
NETWORK and VEHICLE CHANGE COMMITTEE

Determination No. 4

Hearing held at Kings Cross on 2nd October 1997

1. The Committee was asked by the parties, Regional Railways North East and Railtrack, to consider
 - 1.1 whether the issue of supplementary instructions to signalmen at Strensall, and at York (to apply as directed during periods of poor rail adhesion), should be considered as a Network Change under Access Condition G;
 - 1.2 whether the applicable timescales for consultation and/or payment of compensation should be as prescribed under Access Condition G1.9 or an alternative provision; and
 - 1.3 the implications of a proposal from Railtrack that the Rules of the Plan for the line in question be amended, for the duration of the leaf-fall season, to take account of the impact of the supplementary instructions upon the daily operation of trains between York and Scarborough.
2. The Committee concluded that a change to the substance (as opposed to the format) of an operating instruction cannot in itself constitute a Network Change. However the Committee considered that where the implementation of that operating instruction changes the operation of the Network, which in turn materially affects the operation of trains on the Network, that Network Change may result from the operating instruction.
3. In respect of the particular provisions of Access Condition G that should apply in any such case the Committee noted the force of previous determination No.[NV]1. The Committee judged that Railtrack's actions in issuing instructions and achieving Network Change should be subject to the following tests:
 - 3.1 is the change required to be made by Railtrack on safety grounds that could not reasonably have been foreseen sufficiently early to permit application of Access Condition G1.1 before implementation?
 - 3.2 are the changes in question intended to meet the parties' obligations for contingency plans under Access Condition H, or do they affect the running of the normal daily timetable?
4. The Committee further noted that the force of Conditions G1.8 and G1.9 was that they gave Railtrack specific opportunities, in defined circumstances, to avoid (G1.8), or to delay (G1.9) invoking Condition G1.1. In each case this freedom, intended to relieve Railtrack of unnecessary bureaucracy, was subject to constraints to discourage abuse. The Committee noted that, in Determination No.[NV]1, it had already opined as to the effective date from which any compensation might be payable under either of G1.8 or G1.9, and that it had recommended that, in either case, there was benefit to the parties if any necessary consultation was undertaken at the earliest rather than the latest possible time. The Committee asserted that recourse to G1.8 or G1.9 was to be considered as a concession only justified where strict application of G1.1 would imply undue delay, or would be inappropriate to a genuinely temporary change.

5. In relation to the specific details of the case in question the Committee noted that its determination of its locus and of the substance of the matters in question would have been influenced by the following conditions:
 - 5.1 the supplementary instructions to signalmen do directly affect the operations of trains on the Network and on a more constant basis than if they were fulfilling the contingency arrangements required under Access Condition H.
 - 5.2 if the instructions were not applied, then, at certain times of the year, there would be a risk to safety, and that Railtrack would have, if necessary, to apply such instructions. To the extent that Railtrack could anticipate such instructions they should introduce them under Condition G1.1.
 - 5.3 the instructions had been issued as standing instructions, and had been invoked as circumstances required, over significant periods that cumulatively comfortably exceeded six months, and therefore reasonably fell within the scope of the intention of Condition G1.8 and paragraph (iii) of the definition of "Network Change".
 - 5.4 to the extent that the change to the operation of trains is sufficiently material that it qualifies as Network Change, it may require to be reflected in a change to the Rules of the Plan, as provided for in Access Condition D3.4.1(a).
 - 5.5 to the extent to which the parties may disagree on the manner or need for such a change to the Rules of the Plan, this is not a matter to be judged by this Committee, but is one to be referred to the Timetabling Committee, within the timescales prescribed in Access Condition D3.4.5.
6. However, while the joint submission tabled by the parties stated that the signal box instructions in question had been introduced in 1994, evidence presented by Railtrack at the hearing suggested that these were not materially different from instructions that had been in force since 1992. For this reason the Committee concluded that, unless evidence of material differences or discontinuity of application between the sets of instructions could be demonstrated by the parties, the operation of the network arising from the instructions should be considered to form part of the pre-existing Network and not, therefore, a Network Change in terms of Access Condition G.
7. In determining that these particular instructions were not a Network Change the Committee drew the parties' attention to the fact that changes to the Rules of the Plan could not therefore be justified as required "for the purposes of the implementation of any Network Change in accordance with part G of the Access Conditions" (D3.4.1(a)). The parties' attention was further drawn to the deadline of 17.00 on the 3rd October, should there be a wish to refer the proposed changes to the Rules of the Plan to the Timetabling Committee in accordance with the provisions of Condition D3.4.5.

Bryan Driver
Chairman of the Committee
2nd October 1997