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## **ACCESS DISPUTES COMMITTEE**

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**MINUTES of MEETING No. 51**  
held in London on 13 December 2018

**Present:**

Nigel Oatway (DB Cargo (UK)) (Committee Chair)  
Raj Patel (Govia Thameslink Railway)  
Andy Wylie (Hull Trains)  
Greg March (Colas Rail) - by conference telephone  
Peter Craig (Network Rail)  
Richard Parsons (Network Rail)

**In attendance:**

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

**Apologies for absence:**

Dean Warner (Abellio East Anglia)  
James Carter (West Midlands Trains)

It was noted that the meeting was quorate.

**51/1 Approval of Minutes of Meeting no.50**

The Minutes of Meeting no.50, held on 21 September 2018, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

**51/2 Matters arising from the Minutes of the previous Meeting**

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

**49/2 Levy charging arrangements**

It was now possible for a review of the charging rules to be undertaken, having been delayed awaiting data from ORR to inform the 2018/19 invoicing calculations.

**49/10 Appointments**

A very small number of applications had been received in response to advertisement of the role of Committee Secretary; interviews were being planned for January. The members thought that in the event of needing to re-advertise, the wording of the advertisement might be worthy of adjustment to attract wider attention and further consideration ought perhaps to be given to where the advertisement is placed.

Indication had now been received that Network Rail would not oppose a proposal to increase its number of members of the Timetabling Pool to six. Nigel Oatway advised that DB Cargo (UK) would be happy to sponsor the necessary Proposal for Change in the Access Dispute Resolution Rules to the Class Representative Committee on behalf of the Committee.

#### 50/4 Meeting held with Chairs on 22 May 2018

More pressing matters had precluded time for drafting of suggestions for amending the Access Dispute Resolution Rules and Network Code Condition D5.3 to reflect discussion which had taken place with the Chairs. The Committee was aware that Network Rail was seeking to review the Network Code in its entirety and suggestions for changes could be input to that review but it was considered worthy of putting specific changes forward to the Class Representative Committee in advance of the conclusions of the general review.

Regarding the arrangements for appeals against Guidance by the Delay Attribution Board, an informal discussion meeting had taken place on 13 November between available members of the Committee and the Delay Attribution Board, with one Hearing Chair and representatives from ORR and the Department for Transport also in attendance. Possible ways of improving the arrangements were discussed and it was now necessary for some detailed drafting to be undertaken to set out how Part B of the Network Code and the Access Dispute Resolution Rules might be amended so that cases calling for legal consideration of the terms of Schedule 8 of the Track Access Contracts do not in future receive initial consideration by the Delay Attribution Board as a stage of a dispute resolution process.

#### 50/6 Recommendations arising from determinations

Apart from administrative items already given attention by the Secretary, progression of recommendations contained in the determinations of Access Dispute Adjudications and Timetabling Panels over the past two years remained to be addressed by a Working Group. As noted in following up the latest meeting with the Chairs, drafting of suggestions had been precluded by a high volume of dispute-related work of greater priority throughout 2018.

The Secretary was hopeful that drafting work would be able to be undertaken ahead of the next meeting (planned to be held in March 2019). The Committee decided that an action tracking process should become a standing agenda item with effect from the March 2019 meeting.

#### 50/11 Code of Practice for disputes relating to Confirmed Period Possession Plans

The Committee recognised that the ongoing industry situation applying to operation of Part D of the Network Code through 2018 had prevented meaningful trial of the proposed arrangements.

#### **51/3 Matters determined in correspondence**

No matters had been determined in correspondence since Meeting no. 50.

#### **51/4 Position on references**

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

The Secretary reported that the allocation hearing regarding Network Rail not giving sufficient notice to satisfy the "T-14" requirement, which had opened on 11 June and been adjourned whilst the parties sought to clarify the issues between them, had reconvened on 20 November when a Procedure Agreement had been drafted by the Allocation Chair and this was under consideration by the parties. The freight operators involved were also giving consideration to serving fresh Notices of Dispute to clarify their claims and put the matter before a non-TTP Forum, but the existing 32 Timetabling disputes were to remain open in case it is concluded that any aspect should be remitted back.

#### **51/5 Update on the website**

The Secretary reported that the website listing of disputes was up to date. The Directory was also up to date.

Suggestion had been made at the previous meeting that the website might more clearly indicate that the Secretary does not have a role in making the arrangements for mediations or arbitrations held pursuant to the RIDR Rules. The Secretary reported that the Home Page had been suitably amended and opportunity was also being taken to make the point in the Annual Report for 2018.

