

**Sole Submission to Timetabling Panel by
Network Rail Infrastructure Limited**

TTP reference 1127

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) GB Railfreight Limited whose Registered Office is at 55 Old Broad Street, London, EC2M 1RX ("GBRf") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

1.2 Third parties to this dispute may include all other FOCs, SouthEastern Trains and Govia Thameslink Railway.

2 CONTENTS OF THIS DOCUMENT

This Response to the Claimant's Sole Reference includes:-

- (a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
- (b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
- (c) Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;
- (d) The decisions of principle sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (e) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

The nature of the dispute in Section 4 of GBRf's Sole Reference Document (SRD) is noted, but for the reasons set out below Network Rail does not believe that it has failed to act in accordance with the processes specified in Part D of the Network Code, nor that the reasons for the rejection of bid PELE17SSB000033 are invalid.

- (a) Network Rail does not challenge GBRf's right to bring this particular dispute.

(b) i - Network Rail confirms that the dispute relates to Network Rail's decision in respect of Train Operator Variation Request reference PELE17SSB000033 ("the Bid") for the 2017 timetable.

ii - The bid was for one additional train, headcode 6Y41, to run from Tonbridge West Yard (departing 15:31) to Grain (arrive 17:38). The bid would require 6Y41 to propel eastwards out of Tonbridge West Yard, across the layout of Tonbridge station to behind signal AD2032, before heading west towards Sevenoaks (shown in Appendix 12). This propelling move is key to the rejection of the bid.

iii - The bid was rejected because the Network Rail planning team were aware that the propelling move requested would give rise to delay based on known performance issues at Tonbridge and because it did not comply with the planning guidance document covering the location (Appendix D2 of GBRf's submission – specifically pages 9 - 16).

iv - The performance issues at Tonbridge primarily stem from the fact that there are no Timetable Planning Rules (TPR) applicable to the propelling move requested; the Sectional Running Time (SRT) GBRf have applied to the move assumes a loco leading move and does not allow sufficient time for a propelling move. Network Rail therefore disputes GBRf's assertion that the bid is TPR compliant, as there are no rules for propelling moves at this location for this bid to be compliant with.

v - When challenged by GBRf on the grounds of its rejection, Network Rail reviewed its decision against the Decision Criteria and Objective in Part D 4.6 of the Network Code to assure itself that it had made a reasonable decision in line with the Code, and concluded that it had. This was communicated to GBRf in an email on Monday 7th August (Appendix 1). Network Rail therefore disputes that it has not acted in accordance Part D of the Network Code.

vi - Although not forming part of its original decision to reject the bid, in preparing for this Dispute Network Rail has identified safety concerns regarding the propelling move at Tonbridge included in the bid; it believes this gives further grounds for rejection. These concerns are whether the propelling move can be carried out in accordance with the Rule Book. Due to an overbridge which limits sighting from the platform (as shown in Appendix 13), permitting this move may be argued to be in violation of the operational Rule Book (section SS2 'Shunting', Rule 5.3 – Appendix 10) as the shunter cannot safely control the propelling move all the way. Network Rail also does not believe that there is a Method of Working in place to cover the proposed move.

(c) Network Rail considers conditions 4.3.1 and all of 4.6 of Part D of the Network Code to be relevant to this dispute and to support the approach it has taken in reaching its decision in this case.

(d) i - Regarding its decision to reject the bid, Network Rail believes it is important that the broader issues of performance at Tonbridge are considered, specifically in relation to propelling moves in/out of Tonbridge West Yard.

ii - There have been performance issues at Tonbridge for some time, but these have increased during 2016, particularly in relation to GBRf service 4Y81. 4Y81 propels into, rather than out of, Tonbridge West Yard, but the issues arising may be taken as indicative of those which would result from the introduction of bid PELE17SSB000033. The data in Appendix 2 shows that the performance of 4Y81 drops off markedly upon arrival at Tonbridge. Appendix 3 highlights the number of delay incidents associated with this service between Periods 1 and 4 of the 2017/18 financial year.

