

---

## **TIMETABLING COMMITTEE**

---

### **Determination no. 194**

(following a hearing at Kings Cross on 26<sup>th</sup> September 2003)

*[Note: previous published determination was determination no 192]*

1. The Committee was asked by ScotRail Railways (SRR), to determine whether the offers made by Network Rail Infrastructure Ltd (Network Rail) in respect of the Highlander sleeper services on Sunday nights/ Monday mornings during weeks 41, 42, and 44 to 52 of the 2003/4 Timetable “meets SRR’s Firm Contractual Rights”, or, whether Network Rail should be directed to make arrangements such that it would be possible for some other offer to be made.
2. The Committee noted that the reference was made in accordance with Track Access Condition D3.8.9 (15 Feb 02 version), and fell duly within its locus to determine.
3. The Committee was of the view that their determination would need to take account of three discrete considerations, namely
  - 3.1. What are SRR’s Firm Contractual Rights (FCRs), as expressed in its Track Access Agreement?
  - 3.2. To what extent are those rights qualified as a consequence of the superimposition of the “*applicable Rules of the Route*” for the 2003/4 Winter Two Timetable?
  - 3.3. Given the definition of the prevailing rights that emerges from the two foregoing points, together with the Decision Criteria, is the offer made a reasonable fulfilment of Network Rail’s obligations to SRR?
4. In respect of SRR’s Schedule 5 (and Schedule 2) rights, the Committee noted that
  - 4.1. SRR is entitled to departure times from Euston and Fort William/ Inverness/ Aberdeen, no earlier than stated times, and for arrivals no later than stated times. These times, in combination, set a *de facto* maximum journey time for each portion of the throughout service;
  - 4.2. SRR has rights of access that enable it to bid to use certain routes (including the Settle & Carlisle, and the Glasgow & South Western) as diversionary routes;
  - 4.3. The “*applicable Rules of the Route*” provide that the routes normally followed by the Highlander Sleeper service will not be available on the dates in question, and that therefore the services will require to be diverted over one or other of the diversionary routes;
  - 4.4. The consequence is an offer from Network Rail that, in respect of the northbound services, is 1 hour 42 minutes longer than the longest journey time envisaged in the SRR Schedule 5; southbound the difference is 1 hour 38 minutes.

5. In respect of SRR's Firm Contractual Rights in Schedule 5, the Committee accepts that they are as they have been represented as regards journey times; however, like all such rights, they are "*subject to the applicable Rules of the Route*". In this instance, the Rules of the Route have been finalised (i.e. have become "*the applicable Rules of the Route*") on terms which appear to make it impossible for Network Rail to timetable a service to meet the departure and arrival times in SRR's Schedule 5.
6. The Committee is satisfied that "*the applicable Rules of the Route*" were achieved by the due process, (Track Access Condition D2.4) but that their content might have been different had SRR not been dilatory in protecting its interests. (see the Note of Extraordinary Deliberations dated 4<sup>th</sup> August 2003). Nonetheless, SRR's rights, as in Schedule 5, are now subject to qualification; and therefore the offers made cannot be deemed to be in breach of SRR's FCRs, in respect of timings.
7. The Committee took into account that, whereas the responsibility to protect FCRs against encroachment by changes to the Rules of the Route is primarily the Train Operator's, SRR believed that it had been given some encouragement by Network Rail that solutions might be found, and this may have been a factor in SRR's failure to appeal against the proposed Rules of the Route at the appropriate time. However, SRR was not able to produce any documentary evidence to substantiate its belief.
8. The Committee therefore determined that
  - 8.1. SRR's FCRs are qualified by the "*applicable Rules of the Route*", and therefore the offer from Network Rail cannot be deemed to be in breach of SRR's FCRs;
  - 8.2. The parties should renew their dialogue with the objective of finding proposals that minimise the journey time extension (i.e. the Committee has not been convinced that the offer made is the most reasonable fulfilment of Network Rail's obligations to SRR).
9. For the avoidance of doubt,
  - 9.1. any proposal, by Network Rail, that the Rules of the Route that have required these re-timings of the Highlander Sleeper Services should be repeated for the 2005 Timetable, will be subject to the normal processes for agreement of Rules of the Route, as set out in Access Condition D, including the opportunity for affected Train Operators to refer disputed decisions to the Timetabling Committee.
  - 9.2. the Committee is of the view that, where a Train Operator has made representations about a change to the Rules of the Route, and those representations are not reflected in the next available published version of the Rules of the Route, the Train Operator should protect its interests, by invoking the formal dispute resolution procedures, and registering a reference to Timetabling Committee.

Bryan Driver  
Chairman of Committee