

IN THE MATTER OF PART D OF THE NETWORK CODE

AND IN THE MATTER OF THE ACCESS DISPUTE RESOLUTION RULES

**AND IN THE MATTER OF TIMETABLING DISPUTES TTP 1064; 1065; 1066; 1069; 1071;
1073; 1075**

BETWEEN:

**(1) ABELLIO SCOTRAIL LIMITED ("ASR")
(2) DB CARGO (UK) LIMITED ("DBC")
(3) FIRST GREATER WESTERN LIMITED ("GWR")
(4) XC TRAINS LIMITED ("XCTL")
(5) GB RAILFREIGHT LIMITED ("GBRf")
(6) ARRIVA RAIL NORTH LIMITED ("ARN")
(7) EAST COAST MAIN LINE COMPANY LIMITED ("VTEC")**

Claimants

v

NETWORK RAIL INFRASTRUCTURE LIMITED ("NR")

Defendant

**NR's RESPONSE TO HEADS A AND B ISSUES
APPENDIX 7
NR'S RESPONSE TO THE SUBSTANTIVE PARTS OF ARN'S SRD**

Introduction

1. This document should be read in conjunction with NR's Response to Heads A and B Issues dated 12 April 2017 (the "*Response*").
2. Abbreviations as used in ARN's SRD are adopted in this Response. References to Paragraphs are to Paragraphs in ARN's SRD.

Overview of NR's response to ARN's SRD

3. NR denies that ARN is entitled to the relief it seeks, or to any relief, for the reasons set out in this response to ARN's SRD and the Response.

Response to Section 4 of ARN's SRD

4. The nature of the dispute in Section 4 of ARN's SRD is noted; namely an alleged failure to consult between D-64 and D-60 in accordance with D2.2.2. It is accepted that this is a timetable dispute, but for the reasons set out below and in the Response, it is denied that ARN is entitled to the relief sought or any relief.

Response to Section 5 of ARN's SRD

5. As to consultation overall in relation to the TRIP/ODA process, NR relies on the points set out in Mr Allen's witness statement at paragraphs 60 to 89. Further, ARN was represented

specifically at the meeting on 11 February 2016 (the minutes are attached at **Annex / Tab 1/ p.21-25**). It can be seen from section 6 of the minutes that the ODA methodology was discussed particularly in relation to LN600.

6. In Paragraph 5.1 ARN asserts that it is highly concerned over the detrimental impact on its services of the SRT changes. NR admits that the proposed SRTs between Newcastle and Morpeth will increase but it cannot reply to this allegation of detriment on ARN's services as ARN has not provided NR with any detail regarding any such alleged impact. If ARN did provide or if ARN had provided NR with evidence of the impact then NR would, obviously, carefully consider this.
7. ARN's complaints in Paragraph 5.2 about NR's briefings at forums cannot be supported. NR relied on the forums as a method of discussing general issues and implementation of the ODA along with the results of modelling which NR had already undertaken. Whilst the minutes of the forum meetings do not record detailed discussion of LN600, LN600 was mentioned during the forum meetings. Individual studies and the conversations relating to particular routes often took place outside the forums with specific TTPs. NR has set out the chronology of this in its response to ASR's SRD. Instead of repeating that chronology here, NR relies on the chronology regarding consultation included in the response to ASR's SRD, as if it is repeated here.
8. NR does not understand why ARN would think that TRIP/ODA did not apply to LN600 when on 13 October 2016 ARN were emailed a copy of the "*ODA reports detailing proposed SRT amendments for the 2018 Timetable*" in relation to LN600 (see **Annex / Tab 3/ ARN / p.1596-1723** for the email and ODA report). It is therefore not correct for ARN to assert that it was not consulted specifically in relation to the LN600 SRT outputs. ARN itself admits this in Paragraph 5.3.
9. As for Paragraph 5.3, NR cannot see the basis for ARN's complaint that the impact of the analysis on ARN was not made explicit. The relevant route, LN600, is expressly referred to 67 times in the report NR issued on 13 October 2016. Therefore, even a cursory glance at the report would have made clear that it was relevant to LN600 and thereby ARN.
10. Pages 73 and 74 of V303 of the ODA report (sent to ARN on 13 October 2016) provide the summary tables in question. NR accepts that the proposed SRT changes in question (pertaining to ARN) are not mentioned in the summary tables. The information relating to these proposed SRT changes (pertaining to ARN) is on pages 98 – 100 of the ODA report. Pages 98 – 100 clearly illustrate the proposed changes to ARN's SRT times on LN600. ARN should have easily identified that this information was relevant to it, not least since the pre-fix "*ED*" is ARN's unique two-character identifier for the purpose of industry timetabling systems (which ARN is of course aware of). Additionally, page 98 of the ODA report is headed "*Northern Rail Services*", Northern Rail being ARN's name at the time.

