**Reference to the Timetabling Panel**

**Of a Dispute Relating to**

**Network Rail’s Final West Coast Route Modernisation Decision Document (NAUM-30)**

**Reference TTP210/FKTP**

1. **DETAILS OF PARTIES**
	1. The names and addresses of the parties to the reference are as follows:-

| First/Keolis Transpennine Limited"TransPennine Express"A company registered in England under number 4113923 having its registered office at:50 Eastbourne Terrace,PaddingtonLondonW2 6LX | Network Rail Infrastructure Limited"Network Rail"A company registered in England under number 2904587 having its registered office at:40 Melton StreetLondonNW1 2EE |
| --- | --- |
| Contact: Philip Hassall Position: Resource Planning ManagerTel:  | Contact: Matthew AllenPosition: Network Access Unit ManagerTel: Fax:  |

1. **THE PARTY’S RIGHT TO BRING THIS REFERENCE**
	1. This matter is referred to the relevant Access Disputes Resolution Rules Panel ("the Panel") for determination in accordance with Condition D 5.1 of the Network Code*.*
2. **CONTENTS OF REFERENCE**

On the instruction of the Committee Secretary, TransPennine Express has produced this individual reference and it includes:-

* + 1. The subject matter of the dispute in Section 4;
		2. A summary of the issues in dispute in Section 5;
		3. A detailed explanation of the issues in dispute in Section 6;
		4. The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 7; and
		5. Appendices and other supporting material.
1. **SUBJECT MATTER OF DISPUTE**
	1. This dispute concerns the Network Rail Final West Coast Route Modernisation Decision document (NAUM-30) and in particular the possessions in weeks 15, 16, 17, 18, 19, 20 and 21 to deliver “Line Speed Enhancements” between Preston and Penrith.
	2. The dispute arises over Network Rail’s application of Condition D6 of the Network Code, the Decision Criteria, to determine the necessity, extent and timing of the possessions contained within the Final West Coast Route Modernisation Decision document (NAUM-30).
	3. The proposed possession strategy interrupts TransPennine Express services between Manchester and the Lake District on seven consecutive weekends in the height of summer and interrupts TransPennine Express’ flagship services between Manchester and Scotland in the run up to and over the first two weekends of the Edinburgh Festival.
	4. For the avoidance of doubt, TransPennine Express is not disputing the principle of additional possessions during the remainder of the calendar year to secure the launch of the December 2008 timetable on the Principal Change Date.
2. **SUMMARY OF DISPUTE**
	1. The dispute relates to Network Rail’s Final West Coast Route Modernisation Decision document (NAUM-30) and in particular the following possessions: -
3. 2100 Sat to 1300 Sun between Preston Fylde Jn and Lancaster in weeks 15, 16, 17 and 18;
4. 0415 Sat to 2000 Sat between Oxenholme and Hardendale in weeks 18, 19, 20 and 21;
5. 2000 Sat to 2310 Sat between Oxenholme and Penrith in weeks 18,19,20 and 21; and
6. 2310 Sat to 0400 Mon between Carnforth North Jn and Penrith in weeks 18, 19, 20 and 21.
	1. TransPennine Express is disputing the necessity, extent and timing of these possessions as Network Rail has failed to justify that: -
7. The possessions are absolutely essential to the launch of the 2009 timetable in December 2008;
8. Seven consecutive weekends of disruption, with four consecutive weekends of circa 48 hour total block possessions, is the only possession strategy that will achieve the output essential to launch the 2009 timetable in December 2008; and
9. The need to take the possessions in the height of summer and, particularly, during the first two weekends of the Edinburgh Festival.
	1. As a consequence of these possessions, TransPennine Express services between Manchester and the Lake District and Scotland will be disrupted over seven consecutive summer weekends, severely so over four of these weekends of which two are during the period of the Edinburgh Festival. Over the four weekends in weeks 18, 19, 20 and 21 TransPennine Express will be prevented from operating an uninterrupted service between Manchester and Scotland.
	2. Operating an uninterrupted service to Scotland, particularly Edinburgh, is of significant importance to TransPennine Express because of its status as official sponsor of the Edinburgh Fringe Festival. TransPennine Express wishes to support its sponsorship of this prestigious annual event by offering through rail services between Manchester and Edinburgh throughout the period of the Festival.
	3. TransPennine Express also has concerns over its ability to resource alternative transport during August, the coach market’s busiest period and when the limited resources available will be consumed by the six week blockade between Preston and Chorley (Chorley Flying Arches).
	4. For the avoidance of doubt, TransPennine Express is not disputing the principle of additional possessions during the remainder of the calendar year to secure the launch of the December 2008 timetable on the Principal Change Date.
10. **EXPLANATION OF EACH ISSUE IN DISPUTE**
	1. TransPennine Express is disputing the necessity of the possessions proposed as Network Rail has been unable to describe to TransPennine Express exactly how the possession strategy between Preston and Penrith in weeks 15, 16, 17, 18, 19, 20 and 21 contributes to the A09 Line Speed Profile and why they are essential for the launch of the 2009 timetable on 13th December 2008.
	2. TransPennine Express is yet to be convinced that the proposed possession strategy will realise line speed benefits that are essential for the launch of the 2009 timetable in December 2008 and questions whether in fact the benefits Network Rail believes will be delivered warrants the considerable disruption the network will suffer during the height of the summer and over the first two weekends of the Edinburgh Festival.
	3. TransPennine Express believes insufficient consideration has been given to alternative possession strategies such as: -
