
TIMETABLING COMMITTEE

Determination No. 256

(following a hearing at Kings Cross on 2nd March 2005)

[Note: previous published determination was determination no. 252]

Brief Summary of dispute

1. The Committee was asked by Silverlink Train Services Ltd (Silverlink), under Network Code Condition D2.1.6, to find that the arrangements, proposed in Version 2 of the 2006 Rules of the Route, for 12½ hour “all lines blocked” possessions of the West Coast Main Line (WCML) between Camden Junction and Hanslope Junction on 29 discrete Saturday nights/Sunday mornings, should be adjudged unacceptable, and that Network Rail should be directed to propose alternative arrangements involving possessions of no more than 8 hours duration.
2. Network Rail proposes that the 12½ hour blockages should apply on every weekend of Engineering Periods 0 and A between Bourne End and Hanslope Junction, and on every weekend of Period D between Camden and Bletchley. The stated reason for the possessions is Plain Line Track Renewals of the less accessible Up Fast and Down Slow lines. In addition, on 21 weekends 12½ hour “all line blockages” are proposed for squadron tamping of Switch and Crossing (S&C) installations. This tamping work will, as Network Rail describes it, be “piggy-backed” onto the track re-laying blockages, on 17 weekends.

The Committee’s considerations of principle in respect of the reference

3. Disputes of this nature have been considered by the Committee in the past, and, in general, require the Committee to weigh up, by reference to the Decision Criteria (Network Code Condition D6), the relative standings of
 - 3.1. the Firm Rights of the Train Operator to operate trains at specified times;
 - 3.2. the scale of any detriment to the Train Operator’s business (including the ability to meet contractual obligations to outside parties) resulting from the taking of the proposed possessions;
 - 3.3. the extent to which the Train Operator would be able to provide alternative services, either using diversionary routes or by road transport;
 - 3.4. the rights of Network Rail to take the possessions, in effect to cause them to be included within the “*applicable Rules of the Route*” ;
 - 3.5. the extent to which the need for the possessions can be substantiated by reference to such factors as
 - 3.5.1. the need to do works (whether renewals or maintenance);

- 3.5.2. the implications of doing the works at the times specified, or over the durations specified; and
 - 3.5.3. the engineering choices made by Network Rail.
 - 3.6. the impact on the business of other operators on the route concerned of the proposed duration and dating of the possessions and any change to these sought by the appellant.
4. The Committee noted the extent to which this reference covered the same issues, in respect of Network Rail's proposals, as had been addressed in an appeal from Virgin West Coast (VWC) (ttc271). In particular
 - 4.1. the details of the proposed possessions, and the engineering rationale that was presented as supporting them;
 - 4.2. the fact that some of the possessions proposed in Section 4 of the Rules of the Route, overlapped, or were the same as, others that featured in Section 7 of the Rules of the Route;
 - 4.3. the delay to the issue of the West Coast Major Project notice which had resulted in the appeal period for that notice closing some considerable time after the deadline for appeals against the Rules of the Route; and
 - 4.4. that strong indications had been given that the 12½ hour possessions proposed for the 2006 Timetable would also be sought for subsequent timetables.
5. The Committee therefore made very clear to the parties
 - 5.1. that its determination in this reference would relate exclusively to the circumstances of the 2006 Timetable, and was entirely without prejudice to the proper compliance with Condition D2.1 of the Network Code, in respect either of future timetables, or of subsequent alterations to the 2006 Timetable; and
 - 5.2. that matters relating to Major Project notices did not fall within the jurisdiction of the Timetabling Committee. However, the Committee, in reaching a determination of the question of the content of the 2006 Rules of the Route, would be mindful of the need not to prejudice any possible future deliberations of the Network and Vehicle Change Committee.

The Committee's findings of fact in respect of the case for Silverlink

6. The Committee considered the nature of the Track Access rights held by Silverlink, and the extent to which its interests would be harmed by the possessions proposed. It found in particular that
 - 6.1. the Track Access Agreement for Silverlink services runs until the anticipated Franchise Renewal date of December 2006;
 - 6.2. Silverlink does have, for the duration of the 2006 Timetable (i.e. that commencing in December 2005), Firm Rights to the operation of both late night Saturday night/ Sunday morning Silverlink County services, together with a regular pattern of such services throughout Sunday;

