

---

## ***TIMETABLING COMMITTEE***

---

### **Determination No. 275**

(following a hearing at Kings Cross on 11<sup>th</sup> and 29<sup>th</sup> March 2005)

*[Note: previous published determination was determination no.271]*

#### **Brief Summary of dispute**

1. The Committee was asked by First Great Western (FGW) to direct Network Rail that the works necessary for the renewal of the whole track layout at Wootton Bassett Junction should not be undertaken during a one week blockade in late August 2006.
2. The Committee noted that the reference was made under the provisions of Network Code Condition D2.1.6, and is a challenge to Network Rail's proposal to incorporate the proposed engineering possessions, a nine day all line blockade (01:15 Sat 26th August 2006 to 05:30 Mon 4th September 2006 (weeks 22 & 23)), into the applicable Rules of the Route. The proposal had been made first in Version 1 of the Rules of the Route/ Rules of the Plan for 2006, and then, despite a challenge from FGW, re-affirmed in Versions 2 and 3.
3. The case for FGW relates to its contention that, if the work is undertaken in August, around the August Bank Holiday, the scale of the potential dis-benefits to FGW and its customers (service disruption, revenue loss and additional costs) is much greater, because of the numbers of people travelling, than it could be if scheduled at a time of lower demand (specifically either Christmas 2005 or Christmas 2006). FGW do not contest either the need for the work, or the principle that the work is best undertaken in a single uninterrupted blockade.

#### **Other Interested parties**

4. The Committee noted that the joint submission also acknowledged the interest of other Train Operators *"It is worth noting that whilst EWS & Freightliner have objected to the possession plans their rejection [sic] relates to diversionary route issues and not the timing of the main works. Network Rail's understanding is that both freight operators would much prefer the works to be undertaken in August and not at Christmas. Therefore they have been shown as interested parties to the dispute. Wessex Trains have also been added as an interested party, at FGW's request, since they are significant users of the diversionary routes."*

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

5. Disputes of this nature have been considered by the Committee in the past, and, in general, require the Committee to weigh up, where appropriate by reference to the Decision Criteria (Network Code Condition D6), the relative standings of
  - 5.1. the Firm Rights of the Train Operator to operate trains at specified times;
  - 5.2. 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;
  - 5.3. the extent to which the Train Operator would be able to provide alternative services, either using diversionary routes or by road transport;
  - 5.4. the rights of Network Rail to take the possessions, in effect to cause them to be included within the “*applicable Rules of the Route*” ;
  - 5.5. the extent to which the need for the possessions can be substantiated by reference to such factors as
    - 5.5.1. the need to do works (whether renewals or maintenance);
    - 5.5.2. the implications of doing the works at the times specified, or over the durations specified;
    - 5.5.3. the engineering choices made by Network Rail; and
    - 5.5.4. 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.

## **The Committee’s findings of fact in respect of the reference**

6. The Committee found that
  - 6.1. The engineering case for the possessions is set out in the joint submission, which also makes clear the extent of the traffic that a blockade would disrupt:
    - 6.1.1. *“Wootton Bassett Junction, 6 miles west of Swindon, is the point at which the high-speed main line to Bath, Bristol & beyond (MLN) splits from the high-speed main line to Bristol Parkway and South Wales (SWM). On a typical weekday it is used by over 120 FGW High speed train services, 30 in each direction on each route, and 10 Wessex Trains services, 5 in each direction to/from Westbury. In addition there are over 50 freight pathways (EWS and Freightliner) available each day of which just under 50% were used in a recent week analysed. The largest freight flow is the coal supply to Didcot Power Station, from Avonmouth Docks.*

