

TTP1820

1 DETAILS OF PARTIES

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

(a) Arriva Rail London Limited (Company Number 04165861), whose Registered Office is at 125 Finchley Road, London, NW3 6HY. ARL "the Claimant".

and

(b) Network Rail Infrastructure Limited (02904587), whose Registered Office is at 1 Eversholt Street, London NW1 2DN. Network Rail "the Defendant".

1.2 Third parties possibly affected by the Panel finding in any of the ways sought in this sole reference are DB Cargo (02938988), Direct Rail Services (03020822), Freightliner (03118392), Freightliner Heavy Haul (03831229), GB Railfreight (03707899), Govia Thameslink Railway (07934306) West Midlands Trains (09860466) and First Trenitalia West Coast Rail (10349442).

2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D3.5.3 and D5.1 of the Network Code Part D.

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 This is a dispute with respect to a decision made by Network Rail with regards to a late notice possession in Week 51.

4.2 This dispute is brought in line with D3.5.3 on the basis that Network Rail has not fulfilled its obligations under D3.5.2 of the Network Code. This is specifically with reference to Possession Planning System (PPS) item number 2796321.

4.3 This dispute arises over the fact that Network Rail issued a decision to proceed with a late notice possession (PPS ref 2796321) in Week 51 on 3rd February 2021. Arriva Rail London (ARL) were not included in the notification when it was issued and were only made aware of the decision as part of a verbal conversation on 9th February 2021. As a Timetable Participant directly impacted by the engineering access ARL should have been formally consulted and notified of any decision as per D3.4.4(a). Furthermore, this decision did not contain any information regarding Network Rail's application of the Decision Criteria set out in D4.6 as required in D3.4.4(b). ARL had previously declined this access in writing on 27th January 2021 along with other operators. *Please find attached within the appendices to this paper the e-mail notifying Network Rail of our formal rejection of this proposal (appendix A)*

4.4 ARL had expressed an intention to work with Network Rail further on the access proposed provided several assurances were met. No response from Network Rail was ever received on these matters; and when ARL subsequently sought an update from Network Rail's West Coast Main Line (WCML) South Route, it was then revealed that the decision had already been issued by Network Rail without ARL being included.

4.5 ARL cannot accept this possession as currently proposed.

5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

5.1 ARL were not included on the formal notification from Network Rail that this engineering access was being taken. As an affected Timetable Participant who had formally disputed the access proposal, ARL's exclusion from subsequent consultation and notification of the decision represents a lack of adherence to accepted practice by Network Rail as well as contravening D3.4.4(a). Furthermore, this insufficient consultation left ARL unable to undertake the required train planning and diagramming work to support the deadline of Friday 19th February 2021 for submission of a Train Operator Variation Request. ARL has not agreed to this deadline.

5.2 The decision issued by Network Rail gave no reference as to what the altered train service that ARL is required to bid for should look like, despite including specific traffic remarks instructing us to remove trains from the timetable. Additionally, there was no reference whatsoever as to how Network Rail has weighted, assessed and applied the Decision Criteria in coming to this decision as required by D3.4.4(b). ARL would suggest that, in this instance, Network Rail's decision has not taken into account the following considerations set out in D4.6.2;

- b) that the spread of services reflects demand;
- c) maintaining and improving train service performance
- d) that journey times are as short as reasonably possible
- e) maintaining and improving an integrated system of transport for passengers and goods
- f) the commercial interests of Network Rail or any Timetable Participant of which Network Rail is aware
- j) enabling operators of trains to utilise their assets efficiently

5.3 The original traffic remarks, now withdrawn, stated that:

'FREIGHT TRAINS TO RUN IN WTT PATHS, AND PASSENGER SERVICES WILL BE REGULATED AROUND THESE'.