iii - The delays are primarily due to the length of time taken to complete the propelling move, which is longer than the SRT allows for; the SRT is 3 minutes and assumes a 'loco leading' move, whereas when propelling the move takes circa 10 minutes, as shown in observations recorded by GBRf and Network Rail in Appendix 4 (cab ride notes), for a move which covers a shorter distance than that requested by GBRf in bid PELE17SSB000033. The performance issues with 4Y81 led to the creation of the Tonbridge Performance Improvement Group ("the Performance Group") in September 2016. This brought together various Network Rail representatives with TOC (Southeastern) and FOC (GBRf) representatives, the two representatives from GBRf being Ben Thear (operations manager) and Richard Holmes (performance manager).

iv - Network Rail notes references made by GBRf in sections 5.10 and 5.12 of their SRD regarding the accuracy of information in the planning guidance document (GBRF Appendix D2), regarding the nature of GBRf's operations from the West Yard and points about the descriptions of signalling and infrastructure at Tonbridge. Network Rail acknowledges these points and will seek to address them in a revised version of this document, but does not believe these points have any relevance to the matter in dispute, as they do not relate to the reasons for rejection or the specific propelling move in question.

v - Network Rail also disputes the statement made in 5.9 that GBRf "have never agreed to this supposed Method of Working" (GBRf Appendix D2). As noted above, this document was created with the input, guidance and agreement of the Performance Group, which included two GBRf representatives. Appendix 5 (highlighted note) gives the details of the initial meeting of this group which shows creation of this document (referred to as a 'Compendium' in the email) as a key activity for the group to progress. Appendix 6 (action 1, page 2 - highlighted) shows that the document was shared with the group for comment, the group including two GBRf representatives. Both GBRf representatives were included in the distribution of these emails.

(e) Network Rail has included as Appendices a copy of an email to GBRf elaborating on its reasons for rejection (1); performance data concerning existing propelling moves at Tonbridge (2, 3, 4); details of actions undertaken by the Tonbridge Performance Improvement Group (5, 6); observations from local operational staff regarding propelling moves at Tonbridge (7); GBRf's current and proposed Method of Working for Tonbridge West Yard (8 and 9 respectively); relevant extracts from the Rule Book regarding propelling moves (10); diagrams and photographs of the layout at Tonbridge (11 and 12 respectively).

The appendices provided by GBRf to their SRD are recognised as relevant to the dispute.

4 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

4.1 Issues where the Defendant Accepts the Claimant's Case

Network Rail accepts the sequence of events as stated by the Claimant in sections 5.1 to 5.5 of their SRD.

4.2 Issues where the Defendant qualifies or refutes the Claimant's Case

i - Network Rail believes that the safety concerns regarding this move, although not forming part of the original grounds for rejection, are an important consideration in this matter.

ii - Network Rail refutes GBRf's claim that it has failed to act in accordance with the processes specified in Part D of the Network Code, nor that the reasons for the rejection of bid PELE17SSB000033 are invalid.

iii - Taking each of the Decision Criteria in turn, Network Rail believes it has appropriately reached a view in favour of rejection of bid PELE17SSB000033:

(a) It is agreed that clauses (a), (b), (h), (k) and (l) carry a neutral weighting in this matter.

(b) *"that the spread of services reflects demand"*: Network Rail accepts there is a demand for this service;

(c) *"maintaining and improving train service performance"*:

i - As acknowledged by GBRf, Network Rail believes this criteria supports rejection of the bid, on the basis that there are already significant performance issues associated with

propelling moves in and out of Tonbridge West Yard. Details of the performance issues currently being experienced by another service, 4Y81, are given in Appendices 2 and 3. 4Y81 is currently GBRf's worst performing service. Appendix 3 shows the number of delay incidents directly attributable to the propelling move it makes so far this financial year. It has led to PfPI costs of £21,823.32 in the financial year 2016/17 (Appendix 2).

ii - Although the propelling move is into, rather than out of the West Yard, it is considered that the performance issues it experiences would be replicated with 6Y41, the train bid for in PELE17SSB000033, if this was offered. The issues with 4Y81 are being addressed separately from this dispute, as we continue to seek GBRf's cooperation on the insertion of more time into the schedule in order to perform the propelling move without causing delay.

