
NETWORK and VEHICLE CHANGE COMMITTEE

Determination NV71

Hearing held at Kings Cross on 18th May 2004

[Note: previous published determination was determination NV58]

1. The Committee was asked to determine whether or not Network Rail Infrastructure Ltd (Network Rail) was entitled to withdraw a previously agreed Network Change.
2. The case was made by Virgin West Coast (VWC) that Network Rail was not entitled unilaterally to withdraw a previously agreed Network Change, in this case, the series of Network Change notices that supported the proposals for the re-modelling of Manchester South, namely
 - Manchester South Issued 02 July 1999
 - Manchester South Amendment No.1 Issued 25 April 2000
 - Manchester South Amendment No.2 Issued 14 March 2003
 - Manchester South Amendment No.3 Issued 11 September 2003
 - Manchester South Interim Issued 03 September 2003
3. Network Rail, in a letter of 6th April 2004 (received 8th April) had advised VWC that these Network Change notices were withdrawn. In support of this course of action, Network Rail contended “*that Part G provides no specific direction on the procedure for the withdrawal of a Network Change Notice and seeks a determination that it’s [sic] notice of withdrawal dated 6 April 2004 (W001-206-PM-LET-005012) does not contravene the provisions of Part G Network Change*”.
4. Network Rail further contended that “*Part G is not the formal consultation vehicle for the agreement of the terms, conditions and arrangements of specific possessions, whether associated with the building and commissioning of a Network Change or for other work content purposes*”.
5. The Committee considered these contentions and found that
 - 5.1. Track Access Condition G Network Change directs [Network Rail] as to the precise procedure to be followed “*if it wishes to implement a Network Change*” (Condition G1.1);
 - 5.2. part of that procedure relates to the computation of “*the amount of the costs, direct losses and expenses (including loss of revenue) which can reasonably be expected to be incurred by the Train Operator as a consequence of the implementation of the proposed change*” (G2.2). Finalisation of this computation may require the parties to reach a balanced understanding of the way in which any necessary works are to be carried out, and the extent to which this is the way that causes each Train Operator least harm/most benefit;

- 5.3. the parties were agreed that all the works proposed in relation to the re-modelling of Manchester South, and detailed in the notices listed in para 2 above, had been the subject of the procedure set out in Part G, including G2;
 - 5.4. significant works had already been carried out such that a “withdrawal” of the nominated Network Change notices would not result in the Network continuing in the form that it had before the implementation of the Part G procedures; and that
 - 5.5. the definition of Network Change includes at (iv)
“any material change to a previously agreed network change (and for the purposes of this definition a previously agreed network change means any change as referred to in paragraph (i), (ii), or (iii) above which has not yet been implemented by Railtrack but in respect of which the procedure set out in Part G has been initiated)”.
6. The Committee therefore determined that
- 6.1. withdrawal of a previously agreed Network Change proposal is a *“material change to a previously agreed network change”*;
 - 6.2. Network Rail was not entitled to “withdraw” the Network Changes in para 2 above, but was required to invoke the appropriate provisions of Part G, in effect to issue a new Network Change proposal;
 - 6.3. all Train Operators affected by any new Network Change proposal, including one aimed at delivering a *“material change to a previously agreed network change”*, are entitled to the benefit of all the protections, and rights of making representations in respect of compensation, including any modification of previously agreed compensation, that are set out in Track Access Condition G;
 - 6.4. any consultation and agreement on any proposal for *“material change”* must (among other things) take into account any consequential revisions to the programming of works. Therefore, decisions as to the consequential revisions to any programme of works to be included within any schedule of possessions,
 - 6.4.1. in respect of works necessary to the implementation of the Network Change must be informed by the carrying through to agreement of the provisions of Track Access Condition G;
 - 6.4.2. in respect of works not necessary to the implementation of a Network Change, reference to the provisions of Track Access Condition G, is not required.

Sir Anthony Holland

Chairman