
NETWORK and VEHICLE CHANGE SUB-COMMITTEE

DETERMINATION No. 2

Hearing held at Euston House on 12th November 1996

The Committee was asked, on the basis of a joint reference from South Wales & West Railway and Railtrack, to determine whether Railtrack's ceasing to provide copies of its weather forecasts to South Wales & West constitutes a Network Change.

The Committee noted that, at a meeting on 16th October 1996, the Access Dispute Resolution Committee minuted, on a matter of jurisdiction, that this question should be handled "through the procedures laid down in Part G". The Committee noted that this ruling, which re-affirmed the principle set out in Determination No.1 of the Access Dispute Resolution Committee of December 1995, required that the parties make use of the Network Change procedures (Track Access Condition G) to determine the nature of the change; the ruling did not imply that ADRC had itself opined on whether or not the change was a Network Change, nor that the Network and Vehicle Change Committee should construe a ruling on jurisdiction as implying any form of direction on the nature of the change.

The Committee noted that the reference resulted from the specific initiative of one Train Operator but that advice had been given that this was a case where other Train Operators had expressed an interest in the outcome.

The Committee considered that the Weather Forecast could contain information that was vital to the operation of the Network or of trains operated by that Operator on the Network. It would therefore be difficult to deny that Weather Forecasts qualified as "Operational Documentation".

It noted however that, whilst Railtrack was bound by the terms of the Group Standards to co-ordinate actions and provide information in the form of advice, warnings or restrictions as to the use of the Network due to adverse conditions, and that this was likely to be the extent of the information required by the Train Operator to permit the operation of trains on the Network, there might be additional factors contained in the existing Weather Forecast which the Train Operator would regard as material in enabling it to provide other services to its customers, but which did not directly "affect the operation of the Network, or of trains operated by that Operator on the Network".

Nevertheless, whilst taking the foregoing into consideration, the Committee determined that Railtrack's decision to cease providing that weather forecast service which it had previously provided from 1st April 1994, was a Network Change within the terms of paragraph (i) (b) of the definition within Part G of the Access Conditions, insofar as withdrawal was a "change to.....the format of any operational documentation", and that the Train Operator had demonstrated that its withdrawal could materially "affect the operation of the Network, or of trains operated by that operator on the Network", and that the change proposed was material, in that the Train Operator could incur significant dis-benefit in the absence of such Forecast, or in the procuring of a suitable substitute.

The Committee therefore opined that, had its guidance been sought at an earlier stage it would have directed, in accordance with its powers under G6.5.3(a)(i), that Railtrack:

- was not entitled to withdraw provision of the Weather Forecast, whatever its difficulties with the existing arrangements, unless and until it had secured agreement with its Train Operator customer as to what would be adequate alternative arrangements; and that meantime Railtrack should continue to procure the previous service, meeting whatever emerging costs.
- should engage in discussions with the individual Train Operator to identify what form of Weather Forecast is required by the Train Operator to discharge its responsibilities:
 - a) in relation to the operation of trains on the Network and
 - b) in relation to other activities.

In relation to a) above Railtrack should arrange either to procure such a service for the Train Operator without further charge to the Train Operator or to meet the Train Operator's reasonable costs for obtaining such a service.

In relation to b) above the Train Operator should be required to procure such service as they required using their own resources.

The Committee therefore directed that Railtrack should forthwith engage in discussions, governed by the provisions of Access Condition G, with the Train Operator, with a view to complying henceforth with this general direction, to the maximum extent possible.

The Committee noted with displeasure that, although this matter had been made the subject of specific reference to the Network Change Procedures, Railtrack had nonetheless proceeded to implement its proposed withdrawal of the Weather Forecast from 1st October 1996, before the exhaustion of the laid down procedures, and therefore in breach of Access Condition G2.4.

The Committee ruled that, to the extent that the parties, in complying with this general direction, identify that the Train Operator has reasonably incurred costs since 1st October 1996 that might otherwise have proved unnecessary, such costs should be taken into account in any final settlement arrived at under Access Condition G2.3.

In relation to the possible outcomes to such discussions, the Committee gave further guidance that:

- the Network Change procedure was intended to be facilitational, and to ensure that the parties explored all reasonable options where change was required before any party implemented a change.
- in this particular instance the solutions adopted should be those that:
 - a) ensured that, wherever practicable, information purchased by one party was made freely available to any other interested party in a form appropriate to their needs, and
 - b) minimised the gross outpayments by the Railway Group to outside suppliers.

Should such discussions, which would require to be undertaken with any Train Operator that sought them, then fail to produce agreement between the parties, Access Condition G provided the mechanism for resolving such disagreements. However, in this respect, the Committee noted that:

- the Committee was empowered by G6.5.3(a)(ii) to rule wholly in favour of one party in a Network Change dispute, and that this was a brake on any attempt by any party to assert unreasonable claims,
- in this particular case, the Committee would not regard as reasonable for purposes of assessing compensation or enforcing provision, any approach by a Train Operator:
 - i) which had not considered what was the most appropriate level of provision of Weather Forecast for its needs for the operation of trains on the Network; or
 - ii) which sought materially to increase the amount of information required to be purchased by Railtrack for this purpose as compared with that purchased before 1st October 1996.

Bryan Driver
Chairman of the Committee
12th November 1996