
ACCESS DISPUTES COMMITTEE

Annual Report for 2020

- Continuing high number of Timetabling Disputes registered
- Particular emphasis is laid on Parties appropriately registering their disputes, in accordance with ADR Rule B3 (templates available on our website, or by contacting the Secretary) and in particular providing a brief summary of the basis of the claim, including a list of issues, i.e. not registering a 'holding dispute'
- Subject to availability, and local restrictions, the Committee's new premises near Paddington station may be found to offer an acceptable and less costly alternative to booking meeting rooms and hot desking in Central London
- At this stage, the Committee does not expect to increase its overall funding call when issuing levy invoices for 2021/22

REPORT FOR 2020

Access Dispute Resolution Rule J3(g) requires the Committee to “monitor and report at least annually to the Resolution Service Parties upon the work of the Committee”. The Committee is pleased to issue its report for the calendar year 2020.

Communications

Our report for 2020 follows the format adopted for the past ten years. In the absence of any adverse feedback regarding the recent reports, we again invite comments regarding the adequacy of the content of this one.

The Committee’s website (www.accessdisputesrail.org) provides a ready source of reference material whilst also containing downloadable templates for use in connection with dispute procedures. The website is updated promptly following a change in any item of information. Work continues on amending the Directory of Past Precedents, which has been delayed owing to the office move, which took place in the summer. **It is important to note that, following the office move, the Committee’s contact details have changed.**

Comments regarding the website and Committee matters in general will always be welcomed and may be passed to the Committee Secretary, Tamzin Cloke (e-mail: secretary@accessdisputesrail.org, tel: 020 8050 3657). Alternatively, a channel of communication is available through the Committee members who have been elected or appointed on behalf of areas of the industry; the current Committee members are listed at the back of this report along with details of the operators in the respective voting Classes/Bands as at December 2020.

The Committee is happy to provide briefing sessions to enhance familiarity of Resolution Service Party staff with the ADR Rules and associated processes. Requests should be made to the Committee Secretary.

Administration

Greg March and Dean Warner left the Committee following completion of their elected terms ending on 31 March 2020 and were replaced by Ian Kapur and Andrew Danson. The Committee records its appreciation of the contribution that they made to its work.

During 2020, five new Hearing Chairs were recruited; the Committee welcomes Jacqueline Findlay, Peter Hinchliffe, Matthias Kelly QC, Alexander Rozycki and Paul Stevenson.

The Committee members elect the Committee Chair from amongst their number and Nigel Oatway continues in the role.

The Committee met three times in 2020, the last two via videoconference. The March meeting was cancelled due to the pandemic, with urgent business agreed via correspondence.

Following abolition of the Rail Industry Disputes Resolution Committee and Council effective from 1 November 2015, the Committee became responsible for oversight of the CAHA Registrar and the Committee Secretary is deemed to act also as RIDR Secretary in any circumstances where that may become necessary. The current RIDR Rules can be found on this Committee’s website.

Dispute references - national network

Details of dispute references received can be found on the Committee’s website, together with any associated Timetabling Panel or (subject to the confidentiality provisions) Access Dispute Adjudication (“ADA”) determination and any ORR appeal decision. In accordance with the ADR Rules, Timetabling Panel determinations are also issued directly to a nominated person in each operating company. **If you believe that you are missing from this distribution list, please contact the Secretary.**

The position regarding dispute references handled in relation to the national network during 2020 can be summarised as follows:-

For a Timetabling Panel

| | | |
|------------------------------------------------|-----|---------------------------------|
| Unheard references on hand at 31 December 2019 | 96 | |
| New references received in 2020 | 183 | |
| References withdrawn in 2020 | 153 | |
| Hearings held in 2020 | 4 | |
| Determinations issued in 2020 | 4 | (covering 5 dispute references) |
| Determinations appealed in 2020 | 1 | (ORR appeal decision awaited) |
| Pending hearing at 31 December 2020 | 121 | |
| Hearings arranged for 2021 | 0 | |

For an Access Dispute Adjudication (“ADA”)

| | |
|------------------------------------------------|---|
| Unheard references on hand at 31 December 2019 | 2 |
| New references received in 2020 | 0 |
| References withdrawn in 2020 | 1 |
| Hearings held in 2020 | 1 |
| Determinations issued in 2020 | 1 |
| Appeals submitted in 2020 | 0 |
| Pending hearing at 31 December 2020 | 0 |
| Hearings arranged for 2021 | 0 |

One allocation hearing took place this year, with one dispute referred for Arbitration. One dispute was referred to mediation in the first instance, and another to court proceedings (it involved a potential claim against a third party, and thus fell outside the remit of the ADRR). One other notified dispute is on hand awaiting a proposal regarding allocation to a Forum.

Preparing for a hearing concentrates minds and can often lead to a solution being identified without needing to have the case heard. For those disputes where a hearing has been arranged, the Hearing Chairs are committed to combining the application of the ADR Rules with recognised legal practice in order to provide efficient case management; in some cases, directions from the Chair or a request for further information have helped parties to recognise a way forward and settle their differences. The occasional Directions Hearing has taken place in past years and it is considered that there can be real

benefit in Hearing Chairs meeting with the parties involved as a preliminary to a hearing, thus enabling focussed directions to be issued.

As shown above, five Timetabling Panel hearings were held in the year, covering six Timetabling Disputes. Additionally, two further hearings were arranged for Timetabling Disputes on two dates but were stood down due to late discussions between the parties achieving resolution.

