
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 35 held in London on 21 March 2013

Present:

John Beer (First Capital Connect) (Committee Chair)
Bill Davidson (Network Rail) – not present for items 35/1 to 35/3
Richard Dean (London & South Eastern Railway)
Robin Nelson (Freightliner Heavy Haul)
Nigel Oatway (DB Schenker Rail (UK))
Andy Wylie (Hull Trains)

In attendance:

Tony Skilton (Secretary)
Kathy Couldridge (Assistant Secretary)

Apologies for absence:

John Czyrko (First Greater Western)
Gavin Panter (Network Rail)

35/1 Approval of Minutes of Meeting no.34

The Minutes of Meeting no.34, held on 12 December 2012, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

35/2 Matters arising from the Minutes of the previous Meeting

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

34/3 (previous 33/2, 32/3, 31/2, 30/2, 29/2 and 28/2) Implementation of the new Access Disputes Resolution Rules – Contract changes

It remained the understanding 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.

34/3 (previous 33/2 and 32/9) Management of funds

Opening of the intended account with The Loughborough Building Society was awaiting convenient opportunity for formal certification of signatories' identification documents.

34/7 Dispute resolution process and associated matters

The Secretary reported that templates on the website had been amended with a view to reinforcing the guidance aimed at avoiding excessive and unnecessary documentation being annexed to parties' statements submitted to hearings.

It was pleasing to learn that Network Rail had arranged a development session aimed at improving the effectiveness of representatives attending hearings; it was unfortunate that the chosen date had been inconvenient for providing support from the Committee Secretariat.

Hearing Chairs had expressed the view that there is some insufficiency in the expected timescale for writing up a comprehensive determination in complex Timetabling Dispute cases and the Committee had suggested at its December 2012 meeting that the best available solution would be for the Hearing Chair to issue a preliminary written indication of the conclusion reached. It was now noted that ORR had recently clarified that the only decision that could be considered binding on Dispute Parties or capable of being appealed was a comprehensive written determination in the form described in the ADR Rules.

The Committee had previously decided that a seminar should be held later in 2013 to share the learning arising out of handling recent dispute cases; the Secretary was now actively exploring possible dates.

34/11 Annual Report for 2012

The Annual Report had been published on 11 February 2013.

35/3 Matters determined in correspondence

No matters had been determined in correspondence since Meeting no. 34.

35/4 Position on references

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

Regarding previous Minute 34/5, the Secretary reported that as continuing dialogue between the operators and Network Rail regarding dispute TTP371 (which was notified in July 2010) had not enabled settlement, arrangements were now being progressed for a timetabling Panel to hear the reference together with subsequent related dispute items.

Reflecting upon the number and nature of Timetabling Disputes being registered but not necessarily progressed to a Panel hearing, the Committee contemplated from a stewardship point of view whether the Timetabling Dispute process with its short appeal timescales might be wasteful of industry resources. Although in some respects localised, the situation was seen as potentially being an indicator of inadequate preliminary discussions between Network Rail and operators across the spectrum of operational planning whilst, in relation to engineering access, an increase in disputes regarding shorter-notice changes could be an indication that control over the planning of infrastructure maintenance and enhancement projects was being lost. These aspects were thought to stem from perceived lack of experience within Network Rail's planning staff both in being able to engage with their engineering colleagues and in being able to consult effectively with operators; further, there was scope for the problem to spread across the network. In any event, there appeared to be

inefficiency in the way that the industry was working and the Committee considered this to be an issue for the industry to explore, with a first step being to seek to represent the situation to senior managers within Network Rail who are responsible for the activity; Bill Davidson undertook to initiate contact. Separately, Nigel Oatway undertook to review Part D of the Network Code regarding the timescales for registering Timetabling Disputes, with a view to possibly developing an amendment proposal which DB Schenker Rail (UK) would promote.

The hearing, jointly, of Timetabling Disputes TTP493, TTP494 and TTP495 had commenced on 18 September 2012 then been reconvened on 24 September and 12 November, with the final form of the determination being issued on 15 March 2013. Whilst the determination remained subject to any appeal being raised, the Committee noted that it remarked that key issues were perceived in the structure of the timetable development process as currently contractualised. It would have been inappropriate for the already extensive determination to incorporate a detailed legal critique of the timetabling process, but the Committee took the view that there would be merit in commissioning the Hearing Chair to specifically identify the relevant clauses in Part D of the Network Code which give concern, summarise the issues which arise and indicate the action which is considered appropriate to improve matters (whether this be in terms of process or simply redrafting to give clarification). Upon receipt of the report, the Committee would consider what further steps to take.

35/5 Update on the website

The Secretary reported that the website was up to date.

35/6 Internal check arrangements

John Czyrko had tabled a report regarding internal check activity which he had carried out since the 12 December 2012 meeting and this was noted.

It was agreed that Nigel Oatway would undertake internal check until the next meeting, although avoiding areas of business in which he had potential participation as a signatory to the bank account.

35/7 Outturn for 2012/13 and budget and levy for 2013/14

The Committee noted a report setting out the final outturn projections against the current year budget and the final budget proposal for 2013/14, which was approved. In view of the levy surplus expected to be available out of 2012/13 income, the Committee was pleased to be able to deliver a reduction of some 8% in the overall 2013/14 levy demand upon Resolution Service Parties.

One Resolution Service Party had yet to pay its 2012/13.

The levy charges for 2013/14 were discussed in the context of the arrangements set out in the ADR Rules and, together with other funding aspects, determined.

35/8 Office lease terms

The Committee noted a report regarding negotiations to restructure the terms of the lease of its office premises at 1 Eversholt Street and authorised the Secretary to seek to settle the 2014 rent review and extend the lease to 19 July 2020 (with removal of existing break clauses) on the basis of Option 2 in the report.