These were unexpected, particularly as ARL had participated in discussions with Network Rail West Coast Main Line South Route and other Train and Freight Operators with regards to how freight paths could be accommodated within the timetable. These traffic remarks suggested that freight would not in fact be re-timed at all and that passenger trains would be regulated under Control arrangement instead. This was not acceptable to ARL given the risk to the safe and resilient operation of the North London Line (NLL) and Gospel Oak to Barking (GOB) routes, the possible detrimental impact upon passengers and the likely adverse consequences to performance of ARL services under the performance regime in place with TfL. Neither these traffic remarks nor this method of working were included within the original proposal (consulted to the industry on 19th January 2021 and to ARL on 21st January 2021 after we were missed from the distribution list) or the wider discussions which followed. *Please find attached within the appendices to this paper the notes which were sent out by Network Rail during the two trains meetings which were held on 26th January 2021 (appendix B) and 01st February 2021. (appendix C)*

ARL does not recognise a practice of proposing to operate WTT freight “under control arrangements” - i.e. “regulating” trains away from conflicts with the possession footprint into alternative paths on other parts of the network. To propose to do this for such a sustained period and for pre-planned engineering access is not a suitable method of working. It is one that we find all the more risky in the context of the very real possibility for COVID-19 absences to deplete signalling and control teams, who will undoubtedly be required in greater number to oversee the safe and successful operation of the service, were it to operate as proposed.

For such a plan to work successfully it must be properly pre-planned and validated and interfaced properly into TRUST and the signalling system / ARS (Automatic Route Setting).

We are concerned over the potential for various risks to arise from the current proposed approach that could compromise the safe and resilient operation of the NLL and GOB routes through the period of the access. To this end we have requested further information from Network Rail to understand how they have evaluated and planned

for these risks. *Please find attached this correspondence within the appendices to this paper (appendix D). At the time of writing this submission no response to this request has been forthcoming.*

5.4 The traffic remarks have since been re-written several times but the intent on behalf of Network Rail appears to remain the same; freight will be regulated between Rugby Rail Operating Centre (ROC) and Romford ROC “on-the-day” with no robust assessment having ever been provided to show that this would not adversely affect ARL or its passengers. Not only does this approach increase the risk of poor performance and reduced resilience on an already congested line of route, it also introduces a genuine safety concern regarding the impact upon control and signalling teams that are under immense pressure already. Given that the NLL operates within an ARS area it is our belief that this functionality would need to be switched off in order for the manual regulation of freight trains to be implemented which would, in turn, represent a notable increase in signaller workload. We have not seen anything in the way of contingency for unplanned sickness or any other signaller or controller unavailability - which is particularly relevant in the current climate of the ongoing COVID-19 pandemic.

5.5 The latest traffic remarks were re-issued by Network Rail on 15th February 2021 as follows:

FREIGHT TRAINS DIVERTED VIA GOSPEL OAK AND WILL RUN UNDER CONTROL ARRANGEMENTS. FOCUS NOT TO BID REVISED SCHEDULES. PASSENGER SERVICES ARE PLANNED TO OPERATE IN THE CURRENT REDUCED TIMETABLE AND PATHS. FREIGHT TRAINS PLANNED TO RUN AS PER WTT. UTILISING PATHING TIME, ENGINEERING ALLOWANCES, AND TIME BUILT INTO SCHEDULES AT KEY REGULATING POINTS. FREIGHT WILL BE PLANNED, AND ROUTED IN PATHS AVAILABLE WITHIN THE CURRENT REDUCED TIMETABLE, WITHOUT IMPACTING PASSENGER SERVICES OVER THE SAME LINES OF ROUTE. FREIGHT TRAINS TO BE TIMED IN BOOKED WTT TIMINGS AT ROUTE BOUNDARIES AND AT DESTINATIONS.

Network Rail has not issued a formal, end-to-end capacity study nor demonstrated how WTT (Working Timetable) freight will be accommodated with regards the assertion that the utilisation of existing allowances is sufficient to create an operable timetable. Assumptions have been made with regards to the successful accommodation of diverted WTT freight traffic alongside ARL’s timetable. The traffic remark is vague, unsupported and does not cover the operational complexity of the North London Line where traffic is mixed and operates between several Network Rail Routes. There will also be a number of WTT freight trains showing as published foul of a planned possession. It is ARL’s understanding that each train published as foul of a possession is investigated as a safety critical close call after the event and so we are concerned that this control-led approach based upon the WTT timetable remaining in place (as set out in the traffic remarks) is not in keeping with the industry’s core safety values and undermines one of Network Rail System Operator’s main Key Performance Indicators (KPI).

