

TTP1524 - Freightliner Heavy Haul Limited - Sole Reference Document

TTP1524 brought by Freightliner Heavy Haul Ltd in respect of Network Rail's decisions regarding the New Working Timetable Publication for 2020.

Freightliner welcomes the opportunity to present its reference documents to support TTP1524.

1.0 Background

On 28th June 2019 Freightliner Heavy Haul Limited (“Freightliner”) gave Notice of Dispute with Network Rail Infrastructure Limited (“Network Rail”) in relation to the December 2019 (2020 Principle Timetable) Formal Timetable Offer.

This dispute was brought on the basis that Network Rail declined to include a number of train slots in the December 2019 Working Timetable. The train slots that remain in dispute are sought to support the movement of aggregates and other construction materials from the Somerset quarries to receiving terminals across the South of England. The train slots have been bid in connection with Mendip Rail Limited’s decision to transfer the haulage of its rail borne traffic to Freightliner from 3rd November 2019.

This is established traffic that has been operating for many years and all train slots that are sought currently exist in the May 2019 Working Timetable.

Freightliner has been working with Network Rail and the incumbent operator to ensure the smooth transfer of access rights and train slots, in order to support Mendip Rail Limited’s decision to transfer the rail haulage contract. This transfer was handled under Part J of the Network Code, for those train slots that are supported by access rights, and by way of voluntary relinquishment for those slots is no access rights. Network Rail helped to support this process, which began prior to D-40 of the December 2019 timetable and completed prior to D-26 of the December 2019 timetable.

Freightliner and Network Rail have continued discussions pertaining to this dispute matter, however to date resolution has not been reached and the following trains remain in dispute between the parties.

List of trains in dispute

| Ref | Headcode | Day | Origin | Destination |
|-----|----------|------|--------------------------|-----------------------|
| 1 | 7D23DQ | FSX | ACTON TC | MEREHEAD QUARRY |
| 2 | 7O12BA | SX | MEREHEAD QUARRY | WOKING DOWN RECEPTION |
| 3 | 7O52PD | MSX | MEREHEAD QUARRY | CHICHESTER RECEPTION |
| 4 | 6A83DB | WFO | AVONMOUTH BENNETS SIDING | WEST DRAYTON ARC |
| 5 | 6L83DS | TThO | AVONMOUTH BENNETS SIDING | ACTON TC |

2.0 Analysis of train slots in dispute

Ref 1. 7D23DQ FSX ACTON TC MEREHEAD QUARRY

- Freightliner bid for this train slot at the Priority Date.
- Network Rail included this train slot in an appendix of an undated letter about the ‘Publication of the Principle Working Timetable for December 2019’, which listed train slots that Network Rail has declined to include. The reasons for rejecting the train slot were not provided in the letter, which is copied in Appendix A.
- In an email dated 19th July 2019, Network Rail subsequently explained that: *“This Train was rejected due to conflicts with 2N73DB, 1C38DA and 1C38DQ. The comments from the planner stated that as this route is only used when Reading to Westbury via Newbury is blocked, recommend that any amendments are actioned via STP or A4C, and that was part of MENDIP- Discussed with Dave Brooke”*. A copy of this email is contained in Appendix B. Although Network Rail mentions discussions with Dave Brooke to handle on an STP basis, Freightliner still requires a solution in the Working Timetable for this train.
- Network Rail has not explained why it cannot flex 2N73DB, 1C38DA and 1C38DQ to accommodate 7D23 in the timetable. Network Code 4.2.2 (c) states that *“in compiling a New Working Timetable, Network Rail is entitled to exercise its Flexing Right”* and only when this principle, and others, *“have been applied but Network Rail is unable to include all requested Train Slots in the New Working Timetable, the Train Slots shall be allocated in the [following] order of priority”*. Network Rail has not explained how it attempted, but was unable, to apply its Flexing Right to accommodate all access proposals, which meant that the bid for 7D23 was rejected.

Ref 2. 7012BA SX MEREHEAD QUARRY WOKING DOWN RECEPTION

- Freightliner bid for this train slot at the Priority Date.
- Network Rail included this train slot in an appendix of an undated letter about the ‘Publication of the Principle Working Timetable for December 2019’, which listed train slots that Network Rail has declined to include. A copy of this letter is included in Appendix A.
- Freightliner has no further information about this rejection. Network Rail has not explained what the reasons are for rejecting this train and therefore it is not clear what attempts have been made to utilise its available Flexing Right for other services to accommodate this train slot.