iii - Network Rail acknowledges that GBRf has been involved in the Performance Group to try and address the issues there (albeit they have suspended their involvement pending the outcome of this dispute). Amendments to the TPRs for the Tonbridge area have been consulted via the usual industry process for the May 2018 Timetable which should address the performance issues currently experienced by giving sufficient time for the propelling move to take place. Even then, these additional planning rules only cover propelling moves from the West Yard into Platforms 1 or 2, as it is not considered practicable to plan the move bid by GBRf. Therefore this move will continue to be unsupported by TPRs in the future and, if offered, cause delay to other services at Tonbridge unless planned in line with the guidance given in GBRf Appendix D2.

iv - The assessment by local operations staff of the potential impact of this move suggests a risk of conflict with three other services (2W48 Ramsgate - Charring Cross Southeastern service, 2H40 Charring Cross – Tunbridge Wells Southeastern service and 6Y21 East Peckham – Tonbridge GBRf service - see Appendix 7 page 2) and a projected 20 minute late departure for 6Y41 if it is regulated to avoid conflict with other trains. Significant weighting needs to be given to this element of the criteria because of the detrimental and significant material effects that 6Y81 would have on the network if introduced;

(d) *“that journey times are as short as possible”*: Network Rail acknowledges that accepting the bid would give GBRf the shortest journey time for their desired traffic flow. However in causing delay it would impact on the journey times of other services and it is projected that it would itself be delayed due to missing its booked path (see Appendix 7). We therefore believe this point to be in Network Rail's favour;

(e) *“maintaining and improving an integrated system of transport for passengers and goods”*: Network Rail does not believe that knowingly adding a train into the timetable that will cause delay serves to improve an integrated system of transport and so does not believe that this point supports offering the bid;

“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”: Network Rail believes this point supports its position; whilst Network Rail would derive track access revenue from running this additional service, this would be countered by the need to pay out Schedule 8 compensation due to the delay caused by this service. Network Rail acknowledges that there is a benefit to GBRf as a Timetable Participant in the train being offered, but it is also not in Network Rail's commercial interests to detrimentally affect the performance of other Train Operating Companies' services (e.g. SouthEastern) by knowingly permitting a service which introduces problems to the network.

(f) *“seeking consistency with any relevant Route Utilisation Strategy”*: whilst Network Rail acknowledges that the Freight Network Study cited by GBRf makes reference to growth in the construction industry and to terminal capacity, it makes no specific reference to traffic flows/volumes to/from Tonbridge or Grain. Such a study would also consider that growth is only acceptable and sustainable if new services operate robustly. As such, the bid is only aligned to the Freight Network Study in very general, rather than specific, terms and Network Rail does not believe this point supports GBRf;

(i) *“mitigating the effect on the environment”*: whilst carrying goods by rail has a clear positive environmental impact, Network Rail has also considered the potential impact of the unnecessary idling of the locomotive hauling this train if it is delayed, as well as the possible effect of rail passengers transferring to road due to consistent delay issues at Tonbridge that would be caused by the introduction of this service. Again, it is felt that the positives and negatives therefore cancel each other out;

(j) *“enabling operators of trains to utilise their assets efficiently”*: whilst bid PELE17SSB000033 represents an opportunity for GBRf to utilise their assets efficiently, it is considered again that the impact of consequent delay caused to other train operators and themselves, and the associated negative impact on their ability to utilise their assets efficiently, negates this;

v - In using the Decision Criteria, Network Rail also has to consider the Objective, as set out in 4.6.1 of Part D of the Network Code, which states that Network Rail shall “share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services”. It is considered that adding a train to the timetable which it is known will cause delay and impact on other train services is neither an efficient or economical way of managing the Network, nor in the overall interest of rail users. This was thought to be an important factor to consider alongside the Decision Criteria.

