

Sole Reference by
Network Rail Infrastructure Limited "Network Rail"
to a Timetabling Panel (ref TTP602)
in accordance with the provisions of Chapter H
of the ADR Rules effective from 1 August 2010
(and as subsequently amended)

1 DETAILS OF PARTIES

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

West Coast Trains Limited whose Registered Office is at The Battleship Building,
179 Harrow Road, London W2 6NB "WCTL" "the Claimant"; and

Network Rail Infrastructure Limited whose Registered Office is at Kings Place,
90 York Way, London N1 9AG "Network Rail" "the Defendant"

The Correspondence address, contact details and e-mail address for Network Rail is:

Elaine Folwell, Willen Building, The Quadrant: MK, Eider Gate,
Milton Keynes Central, Buckinghamshire, MK9 1EN

Tel: [REDACTED]

Email: [REDACTED]

1.2 Other affected parties are all other West Coast Main Line (WCML) Access Parties.

2 THE DEFENDANT'S RIGHT TO CONTEST THIS REFERENCE

2.1 This matter has been referred to a Timetabling Panel ("the Panel") as an Appeal against Network Rail's decisions concerning the Train Slots not included in the New Working Timetable that applies from the Principal Change Date in December 2013 by West Coast Trains Limited (WCTL) in accordance with Condition D 2.7.2 of the Network Code. Network Rail is entitled to defend its disputed actions before the Panel under the same Condition.

3 CONTENTS OF REFERENCE

3.1 This Response to the Claimant's Sole References includes:-

The subject matter of the dispute in Section 4;

A summary of the issues in dispute in Section 5;

A detailed explanation of those issues in dispute prepared by the claimant in Section 6;

In Section 7, the decision sought from the Panel; and
Appendices and other supporting material in Section 8.

4 SUBJECT MATTER OF DISPUTE

This dispute arises over WCTL's assertion that Network Rail has incorrectly applied the Decision Criteria when compiling the New Working Timetable for December 2013.

Network Rail's position is that the decisions made when compiling the New Working Timetable, including the rejection of WCTL's additional services, are in line with its responsibilities outlined in D 4.2.1 and D 4.2.2 of the Network Code. Further, that in discharging these duties Network Rail correctly applied the Decision Criteria in condition D4.6 when deciding not to include the additional slots as detailed by WCTL in their Access Proposal.

- 4.1 The other documents relevant to the dispute, have been copied and shown in the annexes; these are
- I. Timeline of the communication between Network Rail and WCTL concerning these paths including supporting emails
 - II. Relevant extracts of 'Additional Train Paths bid by Virgin Trains for December 2013' a document sent from Network Rail to WCTL when the New Working Timetable was published at D-26 which have not been submitted in WCTL's Sole Submission
 - III. Timetable Panel Determination in respect of TTP95B
 - IV. Letter from ORR to Network Rail dated 19th December 2012

5 SUMMARY OF DISPUTE

- This dispute arises over Network Rail's decision not to accommodate WCTL's additional services between London and Blackpool North and London and Shrewsbury in the New Working Timetable for December 2013 ("the Services"). The rejection of WCTL's additional services is in line with Network Rail's responsibilities outlined in D 4.2.1 and D 4.2.2 of the Network Code.
- In December 2012 WCTL began discussions with Network Rail in relation to the Services. Recognising that it would be a substantial piece of work to include the

Services in the New Working Timetable for December 2013, Network Rail and WCTL undertook advanced timetable work between January and the Priority Date (1st March 2013) as required in Condition D2.3 of the Network Code. The purpose of this work was to understand whether the train slots could be accommodated in the timetable within the flexing allowable to other Operators' services. The work had not concluded by 1st March 2013 and, recognising the large volume of work required, WCTL appointed an agent to work on their behalf with Network Rail during the Timetable Preparation Period. Despite this additional support, technical solutions had not been found for all services by 10th May 2013 (4 weeks before the issue of the New Working Timetable), demonstrating the considerable complexity of accommodating these additional services. Dialogue to find technical solutions for all services continued between Network Rail and WCTL until 4th June 2013.

- In parallel to the ongoing work seeking compliant paths with WCTL, between 20th May and 4th June a detailed assessment of the Services was undertaken, including detailed simulation modelling of the performance impact of the Services, by Network Rail in line with D 4.2.1 and D 4.2.2. Following due consideration of the Decision Criteria, Network Rail concluded that none of the Services should be accommodated in the New Working Timetable. It was only at this point on 4th June 2013 that Network Rail became aware that it could not accommodate the Services in the New Working Timetable. This was communicated to WCTL by telephone on 5th June 2013.
- Some services (1A93 SX, 1A93 SO, 1A90 SO, 1N01 SO, 1K01 SO, 1A91 SO, 1K02 SO, 1N02 SO) were not included in the New Working Timetable because Network Rail was unable to include all requested train slots and prioritisation was applied as per D 4.2.2 (d). Some services (1A90 SX, 1N01 SX, 1K01 SX, 1A94 SX, 1A91 SX, 1K02 SX, 1N02 SX, 1A94 SO, 1A94 SU, 1A91 SU, 1K02 SU, 1N02 SU) were not included in the New Working Timetable, although slots could be found, because Network Rail did not consider the inclusion of these slots to be in line with its obligations outlined in D 4.6 of the Network Code. This is clearly described in the document that Network Rail sent to WCTL on 7th June 2013 and can be found on in Annexe 2 on pages 17 – 19 of this submission.
- A detailed timeline with supporting emails can be found in Annexe 1 on page 11 of this submission

- WCTL submitted its formal notice of Dispute with Network Rail on 3rd July.

