
TIMETABLING COMMITTEE

Determination No. 271

(following a hearing at Kings Cross on 17th February 2005)

[Note: previous published determination was determination no. 265]

Brief Summary of dispute

1. The Committee was asked by Virgin West Coast (VWC) 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 deemed unacceptable and that Network Rail should be directed to propose alternative arrangements.
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.

4. The Committee noted, with some displeasure, that the original joint submission from the parties had been much lacking in both clarity and detail. In particular, no evidence at all was submitted in relation to the existence, or the nature, of the Track Access rights held by the Train Operator. Network Rail, for its part, had only tardily submitted clarification of the engineering considerations that might be germane to the Committee's deliberations.
5. Furthermore, the Committee found unsatisfactory, that, within the reference, such as it was, there was made mention of
 - 5.1. 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;
 - 5.2. 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
 - 5.3. a suggestion, from VWC, that the engineering practice underlying the proposals from Network Rail was tantamount to the introduction of a Network Change.
6. The Committee therefore made very clear to the parties
 - 6.1. 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
 - 6.2. 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 Virgin West Coast

7. The Committee considered, on the basis of a consideration of documents, and assertions, only laid belatedly before it, the nature of the Track Access rights held by VWC; in particular
 - 7.1. the overarching provisions of the PUG2 Contract, which affirms notional rights that are impossible of realisation because, for example, they are based upon 140mph line speeds;
 - 7.2. a second tier of fall back rights, to marry up with a reduced capability of both stock and infrastructure; and
 - 7.3. an obligation on both VWC and Network Rail, for any intermediate period of further inhibited capability, to agree "Best Achievable Access Rights", being the best achievable in compliance with the applicable Rules of the Plan/ Rules of the Route.

8. In seeking to define “Best Achievable Access Rights”, the Train Operator, which is operating the Franchise on the basis of a management contract with the SRA, is subject to the direction of the SRA, termed “West Coast Instructions to Bid”.

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

9. In respect of Network Rail, the Committee found as follows.
 - 9.1. 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, and the ability to undertake squadron programmes of S&C tamping.
 - 9.2. 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 proximity to other running lines, the ATG standards in respect of the relative position of tracks must, by extension also apply to that parallel track.
 - 9.3. The equipment that Network Rail was proposing to employ for the purposes of Plain Line Track Renewals
 - 9.3.1. 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;
 - 9.3.2. 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
 - 9.3.3. is such that overall safety considerations are most readily met by the imposition of an “all line blockage”.
 - 9.4. 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.
 - 9.5. 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.

- 9.6. 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.
- 9.7. 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.
- 9.8. 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 tampers 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

10. In practical terms, the difference between the parties could be summarised as a difference between
 - 10.1. the Train Operator, who wished/was under instruction, to exploit the benefits of West Coast Route Modernisation (WCRM) to develop the Sunday morning travel market, but which considered that this is not something that can be achieved using services which run only intermittently, or which, because there are no diversionary routes, rely on the provision of substitute buses; and
 - 10.2. Network Rail, who contended that the benefits, in terms of speed etc., of WCRM could only be sustained by the use of renewal and maintenance techniques that required 12½ hour possessions proposed to run up to midday Sunday.
11. The Committee noted that both parties were of a view that the works described as necessary by Network Rail, did require to be undertaken; the points at issue were
 - 11.1. could the work be undertaken within shorter possessions?
 - 11.2. are the Track Access rights held by VWC of such a standing that the precedents set in earlier determinations should prevail in this case, i.e. that a proposed change to the Rules of the Route, that would lead to the extinguishing of asserted Firm Rights, could not be incorporated into the “*applicable Rules of the Route*”? or
 - 11.3. 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 VWC’s Track Access Agreement? or

- 11.4. 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*”?
12. In reviewing the inadequate evidence presented by VWC, the Committee found that, in the broad scale of things, VWC possessed Track Access rights of a standing that required they be taken into consideration before acceding to a request from Network Rail to incorporate a proposed change to the Rules of the Route into “*applicable Rules of the Route*”. However,
- 12.1. whilst this might be a clear-cut position in respect of the underlying PUG2 rights, there was not this clarity in relation to the progressive dilutions of rights, down to and including the “Best Achievable Access Rights”; and
- 12.2. it appeared, from comments made by the representatives of VWC, that the process of negotiating a pattern of “Best Achievable Access Rights” was one that was to be undertaken on a timetable by timetable basis, and furthermore that no bids could be made that were not compliant with the “*applicable Rules of the Route*”.
13. The Committee noted that VWC was operating within the parameters of a non-template Track Access Agreement, and also subject to the overlay of a particular contract with the SRA. However, VWC had not presented any evidence as to why that contract created any special factors that would weigh in any assessment of the balance of interest between the parties, for instance in respect of Decision Criterion (b) (Network Code Condition D6) “*enabling a Bidder to comply with any contract to which it is a party (...including the franchise agreement to which it is a party) ...*”.
14. By contrast, Network Rail had presented copious illustrations of why the work that they wished to undertake was potentially significant in respect of Decision Criteria (c) “*maintaining and improving the levels of service reliability*” or (d) “*maintaining, renewing and carrying out other necessary work on or in relation to the Network*”.
15. In respect of the discretion open to the Committee in making any determination, the Committee finds that this is closely aligned to the discretions open to Network Rail. Thus
- 15.1. 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,
- 15.2. Network Rail can achieve some productive work, in respect of plain line track renewals, from a possession of 8 hours, but can achieve disproportionately more from possessions of 12, 18 or more hours.
16. The Committee noted that it appeared that there had been no discussions between the parties regarding any alternative methods of working that might permit VWC to run even a limited number of services before 1200 on the affected Sundays.

The Committee's determination

17. The Committee therefore determined that, in respect of the case for denying to Network Rail the right to take 29 x 12½ hour weekend all line possessions, VWC had not made an adequate case as to why such possessions should not proceed and be incorporated into the “*applicable Rules of the Route*”. VWC is therefore directed to accept Network Rail’s proposals.

18. For the avoidance of doubt, this determination should be taken as entirely without prejudice to any other appeals, by other Train Operators, either to this Committee, or to the Network and Vehicle Change Committee, in which reference might be made to these blockages. In particular, Network Rail should not construe this determination, which gives them the right to prevail over the interests of VWC, in this specific instance, as conceding any more generalised right, whether in respect of these possessions in relation to other Train Operators, or in respect of other analogous possessions.

Bryan Driver

Independent Vice-Chairman