

**Defendant's Response to a Sole Reference Submission to a  
Timetabling Panel in accordance with the provisions of  
Chapter H of the ADR Rules effective 1 August 2010**

**Dispute Reference: TTP 1521**

## **1 DETAILS OF PARTIES**

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

- (a) GB Railfreight Limited (GBRf) whose Registered Office is at 3<sup>rd</sup> Floor, 55 Old Broad Street, London, EC2M 1RD
- (b) and
- (c) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DNJ ("the Defendant").
- (d) GBRF contact details: Darren Pell, Engineering Access Manager, GBR 3<sup>rd</sup> Floor, 55 Old Broad Street, London, EC2M 1RD
- (e) Network Rail Contact Details: Andrew Briggs, Head of Planning Network Rail London North Western Route, Baskerville House, Birmingham.

1.2 Third Parties to this dispute may include Virgin Trains West Coast, Cross Country Trains, Northern Rail, London North Western Railway, Trans Pennine Express, East Midlands Train, Transport for Wales and other freight operators.

## **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

In this response, we set out evidence that demonstrates that Network Rail has interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately. The key document that evidences that we interpreted the Decision Criteria correctly and applied them appropriately is Appendix A (the Decision Criteria Table).

The remainder of this section 3 addresses GB Railfreights submission on a paragraph by paragraph basis.

- 3.1 In response to GB Railfreights submission, section 4.1. Network Rail confirms that this dispute is regarding Network Rails decision regarding possession P2019/2640755, which was published as a late notice possession on June 26<sup>th</sup>, 2019. [GBRf reference Appendix 1.1].
- 3.2 In response to GB Railfreights submission 4.2 Network Rail will evidence the they correctly followed Part D Clause 3.4.1 by sending out a consultation request document on June 11<sup>th</sup>, 2019 Part D Clause 3.4.3 and 3.4.4 a and b. [GBRf reference Appendix 4.1]. Furthermore, Network Rail will evidence the correct application of the Decision Criteria in reaching its decision. [Appendix A].
- 3.3 In response to GB Railfreights submission 4.3 Network Rail qualifies this section in that it is Network Rail's understanding that the possession reference P2019/260755 does prevent access to and from Liverpool Bulk Terminal and the sidings facility at Tuebrook.
- 3.4 In response to GB Railfreights second submission 4.1 (second paragraph) Network Rail qualifies this section. The original possession 2272741 [GBRf Appendix 5.1] was published in Version 2 and Version 3.0 (Appendix 5.1 refers) in week 39. After reviewing resource and planned works for Week 39 and listening to operator concerns 16<sup>th</sup> January meeting (Section 4.5 GBRf Sole Reference refers), Network Rail decided to look at alternative weeks for this possession.

- 3.5 In response to GB Railfreights second submission numbered 4.2/4.3 Network Rail qualifies that statements in these sections have captured the timeline of events concerning consultation proposals of this Restriction of Use (RoU). Network Rail confirms that GB Railfreights preference for the possession was in the summer weeks.
- 3.6 In response to GB Railfreights submission 4.4 Network Rail qualifies this comment that the possession would impact the quantities and frequency of the services.
- 3.7 In response to GB Railfreights submission 4.5 Network Rail confirms this statement.
- 3.8 In response to GB Railfreights submission 4.6 Network Rail confirms this statement.
- 3.9 In response to GB Railfreights submission 4.7 Network Rail confirms this statement
- 3.10 In response to GB Railfreights submission 4.8 Network Rail confirms part of this statement. Network Rail does not agree with the statement '*What other discussions had been taking place during these 6 weeks and what involvement had any operators? GBRf has not been invited to any discussion relating to this change.*' The possession had not been amended and remained as published in the EAS Version 2.0 and EAS Version 3.0 in Week 39. [GBRf Appendix 5.1].
- 3.11 In response to GB Railfreights submission 4.9 Network Rail confirms the timeline of the consultation. Network Rail correctly followed Part D Clause 3.4.1 by sending out a consultation request document on June 11th, 2019 Part D Clause 3.4.3 and 3.4.4 a and b. [GBRF reference Appendix 4.1 and Appendix 4.2]. Network Rail does not agree with the statement 'GBRf would be greatly interested to know what actions/discussions Network Rail are having during these 13 weeks because again GBRf were not invited to any discussions.' Network Rail correctly applied Part D clause 3.41 and Part D Clause 3.4.3.and 3.4.4 a and b. [GBRF reference Appendix 4.1 and Appendix 4.2]
- 3.12 In response to GB Railfreights submission 4.10 Network Rail confirms the statement. Network Rail discussed this item on the Late Change Conference call on 27<sup>th</sup> June 2019, revised bid dates were detailed on the call. The call is held twice weekly and all operators are invited to attend the call. A spreadsheet is sent out prior to the call detailing the items to be discussed to all operators, including GBRf. GBRf did not attend the call. Network Rail confirms that the call was after the decision document had been sent. Network Rail submits a copy of the spreadsheet which details the

