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

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### ***Determination no. NV 55***

Hearing held at Kings Cross on 17<sup>th</sup> February 2004

*[Note: previous published determination was determination NV 53]*

1. The Committee was asked by English Welsh & Scottish Railway Limited (EWS) to rule that Network Rail Infrastructure Ltd (Network Rail) had acted in breach of Track Access Condition Part G, Network Change. It was EWS' contention that a proposal, by Network Rail, to extend the operation of a "2 Track Railway timetable" on a regular week nightly basis during the 2004 Timetable, between Ladbrooke Grove, and Foxhall Jct. on the GWML, constituted a Network Change within the terms of the definition, and should therefore have been the subject of the consultation provisions of Track Access Condition Part G.
2. It was the counter contention of Network Rail that the arrangements that had been proposed
  - 2.1. were not different in kind from any that had operated in past timetables,
  - 2.2. had, properly, been introduced through the provisions of Track Access Condition Part D in respect of changes to the Rules of the Route/ Rules of the Plan,
  - 2.3. did not, in their view materially affect the operation of EWS' services, and therefore
  - 2.4. did not constitute a Network Change.
3. The Committee gave consideration as to its standing in relation to this appeal. It concluded that the matters raised in respect of the application (or in this case non-application) of the procedures laid down in Track Access Condition Part G, are, under the terms of Track Access Condition G6.1, to be referred to the Network and Vehicle Change Committee.
4. The Committee found that the parties were in agreement that this section of GWML
  - 4.1. has deteriorated significantly in recent years, and
  - 4.2. requires additional time, within the Timetable, to provide both for
    - 4.2.1. higher inputs of maintenance, and for
    - 4.2.2. the productive use of high output on-track maintenance machinery.
5. The Committee heard arguments from the parties as to the extent to which the proposals from Network Rail had the capacity, or were "*likely materially to affect the operation of the Network, or of trains operated by that operator on the Network*" (Definition of Network Change), but decided that such questions of materiality could properly only be determined in relation to a clearly formulated proposition.

6. The Committee noted that, in its Determination No 1, the ADRC had addressed the issue of the applicability of Track Access Condition Part G, and had stated that;

***“Part G of the Access Conditions provides for either party, Train Operator or Railtrack, to bring the matter into the jurisdiction of Part G of the Access Conditions. Railtrack had obligations in relation to the discharge of Condition G1. The Committee was of the view that the force of Condition G2, and G2.1a(ii) and (iii) in particular, is that, if a Train Operator considered that it was faced with a change, it could cause that implementation of that change be made subject to the provisions of Part G of the Access Conditions.***

***In other words the Committee was of the view that it was the operation of the Access Conditions, including where necessary a reference under Condition G6 to the Network and Vehicle Change Committee, that would determine the materiality of the change. It was not open to any party to keep a proposal for change outside the formal processes of Part G unless all parties agreed.” (Determination AD1 4<sup>th</sup> December 1995).***

7. The Committee considered that the arguments advanced by the parties did not constitute any grounds for ruling other than in accordance with the principle set out in AD1.
8. The Committee therefore determined that the proposals in respect of the extended operation of the “2 Track Railway Timetable” on GWML should properly be made the subject of a formal proposition tabled, by Network Rail, in accordance with the provisions of Track Access Condition G.
9. In making this determination the Committee stressed that it is only a direction to the parties as to the procedure (Access Condition Part G) with which they must conform. Any other considerations, such as the actual scale of material hurt, or benefit, to any Access Party, would only come within the jurisdiction of this Committee if, the laid down procedure having been complied with, the parties are unable to agree, and a further reference is made in accordance with Track Access Condition G6.

Sir Anthony Holland

Chairman