The Committee is keen that lessons learned from previous hearings are enacted and, following guidance from the Hearing Chairs, has compiled a list of points of learning or suggestions from recent determinations that might be of assistance to the industry. This is a live document and the Committee expects that it may lead to, for example, Proposals for Change being submitted for industry consideration.

Regarding the number of Timetabling Dispute references, it is of interest to compare statistics for recent years:-

| | <u>2020</u> | <u>2019</u> | <u>2018</u> | <u>2017</u> | <u>2016</u> | <u>2015</u> | <u>2014</u> | <u>2013</u> | <u>2012</u> | <u>2011</u> |
|-------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| New disputes registered | 183 | 169 | 242 | 159 | 138 | 141 | 115 | 107 | 96 | 60 |
| Disputes determined | 5 | 2 | 6 | 9 | 6 | 4 | 5 | 0 | 5 | 6 |

As can be seen, there is a continuing high number of Timetabling Disputes being registered over time. The number in 2018 was significantly inflated by issues associated with short notice access and timetabling decisions during the industry May 2018 recovery process.

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 – A10) are being observed in the way in which disputes are being managed and determined. Having sought and considered the professional view of the Allocation Chair (Professor Richard Butler) in this regard, together with feedback received by Committee members and their own individual experiences under the Rules, the Committee is suitably satisfied.

Dispute references - HS1

No disputes have been registered under the HS1 Access Dispute Resolution Rules during 2020.

Dispute references – Heathrow Airport Ltd (“HAL”)

Two disputes were registered under the HAL Access Dispute Resolution Rules during 2020, one of which (HAL/TTP002) led to a hearing, which took place in November.

Dispute references – Core Valley Lines (“CVL”)

No disputes have been registered under the CVL Access Dispute Resolution Rules during 2020.

Accommodation

The Committee is happy to make its meeting facilities available for the benefit of the industry and readers are reminded that its new offices conveniently situated between Paddington and Edgware Road stations may be found to offer an acceptable alternative to booking meeting rooms in Central London. Starting in 2021 the Committee will also be offering hot desking facilities on a limited basis to rail industry employees – contact the Committee Secretary regarding facilities and availability.

Finance

No levy payments remained outstanding on 31 March 2020. Prior to release of provisions, net audited expenditure in the Financial Year to 31 March 2020 was £357,156 against routine income of £353,233. Reserves were used, as planned, to compensate for the shortfall. They were also used for making 2020/21 pre-payments, to meet cashflow requirements pending receipt of levies for the new 2020/21 Financial Year and to facilitate a reduced call upon Resolution Service Parties for funding in 2020/21. No 2019/20 levy payments were outstanding on 31 December 2019.

The Committee is in a position that it does not expect to increase its overall funding call when issuing the levy invoices for 2021/22.

On behalf of the Committee

[SIGNATURE REDACTED]

Nigel Oatway
Committee Chair

20 January 2021

Committee members (as at 31 December 2020)

| <u>Class/Band</u> | <u>Member</u> | <u>Company</u> | <u>Telephone</u> |
|------------------------------------|-----------------|--------------------------|------------------|
| Franchised Passenger Class, Band 1 | Raj Patel | Govia Thameslink Railway | 07975 603552 |
| Franchised Passenger Class, Band 2 | Andrew Danson | XC Trains Ltd | 0121 200 6160 |
| Franchised Passenger Class, Band 3 | James Carter | West Midlands Trains | 07772 886852 |
| Non-Franchised Passenger Class | Andy Wylie | Hull Trains | 07881 510021 |
| Non-Passenger Class, Band 1 | Nigel Oatway | DB Cargo (UK) | 0130 257 7010 |
| Non-Passenger Class, Band 2 | Ian Kapur | GB Railfreight | 07818 421220 |
| Network Rail | Richard Wall | Network Rail | 07740 783440 |
| | Richard Parsons | Network Rail | 07917 857937 |

Operators by Class and Band (as at December 2020)

Franchised Passenger Class, Band 1:- Abellio ScotRail; ; Govia Thameslink Railway

Franchised Passenger Class, Band 2:- First Greater Western Ltd.; London North Eastern Railway; First MTR South Western Trains; Northern Trains; Abellio East Anglia; West Midlands Trains; London & South Eastern Railway; First Trenitalia West Coast Rail Ltd.

Franchised Passenger Class, Band 3; Keolis Amey Operations/Gweithrediadau Keolis Amey; XC Trains; East Midlands Trains; Arriva Rail London; Trenitalia c2c; Chiltern Railway Company; Merseyrail Electrics; First Transpennine Express; MTR Crossrail; Serco Caledonian Sleepers

Non-Franchised Passenger Class:- Eurostar International; Hull Trains Co; Heathrow Express Operating Co; Grand Central Railway Co; West Coast Railway Co; North Yorkshire Moors Railway; Nexus (Tyne and Wear PTE); Peak Rail; East Coast Trains; Ffestiniog Railway; Chinnor & Princes Risborough Railway; Locomotive Services (TOC) Ltd.; Rail Express Systems; South Yorkshire Supertram; Vintage Trains Ltd.; SLC Operations Ltd.

Non-Passenger Class, Band 1:- DB Cargo (UK); GB Railfreight; Freightliner

Non-Passenger Class, Band 2:- Freightliner Heavy Haul; Direct Rail Services; Babcock Rail; COLAS Rail; Amey Rail Ltd.; Balfour Beatty Plant & Fleet Services; Volker Rail; Devon & Cornwall Railways; Crossrail; Europorte Channel SAS; Harsco Rail; Rail Operations Group; Victa Railfreight; Rail Express Systems