vi - Taking all the above into account, Network Rail does not believe that there is a case to offer this bid. The clear evidence of the negative performance impact of introducing this service is considered to go against the Objective and Decision Criteria in Part D and give grounds to reject the bid. Network Rail also believes that the bid cannot be automatically considered TPR compliant in the absence of any TPRs relevant to the propelling move requested. Even if the bid were considered acceptable from a legal and planning perspective, there remain real concerns as to whether the move can be made safely and in accordance with the Rule Book. GBRf believe there is a positive case to be made for the service to be introduced; however Network Rail must take a wider view and cannot overlook the fact that 6Y41 would substantially harm performance in the Tonbridge area. As such, it is felt that the decision is overwhelmingly linked to questions of performance (Decision Criteria (c)), which is why Network Rail cited this point as their grounds for rejection, as elaborated on in Appendix 1.

vii - In 5.9 of their SRD GBRf “takes exception to this document [GBRf Appendix D2] forming any part of the process for the planning of services: any such rules should only form part of the Timetable Planning Rules.” However, the TPRs at Tonbridge do not currently account for propelling moves, hence the current delay issues and the creation of the Performance Group, in which GBRf have participated, and the subsequent TPR amendments proposed for the May 2018 timetable. In the meantime local operations staff believe the planning guidance document to represent what is actually feasible ‘on the ground’ from a performance and safety perspective (Appendix 7).

viii - GBRf’s own Method of Working for Tonbridge also makes no allowance for this move. The current Method of Working (Appendix 8, page 26) only covers propelling moves into Platforms 1 and 2 from signal AD2059 in the West Yard, whilst GBRf’s proposed revisions to this document (Appendix 9, pages 3-4) again only cover propelling moves into Platforms

1 and 2 and specifically prohibits propelling through to the country end of the station (i.e. beyond the platforms, which is what the proposed move would require). Appendix 13 shows the restricted line of sight available through the overbridge at the east end of Tonbridge station which it is considered prevents compliance with the Rule Book (relevant extract in Appendix 10) if the move were to take place.

ix - In 5.11 of their SRD GBRf recognise that TPR changes have been proposed for May 2018 but that there remains a need to assess all other possible moves at Tonbridge, including the propelling move in question here, to establish how long they will take. Network Rail would agree, in so far as these other moves can be made safely and compliantly with the Rule Book, but argues that until this has been done it would be premature to offer the schedule that has been bid, particularly given the existing performance issues being experienced (as shown in Appendix 2 and 3).

x - In 5.13 of their SRD GBRf express concerns about the practicality of their services propelling from the West Yard to Platforms 1 and 2, as to do so requires an additional shunt move within the yard to signal AD2059. However, this reflects what already happens for services which propel out of the yard and is what is proscribed in GBRf's Method of Working (Appendix 8, page 26). As noted in Appendix 7 (page 3, bullet point 4), GBRf's 6Y39 MO service, which is planned to do the same propelling move as the bid in question, is in reality sent out via Platforms 1 or 2 because the signallers are not prepared to undertake a propelling move out to AD2032 signal due to safety concerns.

xi - In 5.14 GBRf suggests that Network Rail does not have a valid reason to reject the bid in light of Determination TTP834, which stated "NR is not entitled to reject an otherwise contractually compliant Access Proposal other than in accordance with the relevant provisions of the Network Code for the time being in force." Network Rail believes that it has rejected this bid in accordance with the provisions of the Network Code Part D Section 4.6, i.e. a reasonable and correct application of the Decision Criteria, and therefore has a valid reason for rejection.

4.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

i - Although not originally a factor in Network Rail's decision to reject this bid, it has become clear in preparing for this dispute hearing that there are specific safety concerns regarding the proposed propelling move at Tonbridge.

ii - As highlighted by local operations staff in Appendix 7 (page 3), the main concern is that the bridge spanning the country end of Tonbridge station has limited clearance, which prevents the shunter from being able to control a propelling move beyond the platform limits; permitting this move may be argued to be in violation of the operational Rule Book (section SS2 'Shunting', Rule 5.3 – Appendix 10). There is also a general concern that asking staff to complete a move in less time than it actually takes places them under undue pressure and can therefore add additional risk into the move.

iii - As noted above, this move would also fail to comply with GBRf's own current and draft Methods of Working for Tonbridge. Actions from the Performance Group (Appendix 6, highlighted pages 2 and 5) show that GBRf have previously acknowledged that propelling from the West Yard onto the Up and Down fast lines at Tonbridge shouldn't take place and briefed their local staff accordingly.