Ref 3. 7052PD MSX MEREHEAD QUARRY CHICHESTER RECEPTION

- Freightliner bid for this train slot at the Priority Date.
- Freightliner now holds Firm Access rights for this train.
- At the time of the D-40 bid the Part J process to transfer this, and other access rights and accompanying train slots relating to the Mendip traffic, was underway. Network Rail was supporting this Part J process, so aware that the Firm Rights were transferring to Freightliner. The Part J process concluded prior to D-26.

- Network Rail explained the reasons for rejecting the train in a letter to Freightliner dated 11th June 2019. A copy of this letter is included in Appendix C.
- The letter states that “*Network Rail wish to exercise their flexing right by rejecting train slot for 7052PD...*”. Network Code Part D defines a Flexing Right as “*a right, exercisable by Network Rail in allocating a Train Slot in the New Working Timetable, to vary a Train Slot*”. Freightliner does not consider that the application of the Flexing Right should give rise to a rejection of a train slot
- Notwithstanding the above, Network Rail has not explained what trains 7052 conflicts with and the relative priority of those conflicting services. While a number of locations are mentioned no specific Train Slots are mentioned.
- While a number of flexes are mentioned, no other trains are mentioned, and it is not clear why these flexes have not been applied in line with Network Code D 4.2.2 (c). The fact that no specific clashing trains have been mentioned or identified does not allow further scrutiny.

Ref 4. 6A83DB WFO AVONMOUTH BENNETS SIDING WEST DRAYTON ARC

- Freightliner bid for this train slot at the Priority Date.
- Network Rail included this train slot in an appendix of an undated letter about the ‘Publication of the Principle Working Timetable for December 2019’, which listed train slots that Network Rail has declined to include. A copy of this letter is included in Appendix A.
- While no further details were provided to Freightliner an Intent to Reject letter was issued to DB Cargo and subsequently forwarded to Freightliner. This is copied in Appendix D.
- In its identification of conflicting services, Network Rail states that 6A83 is at Priority 4 - i.e. “*Rights/Expectation of Rights notified in an Access proposal submitted between D40 and D26*”. Freightliner contends that this train should be treated as Priority 3, as the train slot was bid at the Priority Date and not after D-40. Assignment of Priority 3 status would affect the relative priority of this train slot against conflicting slots and it is not clear to us that Network Rail has re-evaluated this interaction accordingly.
- Notwithstanding the above, it is not clear to Freightliner what prevented Network Rail from exercising its Flexing Right for the conflicting services to accommodate 6A83. No evidence has been provided that Network Rail has fulfilled its obligation under Part D 4.2.2 (c).

Ref 5. 6L83DS TTho AVONMOUTH BENNETS SIDING ACTON TC

- Freightliner bid for this train slot at the Priority Date.
- Network Rail included this train slot in an appendix of an undated letter about the ‘Publication of the Principle Working Timetable for December 2019’, which listed train slots that Network Rail has declined to include. A copy of this letter is included in Appendix A.
- While no further details were provided to Freightliner an Intent to Reject letter was issued to DB Cargo and subsequently forwarded to Freightliner. This is copied in Appendix D.

- In its identification of conflicting services, Network Rail states that 6L83 is at Priority 4 - i.e. “Rights/Expectation of Rights notified in an Access proposal submitted between D40 and D26”. Freightliner contends that this train should be treated as Priority 3, as the train slot was bid at the Priority Date. Assignment of Priority 3 status would affect the relative priority of this train slot against conflicting slots and it is not clear to us that Network Rail has re-evaluated this interaction accordingly.
- Notwithstanding the above, it is not clear to Freightliner what prevented Network Rail from exercising its Flexing Right for the conflicting services to accommodate 6L83. No evidence has been provided that Network Rail has fulfilled its obligation under Part D 4.2.2 (c).

3.0 Request of the Hearing Chair

Freightliner requests that the Hearing Chair instructs Network Rail to accommodate the train slots that are in dispute in the December 2019 Working Timetable. Freightliner suggests that Network Rail could achieve this by correctly utilising its Flexing Right, as this does not appear to have been applied during the timetable development period.