5.6 ARL understands that Network Rail intends to undertake track work between Camden Junction and Sudbury Junction “whilst there are a reduced number of trains on the network”. Apart from the tactical withdrawal

of 2 SX (Monday to Friday) trains per hour (tph) in each direction between Richmond and Stratford, ARL are currently operating a full timetable on this part of the network. At the time of writing, the agreement with Transport for London (TfL) to this service reduction expires on the 7th March 2021. From this date ARL will be operating a full 10tph service on the NLL with the restoration of the 2tph to Richmond that have been withdrawn since the start of January. Whilst we have offered throughout to try to support this access by the removal of services where required we have still not seen anything more than a single 'standard' hour study for ARL services based upon a midweek morning and we need much more than this to be able to make an informed decision on what we can do. Key workstreams associated with this information are both the diagrams that are required for crew and units and the mobilisation of an effective publicity campaign for passengers on what is an increasingly busy line of route despite the general suppression of passenger numbers elsewhere.

5.7 On 15th February 2021 Network Rail provided a draft timetabling study which was carried out via a 'fighting' exercise led by control. This study is the cause of considerable concern to ARL, particularly as it appears to have been based upon the current, published service levels for all operators which includes the temporary reduction plan in place for both ARL on the North London Line and Greater Anglia (GA) on the Great Eastern Main Line (GEML). At the time of writing, ARL have no plans in place to extend the present reduction plan on the North London Line beyond Monday 8th March 2021 and so this study does not reflect the service that is planned to run in WK51. It is true that ARL offered to reduce the service levels on the North London Line to help to facilitate this proposed engineering work but this was based upon a maximum of 2tph being cancelled in each direction between Richmond and Stratford. If our understanding of the timetable study is correct, it appears that we are being asked to remove at least 5 passenger services on top of the existing reduction plan as well as multiple other associated trains by extension. Also of concern was that this study only took into account the plan for Monday, Wednesday and Friday (MWFO) when the block lasts for a full 7 days in total. ARL has a distinct lack of confidence in the resilience of the plan put forwards within this study which, as stated above, has been undertaken against inaccurate assumptions about service levels and therefore lacks the appropriate and essential technical accuracy. Notwithstanding these inaccuracies, the overall language used within the study – such as the reference to 4L18 requiring 'a good run through Stratford to recover some time there' – leaves us with little trust in the robustness of this plan. It has also failed to take into account a number of ARL Empty Coaching Stock (ECS) moves which will require diversions around the main possession and will add yet more train paths onto the NLL between Camden Road and Kensal Green Junction. *Please find attached within the appendices to this paper the study to which ARL refer to here that was shared with them on 15th February 2021 (appendix E).*

5.8 ARL would also need to know on which days the NLL Richmond branch service needs reducing during the 7-day blockade (Saturday, Sunday and/or SX?). And is this every hour of the day from start of service or just selected points in the day? This isn't clear at all in that although the traffic remarks suggest it needs reducing on all days, only one hour's worth of the illustrative plan for SX has been seen by ARL so far and the control-led fighting study only took into account the plan for MWFO. ARL's timetable is different on a Saturday and a Sunday

to what runs in midweek, particularly in terms of start up and shut down, and freight schedules tend to differ every day. This is exacerbated by engineering work on cross country routes elsewhere in the United Kingdom and we have not been given assurances that other Network Rail possessions have been taken into account here nor that any additional freight paths routed via London have been considered.

5.9 In order for ARL's ECS plan to work around this published possession we require some existing engineering work on the Up and Down DC lines between Camden Road and Watford Junction on midweek nights in WK51 to be split at Willesden Junction Low Level. This is essential in order to enable reversals into Willesden Train Maintenance Depot (TMD) from the NLL whilst the WCML is affected. This was requested both verbally and in writing from Network Rail in advance of their decision but has so far not been forthcoming. As it stands, and until these easements are formally confirmed, ARL's ECS plan will not work against the published WCML possession regardless of the resolution of the other issues raised within this paper.