#### **51/6 Internal check arrangements**

There had been little opportunity for an internal check visit to take place since the meeting on 21 September 2018; Raj Patel would remain the nominated member to undertake the next check.

#### **51/7 Outturn for 2018/19 and preliminary budget for 2019/20**

The Committee noted a report from the Secretary providing an outturn projection against the current year budget, together with the final budget proposal for 2019/20. It was anticipated that 2018/19 income would comfortably exceed expenditure.

Ten levy contributions for 2018/19 had yet to be received.

The preliminary expenditure budget proposal for 2019/20 was approved, with uncertainties currently remaining regarding uplift in business rates and the premises service charge, also regarding future costs of the Secretariat and the cost of running the website.

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 2019/20 finances to be constructed to produce the same overall levy requirement as for 2018/19.

#### **51/8 Delegated authority**

At its meeting on 21 September 2018 the Committee had asked the Committee Chair and the Secretary to suggest the terms for a Letter of Delegation which would set out the delegated authority (financial and otherwise) of the Committee Secretary; the Letter would be reviewed annually.

Proposed terms for the Letter were now before the meeting and the Committee approved the text for issue by the Committee Chair on its behalf.

## **51/9 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.

The Allocation Chair, Prof Butler, provided a report based on personal observation during the past year together with feedback canvassed from the Hearing Chairs and advised the Committee that he was content from a professional perspective that the Principles were being observed in the management and determination of disputes. The Committee noted this advice.

Concerns had emerged regarding the detail provided to explain the basis for disagreement when a Notice of Dispute is served. Whilst ADR Rule B3(c) required the Notice to "summarise the basis of the claim including a brief list of issues", the Chairs were unhappy - and there had been criticism by Counsel attending for the defence in recent hearings - that the summary could be so brief in some instances as not to explain the "claimant's" case. The drafting of the Notice of Dispute had been touched upon in preliminaries for the hearing of Timetabling Dispute TTP1198 but the case had not progressed to a determination so the matter had not been addressed in a determination (although relevant correspondence was posted on the website). The Committee recognised that the Notices were usually prepared by railway managers and not by lawyers, and that whilst the view could be taken that a deficient Notice of Dispute could disadvantage the "Defendant", there will normally have been a sufficient degree of preliminary exchange that the Defendant will be adequately aware of the issues in dispute, but it was agreed that the templates for the Notices of Dispute might usefully be accompanied by some guidance in the form of examples of good and bad practice. In essence, the Claimant must adequately explain its case at the Notice of Dispute stage of the process.

Other matters raised by the Chairs related to the progression of recommendations from determinations and points raised at meetings with the Chairs, dealt with elsewhere in this meeting.

## **51/10 Annual Report for 2018**

The Committee considered the preliminary draft for the 2018 Annual Report and noted that small adjustments would be necessary to reflect factual changes arising in the remainder of the month. Additionally, there was suggestion that aspects of the somewhat standardised text might warrant replacing – Committee members agreed to put forward suggestions as thought appropriate, with the hope that the necessary further drafting could be completed to enable the Report to be issued early in 2019.

## **51/11 Amendment of Claims Allocation and Handling Agreement**

The Committee had previously been advised that the CAHA Registrar was consulting CAHA Parties regarding amendment of the Claims Handling and Allocation Agreement in the context of the General Data Protection Regulation. The Committee now considered the proposed changes together with the responses received from the consultation and agreed to recommend to ORR that the proposed amendments to the Claims Handling and Allocation Agreement should be approved.

Noting that this was the first time that a proposal had been put forward for amending the Claims Handling and Allocation Agreement since abolition of the Rail Industry Disputes Resolution Committee in 2015, Committee members observed that it would be appreciated if any future proposals could be presented to the Committee accompanied by a version of the document using "Track Changes". In this particular instance, however, it was recognised that part of the proposal was that a complete schedule to the Agreement should be substituted and that it contained so many changes from previously that a Track Changes version would probably serve to confuse rather than assist understanding.

The Committee agreed that upon implementation of the amendments to the Agreement, copies of the new Consolidated Agreement should be issued to CAHA Parties by post to reflect its confidential status.

#### **51/12 Membership of the Committee and Timetabling Pool**

The Committee noted the results of recent elections which would take effect from 1 April 2019. The membership of the Committee would be unchanged; there would be two changes in the Timetabling Pool.

#### **51/13 Meetings in 2019**

The Committee agreed dates for routine meetings in 2019 whilst noting that additional business would arise to make decisions regarding Secretariat appointments and the associated contract terms and amendment of banking mandates.

It was agreed that the Secretary should seek to arrange a date in May 2019 for a gathering of the Chairs.

*Notes*  
*25/04/19*