

1 DETAILS OF PARTIES

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

- (a) DB Cargo (UK) Limited whose Registered Office is at Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire DN4 5PN ("DBC") ("the Claimant");
and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN] ("Network Rail") ("the Defendant").
- (c) Contact details for DBC: Graham White, Access Manager South, Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire DN4 5PN.
- (d) Contact details for Network Rail: Duncan Lovatt and Richard Hooper, Network Rail Wales Route, St. Patrick's House, Floor 2, Penarth Road, Cardiff CF10 5ZA.

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.

Network Rail has had less than seven days to respond to the Sole Reference Documents of DB Cargo. In the limited time available, Network Rail has sought to address as many of the relevant issues as possible. However, Network Rail reserves the right to bring further issues to the attention of the Timetable Panel and to make further submissions, if required.

3 SUBJECT MATTER OF DISPUTE

Overview

The Late Notice Restriction of Use between Stoke Gifford No2/ Caldicot and Leckwith Loop North Jn from 02:00 on 19 October to 04:20 on 21 October 2019 is essential in order to complete the electrification programme of the South Wales Main Line to Cardiff Central. Without this Restriction of Use, Network Rail will not complete the electrification programme by 2 January 2020. If Network Rail does not complete the electrification programme by 2 January 2020, the consequences for the December 2019 Timetable will be catastrophic and far outweigh the issues which arose with the May 2018 Timetable as a result of the delays to the Bolton electrification programme.

Removal of the access will prevent registration works from being completed prior to the scheduled dynamic testing involving a train. This in turn will cause dynamic testing to be cancelled and prevent commissioning being completed.

If commissioning does not take place, then GWR services between Cardiff and London Paddington will not be able to maintain their sectional running times between Cardiff and Bristol Parkway. As a result, the Working Timetable (WTT) for December 2019 will not be deliverable. In addition to this, each week of the WTT would need to be amended as a short-term alteration by System Operator. This would prevent Network Rail meeting informed traveller timescales.

The Electrification Programme

The electrification programme will provide an electrified railway between London Paddington and Cardiff. The original commissioning date was December 2018. It is now expected that final commissioning will be completed in December 2019 with final ORR signoff in January 2020.

The electrification programme has been delayed due to changes in procurement strategy that has led to different contractors delivering the electrification scheme. The change in contractors has led to differing delivery strategies and production outputs that delayed the energisation and subsequent running of IET trains to Cardiff. The complexities of the electrification layout between Bristol Parkway and Cardiff has seen a reduction in the planned production rates with the main junction areas taking circa 50% longer than originally envisaged to install for Testing and Commissioning. To enable Dynamic Testing between Bristol Parkway and St Brides the project needs to complete the Registration and Construction planning by week 32 and to achieve this there should be no further short notice possessions to meet the Bristol Parkway to St Brides Milestone. This possession was originally planned to be 14 hours long. However, following a loss of productivity over the August Bank Holiday (week 22), additional access was required to complete registration works.

The scale of the possession (with 100 Road Rail Vehicles and 850 staff working in the possession and 14 possession management staff to set the possession up) means that it is not possible to hand back parts of the possession in order to run a limited number of selected trains through. Single Line Working through the possession is not possible for similar reasons. Handing back the Relief Lines would severely impact on the quantity of work that could be delivered in the possession and would almost certainly result in further disruptive access requests.

A further request for access in week 40 (dynamic testing) has been submitted to support the delivery and Entry in to Service for the St Brides to Cardiff section. The delays for this section are the same as those detailed above and the week 40 access request is the last short notice possession that is required for the completion of the electrification works to Cardiff.

Engagement with DBC

Engagement has taken place with DBC, who were asked if removing the midweek possessions between Cardiff and Bridgend in week 30 would alleviate the issue with the Puma oil trains. These trains are currently planned to divert via the Vale of Glamorgan route and this diversion requires trains to be reduced in length.

The following consultation has taken place:

30/08/19 – Conference call chaired by the GWEP Access team to discuss options for extending access for week 30 from 14 hours to 52 hours. Invite sent out on 29/08/19. DBC did not dial in.

03/09/19 – Disruptive Access Request received from GWEP Access team.

04/09/19 – Further conference call again chaired by the GWEP Access team to confirm proposals for addition access.