- 6.1.2. *The junction was last renewed in 1978. Condition of Track Temporary Speed Restrictions have been in place since September 2003. In the MLN direction line-speed is 125mph; the Up TSR is 40/80 and Down TSR is 100; in the SWM direction line-speed is 70mph but a Down TSR of 40/line-speed is in place. Maintenance requirements including component replacement at the junction have been increasing, and its condition is now such as to require entire renewal. In particular, the junction has poor track geometry including heel block misalignment causing rough riding.*
- 6.1.3. *On a number of occasions over the last few years, the junction has been lifted to maintain top and line and additional clean ballast has been introduced to aid drainage. As a result of this, and the three brick arch bridges that abound the junction, no further lifting is possible whilst maintaining gauge clearance through the area. To gain the full benefits of renewal and ensuring a long life, the works must include a complete lowering of the junction and a full refurbishment of the drainage system.” (Joint Submission Section 2)*
- 6.2. A Track Access Agreement exists which confers upon the franchised operator of passenger train services over the Great Western Main line the Firm Rights to the services detailed in the Joint submission. This Track Access Agreement lasts until December 2006, but expires before Christmas 2006. There is currently no Track Access Agreement in being that covers Firm Rights beyond the end of the 2006 Timetable.
- 6.3. FGW are the current holders of the Great Western Franchise; the franchise falls to be re-let in April 2006.
- 6.3.1. FGW asserts that it has been charged by the SRA to protect the interests of all prospective franchisees in respect of the content of the “*applicable Rules of the Route*”, and that that charge, and the existence of the Track Access Agreement continuing to December 2006, empowers it to oppose the proposed August blockade, and to propose December 2006 as an alternative;
- 6.3.2. Network Rail asserts that the SRA is aware of the proposals in respect of the renewal of Wootton Bassett Jct. and that prospective franchisees have been invited to bid with the impact of the blockade factored into their offer.
- 6.4. The financial impact upon FGW, and other Train Operators does differ as between an August or a Christmas blockade. This is acknowledged within the Joint Submission. Thus
- 6.4.1. *“It is likely that FGW’s road replacement and additional staffing needs would be lower at Christmas than in summer, with certain days of the possession coinciding with days (or times of day) no service is operated at all” (Joint Submission Appendix C FGW case).*
- 6.4.2. *“The requirement for freight flows is at its lowest in the high summer. EWS have confirmed that in respect of Didcot that this is certainly the case and*

*that any disruption to coal flows over the Christmas period is not acceptable to the power generators.” (Joint Submission Appendix C Network Rail case)*

6.5. In respect of the potential cost differences, the parties make their representations on diverging bases; for Network Rail, a deciding factor is the tally of all items of expenditure, including compensation out payments; for FGW the case depends on a perception that it is more disadvantaged by an August blockade than it would be at Christmas. Thus:

6.5.1. *“Network Rail accepts that the FGW bus costs may well be greater in August when compared with Christmas, however the actual possessions costs will be considerably less as the provision of specialist labour at Christmas is becoming prohibitively expensive” (Joint Submission Appendix C Network Rail case).*

6.5.2. *“When taken together it is Network Rail’s view that the whole industry cost is at its lowest in Summer when compared to Christmas 2006. The amount is believed to be somewhere between £100 and 400K.” (Joint Submission Appendix C Network Rail case).*

6.6. Because of the duration of the proposed blockade, compensation to affected passenger Train Operators is covered by the Severe Restriction of Use provisions of Schedule 4 of the respective Track Access Agreements. This is acknowledged by FGW in the Joint Submission; *“With this possession taking a high number of days, FGW will be able to pass these costs through to Network Rail” (Joint Submission Appendix C FGW case).*

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

7. The Committee found that the key considerations that should inform its determination were as follows.

7.1. There is agreement between the parties that the junctions at Wootton Bassett require replacement, and that, because of the extent of the works, in particular the need to lower the overall alignment, these should be undertaken as a single continuous blockade;

7.2. Decisions as to the dating of a blockade require the balancing of matters of

7.2.1. the scale of disruption potentially experienced by the customers of all Train Operators using the route;

7.2.2. the urgency of the works in question, and the possible penalties associated with delay;

7.2.3. the nature of the works, and their vulnerability in relation to the potential seasonal variation in the weather;

- 7.2.4. the overall cost of the works, both in absolute industry terms, and in relation to the ways in which such costs (including revenues foregone) are distributed between the affected parties, and
- 7.2.5. whether there are practical alternatives: in this case, the only alternative to an August 2006 blockade, is mooted, by FGW, to be one at Christmas 2006.
- 7.3. It would appear that a blockade in August 2006, as compared with one at Christmas 2006,
  - 7.3.1. would inconvenience a greater number of FGW passengers, and require the diversion, or bus replacement, of a greater number of trains; ...
  - 7.3.2. could be arranged (if the power generator is prepared to adjust the date of the maintenance shutdown) to have little impact on the flow of coal to Didcot Power Station; a blockade at Christmas would interfere with the volume of coal movement needed to meet the peak burn associated with the Winter power demand;
  - 7.3.3. would have potentially better weather conditions for the carrying out of the drainage works necessary, and would attract significantly lower labour costs and risks of overruns; and
  - 7.3.4. could be undertaken for a lower overall cost to the whole industry, even after payment of compensation, as provided in the respective Track Access Agreements.
- 7.4. The parties' attitudes to the matter of the cost implications of the choice of date appear, at first sight to be irreconcilable. On the one hand, Network Rail argues that August represents a better deal to all the industry, whilst on the other, FGW argues that an August blockade loads it with a disproportionate share of penalties, and that it does not get any share in the benefit from lower overall costs.
- 7.5. The Committee does not find this argument of FGW's to have merit, and, without making any detailed comparison of the sketchy figures presented by both parties, considers that
  - 7.5.1. a comparison of whole industry costs, including a full measure of any contractual compensation (which must include that relating to the anticipated need to suspend some passenger services on other routes to provide capacity for diverted passenger or freight trains), is a factor which should influence the choice of date
  - 7.5.2. The scale of disruption and revenue loss to FGW, would be greater in August 2006 than at Christmas 2006. The compensation payable in consequence will also be greater, but this is already factored into the Network Rail assessment of the whole industry costs of the two alternative dates.

