
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 19 held in London on 9 December 2008

Present:

Sir Anthony Holland, Chairman
George Renwick, Vice-Chairman
John Beer (First Capital Connect)
Bill Davidson (Network Rail)
Lindsay Durham (Freightliner)
Tony Deighan (Eurostar (U.K.))
Nigel Oatway (English Welsh & Scottish Railway)
Gabrielle Ormandy (Network Rail)
Mike Price (First ScotRail)

In attendance:

Martin Shrubsole (Secretariat – Clerk to the Panels)
Tony Skilton (Secretary)

Apologies:

Bryan Driver, Vice-Chairman
Wallace Weatherill (Southeastern)

19/1 Approval of Minutes of Meeting no.18

The Minutes of Meeting no.18, held on 17 September 2008, were approved. The Chairman signed a copy of the Minutes as a true record of the proceedings.

19/2 Matters arising from the Minutes of the previous Meeting

18/2 The Access Disputes process

The Secretary reported that a consultation document setting out the industry Working Group's proposals for amending the Access Dispute Resolution ("ADR") processes was in the final stage of preparation and was expected to be issued very shortly.

18/3 Quorum for meetings of the Committee

G Ormandy reported that proposals sponsored by Network Rail for enabling the Committee to transact business by such means as telephone conference, video conference or written resolution were currently undergoing consultation and were expected to be presented to the Class Representative Committee for formal approval in January 2009.

18/6 Website template for drafting of joint reference documents

The Secretariat had given further consideration to the suggestion of expanding the joint reference document template to provide a "tick box" checklist to prompt parties to supply all relevant information and evidence. Informed by aspects of the documentation submitted to recent Timetabling Panels, it had been concluded that a checklist would not necessarily have the requisite effect as deficiencies were seen to arise through the downloadable document template being un-annotated: incorporation of a confirmation of compliance with the requirements of ADR Rule A1.34 into the template was now anticipated as being more effective towards ensuring that Panels are supplied with the full quota of documents and that attention is also given to establishing that the correct version of each document is used. The Committee approved a proposed modification to the template for application with effect from 1 January 2009.

19/3 Update on references

The Committee noted the current position regarding the references on hand.

News was still awaited from Freightliner Heavy Haul as to whether reference ADP12 (which had been on hand since late in 2005 whilst the parties were understood to be undertaking an extended practical joint assessment of relevant operational issues) could yet be withdrawn.

19/4 Issues arising out of recent findings

The Committee noted ORR's determination of an appeal against the Panel's decision in relation to reference ADP31, which related to the re-introduction of Class 142 units on passenger services in the Exeter area. ORR had reached the same conclusion as the Panel and in doing so had provided some useful clarifications relating to Part F of the Network Code; ORR had, however, largely arrived at its conclusions through rationale based on different arguments from those advanced by either party to the dispute and which had not been considered by the Panel (which had confined itself to the materials presented by the parties). The Committee accepted that this was a case of a higher forum taking into account matters not visible to the Panel and provided guidance as to how the matters should be recorded in the directory.

The Committee also noted the arbitrator's views as to jurisdiction applying in arbitration case A23, which followed the Panel's hearing of reference ADP21 and ORR's determination of an associated appeal regarding a substantive point. The Committee anticipated that any issues regarding future jurisdiction concerns were likely to be addressed by the current review of the ADR Rules.

19/5 Update on the website

Alterations were now to be incorporated into the Network Code Part F directory area of the website to reflect ORR's deliberations in connection with the ADP31 appeal as discussed earlier in the meeting, whilst the outcomes of appeals against two recent Timetabling Panel determinations were also awaited before updating the Part D area; some small amount of attention was also still required to Station Access aspects of the directory (and was actively in hand). The other areas of the website were up to date.

