff Costs are broken down into Station Management (95% QX), Clerical (95% QX), Team Leaders (95% QX) Station Services (100% QX), Station Officers (95% QX), Control and Information (1)(100%QX) and (2) (55% QX).

14.19.3 These and very similar percentages originally came from the privatisation process when various groups assessed such splits between the BRB and Railtrack on a common sense basis. Thus 100% is an appropriate assessment for information provision, while 95% for Customer Services is an appropriate assessment because they would have to sign in contractors who might not be doing work which relates to QX. The percentages were not based on any scientific study of the work actually

¹ The relevant deductible is in fact nil in respect of third party injury claims.

² The study was conducted by Peninsular Business Solutions for Virgin and other TOCs, not Network Rail.

carried out. There were therefore no accounting books or anything else to justify them beyond common sense and experience.

- 14.19.4 It was not until about 2006 that at a meeting in Edinburgh the TOCs, in particular Virgin, said they wanted to conduct a time study on staff. The study was carried out based on activity on one day from 9am to 6pm. The study was carried out at only 11 of the 17 Managed Stations in late 2007. Virgin Trains, First Group, GNER, Central Trains, and Northern Trains took part in the study and contributed to its cost.
- 14.19.5 The study identified the staff involved in the activities and clocked them every 15 minutes. This led to mistakes. If for instance a mobility assistance person was driving a buggy empty he would be logged as non QX even though he was going down to collect a passenger. The hourly security inspection was partially assessed as non QX save at Gatwick where it and all other staff activities were assessed at 100% QX. TOCs argued that this was correct because the inspections were of areas which were not Common. Network Rail's considered this was wrong because for instance a bomb in arches under station would blow up the station and therefore the security inspection of the arches in fact relates to the station as a whole. This approach is in accordance with the requirements of section 119 of the Railways Act 1993 and of the Director of Transport Security and Contingencies ("TRANSEC") established under it requiring Network Rail to perform security checks of such areas.
- 14.19.6 Virgin had specifically reserved its position of staff costs from the year 2002-3 onwards. The other contributing TOCs had associated themselves with that reservation from 2005-6.
- 14.19.7 While Network Rail did not for the reasons set out above agree with the study's conclusions a commercial compromise was reached of e.g. 75% QX for security. Refunds were made on this basis to the relevant TOCs to when they had first reserved their positions. For all TOCs going forward from the year 2006-7 the same percentages are being applied.
- 14.19.8 Thus this is an example of there having been an agreed QX non QX split from privatisation, which was challenged by a number of TOCs which reserved their rights, a commercial compromise reached, and the same percentage adopted for all TOCs going forward. As the Claimants did not themselves reserve their rights, and as they are not entitled to pursue their claims for adjustment or breach of contract, and as their treatment in respect of staff costs was not in breach of contract in any event, Network Rail submits that they are not entitled to seek reimbursement of Staff Costs QX as alleged or at all.
- 14.19.9 [deleted].
- 14.19.17 Insurance** - In 2006-7 Network Rail changed insurance arrangements for the year 2007-8 forward for Managed Stations by reducing the excess from £100k to £nil per claim for public liability claims. This was in line with general practice on the property owners' market where landlords arrange insurance on behalf of tenants.
- 14.19.18** While this resulted in a higher premium charged to TOCs, it reduced uncertainty and administrative costs in dealing with claims, ended the risk of unlimited claims under £100,000 which under the previous insurance the TOCs had to fund themselves where there was no third party negligence e.g. of a contractor.
- 14.19.19** The claims handling service provided under the insurance has reduced the routine work of Network Rail and provided the opportunity to review staffing levels. The new policy covers all QX claims whether caused by TOC or Network Rail's negligence.
- 14.19.20** As to the 12% discount one TOC owning group considered that an allowance should be made for the retail areas within stations including those shared areas where retail customers and passengers both used. A measured survey of Liverpool Street station was undertaken which would have resulted in a 4% reduction in the QX for insurance. Having consulted several owning groups Network Rail considered that going forward a reduction of 12% would be given to include the non QX and Common areas of the stations.
- 14.19.21** Network Rail submits that to suggest that simply because a new insurance

arrangement has been introduced and a 12% reduction on the earlier assessment of the QX non QX split has been agreed, that the same is evidence that the previous arrangements which had been in place since privatisation were in breach of the condition 98 or otherwise is mistaken. To hold otherwise would have the unfortunate effect of discouraging Network Rail from considering improvements in the provision of QX services, or the reduction in QX charges for fear of TOCs claiming that all improvements should be backdated within the relevant limitation period.

14.19.22 Network Rail denies that the Claimants are entitled to any further reduction in insurance costs as alleged or at all.

14.19.23 Again the Claimants are entitled to disagree but if so must make a claim under condition 53 which for the reasons explained they are in any event unable to do. Even were they able to do so they would have to demonstrate that there was a breach which is denied and that they have suffered loss, that is to say to prove the extent to which they have allegedly been overcharged.