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## ***TIMETABLING COMMITTEE***

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### **Determination no. 205**

(following a hearing at Kings Cross on 4<sup>th</sup> March 2004)

*[Note: the previous published determination is ttc203]*

1. The Committee was asked by English, Welsh & Scottish Railway (EWS) to rule that Network Rail Infrastructure Ltd (Network Rail) should be directed to include, within the current Working Timetable (WTT), a revised path for 7O81 1942 SX Dagenham to Dollands Moor freight service (“7O81”). The re-timings to this service had been the subject of a Spot Bid made on 19<sup>th</sup> December 2003, with the aim that the retimed service should commence on 18<sup>th</sup> January 2004.
2. The Committee noted that the reference had been brought by EWS under the terms of Track Access Condition D5.1.1(b) (of the White pages version of Track Access Condition D, as applicable to the Winter 2003 Timetable), on the grounds that Network Rail
  - 2.1. had failed to respond to the Spot Bid within the timescales laid down for such a Spot Bid to be rejected, and that therefore it
  - 2.2. should be deemed to have accepted the Spot Bid in accordance with Track Access Condition D3.5.2.
3. The Committee confirmed that this was a matter that fell within its jurisdiction.
4. The Committee found, as matters of fact, that
  - 4.1. 7O81 is currently routed via Stratford, and Camden Road, and crosses over the flat crossings between Forest Gate and Stratford at around 20:00, after the evening commuter peak. The train loads regularly to a length of over 100SLUs.
  - 4.2. EWS’ reasons for seeking an earlier departure for 7O81 related to a customer requirement to re-route the train into Willesden Euroterminal in order to attach further Channel Tunnel traffic, and yet arrive at Dollands Moor at 2324 in time to take up its allotted path through the Channel Tunnel.
  - 4.3. Terminal working considerations at Willesden Euroterminal meant that the departure of 7O81 from Dagenham needed to be brought forward by a minimum of 60 minutes (i.e. to 1840). Departure cannot be brought forward before 18:00 because of the customer’s requirements at Dagenham.
  - 4.4. EWS originally submitted a Weekly Spot Bid for a retiming of 7O81, which was put into operation during week commencing 28<sup>th</sup> September 2003. The running of the train at revised times during that, and the subsequent, week, led to representations as to delays afforded to other services: as a consequence Network Rail decided to revert 7O81 to its previous 1942 departure time.

- 4.5. EWS had also requested a rolling Spot Bid on 3<sup>rd</sup> October 2003, aimed at continuing the weekly re-timing of 7O81. Some entries were made to the Train Service Database, which EWS interpreted as a willingness by Network Rail to accommodate the Spot Bid. However, ultimately it was rejected by Network Rail (on the ground that there was not, at the time sought, a suitable path to cross the GE main line between Forest Gate and Stratford). This rejection was only advised to EWS on 29<sup>th</sup> October 2003, that is, some time later than the three weeks stipulated for such a decision in Track Access Condition D3.5.1 (b)(i). On this occasion EWS did not seek to enforce deemed acceptance of the Spot Bid, and continued with the dialogue with Network Rail with a view to finding a long-term solution.
- 4.6. EWS considered that it had established that there was a practicable Train Slot, in “white space”, leaving Dagenham at 1823, crossing the GE main line 1839 to 1844, and arriving at Willesden Euroterminal at 1930. EWS therefore made a further Spot Bid on 19<sup>th</sup> December 2003, applicable for the remainder of the Winter 2003 Timetable, and “rolling over” into the 2004 and 2005 Timetables.
- 4.7. Once again, Network Rail did not respond to EWS’ Spot Bid within the timescales laid down in D3.5.1.(b)(i) (i.e. before 9<sup>th</sup> January 2004). On 12<sup>th</sup> January 2004, Network Rail formally advised EWS that the Spot Bid was accepted.
- 4.8. On 14<sup>th</sup> January 2004 Network Rail advised EWS that it was reversing its decision to accept the re-timing of 7O81, again giving as grounds the likelihood that it would cause consequential delays to passenger services at the crossing between Forest Gate and Stratford. Any re-timings previously advised were deleted from the Working Timetable, and 7O81 has continued to operate in the 1942 SX Train Slot.
- 4.9. The only offer made to EWS, in respect of the May 2004 Timetable is for 7O81 to depart Dagenham at 1942 SX.
5. In response to questioning, the Committee established that, although comparable moves are included at other times in the WTT, as compared with a strict interpretation of the provisions of the Rules of the Plan, the EWS Spot Bid of 19<sup>th</sup> December 2003, and the acceptance by Network Rail on 12<sup>th</sup> January 2004, were both deficient, by one minute, in the time allowed to make the crossing move through Stratford Station.
6. The Committee noted that the Network Rail case drew attention to internal administrative and liaison problems, over the Christmas period, which had contributed to the failure to respond to the EWS Spot Bid within the designated time-span. The Committee took into account that, on a previous occasion when administrative problems had caused a breakdown in procedure, the Committee had stated, in its determination ttc22, that *“it was not acceptable to the Committee to be advised that processes had been frustrated because the parties had not made adequate arrangements during the Annual Leave period to ensure responsible persons capable of carrying forwards a dialogue were always available”*.