11. As to Paragraph 5.4, given the way the relevant information was clearly set out in the ODA report, ARN plainly had sufficient time to comment on the SRT values. NR notes that ARN does not say that it considered the ODA report and it seems that it was a failure by ARN to consider the ODA report which led to ARN not commenting on those SRT values contained in the report. Clearly that failure is not one which can be visited on NR. NR is under no obligation, and there is no defined practice in presenting the rules and therefore it is only right that NR may expect that ARN read the rules alongside the ODA report, or with the ODA report in mind.
12. As to Paragraph 5.5, for the reason set out above (and particularly the ODA report) it is not the case that ARN only became aware of the changes to LN600 on 9 February 2017. NR notes that, as can be seen from Paragraph 5.6, ARN does not actually complain about not being able to comment, but instead complains that the revised SRTs were adopted. That is actually a complaint regarding the validity of the ODA data and/or the TRIP process and is not, in reality, a complaint regarding ARN's ability to comment on the SRTs. NR's case in relation to this is set out in more detail below.
13. As to Paragraph 5.6 ARN may have been "*disappointed*" to see the LN600 figures included in Version 2 of the Rules. However, this is not a sufficient objection to the change. What this shows is that ARN was not, in any way, confused by the fact that the LN600 figures were crossed out. That is because the comments which were crossed out were simply that, comments. Comments are not usually included in the Rules.
14. NR accepts that it is not evident from Version 2 of the Rules themselves that the proposed LN600 changes are contained in the Rules. However, the presentation is standard. Version 2 of the Rules, when published, does not highlight changes that have been made to the Rules. When Version 2 of the Rules is published, the corresponding SRT values are held in a separate database named BPLAN, which is available to operators. The information in BPLAN does not highlight which SRT values have changed but simply sets out the new values.
15. Where a proposed SRT time is to be amended or withdrawn, NR will reference this information in Version 2 of the Rules. If a proposed SRT change is not expressly mentioned in Version 2 it means that the proposal is not being modified or withdrawn and is being carried into Version 2, and the new value will be seen in BPLAN alongside publication of Version 2. Therefore, since the eight SRT changes in question were not being modified or withdrawn, ARN should have known that the final values, as proposed, were set out in BPLAN, and NR were entitled to rely on ARN being aware of this.
16. ARN raises five specific points in Paragraph 5.7, which are considered below. However, as an overarching point, NR cannot accept the concerns ARN alleges it has with the analysis and methodology given that the analysis and methodology used is simply that of TRIP, which the TTP were consulted on (as explained in Mr Allen's statement). NR's responses to the bullet points at Paragraph 5.7 are as follows:

- 16.1 ARN was invited to all the TRIP/ODA forums where the issue of the methodology was discussed. If ARN was concerned about the volume or nature of the raw data then it could have raised that issue at the forums. Further, as ARN should be aware, NR is content to provide ARN with the raw data if ARN considers that would be helpful, and if ARN provides notice for the demand. NR does not always keep raw data due to the huge volume processed and requires time to respond to such a request. ARN cannot now validly challenge the results for the analysis concerning LN600 on the basis that it has not been provided with the raw data, particularly when the first request for the raw data is in ARN's SRD.
- 16.2 ARN's concern regarding the Class 156 unit is unfounded as NR removed the data regarding the Class 156 so as to eradicate any potential differences between acceleration and braking and other technical issues. Therefore NR accepts that ARN's concern is appropriate, but it is a concern which has been taken into account in the ODA data used. This shows two things. First, and most importantly, the TRIP/ODA analysis is appropriate and deals with the relevant technical issues, like the one raised here by ARN. Second, that the complaints made by the TTPs have, prior to the complaint being made, already been taken into account.
- 16.3 At a meeting with ARN on 28 March 2017, NR offered to consider withdrawing any proposal to increase an LN600 SRT, where there is any additional time in the schedule above the SRT. This offer was subject to an agreement being reached on the cumulative rounding of the other SRT times impacted by any such withdrawal. This proposal would deal with the concerns raised by ARN at the third bullet point of Paragraph 5.7. However, it is only with ARN's willingness to be reasonable as to the cumulative rounding that NR can withdraw the increase in the LN600 SRT and still comply with the Decision Criteria.
- 16.4 With reference to the fourth bullet of Paragraph 5.7, an offer to change this proposed SRT was sent by email from NR to ARN on 10 April 2017 (**Annex / Tab 3/ ARN / p.1724-1726**), stating that the particular SRT value mentioned by ARN (currently 11 minutes and 11 seconds) could be rounded up to 11 minutes and 30 seconds, rather than being rounded down. As at the date of drafting a response from ARN is awaited and NR is willing to enter into further consultation with ARN in relation to these SRT values.
- 16.5 ARN has highlighted an error in the report at page 126. The section quoted by ARN should not say that "*no analysis was possible on SRT values for class 2 stopping services as there are no published berth offset values for stations other than Alnmouth*", but that: "*no analysis was possible on SRT values for Class 2 stopping services **between Morpeth and Alnmouth** as there was no published berth offset values **at intermediary stations**"*" (NR's changes are added in bold to make them easier to see). This again shows how NR has sensibly and appropriately analysed the data which it has. NR understands that it has appropriate data for Morpeth and Alnmouth overall, but not in relation to intermediate stations. Therefore NR has applied the SRTs as it has, which are appropriate and should