- 6.3. the late night Saturday service is loaded primarily in the direction of travellers leaving London. There is a particularly heavy demand for the “last train” to Northampton, which Silverlink’s rights allow it to bid for a latest departure at 23:45 (and that this is the operative time in current Timetables). This is perceived as a critical service which, if not available, at least as far as Hemel Hempstead, causes significant logistical problems in catering for the type and number of passengers involved using road transport;
- 6.4. Sunday services are more evenly spread as regards direction of demand; Silverlink’s Firm Rights entitle it to bid for an earliest Sunday departure from Bletchley to Euston at 05:11;
- 6.5. Silverlink’s Firm Rights can be honoured with the operation of the Saturday – Sunday 33½ hour “2 Track Railway timetable”, but periods of all line blockages require Silverlink to divert or forgo services covered by Firm Rights;
- 6.6. Silverlink has accepted Network Rail’s proposals for 8 hour all-line blockages in Periods B and C, even though this requires some modification of services covered by Firm Rights, but consider that this is a reasonable maximum, to which the blockages in Period 0, A and D should be aligned.
7. In general terms, there is no scope for diversion of any Silverlink County services affected by “all-line” blockages, and consequently substitute bus services have to be provided at least for part of the journey. During the currency of the major West Coast Route Modernisation (WCRM) works, various blockades, and other engineering blockages, had required Silverlink to make regular use of replacement buses.
8. In response to questions Silverlink conceded that bus substitution on Sunday mornings poses fewer problems in relation to the number of passengers travelling, than is the case with the last services on a Saturday night.
9. With the advance of the WCRM works to the point where it has been possible to introduce the accelerated September and December 2004 timetables, including, for VWC, Enhanced Permissible Speeds (EPS) and “tilt”, Silverlink considers it reasonable that it should now be at a stage where its own services should be subject to lesser levels of disruption, and should therefore be allowed to grow and to recover markets depressed by the previous disruptions. From this perspective, Silverlink contended, a continuing programme of 12½ hour blockages, in particular one that affected more than half of the full currency of the Timetable, was unreasonable, and should therefore not be permitted.
10. Silverlink considered that, whilst this reference only related to blockages proposed for inclusion in the 2006 Rules of the Route, some of the supporting arguments from Network Rail had referred to an ongoing need for similar blockages continuing through subsequent Timetables into an indefinite future. The Committee, whilst noting Silverlink’s point, reminded the parties that its concerns at this time are only with the Rules of the Route applicable for the 2006 Timetable, and that any determination in respect of those Rules of the Route is without prejudice to the possessions that might be proposed for inclusion in any other “*applicable Rules of the Route*”.

The Committee’s findings of fact in respect of the case for Network Rail

11. In respect of Network Rail, the Committee found as follows.

- 11.1. The 12½ hour possessions were being sought for two different main purposes, namely the renewal of plain line track on the middle pair of lines on the 4 track sections where there are restricted clearances between adjacent lines, and on the other, the ability to undertake squadron programmes of S&C tamping at the major junctions.
- 11.2. Increased traffic flow, and speed, on the WCML, had required Network Rail to re-define the basis on which maintenance was to be carried out, and the standards of alignment required. On Fast lines, the requirements of EPS and Tilt demanded maintenance to what is described as “Absolute Track Geometry” (ATG) standards; where Fast lines are in close proximity to other running lines, the ATG standards in respect of the relative position of tracks must, by extension, also apply to that adjacent track.
- 11.3. The equipment that Network Rail was proposing to employ for the purposes of Plain Line Renewals
 - 11.3.1. required significant setting up and strike down periods at the beginning and end of periods of productive activity such that when a blockage lasts for 8 hours, only some 4 hours of actual track renewals can be achieved; when the blockage is extended to 12 hours the productive work time is doubled to 8 hours;
 - 11.3.2. cannot be operated to achieve the renewal of one line without a requirement for the possession, and/or isolation of one or more adjoining lines. In respect of the Up Fast and Down Slow lines on the WCML, the extent to which possession of adjoining line(s) may be required is increased by the extent to which the “ten foot” between the Fast and Slow lines is below the appropriate figure; and therefore
 - 11.3.3. is such that overall safety considerations are most readily met by the imposition of an all line blockage.
- 11.4. It was asserted that there are engineering implications for the possible longevity of track that has been renewed in shorter sections, with a correspondingly greater number of re-connections.
- 11.5. Where tamping of a crossover is required the direct interconnection of adjacent lines on common bearers requires both ends of the crossover to be tamped in the same session. In addition the spacing of some of the points in the respective formations is such that the new crossovers installed at Ledburn Junction, and at Bourne End, have been designed, and installed in a way that, once tamping has been commenced at the beginning of a sequence of connections, there is no opportunity to conclude tamping with a necessary “run out” without completing the total sequence.
- 11.6. The overall time requirement is increased by the need to remove, before tamping commences, and reinstall on completion, various items of track mounted equipment, in particular axle counters associated with the signalling equipment. That signalling equipment then has to be tested before the line can be reopened to traffic.

