

**SECOND ARBITRATION****IN THE MATTER OF THE ARBITRATION ACT 1996 AND IN THE****MATTER OF AN ARBITRATION BETWEEN:****GREAT NORTH EASTERN RAILWAY LIMITED****Claimant****and****RAIL TRACK PLC****Respondent****THIRD INTERIM AWARD****WHEREAS**

- (A) On 5 February 2002 I published my First Interim Award in this Arbitration. I set out the status of the parties and my appointment in that First Interim Award. On 19 February 2002 I published my Second Interim Award in this Arbitration.
- (B) The place of arbitration is London.

(C) The parties have exchanged written submissions in the form of Supplemental Statement of Claim, Defence and Reply in respect of further issues on quantum. The Claimant has served the written statements of the following witnesses: the third witness statement of Jonathan Barry Colley and the third and fourth statements of Robin Davis. The Respondent has served the fourth witness statement of Mark Leving.

(D) A hearing was held at Citypoint, Ropemaker Street, London on 26 and 27 March 2002. The parties served written opening skeletons prior to the hearing and the Respondents served written closing submissions on 27 March 2002. In addition to the documents previously before me, three further volumes of documents were placed before me. I heard the evidence of the witnesses whose witness statements had been served. Both parties were represented by Junior Counsel and Solicitors.

(E) I have heard the evidence, studied the documents, listened to the arguments and deliberated on the issues which I am required to determine.

NOW THEREFORE I, John Manners Jarvis, HEREBY MAKE AND PUBLISH THIS MY THIRD INTERIM AWARD:

(1) For the Reasons which are delivered with and form part of this Third Interim Award I declare:

(A) That, on the true construction of the provisions of the Track Access Agreement and by reason of the events which have occurred, that a Suspension Notice under clause 9.3 of the Track Access Agreement must set out the details of any necessary suspension of the services, and that such details require the specification of the target time departures of the service to be suspended and that if a train does in fact depart within such target time departure it cannot have been in fact a cancelled service.

(B) That the Claimant is only entitled to one service in the target departure time 10.15 and 10.45 between King's Cross and Aberdeen and King's Cross and Edinburgh.

(C) This is a Third Interim Award which is subject only to the provisions of the Arbitration Act. At the request of the parties the remaining issues in this Arbitration are reserved to a further hearing and 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 future be required to decide pursuant to my appointment.

GIVEN UNDER MY HAND THE 3<sup>Td</sup> APRIL 2002

A handwritten signature in black ink, appearing to read 'John Jarvis', is written in a cursive style.

John Jarvis QC