
TIMETABLING COMMITTEE

Determination No. 251

(following a hearing at Kings Cross on 6th January 2005)

[Note: previous published determination was determination nos. 242 and 244]

Brief Summary of dispute

1. The Committee was asked
 - 1.1. by Great Western Trains (GWT)
 - 1.1.1. to uphold an objection to Saturday possessions of the route between Taunton and Exeter on 2nd and 9th April 2005, at a time when two other sets of diversions are also in place, and
 - 1.1.2. to direct either that one or other of the three concurrent blockades should not take place, OR that Network Rail should give guarantees to make available sufficient capacity for the diversion of GWT services to the West of England via Yeovil;
 - 1.2. by Network Rail to rule that the possessions proposed had been progressed in line with due process and that GWT had, at this stage, no contractual right of appeal.
2. The Committee noted, with some displeasure, that the original joint submission from the parties had been much lacking in both clarity and detail, and had had to be significantly supplemented, at the prompting of the Committee's Secretariat, before it was clear whether or not there was legitimately a matter that should properly receive the Committee's attention. The parties were reminded that, whilst it was the function of the Access Dispute Resolution processes that there should be a means by which clearly expressed disputes could be determined, there was an expectation that parties would be able, unaided, to formulate their respective pleadings, and produce clearly cross-referenced (and pertinent) supporting material.

The Committee's findings of fact in respect of the validity of the reference

3. On the weekends of 2nd and 9th April 2005, Network Rail are proposing to carry out three concurrent blockades of respectively the Swindon to Bath, Swindon to Bristol Parkway, and Taunton to Exeter route sections. All three blockades/ Restrictions of Use
 - 3.1. were originally published in Issue 0 of the Rules of the Route (November 2003) and have been re-published in subsequent issues;
 - 3.2. require scheduled services to operate over diversionary routes, with additional complementary bus services to serve intermediate stations.

4. Publication of the Rules of the Plan/ Rules of the Route for 2005 was affected by various technical and procedural problems which had the effect of making it more difficult than in previous years for Train Operators to undertake the necessary scrutiny, and where relevant, challenging, of the proposals. GWT wrote to the ADRC Secretary to register certain items that it wished to dispute, on 19th February 2004, in particular stating

“Great Western Trains objects to provisions contained in [Rules of the Route December 2004 Timetable Version 2]....

The format of the Rules has been different this year from that used in previous years. The key information is (we do not feel) as easy to access. Network Rail has been helpful in providing additional spreadsheet information which we have interrogated.

We have asked NR to justify explicitly each possession through the work that is planned to be undertaken within the possession and the benefit to quality accruing. We have not yet received this information, and are not able to access PPS directly which should contain some of the information sought.

In addition, there is a number of specific possessions which are particularly damaging to GWT services. A note of these is herewith.

As a result, in order to protect its position within formal timescales GWT is objecting to all possessions contained in the Rules. We anticipate continuing discussions with Network Rail meanwhile.”

5. Although the letter of 19th February details 12 separate Section 7 proposals to which GWT objects, none of these objections relate to the weekends in question, nor to the possession between Taunton and Exeter. Nevertheless GWT asserts that it has been concerned, since the first publication of the Rules of the Route for 2005, as to the practicality of operating concurrent diversions of all three of its major services, on these two Saturdays. Furthermore it has pressed those concerns at successive meetings with Network Rail of train planners. According to GWT, the theme of all its representations was that, if the other two routes were to be subject to diversion, the possession between Taunton and Exeter, shown in the Rules of the Route to commence early Saturday morning, should be retimed to start late on Saturday evening and reduced in duration accordingly.
6. No minutes of any of the alleged meetings were submitted for the Committee’s consideration, nor did it appear clear as to where the responsibility for the production and distribution of any such minutes lay, or whether any had ever been drafted.
7. GWT also caused discussion of the matter of simultaneous diversions at senior management level at the “Great Western Joint Board”. GWT asserted that that body had formulated a view that three concurrent diversions should not occur.
8. Following discussions at the Draft Period Possession Plan (DPPP) meetings, the Confirmed Period Possession Plan (CPPP) was published in September 2004, showing that the two possessions in question (i.e. Taunton to Exeter) had been adjusted to commence at 23:15 Saturday. In the mind of GWT these changes were as a consequence of its representations.