- 11.7. To date, the only satisfactory means that Network Rail has identified for carrying out S&C tamping at these locations, to the standards required by ATG, requires the simultaneous and parallel deployment of a “squadron” of tamping machines. The minimum time required for the overall possession is then determined by reference to the operating time for the machine that is charged with the greatest number of point ends.
- 11.8. At Ledburn and Bourne End Junctions, the annual required quota of S&C tamping cannot be delivered, on the basis of current knowledge, without two 12½ hour “all line blockages” at each location. Taken across all the junctions between West London Junction and Hanslope Junction that require this standard of tamping, and assuming that only a single squadron of S&C tamping machines is deployed, there is a need for 21 separate 12½ hour “all line blockages” during the currency of the 2006 Timetable.

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

12. In practical terms, the difference between the parties could be summarised as
 - 12.1. Silverlink, the Train Operator, has Firm Rights that it wishes to enforce, and which it is not prepared to subject to ongoing disruption in excess of a Saturday night/Sunday morning 8 hour all-line possession;
 - 12.2. Network Rail has obligations to another Train Operator (VWC) which requires it to maintain the WCML to ATG standards for the purposes of EPS and tilt running;
 - 12.3. Network Rail contends that, in the current state of its engineering knowledge, it can only carry out S&C tamping of the key junctions to ATG, on the basis of deploying a squadron of tamping machines with a minimum all line blockage of 12½ hours;
 - 12.4. Silverlink does not operate any services that make use of EPS capability;
 - 12.5. Network Rail has obligations to all Train Operators to renew and maintain all the tracks on the WCML, and there is currently a deficit of renewals to be made up affecting the Up Fast and Down Slow lines;
 - 12.6. There are economic benefits to Network Rail from taking longer rather than shorter blockages. More restrictive safety regulations, in part a function of the types of equipment that Network Rail has chosen to employ, now require all line blockages for work which, in previous years, would not have needed all running lines to be under possession. and
 - 12.7. Silverlink is seeking to realise some of the compensatory benefits for the disruption it has suffered in previous years, and seeks to ensure that other works are carried out to a regime that minimises future disruption of its contracted services.
13. For the Committee, determination of the relative merits of these opposing ambitions also required it to supply answers to the following questions
 - 13.1. in circumstances where it appears that newly installed junctions have design characteristics that mean they cannot be maintained without requiring a significant curtailment of existing Firm Rights, should this Committee therefore accept that it has no choice in respect of the matters that it is required to determine?

- 13.2. could the work be undertaken within shorter possessions?
- 13.3. are the Firm Rights held by Silverlink of such a standing that the precedents set in earlier determinations should prevail in this case, namely that a proposed change to the Rules of the Route, that would lead to the extinguishing of asserted rights, could not be incorporated into the “*applicable Rules of the Route*”? or
- 13.4. is an interruption to services that occurs on 29 weekends out of 52 sufficiently infrequent that rights might be considered to have been honoured, subject only to the application of the provisions of Schedule 4 of Silverlink’s Track Access Agreement? or
- 13.5. should Schedule 4 only be relied upon in respect of disruptions that occur on a fewer number of occasions during the year, and, if so, should this be reflected in the circumstances where Network Rail should be denied the right to convert a proposed change to the Rules of the Route into “*applicable Rules of the Route*”?
14. In response to these specific questions the Committee came to the following conclusions
- 14.1. it cannot be acceptable for new track layouts to be designed and installed without prior confirmation that the maintenance and up keep of the new installation is compatible with existing Firm Rights unless appropriate changes to such rights are agreed and approved by the Office of Rail Regulation. If, as appears to be the case in respect of the S&C tamping programme, flawed past decisions mean that there are only limited options open to today’s engineers, this does not mean that Firm Rights have to be subordinated to matters of practicality, even if those matters of practicality may have to govern the prescription of remedies;
- 14.2. it would appear that, in the case of the S&C tamping, an all-line blockage of less than 12½ hours cannot deliver any useful output. This is not the case with plain line renewals where, although the longer possession delivers greater output and efficiency, some productive work can be achieved from an 8 hour possession;
- 14.3. Silverlink’s Firm Rights do indeed have a standing which, if it were to be proposed that they be denied for a whole Timetable, would give the Committee grounds for determining that a proposed change to the Rules of the Route should NOT be incorporated into the “*applicable Rules of the Route*”; and
- 14.4. it would not be appropriate to try to formulate a definite conclusion as to how many weeks in a year constitute the effective denial of a Firm Right. However, the question must be considered if the impact on passengers is that key services (such as last trains at night) are more likely NOT to run than they are to run.
15. The Committee notes that these questions only arise because of the mismatch between Silverlink’s Firm Rights to operate trains and the needs of Network Rail to maintain and renew the network. Given that the existing Silverlink Track Access Agreement has no currency beyond the end of the 2006 Timetable, this is not an issue that need necessarily recur in future years.
16. In respect of the discretion open to the Committee in making a determination, the Committee finds that it is closely constrained by the discretion open to Network Rail. Thus

