
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 34
held in London on 12 December 2012

Present:

John Beer (First Capital Connect) (Committee Chair)
John Czyrko (First Greater Western)
Bill Davidson (Network Rail)
Richard Dean (London & South Eastern Railway)
Robin Nelson (Freightliner Heavy Haul)
Nigel Oatway (DB Schenker Rail (UK)) – not present for items 34/1 to 34/12
Gavin Panter (Network Rail)
Andy Wylie (Hull Trains)

In attendance:

Professor Richard Butler (Allocation Chair)
Tony Skilton (Secretary)

34/1 Committee membership

John Czyrko and Gavin Panter were welcomed to the Committee, replacing Mike Price and Gabrielle Ormandy respectively.

34/2 Approval of Minutes of Meeting no.33

The Minutes of Meeting no.33, held on 12 July 2012, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

34/3 Matters arising from the Minutes of the previous Meeting

All matters arising from the Minutes were listed as agenda items except:-

33/2 (previous 32/3, 31/2, 30/2, 29/2 and 28/2) Implementation of the new Access Disputes Resolution Rules – Contract changes

It was understood that ORR was continuing its progression of amendments to Access contracts to align with the choice of dispute resolution forums offered by the new (August 2010) Rules.

33/2 (previous 32/9) Management of funds

Noting that Gabrielle Ormandy had left the Committee, it was RESOLVED that Bill Davidson be a named signatory to the Instant Access Deposit account which it was proposed be opened with The Loughborough Building Society.

The Committee recognised that this decision would further delay the completion of documentation necessary for opening the account.

33/2 (previous 32/10) Decision Criteria

It was understood that Network Rail had held the expected industry workshop on 11 September to discuss the application of the revised Decision Criteria but the Committee was not represented.

33/8 Management of the Committee's property interests

Revision of the Articles of Association of Access Disputes Resolution (GB) Ltd had been progressed and the intended agency agreement with that company was now ready for signature.

34/4 Matters determined in correspondence

Following upon discussion at the meeting on 12 July 2012 (Min. 33/8), Committee members had reached agreement in correspondence regarding adjustment of wording to finalise the proposed Property Management Agreement between the Committee and Access Disputes Resolution (GB) Ltd.

34/5 Position on references

The Committee noted a report from the Secretary setting out the current position regarding dispute references.

Regarding previous Minute 33/6, the Secretary reported that as recently as 5 December he had been assured by the operator concerned that the outstanding issues in the unresolved timetabling dispute lodged in July 2010 were in active dialogue with Network Rail and matters were thought to be very close to closure.

34/6 Update on the website

The Secretary reported that the website was up to date.

34/7 Review of dispute resolution process and associated matters

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 to A10) are being observed in the way in which disputes are being managed and determined. To assist the Committee in this duty, a report had been compiled by the Allocation Chair and this was considered.

Prof Butler explained that his report reflected feedback on the experience of all the Hearing Chairs and particularly those who had been appointed to chair hearings in the past year.

The feedback was heartening overall as regards the operation of the arrangements introduced by the August 2010 revision of the ADR Rules and in the absence of any awareness of any departure from compliance with the Rules, the Committee was satisfied that the Principles were being observed although certain points had emerged as deserving attention.

It was becoming clear that there was some insufficiency in the expected timescale for writing up a comprehensive determination in complex Timetabling Dispute cases. The Committee acknowledged that where time was pressing in such circumstances, the best available

solution would be for the Hearing Chair to issue a preliminary written indication of the conclusion reached.

There was tendency for 'claimant' Dispute Parties to annex full versions of industry documents to their hearing submissions instead of extracting only the information or evidence relevant to their case and it was also not uncommon for a 'defendant' to provide a document already submitted by the claimant. Such excessive documentation was not helpful. The Committee considered it appropriate that a note be issued to Resolution Service Parties regarding the matter and also that relevant templates on the website be amended to reinforce the existing guidance on provision of evidence.

Hearing Chairs had indicated some disappointment regarding the standards of written submissions in general and also regarding the standards of oral presentation by some representatives at hearings. Whilst the Committee appreciated that Hearing Chairs would do their best to ensure that all parties had the opportunity of a full and fair hearing, it was agreed that effort should be made to encourage improvement across the industry through issue of some simple guidance documentation; the Committee also considered it worthwhile to offer participation in any development sessions which Resolution Service Parties might arrange for their relevant staff members.

Hearing Chairs had identified difficulties in managing certain aspects of Timetabling Disputes because of the non-alignment of the processes for timetable development as set out in Part D of the Network Code with the regulatory process for awarding rights and the Committee recognised that the mismatch between the contractual and regulatory processes could perhaps lead to outcomes which were not good for industry. A Wylie observed that the current industry arrangements were particularly difficult for Open Access passenger operators and indicated that he was taking up concerns with ORR in his capacity as the Class Representative Committee member for the Non-Franchised Passenger Class.

The Hearing Chairs had reported that the seminar held for them in May 2012 had been of benefit for sharing practical experience and developing consistent understanding of relevant issues; there was perceived merit in holding a seminar annually, although the cost implications were understood. Mindful of the current disputes position, the Committee anticipated that there would be lessons to be shared arising out of the handling of complex cases; to allow time for any possible appeal outcomes to be digested, it was decided to plan for a gathering of the Chairs later in 2013.

34/8 Internal check arrangements

Bill Davidson had tabled a report regarding internal check activity which he had carried out since the 12 July meeting and this was noted. The Committee also noted a written report from John Beer which confirmed his verbal report to the 12 July meeting regarding internal check activity earlier in the year.

It was agreed that John Czyrko would undertake internal check until the next meeting.

34/9 Outturn for 2012/13 and preliminary budget for 2013/14

The Committee noted a report setting out the outturn projections against the current year budget; it anticipated that income would comfortably exceed expenditure. Two Resolution Service Parties had yet to pay their 2012/13 levy and one of those had also yet to pay for 2011/12.

In considering the preliminary budget for 2013/14, the Committee took the view that existing reserves together with surplus expected to be available out of the 2012/13 income should enable the 2013/14 expenditure budget to be constructed to produce the same overall levy requirement as for 2012/13.

34/10 Office lease terms

In the light of the anticipated impact on the Euston area of the HS2 project, the Committee considered the potential commercial benefits of seeking to restructure the terms of the lease of its office premises at 1 Eversholt Street and authorised the Secretary to negotiate with the landlord the removal of existing break clauses, the rent following rent review effective from 2014 and such other cost-saving improvements in the lease arrangements as may be possible. Authority was also given to engage professional advice and support for pursuing the negotiations.

It was recognised that legal expenses would be contained if any restructuring of the lease were to proceed at the same time as the assignment to Access Disputes Resolution (GB) Ltd; accordingly, in order to avoid delay, the Committee gave authority for the Secretary to enter into revised lease terms considered beneficial to the Committee subject only to the approval of the Committee Chair.

34/11 Annual Report for 2012

Subject to any appropriate adjustments to reflect discussions at this meeting and factual changes arising in the remainder of the month, the Committee approved the draft for the 2012 Annual Report for issue early in January 2013.

34/12 Committee and Timetabling Pool membership

Recent elections had retained the composition of the Committee for 2013/14 but it was noted that changes would take effect within the membership of the Timetabling Pool.

34/13 Meetings in 2013

The Committee agreed the schedule of business meetings to be held during 2013.



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