6 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

6.1 Issues where the Defendant Accepts the Claimant's Case

That WCTL bid for the Services under appendix PT3C in its Access Proposal.

That Network Rail was in constant dialogue with WCTL in relation to the Services on weekdays.

That Network Rail clearly set out in its report, requested by ORR, that 'it would be inappropriate to sell any further Access Rights on the WCML at this time' [until the December 2016 Event Steering Group had concluded]. Appended to this submission (annexe IV, page 59) is a letter from ORR to Network Rail dated 19th December 2012 where paragraph 6 confirms that Network Rail would be re-issuing its capacity and performance report in respect of available capacity for the December 2013 timetable. This final report took into account the clarification points that ORR set out in response to the first version of this report, as appended to WCTL's submission. The final version of the report was issued by Network Rail on 20th December 2012 and there was no further clarification requested by ORR.

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

That Network Rail did not notify WCTL of the issues with the Services before 7th June as it did so on 5th June 2013 by telephone, following sustained dialogue during the timetable preparation process.

That Network Rail's reasons for not accommodating the Services are not adequate justification. Network Rail is clear that the reasons provided are adequate justification and that it is entitled to make these decisions under the Network Code.

That performance would improve if the Services ran. The analysis submitted to the Panel by WCTL is flawed in that it partially reviews performance benefits from changes to other WCTL services that are not the subject of this dispute and is therefore not relevant. The WCTL analysis does not consider the impact of operation of the

Services, nor any negative impact on performance from other timetable changes within the December 2013 New Working Timetable. Network Rail's analysis which was shared with WCTL on 7th June 2013 and can be found in Annexe 2, pages 45 – 52 of this submission demonstrates the performance would get worse if the Services ran.

Network Rail strongly refute that there was *a lack of willingness and inertia internally to resolve the conflicts with the Services*. There were approximately 18 man days devoted to the work of accommodating the Services by Network Rail during the Timetable Preparation Period in addition to approximately 10 man days in advance of the Priority Date. At no point during the timetable preparation period was this raised as a concern by WCTL or their Agent.

That Network Rail did not devote the same amount of diligence, time and effort to the Services as it did to other more technically challenging aspects of the bid. In addition to the significant input of manpower note above, Network Rail does not agree that adding Crewe stops to Euston – Liverpool services was a more technically challenging workstream.

That no substantive work was undertaken on the Services for Saturdays. WCTL's agent prioritised Monday to Friday services when working with Network Rail, hence Network Rail worked on the Saturday Services with no input from WCTL beyond that included in their Access Proposal.

That Network Rail ceased dialogue with WCTL 10 days before the Publication of the New Working Timetable. The appended email correspondence dated 3rd / 4th June demonstrates continued attempts to resolve conflicts between Freightliner service 4O14 (which has level 1 rights) and 1A93.

That there has been a clear failure by Network Rail to meet its obligations under Condition D2.4.7. Network Rail notified WCTL as soon as possible after the decision had been taken not to publish these trains as described in Section 5.

That Network Rail did not have time to validate services due to the amount of time it spent capturing data and this is a failure in obligations set out in condition D1.1.8. Data capture is essential so that Network Rail can properly manage its obligations to all parties in constructing the New Working Timetable. Even if this information could be

captured automatically there would be a need for Network Rail to manage and understand this data so that it could understand the decisions being made. The compilation of the matrix of this data was done by an Operational Planning Project Manager who would not otherwise have been validating services.

That WCTL were engaged with 'informal dialogue' with Freightliner and believe a mutually acceptable solution for the clash between 4014 and 1A93 would be found. No solution has been provided so this remains conjecture.

WCTL's assessment is that the Services can be accommodated on Saturdays. No solutions have been provided by WCTL so this remains conjecture.

Network Rail's application of Decision Criteria.