9. In October 2004 Network Rail advised all Train Operators that the Taunton-Exeter possessions were to be amended further, and were now to commence at 0245 Saturday, reinstating a need for Saturday diversions of West Country Services via Yeovil. Network Rail stated as the justification for the new amendment, that the later commencement time had been incorporated into the CPPP “in error”. GWT declined to accept the proposed amendment, and, when it was finally formalised (by an e-mail advice from the NLU in Leeds) on 26th November, GWT formalised its objection by reference to the Timetabling Committee.

The Committee’s conclusions in respect of the validity of GWT’s reference

10. The Committee considered all of the foregoing, posing the following questions.
 - 10.1. Are the general terms of GWT’s letter of 19th February 2004 sufficient to substantiate GWT’s right to object to the duration of the Taunton to Exeter possessions on 2nd and 9th April 2005, given that no explicit reference is made to those possessions in the annexe of specifically disputed items? Is it acceptable that that omission should be overlooked on the grounds that it was an “error” on the part of GWT?
 - 10.2. Is Network Rail, after having gone through the relevant procedures for formulation and publication of the CPPP, entitled to set some of that document aside, on the grounds that the possessions in question had been amended “*in error*”? OR is Network Rail required to propose the change as a new amendment tabled under the processes set out in Section 3 of the National Rules of the Plan (as established in compliance with Network Code Conditions D2.1.8 and 2.1.9)?
 - 10.3. To what extent do unrecorded conversations, or deliberations at other bodies (such as the Great Western Joint Board) fulfil the process requirements set out in Network Code Condition D?
11. The Committee’s decision in respect of these three questions was;
 - 11.1. Network Code Condition D5.3 “***Information to be sent in relation to the appeal***” requires that “*the person making the reference shall include within it a statement in reasonable detail as to the matter in dispute and his reasons for making the reference*”.
 - 11.1.1. In general terms GWT’s letter of 19th February 2004 fulfils this requirement, in respect of the specific items listed in the annexe to that letter. However, that requirement has not been met in respect of any matters not the subject of specific reference in the annexe to that letter.
 - 11.1.2. Furthermore, the Committee consider that the inclusion, by GWT, in its letter of the “catch-all” “*As a result, in order to protect its position within formal timescales GWT is objecting to all possessions contained in the Rules.*” to be unreasonable. Whilst such an approach might possibly be justifiable in circumstances where there had been some generalized breakdown of process (e.g data not supplied, or not intelligible), such that the Train Operator was prevented from understanding the substance of the arrangements proposed, this was, self

evidently from the contents of the annex, not the case in this instance. It cannot be in accordance with the terms of Network Code Condition D that a Train Operator can be allowed a general appeal re-opener to cater for *“anything else I haven’t yet thought of/ have left out in error”*.

11.1.3. It follows therefore that, based solely upon the terms of the letter of 19th February 2004, and in the absence of subsequent amendments and revisions, GWT has no right to bring the matter of the changes to the Taunton –Exeter Saturday possessions for the determination of the Committee, because it had made no specific reference within the prescribed time limit after receipt of the documents containing the Rules of the Route. Once there has been tabled a definitive proposition, failure to appeal within set timescales is deemed to be acceptance of that proposition.

11.2. In respect of Network Rail’s contention that an *“error”* in the CPPP can be reversed without penalty, the Committee consider that this contention would be equally at odds with the integrity of the processes for amending the Rules of the Route. The CPPP is another instance where the Train Operator must either object, within a limited timescale, or be deemed to have accepted the proposition. This deemed acceptance would be invalidated if the document to which it applies were capable of further unilateral revision. It follows therefore that, to amend the CPPP, Network Rail must initiate a new formal amendment procedure, which in turn grants the Train Operator affected a new opportunity to exercise a right to appeal. Therefore, Network Rail could be said to have, by inadvertence, ceded to GWT a right of appeal that otherwise they would have forfeited, had they only been able to rely on their letter of 19th February 2004.