11. Using possession opportunities in Engineering Period B next year (48 hour total weekend block of the route between Preston and Carlisle between 26th January 2009 and 22nd March 2009) and delivering the modest line speed increases shortly after the introduction of the December 2008 timetable; or
12. More, less disruptive possessions over a longer period of time; or
13. More disruptive possessions over a fewer weekends but avoiding August.
	1. TransPennine Express is disputing the extent of the possessions on the grounds that Network Rail has been unable to justify that seven consecutive weeks of disruptive possessions, four of which are consecutive weekends of circa 48 hour total block possessions, are necessary to undertake the works required to secure the launch of the December 2008 timetable on the Principal Change Date.
	2. TransPennine Express does not feel it has been afforded adequate opportunity to scrutinise and challenge Network Rail’s delivery plans and is not satisfied that the seven consecutive weekends (including four consecutive weekends of 48 hour total blocks) is essential to deliver an output adequate to support the launch of the December 2008 timetable on the Principal Change Date. TransPennine Express does not feel that Network Rail has fully considered alternative strategies, which create a better balance between the short-term and long-term needs of the network.
	3. If in the event of Network Rail being able to demonstrate the content of the possession strategy proposed is the only practicable way of achieving a solution adequate to launch to December 2008 timetable, TransPennine Express does not accept the only opportunity to undertake the work is in the height of the summer when demand for services between Manchester and the Lake District and Scotland is at its highest.
	4. In addition to the increased passenger demand during August, operating an uninterrupted service between Manchester and Edinburgh is of significant importance to TransPennine Express because of its status as official sponsor of the Fringe Festival. It is important to TransPennine Express to support this sponsorship arrangement by being able to offer through rail journeys between Manchester and the North East and Edinburgh throughout the duration of the Festival.
	5. The timing of the proposed possessions is in direct conflict with a significant increase in passenger demand for rail travel and undermines a commercial arrangement between TransPennine Express and the organisers of the Edinburgh Festival.
	6. Moreover, TransPennine Express is extremely concerned that its ability to respond to the disruption arising from the proposed possession strategy will be severely compromised as it is unlikely to be able to secure the volumes of rail replacement services required to provide a safe and satisfactorily travel alternative during August.
	7. The availability of coaches during the summer months, particularly August, is limited as coach owners and operators tend to be concentrating their supply towards the holiday industry. What limited options are available in the North West of England this year are likely to be fully consumed by Network Rail’s proposed six week blockade of the route between Chorley and Preston, required to carry out emergency repairs to the infrastructure known as Chorley Flying Arches.
	8. TransPennine Express considers the argument of available resources must equally apply to its ability to properly respond to the proposed possession strategy as it does to Network Rail’s ability to deliver physical works.
14. **DECISION SOUGHT FROM THE PANEL**
	1. The Panel is requested to determine that Network Rail has not applied the Decision Criteria correctly and has not paid due consideration to the Firm Rights of TransPennine Express. The Panel is requested specifically to determine:
15. That the Line Speed Enhancements proposed between Preston and Penrith are not absolutely essential to the launch of the 2009 timetable on 13th December 2008 (the Principal Change Date) and that Network Rail should defer the possession strategy proposed to facilitate them until Engineering Period B 2009 (between 26th January 2009 and 22nd March 2009); or
16. That the possession strategy proposed is unnecessarily restrictive and that Network Rail should deliver the Line Speed Enhancements between Preston and Penrith with a less disruptive possession strategy, which will allow TransPennine Express to consume more of its Firm Rights to services between Manchester and the Lake District and Scotland over the summer period; or
17. That Network Rail is to deliver the proposed possession strategy in a manner that avoids disrupting services in the summer period, particularly weeks 19, 20 and 21.
	1. TransPennine Express seeks the following remedy:
		1. A determination that requires Network Rail to defer the possessions required to deliver the Line Speed Enhancements between Preston and Penrith until Engineering Period B 2009 (between 26th January 2009 and 22nd March 2009); or
		2. A determination that requires Network Rail to propose an alternative possession strategy to deliver the Line Speed Enhancements between Preston and Penrith, which will allow TransPennine Express to consume more of its Firm Rights to services between Manchester and the Lake District and Scotland; or
		3. A determination that requires Network Rail to propose an alternative possession strategy that avoids disruptive possessions during the summer period, particularly weeks 19, 20 and 21.
18. **SIGNATURES**

For and on behalf of First/Keolis Transpennine Limited

Signed

PHILIP HASSALL

Print name

Position: **Resource Planning Manager**

Date:

1. **APPENDICES AND ANNEXES**

Annex A Extracts from the track access contract between First/Keolis Transpennine Limited and Network Rail Infrastructure Limited dated 30th January 2004.

Annex B Network Rail Final West Coast Route Modernisation Decision document (NAUM-30).

Annex C Network Rail West Coast Route Modernisation A09 Line Speed Profile.

Annex D LNW08-LC-01 Chorley Flying Arches blockade (proposal) dated 17th April 2008.