
NETWORK and VEHICLE CHANGE COMMITTEE

Minutes of Meeting No.9

held at Kings Cross on 5 June 2001

Present: Bryan Driver (Chairman)
Bob Goundry
Steve Hawkes
Peter Heubeck
Niel Wilson
Graham Laycock
Peter Over
Tim Robinson

Apologies: Tony Deighan

In attendance: Chris Blackman
Martin Shrubsole

9/1 Introductions

The Chairman welcomed Niel Wilson, who was representing Band II of the Franchised Passenger Class for the first time as alternate to Nick Hortin.

9/2 Minutes of the previous meeting

The minutes of meeting no.8 held at Kings Cross on 9 April 2001 were approved without modification. The Chairman signed a copy of the minutes as a true record of the proceedings. A copy of the approved minutes will be circulated to all Industry Parties.

9/3 Record of Hearing of Reference no. NV21

The Record of the Hearing of reference NV21 on 9 April 2001 was approved subject to some modifications. The Chairman signed a copy, as modified, as a true account of the proceedings. In accordance with procedures a copy of the Record will be circulated to members of the Committee, to the parties that attended the hearing, and those other parties directly interested.

9/4 Matters arising from the previous meeting

There were no matters arising.

9/5 Procedural issues relating to references nv5 and AD25

The Committee considered and approved the procedure to be adopted in relation to the hearing of reference nv5. The procedure is set out as an attachment to these minutes.

9/6 Update on References

The Secretary advised Members that, in the case of two references received in April 2001, arrangements for a hearing had been deferred as, in each case, both parties concerned had advised that good progress was being made towards a resolution of the issues and they had requested more time to attempt to finalise a satisfactory resolution of their differences.

9/7 Date of next meeting

To be arranged in mid-July.

9/8 Approval of minutes

There being no other business, the Committee adjourned briefly before reconvening to approve these minutes, which were then signed by the Chairman.

NETWORK and VEHICLE CHANGE COMMITTEE

Reference NV5 Next steps

1. The Committee noted the deliberations of ADRC as recorded in Minute AD 50/4, and the directions to the NVC Committee that it was required to determine reference NV5, and therefore needed to set rules of procedure to ensure that the case was brought promptly to hearing.
2. The Committee therefore considered how it should proceed in the light of:
 - 2.1. the ongoing delay in respect of the submission of papers by the parties in respect of this dispute;
 - 2.2. the existence of a second dispute, directly a consequence of the matters in this dispute; and
 - 2.3. the Committee's own powers to make rules and procedures to handle a dispute, powers as laid down in Access Dispute Resolution Rule A5.3.1.
3. The Committee noted that the dispute arose originally from a reference, by Connex South Eastern, brought under the provisions of Track Access Condition F5.1; and that this appeal followed within the specified 14 days of the serving by Railtrack, in accordance with Track Access Condition F3.1, of a notice of claim for compensation under a range of heads.
4. The Committee was concerned that considerable time had elapsed in the progressing of the appeal, vis:
 - 4.1. the Vehicle Change Notice was dated 28 July 1998
 - 4.2. Railtrack's notice of claim for compensation in response was dated 26th January 1999
 - 4.3. Connex South Eastern's notice of appeal against Railtrack's claim was dated 9th February 1999, and had not been followed by further substantiating documentation, despite promptings from the Committee Secretary.
5. As a consequence of a lack of progress on the bringing of the appeal, Railtrack's claim for compensation had not been finalised. Railtrack had therefore sought to proceed to Access Dispute Resolution Committee with a claim, under Clause 11.3 of the relevant Track Access Agreement, for non payment, by Connex South Eastern, of due accounts. This matter had been considered by Access Dispute Resolution Committee who had concluded that
 - 5.1. the reference to Access Dispute Resolution Committee could not proceed without prior resolution of the quantum of the claim for compensation;
 - 5.2. unless Connex South Eastern withdrew its appeal to NVCC in respect of its objections to Railtrack's claim for compensation, there was an obligation on the Network and Vehicle Change Committee to determine its merits;
 - 5.3. it was appropriate for Network and Vehicle Change Committee to exercise its discretion, under Access Dispute Resolution Rule A5.3, to set down rules of procedure with the aim

of assuring that there was proper scope to determine the reference in a reasonable time scale; and that