7. The Committee decided that it had to balance a number of considerations;
  - 7.1. The facts of the behaviour of the parties meant that Network Rail had, on two occasions, definitely created circumstances where Spot Bids could be deemed to have been accepted, in accordance with D3.5.2. In such circumstances the Spot Bid should be deemed to be accepted, and the Train Slot included in the relevant WTT for the relevant Period.
  - 7.2. Where an offer is made in response to a Spot Bid, that offer is binding upon Network Rail, and the Train Slot must be included in the relevant WTT for the relevant Period.
  - 7.3. There is no laid down mechanism to empower Network Rail to vary or withdraw the formal offer made on 12<sup>th</sup> January 2004, other than in accordance with the terms of D3.7.5(b), (by agreement between the parties), or D3.7.5(c) (“to give effect to a decision of the Timetabling Committee”).
  - 7.4. In the particular circumstances surrounding the Spot Bid in respect of 7081, made on 19<sup>th</sup> December 2003, it would appear that Network Rail could have been justified in rejecting the Spot Bid, on grounds of inadequate time allowances, as compared with the applicable Rules of the Plan, provided such rejection was made in accordance with the Timescales laid down in D3.5.1(b)(i); that is, in this case, by 9<sup>th</sup> January 2004.
  - 7.5. It would be perverse to insist, on procedural grounds, upon the inclusion in the Working Timetable of a Train Slot that was infeasible, or that, when judged in relation to the Decision Criteria, impacted adversely upon the reliable operation of established services on the Network.
  - 7.6. There is obvious merit in EWS’ aspiration to have one train serve the requirements of two originating traffic flows, but not if it can only be achieved at the expense of other operations, or by an inappropriate application of the Decision Criteria.
8. The Committee therefore concluded that
  - 8.1. Network Rail may not legitimately, where it has failed properly to comply with the provisions of Track Access Condition D, refuse to incorporate within the Relevant Timetable a Train Slot corresponding to a Bid that has either been accepted, or been deemed to be accepted in accordance with D3.5.2. Furthermore, Network Rail has no formal means of seeking redress in such circumstances; in particular it cannot, on its own motion, seek the intervention of the Timetabling Committee.
  - 8.2. It is the responsibility of Network Rail to take such action as it considers appropriate to protect the operation of the Network from the consequences of the inclusion of Train Slots that import an unreasonable risk to the services of other Train Operators. However, where Network Rail fails to include in the Timetable a Train Slot corresponding with a Spot Bid which has not, within the laid down timescale, been formally rejected, such failure on the part of Network Rail may form the basis of a reference to the Timetabling Committee by the Train Operator.

- 8.3. In all the circumstances of this case, it was reasonable for EWS to have anticipated that the Spot Bid of 19<sup>th</sup> December 2003, for the retiming of 7O81, would have been accepted. The decision of Network Rail to reverse the acceptance given on 12<sup>th</sup> January 2004 was unreasonable and in breach of the Track Access Conditions; EWS was right to challenge that decision before the Timetabling Committee.
- 8.4. The evidence placed before the Committee has not convinced it that Network Rail has given proper consideration to all the relevant factors and options in respect of 7O81, which, when taken together, may produce a solution capable of meeting the traffic aspirations of EWS, whilst protecting the performance requirements of the Network.
9. The Committee determined that the parties be directed, in accordance with the powers set out in Track Access Condition D5.5.3(a), as follows:
  - 9.1. Network Rail shall produce full proposals for train timings that give EWS, to the closest extent possible (taking account of the Decision Criteria), the means to fulfil its objective of combining on the one train, the traffic currently conveyed on 7O81, with other traffic arising at Willesden Euroterminal.
  - 9.2. Such proposals shall be made the subject of an offer to be received by EWS no later than 26<sup>th</sup> March 2004, and shall relate both to the remaining weeks of the Winter 2003 Timetable, and, subject to all the other provisions of Track Access Condition D (pink pages), the May 2004 Timetable.
  - 9.3. EWS shall respond to the revised offer, either by acceptance, or by the making of a fresh reference to this Committee, by no later than 2<sup>nd</sup> April 2004.

Bryan Driver,  
Independent Vice-Chairman