- 7.5.3. If it should be the case that the contractual compensation payment arrangements still leave the Train Operator with the potential for one date to be more detrimental than the other, then, in this case, account also has to be taken of the fact that both dates fall after the date at which the GW franchise will have been re-let. Whichever date is then incorporated into the specification for bidding, there is scope for the bidders, if they adjudge it appropriate, to factor in some further consideration in their bid. Such a process would not invalidate the basis of the comparison of all industry costs that, in the view of Network Rail, argues in favour of an August blockade.
- 7.6. The proposal for the blockade, as tabled, envisages no train movements through Wootton Bassett during the whole 9 days, and therefore that all services would require to be diverted or substituted. The layout of the junction, in particular the by-passing Up Goods Loop, appears to permit the possibility that during some of the days of blockade a limited but worthwhile number of movements could be made over the Up Goods Loop, without interfering with the works on the main junction formation. Such an arrangement would offer the potential for fewer trains to require diversion, but has not been the subject of significant discussions with the Train Operators.
- 7.7. Other works are contemplated under the cover of the Wootton Bassett blockade. Of these the Committee notes that the proposals in relation to the layout at Rushey Platt (involving the raising of the speed through a key facing lead) are still subject to uncertainty, insofar as they await on the conclusion of the relevant business case. Removing the uncertainty in respect of Rushey Platt may well require that a later Version of the Rules of the Route contain amended proposals.
- 7.8. There are still unresolved matters between Network Rail and the Freight Train Operators as regards the viability of diversionary routes, in particular with regard to trains that are route restricted due to the loading gauge of the traffic conveyed.

### **The Committee's determination**

8. Taking account of all these considerations, the Committee determined that
- 8.1. the case made by FGW that the Wootton Bassett blockade could take place at Christmas 2006, was not sufficiently convincing for the Committee to direct that it should not take place in August 2006;
- 8.2. the case made by Network Rail in favour of an August blockade appeared, in general terms, to strike an acceptable balance between the interests of all prospective affected parties; however,
- 8.3. the adverse impact of the blockade upon all Train Operators could potentially be reduced by further revisions to the detail of the possession plan, directed at allowing some trains to pass over the Up Goods Loop, and at confirming the feasibility of diversionary arrangements.

9. The Committee therefore
  - 9.1. finds AGAINST First Great Western in respect of its request that the Blockade not be in August 2006;
  - 9.2. finds FOR Network Rail in respect of the month of the blockade but NOT in respect of the detailed proposals; and therefore
  - 9.3. directs Network Rail to review and revise its proposals, in consultation with ALL affected Train Operators, to ensure that the periods of total blockage (including of the UGL) are minimised, and that the days of total blockade are those that would result in least overall disruption.
  
10. For the avoidance of doubt, the Committee considers that
  - 10.1. Network Rail can plan in anticipation that a Blockade at Wootton Bassett Junction in August 2006 will in due course be incorporated into the “*applicable Rules of the Route*” for 2006;
  - 10.2. until Network Rail has carried out the review of detail required, together with necessary consultation with all Train Operators, Network Rail shall not be entitled to include the DETAIL of the current proposals within the “*applicable Rules of the Route*”;
  - 10.3. there is good sense in any revised proposals incorporating the conclusions from the ongoing evaluation of options in respect of Rushey Platt;
  - 10.4. any revised proposals, or, should further evaluation indicate that the current proposals cannot be improved on, a restatement of the current proposals, should be published in the first available Version of the Rules of the Route;
  - 10.5. the determination of the Committee, in this instance, is entirely without prejudice to any right of appeal, by any affected Train Operator, against any of the detail of such republished Rules of the Route.

Bryan Driver

Chairman