This is as set out in appendix in the letter sent to WCTL when the New Working Timetable was published at D-26 (WCTL annex V)

Specifically in relation to the points raised in WCTL's Sole Reference document

- a) Network Rail took the view that making the xx36 path potentially 'unsaleable' is not desirable on the basis that it does not make best use of present network capacity. The intensity of operation of the West Coast Main Line makes 'fire-break' paths an essential component of the timetable to reduce delays during perturbation.
- b) Network Rail acknowledges that the Access Proposal reflects WCTL's Service Level Commitment, but this is not relevant under this Decision Criteria.
- c) The analysis undertaken by Network Rail demonstrates performance degradation by operating the Services. In the context of the requirement for WCTL's PPM MAA to increase by 3% to meet the regulatory target by March 2014, Network Rail maintains that performance is the consideration with the highest weighting. Network Rail believes that WCTL's performance analysis does not assess performance of the Services and should be disregarded.
- d) The solution found by Network Rail and WCTL in accommodating the Services resulted in the journey times in the document shared at Timetable Publication. The

timings gave a generally longer journey time than currently available between London and Blackpool North by changing at Preston, and shorter journey times between London and Shrewsbury.

- f) Network Rail maintains that the revenue generated by these paths is low in comparison to potential compensatory payments under Schedule 4 and Schedule 8 at present performance levels. Network Rail further understands that the economic case to run these additional services is marginal, and no evidence has been presented to suggest otherwise
- g) Network Rail maintains that neither service is recommended in the appropriate RUS and no service gaps were identified.
- i) Network Rail maintains that the diesel traction that would be used to operate these services would have a greater impact on the environment than the electric services that are used for the majority of the journey today.
- j) Network Rail has not had visibility of WCTL's rolling stock utilisation plans.

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

In 2006 Network Rail declined to include First Great Western's (FGW's) additional Paddington - Slough services in the New Working Timetable. These services were bid for with 'expectations of rights' and in line with FGW's Service Level Commitment and Network Rail was able to find train slots for the majority of services bid that were compliant with the Rules of the Plan. It did so because to introduce the services would have had a negative impact on performance. This matter was referred to the Timetable Panel (TTP95B) and the panel found that Network Rail was 'entitled to decide that it does not wish to put its performance obligations in jeopardy, and so to decide that it will not incorporate the ... service into the Timetable'. A copy of the determination is appended in Annexe 3.

Performance on the WCML is currently below where it is required to be and Network Rail has exceeded the Sustained Poor Performance threshold (compensation provisions) mandated in the WCTL Track Access Contract (Schedule 8). As outlined in

the simulation modelling undertaken by Network Rail introducing these additional services would make performance worse.

Network Rail has convened an Event Steering Group (ESG) for the December 2016 timetable changes. The December 2016 ESG will look at the timetable structure to accommodate more trains on the West Coast Main Line and this is the date that Network Rail believes would be appropriate for the introduction of new services. Network Rail's view is that performance will suffer if more train slots are included in the New Working Timetable in December 2013 but intends to review the current Timetable Planning Rules to improve right time to 2 minutes late performance from the December 2014 timetable.

In the case of 1A90 SX, 1N01 SX, 1K01 SX, 1A94 SX, 1A91 SX, 1K02 SX, 1N02 SX, 1A94 SO, 1A94 SU, 1A91 SU, 1K02 SU, 1N02 SU Network Rail would further note that ten other Timetable Participants would need to make alterations to their December 2013 timetable if the WCTL position were upheld. Details are included in Annexe 2, pages 20 – 44)

In the case of 1A93 SX, 1A93 SO, 1A90 SO, 1N01 SO, 1K01 SO, 1A91 SO, 1K02 SO, 1N02 SO as no timetable solution has been identified it is not known what the full impact to other Timetable Participants would be.

6.4 Why the arguments raised in 6.1 to 6.3 taken together favour the position of the Defendant

Network Rail followed the appropriate processes in the Network Code to not include the Services in the New Working Timetable.

Some of the Services were not included in the New Working Timetable because they could not be accommodated in a manner consistent with The Rules and with the Exercised Firm Rights of other Timetable Participants.

Some of the Services could have been included in a manner consistent with The Rules and with the Exercised Firm Rights of other Timetable Participants but have not been included in the New Working Timetable after correct application of the Decision Criteria.

This use of the Decision Criteria is not only an obligation of Network Rail as laid out in D 4.2 and D 4.6, but is also supported by the determination of the timetabling panel in TTP95B upholding Network Rail's decision in declining extra Train Slots requested by First Great Western.

7 DECISION SOUGHT FROM THE PANEL

7.1. Network Rail asks the panel to determine that

7.1.1. Network Rail has correctly applied the Network Code D 4.2.1 and D 4.2.2 in relation to the Shrewsbury and Blackpool services that WCTL proposed to introduce in December 2013.

7.1.2. Network Rail complied with its obligations under Network Code D 2.4.7.

8 APPENDICES AND ANNEXES

(a) The Defendant confirms that it has complied with Rule H21 of the Access Dispute Resolution Rules

- I. Timeline of the communication between Network Rail and WCTL concerning these paths including supporting emails (pg 11)
- II. Relevant extracts of 'Additional Train Paths bid by Virgin Trains for December 2013' a document sent from Network Rail to WCTL when the New Working Timetable was published at D-26 which have not been submitted in WCTL's Sole Submission (pg 15)
- III. Timetable Panel Determination in respect of TTP95B (pg 53)
- IV. Letter from ORR to Network Rail dated 19th December 2012 (pg 59)