

Statement of Defence for determination by a Timetabling Panel
("TTP1198") in accordance with the provisions of Chapter H of
the ADR Rules dated 12 July 2017

STATEMENT OF DEFENCE BY DB CARGO (UK) LIMITED IN RESPECT OF A DISPUTE
RELATING TO AN OBJECTION BY NETWORK RAIL INFRASTRUCTURE LIMITED TO A
NOTICE OF DISPUTE SUBMITTED TO THE SECRETARY BY DB CARGO (UK) LIMITED ON
1 DECEMBER 2017 PURSUANT TO CONDITIONS D2.7.2 OF THE NETWORK CODE IN
RESPECT OF THE 2018 SUBSIDIARY NEW WORKING TIMETABLE ("TTP1198")

1 DETAILS OF PARTIES

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

- (a) Network Rail Infrastructure Limited (Company number 2904587) whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("NRIL") ("the Claimant"); and
- (b) DB Cargo (UK) Limited (Company number 2938988) whose Registered Office is at Lakeside Business Park, Carolina Way, Doncaster DN4 5PN ("DBC UK") ("the Defendant")
- (c) The Claimant's point of contact is Katherine McManus, Project Manager (Timetable Change) [REDACTED]
[REDACTED]
- (d) The Defendant's point of contact is Nigel Oatway, Access Manager, Ground Floor, McBeath House, 310 Goswell Road, London, EC1V 7LW [REDACTED]
[REDACTED]

2 THE DEFENDANT'S REPRESENTATIONS

- 2.1 On 1 December 2017, the Defendant submitted a response to the Claimant's New Working Timetable in respect of the 2018 Subsidiary Change ("the response"). The response contained detailed information of the issues that the Defendant wished to appeal against in accordance with D2.7.2 of the Network Code. This was expressly highlighted in the response with the following statement:

"All Train Slots referred to either explicitly or implicitly in this letter and its Appendices are disputed by DB Cargo and, unless resolved in the meantime, will be referred for determination by a Timetabling Panel in accordance with the Access Dispute Resolution Rules."

- 2.2 On the same date as it submitted the response to the Claimant (i.e. 1 December 2017), the Defendant also submitted to the Secretary a Notice of Dispute in accordance with Condition D2.7.2 (D5.1.1) of the Network Code. This Notice of Dispute was copied to the Claimant on 6 December 2017.
- 2.3 On 13 December 2017, the Claimant submitted to the Secretary its own Notice of Dispute objecting to the Notice of Dispute issued by the Defendant on 1 December 2017 on the basis that the Claimant considered the Defendant's Notice of Dispute to be defective in 2 respects:
- (1). It was not copied to the Claimant at the same time it was submitted to the Secretary; and;
 - (2). It was not specific enough in respect of the issues in dispute to form a valid Notice of Dispute.
- 2.4 In respect of the Claimant's issue 1 above, the Defendant has in the past always sought to ensure that the Claimant is sent a copy of relevant Notices of Dispute at the same time that these are lodged formally with the Secretary and would expect this to continue to be the case for all future relevant Notices of Dispute. In respect of this particular Notice of Dispute, however, regrettably Network Rail was not copied in at the same time due to an oversight by the person concerned who is new to the role of dealing with matters concerning the New Working Timetable and the dispute resolution process. However, as soon as this oversight was realised, the Notice of Dispute was submitted to Network Rail along with the Defendant's apologies. Whilst regrettable, the Defendant would not have thought that Network Rail would have suffered any particular prejudice as a result of receiving the Notice of Dispute three Working Days after it was lodged with the Secretary, particularly as it had already received the response.
- 2.5 Notwithstanding the comments in paragraph 2.4 above, the Defendant notes that Access Dispute Resolution Rule B2 (which is the ADR Rule relied upon by the Claimant in respect of issue 1) states:

“A Resolution Service Party wishing to refer a dispute shall serve a written Notice of Dispute on the Secretary and shall serve a copy of the Notice of Dispute on every other party to the dispute.”