- 16.1. Network Rail appears, in the present state of understanding in respect of ATG maintenance standards for S&C, to have an inescapable requirement for “all line blockages” of a minimum of 12½ hours, in order to undertake S&C tamping. However, it would also appear that this length of blockage is also a reasonable amount of time in which to complete a sensible unit of output; by contrast;
- 16.2. Network Rail can achieve some useful output, in respect of plain line track renewals, from a possession of 8 hours, even though it can achieve disproportionately more from possessions of 12, 18 or more hours.
17. The Committee is therefore of the view that given the existence of Silverlink’s Firm Rights, in this instance, it would not be unreasonable to expect Network Rail to plan its possession strategy upon the following principles;
 - 17.1. unless totally unavoidable, no all line blockages to exceed the 8 hours that already has Silverlink’s support;
 - 17.2. where, as appears to be the case with the S&C tamping, there is an inescapable need for longer possessions, these should be provided for, but only to the minimum extent required, and scheduled in consecutive weeks to avoid “*wherever practicable frequent timetable changes, in particular for railway passenger services*” (*Network Code Condition D6: Decision criterion (k)*); and
 - 17.3. to the extent that other activities, as in this case plain line track renewals, can also take advantage of longer periods of “all line blockages”, then such other activities should be “piggy-backed” onto the essential blockages, but only to the extent that they do not require those blockages to be further extended in duration, or number.

The Committee’s determination

18. The Committee’s determination therefore is based upon the pragmatic balancing of intrinsically conflicting propositions, and is that
 - 18.1. Silverlink has Firm Rights and is entitled to assert them, within the 2006 Timetable;
 - 18.2. were Silverlink to assert those Firm Rights in every case, the potential modifications this would require of the proposed Rules of the Route, is likely to result in track maintenance problems that would be to the detriment of all relevant Train Operators, including Silverlink;
 - 18.3. it is in the interests of all relevant Train Operators that Network Rail should be allowed to incorporate into the Rules of the Route provision for that number of 12½ hour “all line” possessions as are required specifically for the programme of S&C tamping that it has presented in evidence to the Committee, but that this level of extra disruption cannot be justified where there is no requirement for S&C tamping.
 - 18.4. Network Rail should therefore devise and present to Silverlink, and all other affected Train Operators, revised proposals for possessions in Periods 0, A and D of the 2006 Rules of the Route, that comply with the following general objectives;
 - 18.4.1. the normal duration of “all line” possessions between Camden and Hanslope Junction, throughout the 2006 Timetable should not exceed 8 hours;

18.4.2. “all line” possessions may be extended to 12½ hours only on those weekends where S&C tamping is to be undertaken;

18.4.3. S&C tamping should, within Periods 0 and A, and within Period D, be undertaken on consecutive weekends such that Silverlink’s passenger timetable (and those of other passenger operators) does not require more than a minimum of adjustment; and

18.4.4. on every possible occasion the timing, and organisation, of the start of the possession should be such as to permit the last train on Saturdays from Euston to Northampton (currently the 23:45 departure) to run at least as far as Hemel Hempstead.

19. These proposals shall be put to Silverlink, and other affected Train Operators, with the minimum delay, and, provided that there is, within the proposals, reasonable compliance with the guidance set out above, the Committee would commend their acceptance to Silverlink. This commendation is without prejudice to the rights of Silverlink or any other affected Train Operator to have recourse to this Committee with respect to the revised proposals, or, in respect of the WCRM Major Project Notice, to the Network and Vehicle Change Committee.

Bryan Driver

Independent Vice-Chairman