05/09/19 – Disruptive Access Request proposal issued out to all affected operators by Access Planning Team.

12/09/19 – Decision document issued then subsequently withdrawn due to an administrative error.

12/09/19 – Disruptive Access Request re-proposed to all affected operators by Access Planning Team.

20/09/19 – Decision Document published by Access Planning Team.

23/09/19 – Formal notification of dispute received from DB Cargo.

Other Timetable Participants

All passenger train operating companies have agreed to the access and operating replacement road transport. Several interested parties have been identified during preparations for the hearing. GWR & Cross Country both intend to send representatives to the hearing and both parties along with TfW Rail have confirmed their support for the access proposal.

Decision Criteria

Network Rail denies that the alleged disruption and cost to both DB Cargo and its customers has been insufficiently weighted. Network Rail has applied the Decision Criteria as follows:

Considerations	Weighting	Justification
Consideration (a): maintaining, developing and improving the capability of the Network;	HIGH	The electrification of the South Wales Main Line to Cardiff Central is essential for the development and improvement of the railway network in Wales. Journey time improvements between London and Cardiff and beyond are vital to the Welsh economy and the improvement in communications between London and South Wales have been supported by both the Westminster government and Welsh Assembly. Faster trains will enable more trains to operate on the network, which will benefit both passenger and freight customers.
Consideration (b): that the spread of services reflects demand;	LOW	The nature of the possession means that no trains of any operator can run through the affected area. There is no diversionary route available and there is no access to stations or freight connections in the affected area. If the possession reverted to the originally agreed one of 14 hours, then a further 10 – 15 additional No Booked Services possessions would be required. This would delay the electrification programme well into the New Year and cause catastrophic damage to the December 2019 Timetable.
Consideration (c): maintaining and improving train service performance;	HIGH	The December 2019 timetable has been written based on IETs operating in electric mode between London Paddington and Cardiff Central. The Tfw Rail timetable has also been written based on cascaded rolling stock with superior point to point timings. Commissioning the electrification is essential to delivering the timetable in South Wales. Without the IETs operating in electric mode, there is an increased risk that they will not run to time. This will have a significant effect on other train services, not only in South Wales, but along the length of the South Wales Main Line to London Paddington with impact spreading as far afield as locations such as Plymouth, Manchester and Birmingham, Leeds, York, Basingstoke and Southampton.
Consideration (d): that journey times are as short as reasonably possible;	MEDIUM	The work being undertaken in the possession requires both the geographical limits and times as published in the Decision Document. Therefore, the disruption to the passenger and freight services has been kept to an absolute minimum.

Considerations	Weighting	Justification
Consideration (e): maintaining and improving an integrated system of transport for passengers and goods;	LOW	Based on stakeholder consultation through a series of teleconferences, the proposed access was discussed with operators outlining the reasons why the additional level was required. This involved avoiding week 31 where there was already access in place in the Bristol Parkway – Severn Tunnel Junction area to commission new signalling. All three of the affected passenger operators agreed to the additional access being requested along with some of the freight operators. It did not appear to be possible to agree additional access of this duration in any week which would be agreeable to DBC.
Consideration (f): 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;	HIGH	If this work does not proceed, then commissioning of the overhead power supply will not be completed in readiness for the December 2019 timetable. This will prevent GWR IETs maintaining their sectional running times between Cardiff and Bristol Parkway. This in turn will impact other timetable slots leading to widespread performance issues and congestion at key transport nodes, impacting on all operators, passengers and commercial freight customers. The overall impact on the December 2019 timetable would far exceed the issues that arose in relation to the May 2018 timetable following the delay in the Bolton electrification works.
Consideration (g): seeking consistency with any relevant Route Utilisation Strategy	LOW	The Wales Route Utilisation Strategy was based on the electrification of the South Wales Main Line.
Consideration (h): that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed	HIGH	Working Timetable paths are directly affected by this possession. The December 2019 Working Timetable has been written based on the electrification between Bristol Parkway and Cardiff being commissioned. If this commissioning does not take place, adjustments will need to be made to that timetable to make it robust and this will negatively impact the industry image causing specific damage to Network Rail and GWR.
Consideration (i): mitigating the effect on the environment	MEDIUM	An increase in trains working under electric traction is more environmentally friendly than operating in diesel mode. If IETs continue to operate between Cardiff and Bristol Parkway in diesel mode, this will mean they are using more fuel than necessary, which is not the most efficient use of the operator's assets.

