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## ***NETWORK and VEHICLE CHANGE COMMITTEE***

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### **Determination No. NV 15 and 16**

*Hearing held at Kings Cross on 23rd October 2000*

*[Note: previous published determination was determination no.NV13]*

1. The Committee was asked, in complementary submissions from North Western Trains Co. Ltd (trading as First North Western (FNW)), and Northern Spirit Ltd (NS) to rule that Railtrack, in a Notice of Network Change dated 6<sup>th</sup> July 2000, was wrong to introduce the proposed change under Track Access Condition G5 “Changes Imposed by Competent Authorities”.
2. The Committee noted that the matter at issue related to the imposition of speed restrictions on the approaches from the South to Manchester Piccadilly Station, and that the two submissions covered substantially the same ground. The Committee therefore decided, with the agreement of the parties, that the matter should be considered at a joint hearing, resulting in a single Determination, and treating all the points made in both submissions as generally points made in common.
3. The Committee established that the dispute arose from the following sequence of events, each in their way arising from the need to assure maximum safety for all operations:
  - 3.1. October 1999: enforcement and improvement orders issued by HMRI, following Ladbroke Grove, in respect of “Top 22” and “Top 203” signals include signals in the Manchester Area. Special Signal Box instructions are issued, by Railtrack, to preclude some parallel routes;
  - 3.2. November 1999: following discussions about speed restrictions with HMRI, Railtrack impose a blanket speed restriction of 25mph introduced between 188 miles 27 chains (a gantry North of Ardwick Jct) and Manchester Piccadilly Station/Piccadilly West Jct. This was introduced as a Temporary Speed Restriction (TSR), with appropriate signing etc., in the expectation that the restriction would be removed once specific Signal Passed At Danger (SPAD) mitigation measures were introduced;
  - 3.3. February 2000: HMRI review the site from a specially provided train;
  - 3.4. May 2000: Railtrack share with HMRI a consultants’ report on risk assessment of the track layout in the approaches to Manchester Piccadilly;
  - 3.5. June 2000: HMRI give written advice to Railtrack that the speed should be further restricted to 20 mph, and over a longer stretch; and that, if Railtrack do not adopt this measure, HMRI will take enforcement action;
  - 3.6. July 2000: following informal advice to Train Operators at the Timetable Conference, Railtrack issue a Notice of Network Change dated 6<sup>th</sup> July; this states that the extended restriction to 20 mph is being introduced in accordance with Track Access Condition G5 as a change imposed by a competent authority, and announces that it will take the form of a Permanent Speed Restriction (PSR), with associated

adjustments to Rules of the Route/Rules of the Plan;

- 3.7. August 2000 to date: Permanent 20 mph Speed Restriction in force in accordance with the Notice of Network Change dated 6<sup>th</sup> July.
4. The Committee was very clear that it was not part of its role to comment on the merits of the safety measures taken, or the debates that had taken place between Railtrack and HMRI. However, the nature of the references meant that the Committee had to take into consideration the following points:
  - 4.1. the 25 mph TSR introduced in November 1999 reflected Railtrack's best judgement of the most appropriate measures to take at the time, in the interests of all parties;
  - 4.2. the 25 mph restriction, which had throughout been administered as a Temporary Speed Restriction, had not been introduced under the provisions of Track Access Condition G1.9 ("*Network Change for safety reasons*"), although that option would have been open to Railtrack, had it expected that the restriction might last some time;
  - 4.3. Railtrack had had the option, at any point since the introduction of the 25 mph TSR to invoke the provisions of Track Access Condition G1.8 and proposing a formal Network Change. Once the TSR had been in force for six months, then, in accordance with Track Access Condition G1.8, and upon receipt of notice from a Train Operator, Railtrack would have been obliged to proceed in this way; neither Train Operator had issued any notice to place such an obligation upon Railtrack;
  - 4.4. the form of the advice given by HMRI to Railtrack was expressed in terms that could only reasonably be construed as an instruction. As such it falls within the definition of a Direction which "*means, in respect of an Access Agreement, any direction, requirement, instruction or rule binding on either or both of the Access Parties,*" ;
  - 4.5. the Committee noted that Railtrack believed that it was being given an inappropriate instruction by HMRI, and that it had expressed this view strongly in writing. The Committee was therefore satisfied that, in modifying the speed restriction to 20mph, and extending it Southwards to 188 miles 08 chains, Railtrack was responding to a Direction, that the Direction came from a Competent Authority, and that therefore Railtrack was entitled to make use of the provisions of Track Access Condition G5 ("*CHANGES IMPOSED BY COMPETENT AUTHORITIES*"). The Committee did not consider that, before it could claim the benefit of these provisions in respect of Directions from a Competent Authority, it was necessary for Railtrack to have caused the Competent Authority to invoke formal enforcement measures, and, for example, issue an Improvement Notice.
  - 4.6. Railtrack had decided that the revised speed restriction should be introduced as a Permanent Speed Restriction, using the procedures and signing prescribed for a PSR, as they believed that this would be a more appropriate arrangement, on safety grounds, than continuing with the TSR method of implementation. Although this belief was challenged by the Train Operators, the Committee did not consider that it lay within its locus to review the merits of such a decision made on safety grounds.

