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## **ACCESS DISPUTES COMMITTEE**

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**MINUTES of MEETING No. 43**  
held in London on 10 December 2015

**Present:**

John Beer (Govia Thameslink Railway) (Committee Chair)  
Dean Warner (Abellio Greater Anglia)  
John Czyrko (First Greater Western)  
Andy Wylie (Hull Trains)  
Nigel Oatway (DB Schenker Rail (UK))  
Robin Nelson (Freightliner Heavy Haul)  
Peter Craig (Network Rail)

**In attendance:**

Professor Richard Butler (Allocation Chair)  
Tony Skilton (Secretary)  
Kathy Couldridge (Assistant Secretary)

**Apologies for absence:**

Paul Thomas (Network Rail)

It was noted that the meeting was quorate.

**43/1 Approval of Minutes of Meeting no.42**

The Minutes of Meeting no.42, held on 22 July 2015, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

**43/2 Matters arising from the Minutes of the previous Meeting**

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

42/2 (previous 41/2 and 40/8) Seminar for Hearing Chairs

The Secretary reported that he was still endeavouring to find a date convenient for all anticipated participants in the intended seminar.

42/9 Abolition of the Rail Industry Dispute Resolution Committee and Rail Industry Dispute Resolution Council

The Secretary reported that the Rail Industry Dispute Resolution Committee and Rail Industry Dispute Resolution Council had ceased to operate with effect from 1 November 2015. In accordance with the industry consultation, certain residual responsibilities of the Rail Industry Dispute Resolution Committee had been transferred to the Access Disputes Committee, the Allocation Chair and the Secretary, with the ADR Rules amended accordingly. The Secretary of the Rail Industry Dispute Resolution Committee was in the

process of closing down its affairs with the objective of being completed by the end of the current month.

#### 42/10 Timetabling Disputes

The report of the investigation into the increased numbers of Timetabling Disputes being registered, which had been conducted on behalf of the Committee by Paul Thomas and Robin Nelson, had been sent to Network Rail's Capacity Planning Director (Network Strategy and Capacity Planning) with a view to securing senior level attention and bringing about improvement in the various areas of timetable planning. Offer was made of welcoming a nominated Network Rail lead to work with the Committee to exercise its management responsibility of the Timetabling Disputes process to deliver better value for the industry. Network Rail had agreed that a representative would attend and provide feedback at the Committee's next meeting but, in the interim, an informal discussion meeting was being arranged between Network Rail and the Committee members in order to maintain momentum.

The report had been discussed with train planning practitioners at Operations Planning Strategy Group in the hope of finding ways to address issues raised. Additionally, opportunity had been taken to bring the findings of the report to a wider audience by means of a seminar at the recent national Timetabling Conference.

#### **43/3 Matters determined in correspondence**

No matters had been determined in correspondence since Meeting no. 42.

#### **43/4 Position on references**

The Committee noted a report from the Secretary setting out the current position regarding dispute references. The trend of registering a high number of Timetabling Disputes continued.

#### **43/5 Update on the website**

The Secretary reported that the website (including the Directory) was up to date.

#### **43/6 Internal check arrangements**

Nigel Oatway had tabled a report regarding internal check activity which he had carried out since the 22 July meeting and this was noted.

It was agreed that Robin Nelson would undertake internal check until the next meeting.

#### **43/7 Outturn for 2015/16 and preliminary budget for 2016/17**

The Committee noted a report setting out the outturn projections against the current Year budget; it anticipated that income would comfortably exceed expenditure. All Resolution Service Parties were up to date with levy contributions.

In considering the preliminary budget for 2016/17, strategy was discussed in relation to future costs of running the Committee's office premises following the abolition of the Rail Industry Dispute Resolution Committee. It was agreed that the aim should be to share the

costs of the premises across the incumbents on a fair and equitable basis which reflects expected use. The Secretary was directed to write to the Delay Attribution Board setting out the Committee's views in this regard.

The Committee considered that, as with recent Years, existing reserves together with surplus expected to be available out of current Year income should enable the 2016/17 finances to be constructed to produce the same overall levy requirement as for 2015/16.

#### **43/8 Review of dispute resolution process**

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.

Based on personal observation during the past year and feedback canvassed from the Hearing Chairs, Professor Butler was content to advise from a professional perspective that the Principles were being observed and that the Committee could be satisfied with the way in which the ADR Rules were being applied. The Committee noted this advice.

The feedback from Hearing Chairs had indicated no dissatisfaction with administration of the disputes process and Hearing Chairs had expressed that they were impressed by the assistance received from Timetabling Panel members, Industry Advisors and the Secretary, particularly when compared to experience with tribunals, etc on which various of them sit. The feedback did, however, suggest a number of areas deserving of discussion between all the Chairs with representation from ORR's legal team, viz:-

- The level of detail necessary when giving reasons for decisions (particularly in the time-constrained situation of a Timetabling Panel determination)
- Where it is necessary to examine the legal interpretation of a contract as a matter of law, it has not been the practice for determinations under the ADR Rules to cite authorities. Should this properly be done, particularly with a view to informing any possible appeal forum?
- How should a Hearing Chair proceed when the industry is awaiting a relevant appeal decision but the case in hand means it is not reasonable to delay?
- Is there a case for proposing changes to the Rules to clarify/reinforce the case management powers of the Hearing Chair?

These topics were noted for discussion at the intended seminar.

#### **43/9 Annual Report for 2015**

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 2015 Annual Report for issue in January 2016.

#### **43/10 Committee and Timetabling Pool membership**

The Secretary reported that the results of the recently held round of elections had not yet been received from the Secretary of the Class Representative Committee.

**43/11 Meetings in 2016**

The Committee agreed the schedule of routine business meetings to be held during 2016.

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17/3/16