Considerations	Weighting	Justification
Consideration (j): enabling operators of trains to utilise their assets efficiently	MEDIUM	The failure to realise journey time improvements for GWR between Cardiff and London will lead to a potential rolling stock shortage for GWR. In addition, route capacity may also be constrained.
Consideration (k): avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Path to which the Strategic Train Slot relates;	N/A	N/A
Consideration (l): no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.	N/A	N/A

Diversiory routes

As part of Network Rail's efforts to resolve this dispute prior to the Access Disputes Committee hearing, several options have been explored. These include:

Review of GWEP Access in Week 30 to see if it was possible to open a route into Wentloog Freightliner Terminal either from Maindee or Severn Tunnel Junction. Several proposals were made by DBC but none of these could be accommodated due to the number of machines and personnel working on the infrastructure.

Options explored to try and alleviate access concerns raised by DBC for weeks 39/40 in an effort to use this as leverage to remove the access dispute for week 30. Some progress has been made in this area in terms of options such as moving product from TATA steel to Tidal Sidings for export and also from Llanwern to Bridport for export.

The Senior Freight Manager for Wales & Western (Steve Wallbank) has held discussions with TATA steel regarding their requirements for weeks 39/40 and to discuss week 30 access.

No diversionary routes are available for the affected traffic flows.

Appendices 1 and 2 outline the work scheduled to be delivered in the week 30 access.

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 does not accept the Claimant's Case.

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

Network Rail refutes the following issues raised by DB Cargo:

- Disruption and cost to both DB Cargo and its customers has not been weighted sufficiently by Network Rail. Network Rail has set out above how it has applied the Decision Criteria.
- It is not clear whether DB Cargo's position is that Network Rail has not consulted with Timetable Participants. If this is the case, Network Rail denies this. It has set out above how it has consulted with Timetable Participants.
- As DB Cargo accepts, Network Rail can specifically propose Restrictions of Use at less than 12 weeks' notice, pursuant to D3.5. DB Cargo's submission that the restriction "goes beyond what should reasonably [be] expected by operators" has no basis.
- The basis of DB Cargo's reliance on TTP1521 is not clear. If it is alleging that Network Rail has delayed notification of the Restriction of Use to ensure it is not challenged, Network Rail wholly rejects this. DB Cargo has provided no evidence of this.

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

DB Cargo has not addressed the catastrophic impact that removing or amending the Late Notice Restriction of Use between Stoke Gifford No2/ Caldicot and Leckwith Loop North Jn from 02:00 on 19 October to 04:20 on 21 October 2019 would have on the delivery of the electrification programme South Wales Main Line to Cardiff Central. It would result in the non-completion of works in January 2020, which in turn would have

a catastrophic impact on the December 2019 Working Timetable, which has been modelled based on the completion of the works. The impact would significantly exceed the issues faced by the industry in respect of the May 2018 timetable following the delay to the Bolton electrification works. For this reason the proposed possession is supported by other Timetable Participants, as set out above.

The Claimant has also failed to address the powers of the Hearing Chair pursuant to Part D 5.3.1 of the Network Code. The Timetabling Panel can only substitute an alternative decision in place of a challenged decision of Network Rail in exceptional circumstances. DB Cargo has not argued exceptional circumstances exist. No exceptional circumstances exist.

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

As set out above, if the December 2019 timetable is not delivered the impact on the December 2019 timetable are catastrophic. The WTT for December 2019 would not be deliverable. In addition to this, each week of the WTT would need to be amended as a short-term alteration by System Operator. This would prevent Network Rail meeting informed traveller timescales.

In any event, DB Cargo has not demonstrated why Network Rail cannot vary the Working Timetable. D3.5 of Part D of the Network Code specifically provides that Network Rail can make variations to the Working Timetable with less than 12 weeks' notice.

No exceptional circumstances exist to substitute Network Rail's decision.

5 DECISION SOUGHT FROM THE PANEL

This restriction is maintained in order to complete the electrification programme of works.

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, so as to follow on at the conclusion of the previous submission.

7 SIGNATURE

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

Signed



Print Name
Duncan Lovatt

Position
Head of Planning (Wales Route)