- 5.4. although it was alleged that there were other parties with an interest in the outcome of the appeal by Connex South Eastern, no other party had formally lodged any appeal with the Secretary within any prescribed time scale.
6. In issuing directions to the Secretary on the procedures to be followed to bring this case to a conclusion, the Committee took account of the following:
 - 6.1. Track Access Condition F5.3 requires that *“where an Access Party refers a matter to the Network and Vehicle Change Committee ... that Access party shall at the same time:*
 - (a) *provide a statement in reasonable detail as to the matter in dispute and its reasons for making the reference”*
 - 6.2. Access Dispute Resolution Rule A5.1 states that *“Any Industry party may, by notice to the Committee Secretary, require a meeting of the Committee to be called. That meeting shall take place within 14 days (or such longer period as the Industry party shall agree with the Committee Secretary) of the receipt by the Committee of the Notice.”*
 - 6.3. Furthermore Access Dispute Resolution Rules A5.4 and A5.5 require that all papers that either party wishes to be considered by the Committee should *“be sent so as to be received by each person to whom it is to be sent at least 7 days before the meeting of the Committee which is to consider the matter”*; whilst Access Dispute Resolution Rule A5.6 provides for the timescales for the same papers to be circulated to members of the Committee.
 - 6.4. Access Dispute Resolution Rule A5.3.5 provides that :

“(b) rules of procedure may specify time limits which are different from those specified in this Part A provided that they do not deny to any party to a dispute the right:

 - (i) *properly to make his case*
 - (ii) *to receive proper notice of the case he has to answer; and*
 - (iii) *to a fair hearing”.*
 - 6.5. Track Access Condition F3.4 (b) provides that *“if the sponsor [in this case Connex South Eastern] shall have failed either:*
 - (i) *to comply with the terms upon which the compensation in question shall be payable, having been given a reasonable opportunity to remedy that failure:*
 - (ii) *to refer the matter for determination pursuant to the Access Dispute Resolution Rules within 14 days of the notice in question,*

the proposed Vehicle Change shall not be implemented.”
 - 6.6. In the event that Connex South Eastern were to withdraw its appeal under F5.1, then there would be grounds for Railtrack to assume that its notice of claim for compensation had been accepted.

7. The Committee therefore directed the Secretary to advise the parties that
 - 7.1. the Committee considered that the papers already received from the party making the appeal could be deemed to have sufficiently fulfilled the requirements set out in Track Access Agreement 5.3(a) as to entitle the Committee to proceed to convene a hearing on a stipulated date;
 - 7.2. the hearing of the dispute registered as NV5 between Connex South Eastern and Railtrack in respect of the Class 375 Vehicle Change Notice would take place on Thursday 12th July 2001;
 - 7.3. the Secretary had been instructed that he was not to grant any further deferment at the request of the party making the appeal;
 - 7.4. the Committee would take into account such other papers as were received by the Secretary from the appellant in fulfilment of Track Access Condition F5.4, by Friday 22nd June 2001; and any other papers (including responses to earlier papers) from the other party, received by the Secretary by Friday 29th June; and that copies of all papers would be circulated to both parties, as well as to Committee Members;
 - 7.5. whilst the Committee would welcome any move by the parties to produce a joint statement of the matters in disagreement, the Committee was not prepared to offer any extension of deadlines, or deferment of the hearing, in order to facilitate this; and that,
 - 7.6. given the time that had elapsed since the date of the original appeal, and the opportunities that that lapse of time had afforded to both parties adequately to prepare the merits of their respective cases, making these rules of procedure in respect of this particular case was fully in accordance with the requirements of Access Dispute Resolution Rule A5.3.5(b).

Bryan Driver

Chairman of the Committee

5th June 2001