possessions to be discussed on the call. Network Rail emailed to all Operators, including GBRf a copy of the Late Change spreadsheet that included this possession [Appendix B]. Network Rail qualifies that the late change call and spreadsheet informs all operators equally about late change.

3.13 In response to GB Railfreights submission 4.11 Network Rail confirms this statement.

The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants. Network Rail are obliged to apply the Decision Criteria in its considerations in accordance with D4.6.3. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately. [Appendix A].

3.14 In response to GB Railfreights submission 4.12 Network Rail confirms this statement.

The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants. Network Rail are obliged to apply the Decision Criteria in its considerations in accordance with D4.6.3. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately. [Appendix A].

3.15 In response to GB Railfreights submission 4.13 Network Rail correctly followed Part D

Clause 3.4.1 by sending out a consultation request document on June 11th, 2019 Part D Clause 3.4.3 and 3.4.4 a and b. [GBRf reference Appendix 4.1 and Appendix 4.2]. When making the decision Network Rail applied the Part D Clause 4.6.2 and 4.6.3 [Appendix A]. Network Rail does not agree with the statement 'It is clear that discussions have taken place between Network Rail and these operators to make arrangements to fulfil their needs during the disruption; GBRf have not been privileged to such discussions' Network Rail made several attempts to contact GBRf for further discussions [Appendix C]. With respect to Part D Network Rail correctly applied Part D clause 3.4.1 and Part D Clause 3.4.3 and 3.4.4 a and b. [GBRf reference Appendix 4.1 and Appendix 4.2], which allows Timetable Participants to comment on the consultation. Following responses from Timetable Participants Network Rail interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately [Appendix A], from Operator comments the possession was amended to allow for Pilot Working in certain areas of the possession. GBRf did not ask for Network Rail to consider pilot working as an option. Network Rail agrees GBRf provided details of the impacted

services after Network Rail requested them. [Appendix GBRf 3.12] The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants. Network Rail are obliged to apply the Decision Criteria in its considerations in accordance with D4.6.3. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately. [Appendix A].

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

**4.1** In Response to GB Railfreight submission 5.1 Part D does not specify that Network Rail should notify Timetable Participants how it has used the Decision Criteria when notifying decisions therefore Network Rail has adhered to Part D. Network Rail refutes that it did not consult this possession properly (see GBRf Appendix 4.1 and 4.2). The consultation of this possession was in accordance to Part D clause 3.41 and Part D Clause 3.4.3.and 3.4.4 a and b

**4.2** In Response to GB Railfreight submission 5.1 (second sentence) Network Rail refutes that it did not consult this possession properly, see GBRf Appendix 4.1 and 4.2. The consultation of this possession was in accordance to Part D clause 3.41 and Part D Clause 3.4.3.and 3.4.4 a and b

In Response to GB Railfreight submission 5.1 (second paragraph) Network Rail refutes that the decision was already made and that the Decision Criteria was not applied as per the Network Code. Part D does not specify that Network Rail should notify Timetable Participants how it has used the Decision Criteria when notifying decisions therefore Network Rail has adhered to Part D. The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants. Network Rail are obliged to apply the Decision Criteria in its considerations in accordance with D4.6.3. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately. [Appendix A].