However, the Committee did acknowledge that there was a significant commercial difference, for the Train Operators, as between a TSR with the associated operation of a Performance Regime, and a PSR incorporated into Rules of the Route/Rules of the Plan; it was concerned that the consultation with Train Operators, concerning the reasons for the restriction and its method of implementation, appeared to have been inadequate.

5. The Committee considered that within its determination it should ensure that:
  - 5.1. it reminded the parties that they should not pursue commercial advantage in ways that might be at odds with their safety responsibilities. At the same time, if there were suspicions, in any mind, that the choice between safety options (e.g. as between TSR and PSR) was being driven by considerations of commercial advantage, it would work against the principle of collaboration as a foundation of Safety Management;
  - 5.2. to the extent that any party might require to re-visit or revise past actions, this should not result in any possible cause for confusion affecting day to day train operations;
  - 5.3. it made the distinction between the consequences (safety and commercial) of the action that Railtrack had taken on its own assessment in November 1999, and those that flowed from the actions taken pursuant to the Direction given by HMRI.
  
6. The Committee therefore determined that:
  - 6.1. the imposition from November 1999 of a 25 mph temporary speed restriction between 188m.27ch. and Manchester Piccadilly Station and Piccadilly West Junction was a case of Railtrack discharging its own responsibility towards managing risk. The effect of introducing that speed restriction was “materially to affect the operation of the Network” and as such fell within the scope of Network Change;
  - 6.2. once it had become apparent to Railtrack that the 25 mph speed restriction would require to remain in force for a prolonged period, it was incumbent upon Railtrack to be prepared to carry out full consultation with all affected train operators, treating the matter as one of Network Change introduced under Track Access Condition G1. To the extent to which this has not already been done, it should be undertaken without delay. This will imply the modification or withdrawal of the Network Change Notice dated 6<sup>th</sup> July 2000 and its replacement by another Network Change Notice that covers both the earlier (25mph) and later (20 mph) restrictions, and which addresses the following points of principle;
  - 6.3. introduction of any speed restriction as a Network Change requires an assessment of an amount of compensation in accordance with condition G2.2. For the avoidance of doubt any calculation of compensation in respect of the impact of a 25 mph restriction between 188m.27ch. and Manchester Piccadilly Station and Piccadilly West Junction should be based upon the following principles:
    - 6.3.1. the effective commencement date of any compensation payable in respect of a 25mph speed restriction should be May 2000, as if the consultation had been

triggered, whether by Railtrack or by a Train Operator, at the expiry of six months within the context of Condition G1.8;

- 6.3.2. the intervention by HMRI in letters indicating specific expectations as to the imposition of a lower speed limit (20 mph) over an extended area (back to Ardwick Junction (188m.08ch.), together with clear indications of the enforcement action that would follow were such actions not implemented, does constitute Direction by a Competent Authority within the terms of Access Condition G5. As a consequence, it is appropriate that the costs of any incremental restrictions that Railtrack might impose on Train Operators and the Timetable, over and above those already required to implement a 25 mph TSR between 188m.27ch. and Manchester Piccadilly, should lie where they fall, in accordance with Access Condition G5.1(c);
- 6.3.3. the Committee leaves to Railtrack the decision as to which, as between a prolonged Temporary Speed Restriction (TSR), or conversion to a Permanent speed Restriction (PSR) is the most effective operational means of achieving the necessary safety ends;
- 6.3.4. nothing in this determination is intended to, or should in any way, impede Railtrack in carrying out its safety responsibilities, nor should it be interpreted as requiring Railtrack to withdraw, publicly modify, or otherwise change, the practical operating arrangements and instructions that have been promulgated as a consequence of the Notice of Network Change, dated 6<sup>th</sup> July, and all such arrangements and instructions should continue in force without interruption.
- 6.4. However, in calculating the commercial implications of the prolonged speed restrictions in this specific case, Railtrack should not be entitled to any benefit, to the detriment of a Train Operator, from implementing a PSR (with associated amendments to Rules of the Route/Rules of the Plan), as compared to continuing with a TSR (with monitoring of delays and corresponding impact upon performance regimes).
- 6.5. As between prolonging debate and dispute on detailed implementation of the foregoing ruling, and acting collaboratively for the implementation of SPAD reduction measures aimed at maximising available network capacity, all parties are enjoined to concentrate their efforts on the latter.

Bryan Driver  
Chairman  
Network and Vehicle Change Committee