
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 46
held in London on 6 December 2016

Present:

Nigel Oatway (DB Cargo (UK)) (Committee Chair)
John Czyrko (First Greater Western)
Dean Warner (Abellio East Anglia)
Helen Cavanagh (Arriva Rail North) - by conference telephone
Andy Wylie (Hull Trains)
Ian Kapur (GB Railfreight)
Paul Thomas (Network Rail)
Peter Craig (Network Rail)

In attendance:

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

It was noted that the meeting was quorate.

46/1 Approval of Minutes of Meeting no.45

The Minutes of Meeting no.45, held on 28 July 2016, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

46/2 Matters arising from the Minutes of the previous Meeting

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

45/2 Seminar for Hearing Chairs

The Secretary reported that a convenient date was being sought for a seminar to be held in 2017, with early planning to follow on an annual basis for future years.

45/3 Consultancy contracts

The Secretary reported that over the summer, contracts had been renewed with the Allocation Chair, all the Hearing Chairs and with all Industry Advisors except one (who was not responding to attempted contacts). Appointment of John Beer as an Industry Advisor had also been accomplished. The contract with the Assistant Secretary had lapsed and the Committee decided to leave the role vacant for the time being.

46/3 Matters determined in correspondence

No matters had been determined in correspondence since Meeting no. 45.

46/4 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, particularly relating to Confirmed Period Possession Plan ("CPPP") decision notices, continued.

The Committee noted that Network Rail had alerted the Secretary to the likelihood of there being a high volume of Timetabling Disputes to register early in 2017 relating to Timetable Planning Rules for the 2018 Working Timetable; it would be desirable to have these cases heard by Panels in early course to provide the industry with a certain basis for forthcoming major timetable changes.

In discussing the potential challenge of resourcing a large number of Panels for hearings at around the same time, the Committee felt that as the Hearing Chair now decides how a dispute will be determined instead of the Panel members appointed from the Timetabling Pool as previously, there was no longer the need for expertise on each Panel to be provided by a total of three of the elected Class/Band members from amongst the operators (in addition to one of Network Rail's appointed Pool members). Nigel Oatway undertook to develop a proposal to be submitted by DB Cargo to the Class Representative Committee for reducing operator participation on Panels to two.

Timetabling Disputes

The meeting welcomed a report from Paul Thomas which continued the Committee's focus upon the high number of Timetabling Disputes being registered by exploring the underlying reasons as to why registrations regarded by those involved as "holding disputes" were not being settled with any apparent urgency yet not being pressed for hearing by a Timetabling Panel.

Analysis had revealed that some 50% of registrations relating to Engineering Access were without any generic theme; in many cases the Notice of Dispute served by the operator either did not contain sufficient detail to enable Network Rail to embark on a positive course or action or it was evident that the dispute had been raised to protect the operator's interests pending completion of some part of the planning process which had yet to take place. Disputes notified in relation to CPPP ("Confirmed Period Possession Plan") decision notices - generating some 33% of dispute registrations - tended to be more specific and detailed than those raised in relation to an Engineering Access Statement, considered to be more possible because the CPPP was issued closer to the time of the intended works (at TW-26).

Analysis had also revealed significant timelag in some instances between issues being resolved and the operator then formally withdrawing the dispute.

The Committee was firmly of the opinion that in view of the level of consultation required by the Network Code, there should be no surprises for operators when a CPPP decision notice is issued; further, it was not considered unreasonable to expect certainty to thereafter be achieved for all parties by TW-18 at the latest to facilitate the "bidding" process. Analysis had revealed that CPPP disputes were remaining "open" on average for in excess of 100 days, which was far too long.

Paul reported that Network Rail was now endeavouring to apply greater rigour in the CPPP development process and in then closing out any issues raised by operators. The view in Network Rail was that any unresolved CPPP dispute should be heard by a Timetabling Panel by TW-20 at the latest. The reasonable timescale within which a Timetabling Panel ought to hear a dispute regarding an Engineering Access Statement was less easy to recommend; the Secretary was asked to explore the practicalities with Network Rail's Head of Capacity Planning Controls.

The Committee decided that there would be considerable merit in examining a tranche of the current CPPP-related disputes with Network Rail and the operators concerned on a without prejudice basis in order to identify the reasons for the disputes arising in the first place and the factors which were preventing the disputes from being settled without recourse to a Panel hearing. It was anticipated that this independent examination might enable a code of practice to be proposed which, whilst not contractual, would guide practitioners in the management of CPPP matters. A working group having been nominated by the Committee, Paul undertook to make necessary arrangements.

46/5 Update on the website

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

46/6 Internal check arrangements

Peter Craig had tabled a report regarding internal check activity which he had carried out since the 28 July meeting and this was noted. The Committee was pleased to note that Peter has been accompanied by Ian Kapur to give some introduction to internal check processes.

The Secretary responded to suggestion that the current level of audit fees should be market tested and it was decided that no further action should be taken at this time. A suggestion that the costs of maintaining the website into the future should be investigated was, however, adopted.

It was agreed that John Czyrko would undertake internal check until the next meeting. Subject to mutual availability, John agreed to take the opportunity to give some introduction to internal check processes to Helen Cavanagh, who had not previously had experience in the activity.

46/7 Outturn for 2016/17 and preliminary budget for 2017/18

The Committee noted a report setting out the outturn projections against the current Year budget; it anticipated that income would modestly exceed expenditure. Four Resolution Service Parties were yet to pay their 2016/17 levy contributions.

In considering the preliminary budget for 2017/18, the Committee noted an anticipated significant increase in business rates for the office premises and endorsed proposition as to how this might be partially offset.

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 2017/18 finances to be constructed to produce the same overall levy requirement as for 2016/17.

46/8 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, Prof 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.

46/9 Annual Report for 2016

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 2016 Annual Report for issue in January 2017.

46/10 Meetings in 2017

The Committee agreed the schedule of routine business meetings to be held during 2017.

Not
Chair 16/03/17