In Response to GB Railfreights submission 5.2 Part D does not specify that Network Rail should notify Timetable Participants how it has used the Decision Criteria, when notifying decisions therefore Network Rail have adhered to Part D of the Network

Code. The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants. Network Rail are obliged to apply the Decision Criteria in its considerations in accordance with D4.6.3. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately. [Appendix A].

In Response to GB Railfreights submission 5.3 Network Rail refutes that the correct consultation process was not applied. The consultation of this possession was in accordance to Part D clause 3.41 and Part D Clause 3.4.3 and 3.4.4 a and b.[GBRf Appendix 4.1 and 4.2]

In response to GB Railfreights submission 5.4 Network Rail have evidenced [Appendix A] that they adhered to Part D4.6.1. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately.

In respect to GB Railfreights submission 5.5 Network Rail have evidenced [Appendix A] that they adhered to Part D4.6.1. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately.

In respect to GB Railfreights submission 5.6 Network Rail confirms the impact on GBRf however Network Rail have evidenced [Appendix A] that they have adhered to Part D4.6.1. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately and without prejudice. The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants.

In respect to GB Railfreights submission 5.7 Network Rail confirms the impact this possession has on GBRf. Network Rail have evidenced [Appendix A] that they have adhered to Part D4.6.1. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately and without prejudice. The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants.

In respect to GB Railfreight submission 5.8 Network Rail confirms the impact this possession has on GBRf. Network Rail have evidenced [Appendix A] that they have adhered to Part D4.6.1. Network Rail confirms they interpreted the Decision Criteria

correctly and applied the Decision Criteria appropriately and without prejudice. The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants.

In respect to GB Railfreights submission 5.9 Network Rail confirms the impact this possession has on GBRf. Network Rail have evidenced [Appendix A] that they have adhered to Part D4.6.1. Network Rail confirms they interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately and without prejudice. The Network Code does not oblige Network Rail to accommodate all comments or requests from Timetable Participants.

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

Network Rail would challenge GBRf to provide detail on whether the impact the services not running at this weekend would require their customer to 'draw down' on their storage biomass which could then be 'topped' up by running extra services the following week? How many days' worth of bio mass is kept in storage?

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

Network Rail believes that it has correctly interpreted applied the Decision Criteria to the Week 32 possession as per Appendix A.

Network Rail believes that it has correctly applied Part D in relation the consultation and decision of the week 32 possession.

Network Rail has consulted with all Operators throughout the with regards to the Week 32 possession both formally using Network Code timescales for Week 32 and informally suggesting alternate weeks for consideration. Network Rail has proved evidence [Appendix C GBRf Appendix 4.1 and 4.2] of continuous and correct consultation with GBRf. Network Rail believes that have correctly adhered to the Network Code.

### **5 DECISION SOUGHT FROM THE PANEL**

(a) Network Rail seeks that the panel rules that under 3.4.4 (a) [GBRf appendix 4.1] Network Rail consulted the possession in Week 32 correctly.



(b) Network Rail seeks that the panel rules that under 3.4.4 (b) [GBRf Appendix4.2 and Network Rail Appendix A] Network Rail interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately

(c) Network Rail seeks that the panel rules under Condition 5.3.1 (b) that the decision by Network Rail for the possession in Week 32 shall stand.

## 6 APPENDICES

The Defendant confirms that it has complied with Access Dispute Resolution Rule H21

Extracts of Access Conditions/ the Network Code are included where the dispute relates to previous (i.e. no longer current) versions of these documents.

All appendices and annexes are bound into the submission and consecutively page numbered. To assist the Panel, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

Any information only made available after the main submission has been submitted to the Panel will be consecutively numbered, to follow on at the conclusion of the previous submission.

## 7 SIGNATURE

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

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Signed

*A Briggs*

Print Name  
Andrew Briggs

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Position  
Head of Planning LNW Route

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APPENDICES

APPENDIX A – Decision Criteria

APPENDIX B – Late Change Call Spreadsheet and Call Invitation

APPENDIX C – Contact emails to GBRf for further discussions

APPENDIX D - EDGE HILL RECONTROL PRESENTATION