be accepted by ARN. In effect, ARN has no valid criticism of the SRT on account of a mistake in a report describing the data.

17. ARN's case is summarised at Paragraph 5.8 as being a failure to consult between D-64 and D-60. What is set out above shows that is not the case. ARN received the ODA report prior to Version 1 of the Rules being issued and could have commented on it, but did not do so. Further, ARN had the information it needed to make the comments which it now makes, but it failed to do so in the relevant period.
18. In paragraph 5.9 ARN sets out that other data could be used when considering the SRTs. The point in relation to this is not that no other data is available, but that NR consulted on the data to be used in the TRIP/ODA process and the process and methodology was settled by NR and TTPs. NR would be happy to consider further data if ARN were to submit it, but it would be wrong for ARN to be able to provide data after the change had been proposed and then say that because NR has not considered this data earlier it has failed to consult properly. If that were the case then TTPs could always hold back data until after the Rules were provided and then challenge any amendment to the Rules on the basis of further information provided later. As an aside ARN refers to its GPS data. NR would be happy to consider that, but there are problems with GPS data as it will not necessarily accurately identify which track a train is running on. This is unlike the ODA data which will correctly identify the track the train is running on. NR does not raise this as a reason not to use the GPS data as a useful additional data source, but raises it simply to highlight specifically that any GPS data has flaws and that any data has to be used sensibly with those flaws taken into account.
19. Although there is no express criticism of NR's application of the Decision Criteria, NR has properly considered and applied the relevant Considerations in order to achieve the Objective and apply the Decision Criteria set out in Part D paragraph 4.6. NR considers that planning services on the basis of the actual operational capability of the Network (which encompasses the proposed SRT changes) pertains to sharing the Network's capacity in the most efficient and economical manner, as discussed in Part D paragraph 4.6.1.
20. With regard to the particular Considerations listed in Part D paragraph 4.6.2, Condition (c)¹ was given high weighting, and NR considers this to be the main driving force behind the proposed SRT changes. Consideration (f)² was also material to determining the proposed SRT values, not least since the proposed changes represent the more accurate running of the railway network and will therefore help to reduce delays and associated compensation

¹ Maintaining and improving train service performance

² The commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware.

payments arising from delays, payable by both NR and TTPs. NR also found Considerations (d)³ and (i)⁴ to be relevant to this matter.

21. To the extent that comments on a proposed change to the TPRs are properly presented to NR, for example supported by reasons and evidence, NR carefully considers these. If a TOC provides evidence that what NR proposes is incorrect or is not in line with the Decision Criteria, NR will change it. However, when a TOC simply states that it does not agree, or it inconveniences the specific TOC, NR is less likely to be able to justify any change being made.

Conclusion

22. ARN's complaints regarding the SRTs for LN600 are without foundation. First, ARN has proposed sensible changes to the SRTs for LN600 based on accurate and appropriate data, which still mean that overall the Decision Criteria are complied with. Second, ARN was perfectly aware (or should have been aware) of the SRTs proposed for LN600 given the consultation and notice provided by NR. Third, NR has considered carefully the issues raised by ARN and has made sensible proposals where appropriate.

³ That journey times are as short as reasonably possible.

⁴ Mitigating the effect on the environment.