

IN THE MATTER OF THE ARBITRATION ACT 1996 AND IN THE MATTER OF AN

ARBITRATION BETWEEN:

RAIL TRACK PLC

Claimant

and

GREAT NORTH EASTERN RAILWAY LIMITED

Respondent

FIRST AWARD

WHEREAS

(A) The Claimant is the owner and licensed operator of a network of railway lines in England, Wales and Scotland. The Respondent is a licensed operator of passenger train services in England, Wales and Scotland.

(B) By a letter of appointment dated 23 August 2001 from Mr Christopher Blackman, the Disputes Secretary of the Access Dispute Resolution Committee, I, JOHN MANNERS JARVIS, Queen's Counsel, was duly appointed sole arbitrator for the determination, decision and arbitrament of the dispute referred to therein pursuant to clause 11.1 of the Track Access Agreement between the Claimant and the Respondent dated 1 April 1995.

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- (C) The place of arbitration is London.
 - (D) The parties exchanged written submissions in the form of Statement of Claim and Defence followed afterwards by written outline arguments.
 - (E) A hearing was held at Citypoint, Ropemaker Street, London on the 10th and 11th December 2001. Both parties were represented by leading and junior counsel and solicitors. Two volumes of documents were placed before me together with a bundle of authorities.
 - (F) I have listened to the arguments, studied the documents and deliberated on the issues which I am required to determine.

NOW THEREFORE I, John Manners Jarvis, HEREBY MAKE AND PUBLISH THIS MY FIRST AWARD as follows:

- (1) For the REASONS which are delivered with and form part of this Award I declare-
 - (a) That, on the true construction of the provisions of the Track Access Agreement neither party to the Agreement can exercise rights of set-off in support of a refusal or failure to pay amounts that have been properly calculated and are otherwise due and payable under the Track Access Agreement.
 - (b) That the Claimant is, pursuant to clause 15.6 of the Track Access Agreement, entitled to the payment of interest at the Default Interest Rate on all amounts due and payable to the Claimant under the Track Access Agreement from the due date until the date of actual payment by the Respondent.
- (2) This Award is FINAL as to what it decides subject only to the provisions of the Arbitration Acts. At the request of the parties I RESERVE for myself the power to make a further Award or Awards in relation to costs (including the costs of this Award), and all

other matters which I may in the future may be required to decide pursuant to my appointment.

GIVEN UNDER MY HAND the 19th day of February 2002.

A handwritten signature in black ink, appearing to read 'John Jarvis', with a long, sweeping flourish extending to the right.

John Jarvis QC



