
ACCESS DISPUTES COMMITTEE

By E-Mail

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From: Bryan Driver (Panel Chairman)
Access Disputes Committee
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James Carter,
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(on behalf of the Disputes Chairman)

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Ref: ADC/TTP306/310/312
Date: 18th January 2010

cc:

Matt Allen (NAU)
Panel Members appointed to hear TTP306/310/312
Sir Anthony Holland, Disputes Chairman
Martin Shrubsole, Clerk to the Panels

CONFIDENTIAL

TTP306 Freightliner Ltd (“FL”) –v- Network Rail Infrastructure Ltd (“Network Rail”):-

TTP310 Arriva Cross Country Trains Ltd (“XC”) –v- Network Rail Infrastructure Ltd (“Network Rail”):-

TTP312 GB Railfreight Ltd (“GBRf”) –v- Network Rail Infrastructure Ltd (“Network Rail”):-

**Objections to aspects of the proposals contained in Project Strategy Notice PSN-MA-012
(issued 10./07/2009) relating to the implementation of the Water Orton resignalling project**

1. The case for which you have submitted your arguments, will be heard by a Timetabling Panel chaired by myself, on Wednesday 27th January 2010.
2. Sir Anthony Holland, the Disputes Chairman, has delegated to me (under ADR Rule A1.5) responsibility for *“oversight of the effective case management of [this] dispute”* that is required in compliance with ADR Rule A1.4(a). I am grateful to all concerned for submitting their respective submissions by the dates requested by the Secretary. On the basis of my reading of those submissions I consider that the determination of the matters in question require that I exercise my personal judgement to anticipate lines of enquiry that the Panel may wish to pursue in accordance with its duties under ADR Rules A1.3 (c) (*“where appropriate, take the initiative in ascertaining the facts and law relating to the dispute”*), and A1.3(d) (*balance the formality required to achieve a fair*

and efficient process with the accessibility required to ensure that the process is quick and easy to use”).

3. Having seen all four submissions, I am satisfied that the issues raised by the three Train Operators have sufficient in common that it would be inappropriate to proceed with separate hearings. I am also conscious that there were originally 4 other disputing Train Operators, and that whilst these parties now consider that they are no longer in dispute with Network Rail, they may yet elect to be represented as Dispute Parties at the Hearing.
4. I am, by this letter, asking all parties to address a number of issues of procedure, together with certain specific questions of fact, so that there can be, on the day of the hearing, a clear common understanding of the particular issues that the Panel is expected to determine. All Parties are therefore asked to submit written responses/answers to the following questions, to be with the Secretary by 12:00 on Monday 25th January, so that they can be circulated in advance to the members of the Panel. All such answers should be copied to the other Parties to this hearing. Where one party wishes to take issue with a comment from another, this can be made the subject of a specific reference in any Opening Statements.

Issues of Procedure

5. This hearing is specifically concerned with the arrangements for the implementation of the Water Orton resignalling as contained in the PSN.
 - 5.1. Will the Parties please confirm that the scheme to which the PSN relates has already been the subject of other consultation as to scheme content (whether in Network Change notices, or otherwise), and that they are not seeking to ask the Panel to address any issues in relation to the merits of the scheme when complete? Can each Train Operator confirm that the **output** from the scheme has its support?
 - 5.2. Is it the understanding of the parties that
 - 5.2.1. the arrangements set out in the PSN cover all Restrictions of Use needed up to and including the Final commissioning of the complete scheme, i.e. that there will not be a further such document? And that
 - 5.2.2. when all outstanding issues in relation to the PSN have been resolved and the PSN “established”, those Restrictions of Use will be incorporated into the “*applicable Rules of the Route*” for 2011, and appropriate subsequent years (i.e. will be a “given” in any review of the Rules of the Route for those subsequent years)?
 - 5.3. Would each Train Operator please set out clearly not just the determination on entitlement that they seek from the Panel, but also what remedy they consider the Panel should grant, in particular whether
 - 5.3.1. as contemplated in ADR Rule A1.19(a), “*the Access Conditions or Access Agreement require that a specific remedy be granted*”; OR
 - 5.3.2. as contemplated in ADR Rule A1.19(b), “*the choice of remedy is not a matter of entitlement but is a question properly falling within the discretion of the Panel...*”.
 - 5.3.3. I envisage that the Panel will wish to hear any arguments from Network Rail in respect of the remedies sought, as part of Network Rail’s opening statement.

Issues of fact or entitlement

6. In relation to the cases brought by FL (TTP306) and GBRf (TTP312), can each confirm that the only Restrictions of Use that are not agreed as between themselves and Network Rail are those relating to the Stage 1 Commissioning in **week 35 2011**?
7. Will XC (TTP310) please clarify in specific terms which, if any, other Restrictions of Use proposed in the PSN, beyond **week 35 2011**, it is disputing?
8. In all three cases the relative importance given to the respective Decision Criteria will inform the Panel's determination. Will the Train Operators please indicate where they consider that the assessments in respect of the Decision Criteria made by Network Rail in its submission to be wrong, or challengeable, and give their contrary assessment?
9. Economic hurt to Train Operators is likely to be a factor of interest to the Panel in determining the reasonableness of those Restrictions of Use it considers are a matter of discretion rather than absolute entitlement, will all three Train Operators please provide an indication of the scale of compensation each would receive under the terms of Schedule 4 of their respective Track Access Contracts, should the Panel determine that all the disputed Restrictions of Use in the PSN should be established?
10. In relation to TTP310, there is much focus on the matter of how the Train Operator is to maintain Train-Crew Route Knowledge over diversionary routes. For the guidance of the Panel, would the Parties please provide the necessary documents that prescribe the relevant contractual obligations on the Train Operator (to ensure adequate training/refreshing etc is undertaken) and on Network Rail (to ensure that appropriate access is given to routes). It would be my understanding that this obligation was previously (e.g. in Condition H4.2 of the Network Code published in January 2005) explicitly required to be part of a Code of Practice: is this a matter addressed in the Railway Operational Code prescribed in the current Condition H3, and if so, in what terms?

General point

11. Would all parties ensure that their written submissions on all the above points are circulated to the Secretary and to Network Rail, FL, XC, and GBRf, in electronic pdf format, by 12:00 on Monday 25th January. As, in the formulation of both any Record of hearing, and any determination, it is frequently necessary to cite parts of submissions etc verbatim, it is of considerable assistance if such documents are also supplied, to the Secretary only, in Word format. This is also the case with any written transcripts of opening statements.

*M.R. Shukla
signed by direction*

Bryan Driver

Panel Chairman