5.10 That there may be a reduced number of services on the network for some operators is not an engineering-based decision with regards to the urgent need for the proposed works. Nor have Network Rail been clear as to which parts of the Decision Criteria they have applied when issuing the decision. It was conceded by Network Rail within the original trains meeting that this engineering work is not safety critical and is more of a 'nice to have' which will bring forward benefits which would otherwise have taken several years to achieve. This was also recorded within the notes issued after the first trains meeting as well (see appendix A). ARL do not believe that this justifies the serious performance risk which is being introduced by not providing a timetable for a full 7-day blockade.

5.11 In summary, ARL is of the view that this engineering work cannot proceed as per the decision that was issued on 3rd February 2021 for the following reasons:

- Network Rail has not fulfilled its obligations under D3.5.2 of the Network Code and, furthermore, given that the engineering work itself has been confirmed as being non-safety critical and simply an expedited programme of works that were already in the Engineering Access Statements (EAS) covering the next 2 years we would query as to why it could not have been planned in with at least 12 weeks-notice as per D3.4.
- Network Rail failed to consult either the formal proposal or the final decision in line with the expectations set out in D3.4.4(a).
- Network Rail failed to provide any information within the decision regarding their application of the Decision Criteria set out in D4.6 as required in D3.4.4(b) despite the fact that ARL, and other operators, had formally declined this access in writing within the agreed timeframe.
- Network Rail has failed to provide the necessary assurances in relation to the management of risk, the impact upon performance and the safety implications of running an entire weekly plan via Control

arrangement. The studies that have been provided do not give us the confidence required to endorse this approach as a viable option.

- Network Rail has made several references with regards to Department for Transport expectations, but these have never been made explicitly clear to operators. Nor would these expectations be acceptable to ARL in isolation without an assessment as to the impact on passenger services if Network Rail's freight regulation plan lacks the necessary resilience we have asked for.

6 DECISION SOUGHT FROM THE PANEL

6.1 The outcome that ARL is seeking from the Panel is that the proposed track works between Camden Junction and Sudbury Junction are withdrawn from Week 51 and planned properly in accordance with Part D processes. This is as a result of:

- (a) Network Rail not fulfilling its obligations with regards to D3.5.2 of the Network Code.
- (b) Network Rail not providing adequate reasons as to the operational necessity for these works.
- (c) Network Rail's plan to regulate WTT freight on-the-day not being robust enough to justify the lack of any proper impact assessment, other than a standard hour for SX passenger services and a high level flighting plan for freight trains on MWFO.

7 APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21. *[which requires that*

“Copies of the following documents ... shall also be annexed and cross referenced to the reference:

(a) ***the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provisions associated with the substance of the dispute; and***

(b) ***[the relevant extracts of] any other Documents referred to in the reference”***

Note: It is undesirable for complete documents to be provided to the Panel, whether for information or as evidence. Relevant extracts which support the Claimant's position are sufficient.

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

All appendices 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.

8 SIGNATURE

For and on behalf of Arriva Rail London Limited

Shona Elkin _____
Signed

Print Name

Shona Elkin _____

Position

Train Planning Manager _____

This is a control mechanism; it provides the Panel with assurance that the dispute has been referred with the knowledge and understanding of the disputing corporate body. This is important, as engaging in formal dispute resolution implies a commitment to accepting the outcome of that process.

*In this context, the Claimant is reminded that in sending representatives to argue its case before the Panel, **“it shall... ensure that***

*(a) **the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value); [ADR Rule A19]***

then provide

The Appendices

Appendix A



RE REQUEST
LNW21-0146 - WEEK

Appendix B



FW Week 50 week
51 review of the stanc

Appendix C



Week 50 week 51
review of the standar

Appendix D



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Appendix E



Week 51 city lines
diversions draft v1.0.c