4.4 Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant

i - Network Rail believes that it has reasonably and sensibly applied the requirements of the Network Code in reaching the conclusion to the reject bid PELE17SSB000033. In reaching this decision it has attempted to balance the needs of both GBRf and the wider industry.

ii - In the context of the existing performance issues at Tonbridge already described it was felt that performance was the overriding consideration in this matter, hence citing 4.6.2 (c) in correspondence with GBRf over the cause for rejection. However due consideration was given to all the Decision Criteria, as well as the overall Objective as stated in Part D.

iii - GBRf have considered the position from the perspective of this one service, 6Y41, whereas Network Rail has considered not only this one train but the wider impact on services on that part of the network. As identified in Appendix 7, 6Y41 would have a knock-on effect to the network, either through delaying other services or through itself being delayed and then running out of its booked path.

iv - Network Rail refutes the suggestion that the planning guidance document created by the Performance Group (GBRf Appendix D2) was not consulted with GBRf, on the grounds that two members of GBRf were involved in the development and sign off of that document and were fully engaged in the conversations being had about what were and were not considered practical moves at Tonbridge.

v - Regardless of the 'correctness' of this decision, Network Rail believes in view of the safety concerns raised around the propelling move requested by GBRf that, even if it were directed to change this decision, it would be inappropriate to offer the schedule until confirmation had been received that a fully signed-off Method of Working was in place to govern the propelling move at Tonbridge.

5 DECISION SOUGHT FROM THE PANEL

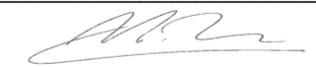
(a) Network Rail is seeking the Panel to determine: that its rejection of GBRf's bid PELE17SSB000033 was valid; that it has provided sufficient information to support this decision, and; that it is not obliged to accept the bid.

(b) With regards to the 'Specific Remedy Sought' in section 6.1 of GBRf's SRD, Network Rail does not believe the TTP is empowered to compel Network Rail to accept the bid purely on the basis that it is compliant with the Timetable Planning Rules, as there are multiple factors that Network Rail can and should consider in deciding whether to accept or reject a bid. These include the provisions of Network Code D 4.3.1(b) (i) and (ii), only the latter of which is addressed by GBRf's determination request, and the Objective specified in D4.6.1, which NR considers cannot be effectively met until the safety concerns outlined elsewhere are addressed. On this basis, should the TTP decide in favour of GBRf, Network Rail believes it should not be compelled to accept the bid until the safety concerns surrounding the propelling move at Tonbridge have been addressed to the satisfaction of both GBRf and Network Rail.

SIGNATURE

For and on behalf of
[usually Network Rail Infrastructure Limited]

Signed



Print Name

Andrew Robinson

Position

Amended Schedule Planning Manager

The Appendices

- Appendix 1: a copy of a response email sent to GBRf outlining Network Rail's reasons for rejection based on its use of the Decision Criteria.
- Appendix 2: Performance data graph for the Tonbridge area
- Appendix 3: Performance data for 4Y81 showing performance issues with propelling at Tonbridge
- Appendix 4: Observations on current propelling moves at Tonbridge by GBRf and NR
- Appendix 5: List of priority actions from the Tonbridge Performance Improvement Group showing creation of the Method of Working document (GBRf Appendix D2) as a priority action for the group
- Appendix 6: List of actions completed by Tonbridge Performance Improvement Group, showing Method of Working (Appendix D2) to have been consulted with all involved and showing GBRf to have briefed staff locally not to propel trains onto the Up/Down fast lines
- Appendix 7: NR local operations assessment of propelling moves at Tonbridge
- Appendix 8: Current GBRf Method of Working for Tonbridge West Yard
- Appendix 9: Draft GBRf Method of Working for Tonbridge West Yard
- Appendix 10: Extracts from operational Rule Book pertaining to propelling moves
- Appendix 11: Diagrams showing the layout at Tonbridge, the move requested by GBRf, Network Rail's preferred move and the moves for which TPRs have been created.
- Appendix 12: Photographs showing the limited clearance through the overbridge at Tonbridge and consequent limited sighting available to a shunter controlling the movement from the ground.