11.3. The Committee is satisfied that there had been dialogue about the implications of three concurrent blockades, and that therefore the publication, in the CPPP, of amended times for the Taunton-Exeter possessions could reasonably have been construed, by GWT, as closure of a long running issue. However, in accepting that the parties had acted with good faith, the Committee is very critical of their lack of good practice in respect of the proper documentation of meetings etc., in relation to matters that are clearly contractual, and governed by mechanistic procedures. In this respect, the Committee considers that the parties should be reminded that discussions in bodies that are not directly part of the contractual processes, such as the Great Western Joint Board, may complement, and indeed, inform, those processes; however they cannot be a substitute for those processes. The Committee cannot recognise the force of any decision taken at such a body if it has not been translated into the relevant due process.

12. The Committee concludes therefore that it would be wrong to throw out the reference on the grounds that there was no valid appeal to answer.

The Committee’s findings in respect of the merits of the case

13. On the merits of the case the Committee was presented with much less detail to consider. It noted

- 13.1. the representations by GWT concerning the undesirability of having concurrent blockades on three routes, and the demands that that situation would place on the availability of rolling stock, and supplementary bus services, not to mention the impact upon journey times for a majority of passengers.
- 13.2. the representations by Network Rail regarding the scale of the works that had been committed to be undertaken during the blockades in question, of which the most difficult to curtail, or re-schedule, would be the outside party bridge work to replace Silk Mill level crossing.
- 13.3. the acknowledgement by GWT of the desirability of the works being done, and
- 13.4. the concerns of GWT that the route from Yeovil to Exeter, although available for some diversions, might not have sufficient capacity for the number of services to which GWT would aspire, together with a concern that, notwithstanding the pressures of the timescales associated with Informed Traveller, there appeared to have been no active discussions with GWT and/or the other principally interested Train Operators, in particular South West Trains.
14. The Committee took note of the fact that GWT had explicitly sought from the Committee one of two alternative determinations, namely
 - 14.1. *“the cancellation (or rescheduling) of one of the above [i.e. Taunton to Exeter, or one of the other concurrent] pairs of possessions each week: or*
 - 14.2. *the forcing of capacity for diversion of GWT’s West of England services via Yeovil”.*
15. Faced with two such options the Committee had itself to take into account not just the merits of the individual contentions but also the extent to which those merits were affected by the point reached in the overall Train Planning/Informed Traveller processes. All of the arguments about the unquestioned impact of three concurrent sets of diversions upon GWT, and its passengers, were sound. They were, however, substantially no different from those that could have been put before it in March 2004. By contrast the passage of time had materially changed the extent of the commitments by Network Rail to its contractors and outside parties.
16. That said, given the scale of the diversions that were being wished upon GWT, and which again had been known about since at least March 2004, it was unacceptable that Network Rail was not able to re-assure GWT beyond the somewhat weasel words that *“a diversionary route will be available via Yeovil for the Taunton Blockade”*. Such a re-assurance could only have a value to GWT if it were backed up by a demonstration of the capacity available on that diversionary route. The Committee noted, with surprise, that, notwithstanding the time pressures of the Informed Traveller process, GWT had not made an approach to Network Rail with its potential requirements in the event of diversion, and that therefore there had, as yet, been no dialogue between the parties regarding the level of diverted service that could, or should, be provided.
17. In making this last observation, the Committee is concerned that there is a balance to be struck. It cannot, in its determination, give any comfort to a proposition that once possessions have been tabled for a certain time, and external commitments made, this is sufficient reason for letting things continue, irrespective of other considerations.