Whilst the Defendant would acknowledge that it would be considered normal practice for a Notice of Dispute to be copied to every other party to the dispute at the same time it is submitted to the Secretary, the Defendant submits that this is not what ADR Rule B2 actually states. All ADR Rule B2 provides for is that the Notice of Dispute has to be served on the Secretary and also has to be served on every other party to the dispute (in this case the Claimant). It does not specify that these actions must be carried out at the same time. The Defendant has served the Notice of Dispute on the Secretary and it had also copied the Notice of Dispute to the Claimant; admittedly not at the same time but well before the Claimant served its own Notice of Dispute on the Secretary raising this as an issue. The Defendant considers, therefore, that it has met its obligations under ADR Rule B2, particularly as the response had indicated that all matters highlighted therein would be referred for determination by a Timetabling Panel.

2.6 In respect of the Claimant's issue 2 above, the Defendant has submitted its relevant Notices of Dispute in the same format for many years without challenge from the Claimant. The Defendant had used this format as it considered that the issues in dispute were already known in detail by the Claimant as they were contained, in this case in the response, and in previous cases in all of the Defendant's previous responses to the Claimant's New Working Timetables. If the Claimant wished to take issue with the format, timing and content of the Defendant's relevant Notices of Dispute, the Defendant would have expected the Claimant to discuss this with the Defendant so that any perceived deficiencies could be addressed for future Notices of Dispute.

2.7 In fact, after being advised of the Claimant's challenge, the Defendant wrote to the matter in order to avoid the time and expense of the proceedings arranged for 9 acknowledging its Notice of Dispute was deficient in any way, this involved the in dispute (i.e. those contained in the response that have not already been

subsequently resolved). The Claimant has recently responded positively to the Defendant's proposal which hopefully may result in an amicable resolution of this matter, thereby allowing the Claimant's dispute to be withdrawn. The Defendant (and no doubt the Claimant) will keep the Secretary updated.

- 2.8 Notwithstanding the comments in paragraphs 2.6 & 2.7 above, the Defendant notes that ADR Rule B3(c) (which is the ADR Rule relied upon by the Claimant in respect of issue 2) states:

"summarise the basis of the claim including a brief list of issues;"

- 2.9 As already mentioned in paragraphs 2.6 & 2.7 above, given that the detail of the issues in dispute had already been advised to the Claimant in the response (and previous such responses), it has become custom and practice for the Defendant to issue a succinct Notice of Dispute. However, even these brief Notices of Dispute state the basis of the claim and issues involved (i.e. in this case that it concerns decisions made by the Claimant in respect of the 2018 Subsidiary New Working Timetable and that there are areas of contractual deviation which may require resolution through the dispute mechanism) which are in reference to the detail set out in the response (and previous such responses).
- 2.10 Whether or not the detail contained in the Defendant's Notice of Dispute will be found sufficient by the Hearing Chair to meet the requirements of ADR Rule 3(c), given that the Claimant was already in possession of the full detail as it was set out in the response, the Defendant would again have thought that the Claimant would not have suffered any particular prejudice as a result.
- 2.11 Therefore, the Defendant would submit that the consequence of any procedural default (should this be the determined outcome) should not prevent the possibility of the actual issues (i.e. those issues contained in the response that have not yet been addressed) being resolved by way of a future Timetabling Panel.
- 2.12 Finally, the Defendant submits that the Claimant's own Notice of Dispute in this case fails to meet the obligations and level of detail set out in ADR Rules B2 and B3. For example, the Notice of Dispute issued by the Claimant on 13 December 2017 was not copied by the Claimant to the Defendant as it should have been to meet the obligation under ADR Rule B2. It also does not include a statement indicating

whether exceptional circumstances exist necessitating an expedited hearing (ADR Rule B3(e)).

- 2.13 In conclusion, therefore, whether or not the Hearing Chair determines that there has been a procedural default in respect of either or both the Defendant's and Claimant's Notices of Dispute, the Defendant submits that these do not amount to enough prejudice on either party to prevent the actual issues in dispute concerning the 2018 Subsidiary New Working Timetable from being heard if necessary by a future Timetabling Panel.

SIGNATURE

For and on behalf of DB Cargo (UK) Limited

Signed



Print Name

NIGEL OATWAY

Position

ACCESS MANAGER