By the same token it would not be reasonable for a Train Operator, at the time of first receiving proposed Rules of the Route, to insist that it will dispute all possessions for which it has not been supplied with details of consequential service changes. In this case however, the feasibility, or otherwise, of a GWT specification for diversions via Yeovil, is so material to the substance of this appeal that it would have been reasonable to expect to see evidence that such a specification had been tabled by GWT, and that Network Rail had responded appropriately.

The Committee's determination

18. The Committee therefore determined that

- 18.1. The dispute before the Committee relates to a proposal, for whatever reason, by Network Rail, to amend the starting time of a possession, as compared with the time previously published in the CPPP in compliance with the laid down procedures.
- 18.2. Any proposal for amendment to possessions as compared with what is contained in the CPPP is subject to the operation of the procedures for the amendment of Rules of the Route as set up in accordance with Network Code Condition D2.1.8 and 9. Those procedures (as contained in Section 3 of the National Rules of the Plan) confer upon any Train Operator affected by a proposed amendment, the right to appeal against the content of that amendment. GWT is entitled to exercise that right, within defined timescales, and, having complied with those timescales, is entitled to have the benefit of a determination by this Committee.
- 18.3. Given the disciplined nature of the Timetabling process, it cannot be acceptable that the formal amendment procedure can be dispensed with, or that the rights of appeal of a Train Operator can be curtailed, by the making of a simple assertion, by Network Rail, that an error has been incorporated into the published CPPP. By the same measure it is not open to a Train Operator to bring a matter to appeal, beyond a due date, citing as grounds that its previous failure was also "*an error*".
- 18.4. Having admitted the right of GWT to object to the change of the starting time of the possession in question, the Committee notes that GWT has asked the Committee to determine either that the extended possession should not proceed, or that adequate diversionary facilities should be provided over the Yeovil route. This second option is made the more difficult of fulfilment, whether by the provision of diverted train services, or replacement buses, by the concurrent closures affecting the Routes via the Severn Tunnel and via Chippenham.
- 18.5. The content of the work scheduled to be undertaken within the scope of the possession, were it to be extended as proposed, is of a magnitude, and an indivisibility, that it cannot reasonably be undertaken in the duration of possession published in the CPPP. Furthermore, it is apparent that previous documents had been published incorporating the extended possession times, and that the programming of work, including with outside parties, had been undertaken on the expectation of that longer possession. For this reason the Committee is reluctant to accede to the request of GWT that the possession, in its extended form, be not granted.

- 18.6. It would not however be reasonable, given the disruption to GWT's other services, to allow Network Rail to proceed with the extended possession, without an understanding as to the level of diversionary facilities over the Yeovil route to be made available to GWT. The Committee notes and accepts NRI's assertion that there will be a diversionary route available via Yeovil, but considers that it is not acceptable that there has been no dialogue regarding the number of services to which GWT might aspire, or which Network Rail might be able to schedule.
- 18.7. Network Rail should proceed to detailed discussions with GWT (and any other affected Train Operator) with a view to producing comprehensive timetable proposals for the diversion of an appropriate number of GWT services over the Yeovil route. For the purposes of this determination, an "appropriate number of services" would be a timetable that included a number of services comparable with those accommodated on a previous Saturday of diversions over the Yeovil route.
- 18.8. It is to be understood that, if, in the course of this timetabling of services diverted over the Yeovil route, Network Rail is not able satisfactorily to accommodate the reasonable aspirations for services or other facilities of either GWT or any other Train Operator affected, then any of such affected parties shall be entitled to appeal to this Committee for its determination of the matters still unresolved.
19. For the avoidance of doubt, both in respect of the details of this dispute, and the actions to be followed by the parties in future, the parties are reminded that the operation of Network Code Part D relies on clear and precise compliance with all the laid down procedures. This in turn implies the careful recording of all material decisions. Furthermore, where other bodies, as in this case the Joint Board, may be addressing matters that relate to Access to the Network, any decisions made cannot have any contractual force until they have been duly translated into the terms that can be applied through the procedures laid down within the relevant Track Access Agreement, or the Network Code.

Bryan Driver

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